

(1993) 09 GAU CK 0010

Gauhati High Court

Case No: M.A. (F) 98 of 1993

Silchar Anchalik Panchayat
Mahkuma Parishad Compound

APPELLANT

Vs

Anwarul Islam Burbhuyan,
President, Beranga Gaon
Panchayat

RESPONDENT

Date of Decision: Sept. 30, 1993

Acts Referred:

- Assam Panchayati Raj (Financial) Rules, 1990 - Rule 49, 49(2), 51
- Assam Panchayati Raj Act, 1986 - Section 13, 2, 2(1), 71, 71(1)

Citation: (1993) 2 GLR 303

Hon'ble Judges: S.N. Phukan, J

Bench: Single Bench

Advocate: M. Singh and S. Singh, for the Appellant; G.N. Sahewalla, A.R. Goswami and B. Sharma, for the Respondent

Final Decision: Dismissed

Judgement

S.N. Phukan, J.

This appeal is against the order passed by the Asstt. District Judge No. 1, Cachar at Silchar in Misc. Case No. 60/93 arising out of Title Suit No. 65 of 1993. The appeal has been filed by the Silchar Anchalik Panchayat Mahkuma Parisbad, as by the impugned order which is available at Annexure-1 to the memo of appeal, the learned Asstt. District Judge though held that the settlement of the bazar viz Baranga Market in favor of one Angad Das at Rs. 85,000/- valid, but conditions No. 17 & 18 of the tender notice are contrary to the provision of the Assam Panchayati Raj Act, 1986 and accordingly the above 2 conditions were stayed. The suit was filed by the President of the Baranga Gaon Panchayat being aggrieved with the said tender notice for settlement of the market. It may be stated that according to Clause (17) of the tender notice the lessee could collect the fees for sale and standing of

cows etc.

2. It may be stated that by order dated 6.7.93 the above order of the Asstt. District Judge No. 1 passed in Misc. Case No. 60/93 was stayed and thereafter the petition for vacating the stay order was filed by the President of the Gaon Panchayat which was registered as Misc. Case No. 74/93. As agreed to at the bar, both the appeal and the petition for vacating the stay order were taken up for final disposal.

3. For the purpose of the present case Section 2(1), Section 13, Section 71(2), Section 73, Section 84 and Section 91 are relevant and also Rule 49 and Rule 51 of the Assam Panchayati Raj (Financial) Rules, 1990 are relevant.

4. Clause (1) of Section 2 of the Act defines Gaon Panchayat which means a Gaon Panchayat established under the Act. Section 13 is regarding constitution of Anchalik Panchayat which includes all Presidents of Gaon Panchayat alongwith other members. Section 71(1), inter alia, provides that subject to rules and by-laws framed with the approval of the appropriate authority a Gaon Panchayat may impose the taxes in addition to the local rates collected from the area as mentioned in the said Sub-section. According to Clause (2) a Gaon Panchayat may impose a cess or fee or registration of cattle sold within the local area and Sub-section (3) provides that taxes etc shall be imposed and assessed and realised in such time and in such manner as prescribed. Section 73 of the Act empowers the Anchalik Panchayat to settle in the manner prescribed for a period of one financial year by inviting tenders all hats within its territorial jurisdiction. Sub-section (5) of the said section provides that all sale proceeds of hats shall be deposited in Anchalik Panchayat and shall be distributed in the manner according to the said Sub-section. Clause (c) of the said Sub-section (5), Anchalik Panchayat has to distribute an amount equivalent to 40% of the sale proceeds of the hats equally amongst the Gaon Panchayat falling within its jurisdiction. Section 87, inter alia, provides that no action civil or criminal shall lie against a member or agent or employee of a Gaon Panchayat or Anchalik Panchayat or Mahkuma Parishad acting under its direction in respect of anything done in good faith under the Act or rule or bylaws made thereunder. Section 91 provides that if a dispute arises between two or more Mahkuma Parishads and Mahkuma Parishad or local authority or between any two local authorities, the matter shall be referred to the State Govt. or to such authority as the State Govt. may direct and the decision of the State Govt. or such authority shall be final and conclusive.

According to Rule 49 of the Assam Panchayati Raj (Financial) Rules, 1990, the Gaon Panchayat may from time to time at a meeting convened expressly for the purpose, impose taxes, less, cess at such rate not exceeding the maximum limits as laid down. According to Clause (f) of Sub-rule (2) of the above rule in case of registration of a cattle within the local area of a Gaon Panchayat at the rate not exceeding Rs. 20/- per cattle. Rule 51 of the above rule empowers the Gaon Panchayat to make necessary arrangement for assessment and collection of taxes etc, imposed under the provisions of the Act. From the above provisions of the Act and rule it is

absolutely clear that though Anchalik Panchayat has got power to settle any hat or market, the revenue collected has to be distributed. As per Sub-section (5) of Section 73 as stated above such distribution for every Gaon Panchayat will be only 40% of the sale proceeds u/s 71 of the Act, the Gaon Panchayat has exclusive jurisdiction to impose registration of cattle in local area and as stated above, under the relevant rules such registration fees shall not exceed Rs. 20/- per cattle. In the jurisdiction of a particular Gaon Panchayat, the number of cattle may vary and as the exclusive power of collection of registration fee of cattle is with the Gaon Panchayat, if this registration fee is collected by a lessee in whose favour a hat or market is settled, the distribution of such registration fee will not be in accordance with the number of cattle within each Gaon Panchayat. Therefore, the learned trial court rightly held that Clauses (17) & (18) of the tender notice regarding collection of registration fee for cattle etc. is bad in law as the power is with the Gaon Panchayat.

5. Drawing attention of the above legal position Mr. Sahewalla has rightly pointed out that the impugned order cannot be faulted, regarding collection of registration fee for cattle etc.

6. On the other hand on behalf of the Anchalik Panchayat Mr. Singh has urged that if the registration fee is collected by the lessee it will be distributed to the respective Gaon Panchayat. But I am unable to accept the contention of Mr. Singh, inasmuch as, the Gaon Panchayat will not get the actual registration fee of the cattle within the Gaon Panchayat but only 40% of the total sale proceeds. I am of the opinion that the intention of the legislature is very clear that distribution of sale proceed received by the Anchalik Panchayat from the settlement of hat market shall not include registration fee of cattle as a specific separate provision has been made empowering the Gaon Panchayat to impose cess or fee on registration of cattle. Therefore, the contention of Mr. Singh has no force.

7. Drawing attention to Section 84 Mr. Singh has urged that the present suit is not maintainable. That apart, Mr. Singh has further urged that in view of Section 91 as this is a dispute between the Anchalik Panchayat and the Gaon Panchayat which are local authorities as defined in Clause (4) of Section 2 of the Act, the matter has to go to the State Govt. or any authority as the State Govt. may direct. I am unable to accept the contention of learned Counsel as in my opinion, on the face of it the sale notice is bad in law as it has been issued in complete violation of the relevant provisions of the Act and the Rules regarding registration fee for cattle etc.

8. Mr. Singh has further stated that already the lessee has collected registration fee. If that be so, the amount shall be handed over to the present Gaon Panchayat.

9. Another point urged by Mr. Singh is that in absence of any rule or by laws the Gaon Panchayat cannot impose any registration fee. If that be so, it is needless to say that before imposing such registration fee, the Gaon Panchayat shall follow the necessary provisions of the Act and the Rules.

For the reasons slated above, the appeal is dismissed and the impugned order is up-held to the extent that the settlement holder of the market shall not collect registration fee for cattle etc. and such amount so far collected shall be paid to the Gaon Panchayat, by the Anchalik & the trial court shall dispose of the suit immediately.