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**(1999) 03 GAU CK 0028**

**Gauhati High Court**

**Case No:** Civil Rule No. 5169 of 1998

Nashiruddin Ahmed

APPELLANT

Vs

State of Assam and Others

RESPONDENT

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**Date of Decision:** March 11, 1999

**Acts Referred:**

- Assam Panchayat Act, 1994 - Section 120, 122, 125(4), 132
- Civil Procedure Code, 1908 (CPC) - Order 39 Rule 1, Order 39 Rule 2, 151
- Constitution of India, 1950 - Article 226

**Citation:** (1999) 1 GLT 202

**Hon'ble Judges:** D.N. Chowdhury, J

**Bench:** Single Bench

**Advocate:** A.B. Choudhury and M.U. Mondal, for the Appellant; H.N. Sarma, A.S. Choudhury and A.R. Sikdar, for the Respondent

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**Judgement**

D.N. Chowdhury, J.

By this petition, the Petitioner has challenged the legality of the order of settlement of the Ferry-in-question in favour of Respondent No. 4 Shri Kashme Ali.

2. According to the Petitioner, Nashiruddin Ahmed, the Ferry Ghat-in-question AIR Kata Mairakuchi Namchala to Duhri Parghat Ferry for the year 1997-98 by the Jamadarhat Anchalik Panchayat for the total amount of Rs. 3,350/-. The Petitioner deposited all the kist money at a time and a Lease deed was executed in his favour settling the said Ferry for the period 1.7.97 to 30.6.98. The Petitioner further stated that he was prevented from operating the lease and interfered with in collection of tolls by the authorities, as a result of which he had to suffer severe loss; but he was assured by the authority to be given extension of the lease. While the Petitioner was expecting extension of the lease period, at that time he came to know that an arrangement was made for direct settlement with the Respondent No. 4, by the other Respondents. The Petitioner apprehending direct settlement of the said Ferry

with Respondent No. 4, rushed to this Court and this Court by its order dated 7.10.98, issued notice of motion and in the interim, directed the Respondents not to settle the Ferry-in-question with Respondent No. 4 or with any other person. The Respondent No. 4 appeared in court and submitted his affidavit. In the affidavit, Respondent No. 4 stated that Jamadarhat Anchalik Panchayat duly invited tenders for settlement of Haats/Ghats under its jurisdiction including the Airkata-Moirakuchi Namchala to Dhubri Ghat. According to the Respondent No. 4, a number of parties participated in the tender and thereafter settlement of the Ferry-ghat-in question was made in favour of Respondent No. 4 for the period 16.9.98 to 30th June, 1999 for an amount of Rs. 2110/- and by virtue of the settlement order, Respondent No. 4 took charge of the Ferry-ghat and operated the same. Respondent No. 4, further stated about the institution of a Suit by the Petitioner before the Civil Judge (Sr Division), Dhubri, in respect Airkata-Moirakuchi Namchala to Dhubri Ferry-ghat. Respondent No. 4 denied the allegation that the Ferry-ghat in question was settled with him illegally and stated that the settlement was made with him by the Panchayat Authority as per law.

3. Mr. A B Choudhury, learned Counsel for the Petitioner, firstly submitted that the settlement which made in favour of Respondent No. 4, was in fact made by the Block Development Officer, Jamdarhat Block, who was is not the competent authority to settle the Ferry-ghat since under the Assam Panchayat Act, 1994, it is only the Anchalik Panchayats who can settle the Hats/Ghats within its jurisdiction with a person/party. Mr Choudhury, the learned counsel, thereafter submitted that in the absence of wide publicity of the notification inviting tenders, the impugned settlement order cannot be sustained, public interest demanded a wide circulation/publicity of the tender notice and in the absence of such publicity of the notice, the entire process of settlement was vitiated, submitted Mr. Choudhury, the learned Counsel for the Petitioner.

4. Mr. A. R. Sikdar, learned Counsel appearing on behalf of Respondent No. 4, before entering into the merits of the case, pointed out about the institution of the Civil Suit before the Civil Judge (Sr Div), Dhubri, by the Petitioner which was numbered as Title Suit No. 279/98 and also about the application for temporary injunction under Order XXXIX Rules 1 and 2 read with Section 151 Code of Civil Procedure. The learned Counsel has produced before this Court a copy of the application for temporary injunction and also a copy of the notice issued by the Civil Judge (Sr. Div), Dhubri, to one of the parties, as to why ad-interim temporary injunction should not be granted; and stated that the Petitioner in fact sought for an injunction before the Civil Court for restraining settlement of the Ferry-ghat-in-question with Respondent No. 4. Failing to get any interim order, the Petitioner had to withdraw the Suit with the liberty to file a fresh Suit and the Court by its order 3.10.98 and 30.10.98 dismissed the Suit as well as the injunction petition. That the Petitioner by suppressing this fact before this Court, obtained an interim order from this court. Mr Sikdar, the learned Counsel for Respondent No. 4, further submitted that in the instant case, the Block

Development Officer of Jamadarhat Block was not a stranger in the matter of settlement of hats/ghats. He further stated that the Panchayat Elections have not been held since 1996 and the authorities are yet to hold the elections and that the BDO during the intervening period, in public interest, invited tenders for settlement of the Hats/Ghats under the Anchalik Panchayat. Referring to the allegation of short of wide publicity of the tender notice, Mr. Sikdar, the learned counsel, submitted that the tenders were invited three times, i.e., on 10.6.98, 25.6.98 and on 4.8.98, for all the Hats/Ghats under the Jamadarhat Anchalik Panchayat and those tenders were finalised after considering all the tenders.

5. I have heard the learned Counsel for the parties, and gone through the materials on record.

6. The Assam Panchayat Act, 1994 now doubt was enacted to amend and consolidate the laws relating to settlement of Hats/Ghats/Fishery by the Panchayat. It has specifically conferred respective powers on the Panchayat institution for settlement of Hats/Ghats/Fishery through its prescribed authorities. When any Panchayat is not functioning, the Panchayat properties are to be dealt with by some authorities.

The Scheme of the Statute bears clear indication. Section 120 of the Statute clothed the Government with the powers to dissolve and reconstitute Panchayats in certain situations. The State Government for reasons to be recorded, cause an enquiry on matters connected thereto. Section 122 of the Act, 1994 authorised the State Government with the power to issue directions. In the event of dissolution of a Gaon Panchayat or an Anchalik Panchayat or a Zila Parishad, Sub-section (4) of Section 125 of the Act, 1994 provides that: (a) all the powers and duties of the Gaon Panchayat or Anchalik Panchayat or Zila Parishad shall during the period of its dissolution, be exercised and performed by such person or persons as the Government from time to time appoint in this behalf;

(b) all the property vested in the Gaon Panchayat, or Anchalik Panchayat or Zila Parishad shall, during the period of dissolution vest in the Government;

(c) u/s 132 of the Act, 1994, the Government may take such necessary action, if any difficulty arises in giving effect to the provisions of the Act, so long as those are not repugnant to the main provisions of the Act, 1994. In the absence of any contrary intention, therefore, there was no bar upon the BDO to initiate and complete the process of settlement of Hats/Ghats/Fishery. At any rate, the BDO is a pore of the Government. Similarly, on the material facts, it cannot be held that there was absence of wide publicity in the matter of inviting the tenders.

Needless to say that the Court is to lean against Constitution which reduces the Statutory provision otiose. A statute is to be contoured to make it operative and effective by observing the maxim "*Ut res magis valeat quam pereat*". The above principle requires inconsistencies within an Act to be reconciled. The statute in

question as referred to above, has not left any vacuity in the functioning of the institution.

On the other hand, the Petitioner did not specifically raise this issue in the writ petition, he only made out a case that the settlement of the Ferry ghat-in-question was made in contravention of the procedures as laid down in the Act, 1994 and by way of direct settlement. The Petitioner did not make a whisper about institution of the Civil Suit and the application for temporary injunction which was/were rejected in the writ petition. At any rate, no injustice as such is caused to the Petitioner requiring interference from this Court under Article 226 of the Constitution of India.

Considering all the aforesaid facts and in view thereof, I do not find any merit in this writ petition and the same is accordingly dismissed. There shall, however, be no order as to costs.

Copies of the application for temporary injunction and the notice, shall be kept on record and will form part of the record.

The Rule is discharged.