

Nashiruddin Ahmed Vs State of Assam and Others

Court: Gauhati High Court

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

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 Dhuhri 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 Dhuhri 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.