(1981) 02 GAU CK 0004

Gauhati High Court

Case No: Civil Rule No''s. 403 and 495 to 497 of 1973

Jagat Upadhyaya etc.		APPELLANT
	Vs	
The Secretary, Mahkuma Parishad, Kokrajhar and Others		RESPONDENT

Date of Decision: Feb. 26, 1981

Acts Referred:

- Assam Panchayat (Financial) Rules, 1960 - Rule 65A(5)

Citation: AIR 1981 Guw 80

Hon'ble Judges: B.L. Hansaria, J

Bench: Single Bench

Advocate: B. Sarma, for the Appellant; D. Konwar, Government Advocate, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

B.L. Hansaria, J.
All these Civil Rules are directed against the attempts to realise the arrears which according to respondent No. 1 had accrued on account of settlement taken by the petitioners of Daily Bazars for the year 1968-69. The facts in Civil Rule No. 495/73 alone may be noted which would throw light on the nature of the controversy.

2. What happened was that the petitioner in this case submitted tender from Bijni Hat for the year mentioned above. There is a specific averment in the petition that in the tender it was stated that tolls will stand increased and tenders should be submitted keeping in view that aspect of the matter. Accordingly this petitioner submitted tender of Rs. 17,666/-. His further case is that he could not realise tolls at the enhanced rate as the shopkeepers refused to pay the same. This fact was brought to the notice of Mahakuma Parishad who took some steps which proved abortive. The petitioner however paid first two kists but failed to pay the 3rd and 4th

kists due on 16-2-69 and 16-5-69 amounting to Rupees 8.833.00. He requested the authority for remission, though assurance was given nothing materialised. Ultimately Secretary of the Parishad (respondent No. 1) requested the S. D. O. to realise the unpaid kists money as arrears of land revenue. A Bakijai case was accordingly started in which it was prayed to strike off the case on the ground that the petitioner could not collect tolls for various reasons. This prayer was not acepted by respondent No. 3 and so the petitioner has approached this Court.

3. It is submitted by Shri Sarma that proceeding in question is not tenable in law inasmuch as under the rules and the terms of the lease deed what could be realised as arrear of land revenue is the loss sustained on the resale of market, A perusal of the lease which appears at Annexure ''B'' of the Assam Panchayat (Financial) Rules, 1960 would bear the submission of Sri Sarma. Rule 65A (5) (a) of the aforesaid Rule is more specific, it had read :

"When a lease becomes liable to determination in consequence of the infringement by the lessee of any of the terms of the lease, the hat shall without undue delay, be framed out. by publication in the manner laid down in the preceding sub-rules. If the price fetched at such resale does not cover the balance of the rent payable by the defaulting lessee, the Mahkuma Parishad shall at once proceed to request the Deputy Commissioner or the Sub-Divisional Officer, as the case may be, to take action for the recovery of the amount of the loss from the defaulting lessee or his surety if any as arrears of land revenue unless the amount deposited by the lessee under Sub-rule (6) or the residue if any is sufficient to defray the amount of loss."

4. It may be stated that a similar provision finds place in Rule 28 (7) of the Assam Panchayati Raj (Administration) Rules, 1173. These provisions clearly show that once a lease becomes liable for determination, the hat in question has to be resold without undue delay by public auction. If the price fetched in the resale does not cover the balance of the rent the amount of the loss can be realised as arrears of land revenue. It is nobody''s case that the hat in question was resold and what is attempted to be realised through the Bakijai case is the loss sustained on resale. Learned Govt. Advocate appearing in the case has however submitted by relying on the records submitted by the Mahkuma Parishad that this petitioner had continued the possession of the market till end of the period; and there sale was not undertaken on the assurance given by the petitioners that he would pay the entire kist money along with the 4th kist which was due on 16-5-69. As such, according to learned Govt. Advocate, it was this assurance of the petitioner which had stood in the way of resale. Really there is no affidavit on behalf of Mahkuma Parishad making this averment. Nonetheless even if what is stated by the learned Advocate is accepted to be the factual position, the legal hurdle remains to be crossed by the Mahkuma Parishad. As has already been noted, Rule 65A (5) (a) (supra) in term permits realisation of the loss sustained on resale as arrears of land revenue, and not the kist money as such. Had a plea of estoppel been taken by filing counter

affidavit, this point would have merited further scrutiny, but in the absence of the same, I do not propose to enter into this controversy.

5. This being the position, the starting of the Bakijai case to realise the unpaid kist money as arrears of land revenue cannot be upheld; and as such the same has to be quashed, which I hereby do.

6. The facts in the other case are almost similar except that in Civil Rules 496 and 497/73 the petitioner had not paid any kist money. Whether the kist money was due in full or part, it is open to no doubt that the machinery available for realising certain dues as arrears of land revenue could not have been legally set in motion without anything more to recover unpaid kist money.

7. The result is that all these petitions are allowed and the orders impugned therein stand quashed. It would be open '' to respondent No. 1 to take recourse to such other proceeding as may be legally available to it to recover the dues in question subject to just and legal exceptions.