

Ganga Ram Das

Vs

Tezpur Kaibarta Co-Operative Fishery Society Ltd

Civil Appeal No. 374 of 1956

(N. H. Bhagwati, T. L. Venkatarama Ayyar, B. P. Sinha, S. K. Das JJ)

29.01.1957

JUDGMENT

BHAGWATI J. -

This appeal with special leave arises out of a judgment of the Assam High Court in Revenue Appeal No. 33(M) of 1955 and Civil Rule No. 76 of 1955.

The State of Assam, respondent No. 3, had settled the Charduar Brahmaputra Fishery with the respondent No. 1 for a period of three years, viz., from April 1, 1954, to March 31, 1957, at an annual zama of Rs. 19,600 under r. 12 of the Fishery Rules. The Deputy Commissioner of Darrang, respondent No. 2, received some reports against the respondent No. 1 alleging violation of cl. VI of the Fishery lease and also of certain other conditions of the lease. He obtained reports from the Sub-Deputy Collector and the Extra Assistant Commissioner in regard to these allegations and came to the conclusion that respondent No. 1 had created under-lease in favour of certain persons and cancelled the settlement of the fishery. It appears that after such cancellation, respondent No. 3, purporting to act again under r. 12, settled the said fishery with the appellant with effect from May 4, 1955, and respondent No. 1 was directed to give up possession thereof with effect from the date. Respondent No. 1 thereupon obtained a Rule from the Assam High Court alleging that the said settlement was absolutely illegal and the fishery had to be settled properly according to the rules under which these settlements are usually made. A Revenue Appeal was also filed against the order of respondent No. 2 under rule 11 of section 1 of the Fishery Rules and both the Rule and the Revenue Appeal were heard together by the Assam High Court.

The High Court had already on August 31, 1955, delivered a judgment in Civil Rule No. 56 of 1955, *Nuruddin Ahmed v. State of Assam* [A.I.R. 1956 Assam 48], declaring r. 12 of the Fishery Rules ultra vires the State Government" and therefore invalid and unenforceable. It followed that judgment and held that the respondent No. 3 had no jurisdiction to make a settlement under r. 12 of the Fishery Rules with the respondent No. 1 and the order of cancellation should be upheld on that ground alone. The appeal of respondent No. 1 was accordingly dismissed. In regard to the appellant also the High Court came to the same conclusion and held that the settlement made by respondent No. 3 in his favour was entirely without jurisdiction. The Rule obtained by respondent No. 1 was accordingly made absolute. The result was that the settlements made by respondent No. 3 with respondent No. 1 and the appellant were both set aside and the authorities were directed to make a fresh settlement of the fishery in question according to the existing Fishery Rules.

The State of Assam had not obtained any leave to appeal against the decision of the High Court in *Nuruddin Ahmed v. State of Assam* [A.I.R. 1956 Assam 48], and was apparently content with the

decision that r. 12 of the Fishery Rules ultra vires. The appellant, however, obtained special leave to appeal against the decision of the High Court which set aside the settlement of the Fishery made by respondent No. 3 along with him and impleaded the State of Assam as respondent No. 3 along with respondent No. 1. The appellant was interested in establishing that r. 12 of the Fishery Rules was ultra vires. The state of Assam had acquiesced in the position that the rule was ultra vires but in so far as it was added as respondent No. 3 in this appeal it took up the position that r. 12 of the Fishery Rules was intra vires, a position which it had not so far chosen to sustain by appealing against the decision of the High Court in Nuruddin Ahmed v. State of Assam [A.I.R. 1956 Assam 48] or in the present case but which it tried to support as it were by the back-door by appearing in this appeal and supporting the appellant.

Respondent No. 1 appears to have been in a similar quandary. If the appellant gained his point and had it established that the rule was intra vires the settlement of the fishery by respondent No. 3 with respondent No. 1 would have been with jurisdiction and the cancellation by respondent No. 2 would have been void and inoperative. This relief was, however, not available to respondent No. 1 inasmuch as it had not appealed against the judgment of the High Court. Nor did it suit it to adopt that position because not more than 2 1/2 months were left for the lease to run and at the end of that period it would have found itself in the same invidious position in which it was when the allegations in regard to the breach of the conditions of the fishery lease had been made against it. Respondent No. 1 therefore, at the hearing of the appeal adopted the peculiar attitude of supporting the judgment of the High Court and of contending that r. 12 of the Fishery Rules was ultra vires. That was the only basis on which the settlement made by respondent No. 3 with the appellant could be at naught and no further comment is needed on the obviously inconsistent attitude adopted by respondent No. 1

The issue which was therefore, contested between the appellant supported as he was by respondent No. 3, the State of Assam, and respondent No. 1 was as to the vires character of r. 12 of the Fishery Rules. It will be appropriate at this stage to set out the relevant provisions of the Assam Land and Revenue Regulation, 1886 (Regulation 1 of 1886), and the rules for the settlement of fisheries made by the State of Assam thereunder :

Section 16. Right of fishery :-

The Deputy Commissioner, with the previous sanction of the Provincial Government, may, by proclamation published in the prescribed manner, declare any collection of water, running or still, to be a fishery; and no right in any fishery so declared shall be deemed to have been acquired by the public of any person, either before or after the commencement of this Regulation, except as provided in the Rules made under section 155;

Provided that nothing in this section shall effect any express grant of a right to fish made by or on behalf of the British Government, or any fishery-rights acquired by a proprietor before the commencement of this Regulation, or the acquisition by the proprietor of such rights in any fishery forming after the commencement of this Regulation in this estate".

"Section 155. Additional power to make rules.

The Provincial Government may, in addition to the other matters for which he (sic) is empowered by this Regulation to make rules, consistent with this regulation, relating to the following matters :

#.....##

(f) the granting of licences, or the farming of the right..... to fish in fisheries proclaimed under section 16....."

"Rule 12 of the Fishery Rules : No fishery shall be settled otherwise than by sale except by the State Government. The order of settlement passed by the State Government shall be final :

Provided that the State Government may introduce the tender system of settlement of fisheries in place of sale by auction system whenever it is considered necessary."

This rule occurs in chapter X of the Assam Land Revenue Manual. Vol. 1 (6th ed.) headed "Rules for settlement of fisheries". This chapter is divided into four sections :

Section I - General and settlement of fisheries.

Section II - Miscellaneous.

Section III - Sanctuaries, and

Section IV - Rules for settlement of fisheries by tender system.

The normal procedure for settlement of fisheries prescribed in r. 3 of s. 1 is by auction sales in regard to all registered fisheries held under leases expiring on the last day of the current year of which at the last previous auction were reserved for sale under r. 9. After making provision for the place of sale, conditions of sale, execution of leases and confirmation of sale, provision is made in r. 11 for appeal to the Assam High Court against all orders of a Deputy Commissioner or Sub-Divisional Officer passed under the rules and it is provided that there shall be no appeal against an order of settlement passed by the State Government under r. 12. Then follows r. 12 set hereinabove which provides that no fishery shall be settled otherwise than by sale except by the State Government and proviso is enacted to this rule enabling the state Government to introduce the tender system of settlement of fisheries in place of the auction system whenever it is considered necessary. The rest of the provisions of s. 1 and those of ss. II and III are not necessary to be set out for the purpose of this appeal but reference may be made to the provisions of s. IV which contains rules for settlement of fisheries by tender system. Rule 42 provides that the Government may from time to time select any fishery or fisheries to be settled by tender system and instruct the Deputy Commissioner to lease them out for any specified period and the procedure to be adopted in the settlement of fisheries by tender system is therein provided.

It will be seen from the above summary of the relevant rules that the normal procedure for settlement of fisheries is by holding auction sales. Power is, however, given to the State Government to introduce the tender system of settlement of fisheries in place of the auction system whenever it is considered necessary and if the Government selects any fishery or fisheries to be settled by the tender system and instructs the Deputy Commissioner to lease them out for specified period acting in exercise of that power, s. IV prescribes the procedure for settlement of fisheries by the tender system.

The question, therefore, which arises for our determination is whether there is any power conferred on the State Government by these rules to settle fisheries other than by sale, e.g., by individual

settlements without a settlement thereof by auction system or by tender system.

We may here dispose of an argument which was urged on behalf of Respondent No. 1 before us and which appears to have found favour with the High Court that r. 12 of the Fishery Rules which is the source of that power ultra vires and repugnant to s. 16 of the Assam Land Revenue Regulation I of 1886. That section deals with the right of fishery and provides that the Deputy Commissioner, with the previous sanction of the State Government, may by a proclamation declare any collection of water to be fishery and no right in a fishery so declared shall be deemed to have been acquired by the public or by any person except as provided in the rules made under s. 155. The instances before us are not covered by the proviso and we shall, therefore, make no mention of the same. The only relevant enquiry is whether there was any rule validly enacted under s. 155 which enabled the State Government to settle the fishery otherwise than by sale by making an individual settlement thereof with Respondent No. 1 or the appellant in the manner in which it was done. There is absolutely nothing in the provisions of s. 16 which would go to show what are the principles on which such rules for the acquisition of fishery rights by the public or any person have to be made nor is there anything therein to indicate any policy which has to guide the State Government in the making of such rules. The whole thing is left to the discretion of the State Government which is empowered by s. 155, inter alia, to make rules relating to the granting of licences and the farming of the right to fish in fisheries proclaimed under s. 16 consistent with the Regulation. No doubt the State Government would also be bound by such rules and would not be entitled to make any settlement of fishery rights unless and until there was a rule made in that behalf under s. 155. It would not be open to the State Government to contend that it had absolute property in these fishery rights and it was, therefore, entitled to settle them in any manner whatever.

Unless, therefore, the action of the State Government could be justified by reference to any rule made under s. 155 it would not avail the appellant. Reliance is accordingly placed on the provisions of r. 12 of the Fishery Rules and it is submitted that under that rule specific power is given to the State Government to settle the fishery rights otherwise than by sale. The State Government is thereby invested with the power to settle fishery rights even by individual settlements without following the auction system or the tender system. Even though this power is not vested in the State Government by express provision made in that behalf, the context of rule 12 sufficiently indicates the intention of the rule-making authority. After having prescribed the procedure by way of auction sales in rr. 1 to 11 of s. I, a prohibition against the settlement of fishery rights otherwise than by sale is enacted in r. 12 except in the case of the State Government. No fishery is to be settled otherwise than by sale and that prohibition is general in terms but an exception is carved out in favour of the State Government in terms which are only capable of the construction that the State Government shall have the power of settling fishery rights otherwise than by sale. No limitation is placed on this power which is thus vested in the State Government and if the State Government is empowered to settle fishery rights otherwise than by sale it can do so by adopting the tender system if it thought it desirable to do so or even by entering into individual settlements if the circumstances of the case so warranted. Apart from the adoption of the tender system in place of the auction system, circumstances may conceivably arise where either by reason of the cancellation or relinquishment of fishery lease before the expiration of the period thereof and having regard to the situation then obtaining, it may not be feasible or desirable to sell fishery rights for the unexpired portion of such a lease either by public auction or by inviting tenders and the State Government may, under those circumstances, consider it desirable to enter into individual settlement of the fishery rights so as to earn for the State as much of revenue as possible. No fetter can be placed on the discretion of the State Government in this behalf and the State Government would be the best judge of the situation and would be the best judge of the situation and would be in a position to determine what procedure

to adopt in the matter of the settlement of fishery rights otherwise than by sale. There is nothing in the provisions of s. IV containing rules for settlement of fisheries by tender system which militates against the above position.

We are, therefore, of opinion that r. 12 specifically empowers the State Government to settle the fishery rights otherwise than by sale and there is no conflict at all between the provisions of s. 16 of the Assam Land and Revenue Regulation, I of 1886, and r. 12 of the Fishery Rules. The decision of this appeal turns on the construction of r. 12 and we fail to understand how the question of the intra vires or the ultra vires character of r. 12 at all arises. The whole of the argument addressed before us on behalf of respondent No. 1 is based on a misconception and cannot be sustained. The decision of this Court in *State of Assam v. Keshab Prasad Singh* [[1953] S.C.R. 865], on which the learned judges of the Assam High Court apparently based their judgment in *Nuruddin Ahmed v. State of Assam* [A.I.R. 1956 Assam 48] did not touch the present controversy and it follows that that was clearly wrong and cannot be supported.

The result, therefore, is that this appeal will be allowed and the settlement of fishery rights by respondent No. 3 with the appellant declared valid and operative. Logically enough respondent No. 1 also would have been entitled to a similar relief but there are various questions of fact involved in the determination of the question whether the fishery lease in his favour was validly cancelled by respondent No. 2. Respondent No. 1 moreover has disclaimed such benefits by adopting the contention that r. 12 of the fishery rights was ultra vires. We, therefore, do not think that respondent No. 1 is entitled to any relief on the basis of this judgment. Respondent No. 3, the only person vitally interested in the decision of this issue will, in spite of its entry having been by the back-door, be entitled to the benefit of this judgment, an unsought relief that it will get as a result of our decision on the main point in controversy. Under the peculiar circumstances of the case we feel that the proper order for costs should be that each party will bear and pay its respective costs of this appeal and we do order accordingly.

Appeal allowed.

</html