

Dy. Commissioner, Sibsagar and Another

Vs

Nurul Islam and Another

Civil Appeal No. 72(N) of 1967

(K. S. Hegde, P. Jagmohan Reddy, D. G. Palekar JJ)

18.01.1972

JUDGMENT

HEGDE, J. -

1. The respondent was appointed as a temporary Mondal on June 11, 1956, and thereafter on May 27, 1964, the Deputy Commissioner of Sibsagar appointed him permanently as a Mondal for Morongi Mauza in Golaghat Circle, in the very Mauza where he was previously working as a temporary hand. He was fully qualified to be appointed as a permanent Mondal. He was not living within that circle. He was living within two miles from that circle. Therefore, while appointing him permanently, the Deputy Commissioner granted him exemption under Rule 6(2) of the Appointment and Qualifications Rules in the Land Records Manual. The second Respondent Debo Kanta Bora appealed against the order of appointment of the first Respondent to the Director of Land Records. The Director set aside the order of the Deputy Commissioner and appointed Bora as a Mondal on the sole ground that he resided within the Mauza. As mentioned earlier, the first Respondent was working as a temporary Mondal for nearly eight years in that very Mauza. This aspect was totally ignored by the Director.

2. Aggrieved by the Order of the Director, the first Respondent moved the High Court of Assam under Article 226 of the Constitution. At the hearing of the petition, it was conceded on behalf of the Government that there were no rules providing for an appeal against the order of the Deputy Commissioner. On the basis of that concession, the High Court quashed the order of the Director of Land Records.

3. Thereafter, the State of Assam moved the High Court to review the order on the ground that the concession made at the hearing of the writ petition that there are no rules providing for an appeal was an erroneous concession. It was said that there were rules providing for appeal to the Director of Land Records as against the order of appointment made by any Deputy Commissioner. The High Court dismissed the review petition, but granted certificate to the State of Assam to appeal to this Court.

4. We have not thought it necessary to find out the scope of the rule providing for an appeal from an order of the Deputy Commissioner to the Commissioner or to the Director of Land Records. For the purpose of this appeal, we shall assume that the rule in question did employer the Director of Land Records to entertain the appeal. Even then, we think this is not a fit case where we should interfere with the order of the High Court. We are of the opinion that the order of the Director of Land Records is an arbitrary one. The Deputy Commissioner was competent to grant exemption in regard to residence and on the facts of this case he was fully justified in granting exemption. The question

whether anyone can appeal against the order of a Deputy Commissioner appointing Mondal is left open to be decided by the High Court in any appropriate case.

5. In the result, this appeal is dismissed with costs.

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