State of Meghalaya

Vs

Orneshwar Das and Others

Civil Appeal No. 1731 of 1973

(M. P. Thakkar, B. C. Ray JJ)

28.01.1987

ORDER

1. The question which arises for consideration is whether damages arising out of a breach of contract entered into before the Assam Settlement of Forests Coupes and Mahals by Tender Systems Rules, 1967 came into force can be recovered as arrears of land revenue. There can be no doubt about the fact that if a contract is entered into after the aforesaid rules and a claim arises under Rule 17, the provision embodied under Rule 18 as regards the mode of realisation of the amount due under the Rules would be attracted and any amount due under the Rules would recoverable as arrears of land revenue. It was canvassed before the High Court that even in the case of agreements which came into existence prior to the enforcement of these Rules, recourse can be made to the mode of realisation specified in Rules 19 and recovery can be made as arrears of land revenue. The High court rejected the contention and in our opinion rightly so. A plain reading of Rule 18 makes it evident that any amount due "under the rules" will be recoverable as arrears of land revenue. Before recourse is made to Rule 18 it should be shown that the amount is recoverable under the other rules. Rule 17 which provides for the claim for damages arising upon the resale necessitated on account of the failure to pay security or in payment of installments is as under :

> If the tender whose tender has been accepted fails to pay on due dates the security mentioned in Rule 14 or to pay the installments mentioned in Rule 15, or to execute the agreement mentioned in Rule 16, the settlement of the coupe or the mahal shall be liable to be cancelled and the coupe or the mahal may be resettled for the remaining part of the settlement period at the risk of such tenderer as regards the loss government and if the proceeds on resettlement are less than the value at which it was originally settled, the difference shall be realisable from him; and further, the earnest and the security money if already deposited, shall be liable to be forfeited.

2. On a plain reading of Rule 17 it is evident that the claim must be referable to the default in the context of Rule 14 to make a security deposit or failure to deposit installments under Rule 15 arising out of, and this is important, an agreement mentioned in Rule 16. There is no room for doubt that the agreement itself must be an agreement which is contemplated by Rule 16 and which was come into existence pursuant to the rules. The agreement envisaged by Rule 16 could not have been entered into before the Rules themselves came into force. Admittedly, the agreement which gave rise to the proceedings before the High Court was an agreement entered into prior to the enforcement of the Rules (contract in respect of which the breach was committed was entered on April 29, 1966 whereas the rules came into force on September 25, 1967). In the circumstances the agreement was not an agreement contemplated by Rule 16 and hence neither Rule 17 nor Rule 18 would be attracted. The High Court was, therefore, right in the taking the view that the recovery of

damages could not be made as arrears of land revenue under Rule 18 of the aforesaid rules. The appeals accordingly fails and is dismissed. No costs.

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