

Supreme Court of India

Shri. Subhas Chandra Chetia vs Assam Board Of Revenue And Ors. on 27 March, 1980

Equivalent citations: (1980) 3 SCC 234, 1980 (12) UJ 683 SC

Author: R Sarkaria

Bench: R Pathak, R Sarkaria

JUDGMENT R.S. Sarkaria, J.

1. S.L.P. Granted.

2. This appeal by special leave is directed against a judgment, dated August 31, 1979, of the Gauhati High Court.

3. The facts stated in the petition and reiterated at the bar are that in pursuance of a sale notice, dated April 6, 1979, issued by a Sub-Divisional Officer, Sibsagarm including the Amgurri Country spirit, the appellant submitted a tender in the prescribed form for taking settlement of the shop. The Sub-Divisional Officer (the Primary Authority on the advice of the Advisory Committee, settled the shop with the appellant by an order, dated April 28, 1979, for the period from June 1, 1979 to March 31, 1980.

4. In the tender submitted to the Primary Authority, the petitioner had given these details of his financial sources:

(1) My brother, Shri Puspa Chetia is giving me Rs. 10,346.52" (In support of this assertion he attached an affidavit of his brother with the tender.

(2) "Sibnagar District Cooperative Bank Ltd., has assured me to accommodate loan. Bank Assurance Certificate is attached with the tender.

5. In the course of the enquiry, the Excise Inspector on April 22, 1979 examined the Pass Books of the appellant's brother, Puspa Chetia, and found that he had then a total credit balance of Rs. 10,346.52 in two accounts, namely, Rs. 7334.36 in the Sibasagar Central Cooperative Bank and Rs. 3012.16 in the United Bank of India, Sibasagar. This apart, the appellant had Rs. 1200/- ad cash in hand which was paid by his brother. The Inspector further referred to the Accommodation Assurance Certificate granted by the Bank. He also mentioned that the appellants family owned a pucca building, worth Rs. 30,000/-. He thus reported that the appellant was financially sound. As a result, the Primary Authority on the advice of the Advisory Committee settled the shop with the appellant for the period, June 1, 1979 to March 31, 1980, as per its order dated April 28, 1979. The respondent and two other tenders preferred appeals before the Revenue Board under Section 9 of the Assam Excise Act,

6. The Board by its order dated Aug. 30, 1979 accepted appeal No. 1002/79 filed by Krishna Kumar Gogoi, set aside the order of settlement made in favour of the appellant by the Primary Authority, and thereby settled the shop in favour of the respondent, Krishna Kumar Gogoi. Aggrieved the appellant filed a writ petition in Gauhati High Court under Article 226 of the Constitution to

impeach the order of the Board. The High Court dismissed the writ petition in limine with the observation that the "error, if any" (in the impugned order of the Board) "resulting from appreciation of the evidence on record, is one of fact" and not one of law which would justify interference by the High Court in the exercise of its writ jurisdiction.

7. The appellant had to pay Rs. 10,850.44 to the outgoing lessee on June 1, 1979 for taking over the possession of the shop together with assets etc., apart from Rs. 1117/- which was deposited as security money on April 28, 1979, when he received the settlement from the Primary Authority.

8. We have heard the learned Counsel for the parties and examined the documents produced before it. The board also based one of its findings merely on conjectures & suspicions and appears to have misappreciated and brushed aside some pieces of important evidence. For instance, while dealing with the "Assurance Certificate", it criticised the Bank for issuing it. The Board also failed to note that this "Assurance Certificate" did not remain a paper assurance but was subsequently, followed by Bank's letter dated May 29, 1979, whereby the Bank allowed the appellant to draw a loan of Rs. 10,000/- on May 31, 1979 i.e. one day before the commencement of the term of the settlement. Certificate, dated August, 1979, was filed by the appellant before the Board. Its copy if annexure '4' to the special leave petition. The Board suspected the genuineness of the "Assurance Certificate" and the "Certificate of Advancing the loan of Rs. 10,000/-" on May 31, 1979, merely because in its opinion the Bank should not have assured to advance and then advanced the loan to the appellant it being contrary to prudent banking practice, The board. observed that the "matter regarding the certificates issued by the Cooperative Bank is a very serious one and calls for a through probe". Nevertheless, without making any enquiry whatever from the Bank or otherwise, it at once drew the conclusion that these documents were false and fabricated:" Although the Board did not directly and expressly say so, it suspected the genuineness of these documents merely because the appellant's brother was an employee of the Bank, This finding to of the Board that these bank Certificates were fabricated documents was based merely on suspicious and conjectures and on no evidence whatever. This finding being based on no evidence, was vitiated by an error of law. But the Board's judgment in question is not based merely on this finding. In its opinion, the appellant was also a defaulter of land revenue for 1978-79. The appellant however, contended (as is now urged before us) that the right or interest in the land in respect of which land revenue was outstanding did not belong to him or his brother; but to his mother. In support of this contention, he produced a copy of Jamabandi showing that after the death of his father this land was mutated on August 26, 1978, in favour of his Mother. The Board, however, after taking into consideration a certificate from the Sub-Divisional Officer produced by the opposite party, rejected this contention. Thus, the Board had on an appreciation of the evidence reached the finding that since the appellant was a defaulter, it was not desirable to settle the shop with him.

9. It was contended before us that this finding as to the appellant being a defaulter of land revenue, was factually incorrect. Assuming it was erroneous, then also this finding of fact could not be disturbed by the Court is the exercise of its writ jurisdiction.

10. Lastly, it may be observed that the period of the settlement made in favour of the respondent will be expiring shortly. That is an additional reason for not disturbing the impugned judgments of the

Board and the High Court.

11. For reasons aforesaid, the appeal fails and is dismissed. In the circumstances of the case we leave the parties to pay and bear their own costs.