
(2004) 05 GAU CK 0022
In the Gauhati High Court
Case No : Writ Petition (C) No. 2426 of 2002

Abdul Halim Dewan and Others

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 25-05-2004

Acts Referred:

Mikir Hills District (Transfer of Land) Act, 1959 — Section 2, 3, 4, 5

Citation : (2004) GLT 410 Supp

Hon'ble Judges : B. Lamare, J

Bench : Single Bench

Advocate : A.B. Choudhury, J. Abedin and B. Gogoi, for the Appellant; G.N. Sahewalla and C. Baruah, for the Respondent

Judgement

B. Lamare, J.—Heard Mr. A.B. Choudhury, learned Senior Counsel for the Petitioners, Mr. G.N. Sahewalla, learned Senior Counsel for the Respondents 2, 3 and 4 and Mr. C. Baruah, learned Senior Counsel for the Respondent No. 6.

2. Briefly stated the case is that a land measuring 10 lachas covered by Patta No. 56, Dag No. 71/203 (new) situated at Dokmoka Town under Howraghat Mouza was purchased for the purpose of establishment of a Masjid at Dokmoka Town from one late Hemai Rongpi. After the land was purchased, a Masjid Committee was constituted and a Masjid was also constructed on the land in the same year. Since then, the land was in possession of the Masjid Committee represented by the Petitioners.

3. While the Petitioners were in possession of the land, a notice dated 21.2.02 was issued to Smti. Jonaki Rongpi, Respondent No. 6 and one Sri. Halim Mekar directing them to appear before the Assistant Settlement Officer and EAC (In-charge), Phulani Circle on 28.2.02 in order to visit the land and have a spot verification of the land in dispute. Thereafter, no action was taken against the Petitioners. However, by another notice dated 21.3.2002 addressed to the Petitioners 1, 3 and 4, the Assistant Settlement Officer and EAC directed the Petitioners to vacate the land within one month from the date of receipt of the

notice, failing which legal action will be taken against the Petitioners in accordance with law. It is this letter which is assailed by the Petitioners in this writ petition.

4. The case of the Petitioners is that after the purchase of land, they have enjoyed the same without any objection or disturbance. A Masjid was also constructed on the land in the year 1978. The Petitioners have also annexed the Sale Deed by which the land measuring 10 laches covered by Dag No. 71, Patta No. 56 of Vekulagaon Kissam under Mouza and P.S. Howraghat of Karbi Anglong District was purchased by them. According to the Petitioners, by virtue of the Sale Deed, they are the absolute owners of the land as per the boundaries mentioned in the Sale Deed. Therefore, the Petitioners cannot be evicted from the land.

5. The Respondents 2, 3 and 4 resisted the claim of the Petitioners and stated that on 10.1.2002 one Smti. Jonaki Rongpi, Respondent No. 6 submitted a petition before the Respondent No. 4 the ASO to the effect that a plot of land situated at Dokmoka belongs to her and that she has been paying land revenue for the land. On receipt of the application from the Respondent No. 6, the same was endorsed to Survey Mandal and Survey Kanango directing them to make an enquiry on the matter and furnish a report. After due enquiry by the Revenue staff, a report was submitted whereby the land measuring 10 lechas covered by Dag No. 203 and bearing Periodic Patta No. 77 was found to be in the name of the Respondent No. 6. However, the land was found to be illegally occupied by the muslim community who are residing on the land. Both the parties were called to the office of the Assistant Survey Officer and after hearing both the parties it was found that the Petitioners have no right to occupy the land as it belongs to the Respondent No. 6. The Respondents also denied the existence of Masjid or Mosque standing on the land. According to the Respondents only Kutcha dwelling houses were found on the land which actually belongs to the pattader Respondent No. 6. The Respondent No. 6 also resisted the claim of the Petitioners and stated that the land belongs to the Respondent No. 6 and patta was also issued in her name. The land is covered by periodic Patta No. 77 (old) and 56 (new) covered by Dag No. 203. The Respondents also contended that the Petitioners who are non-tribal have no right to occupy land in the district and cannot acquire or procure any land in the district without the permission of the authority.

6. Mr. A.B. Choudhury, learned Counsel for the Petitioners submitted that the Sale Deed (Annexure-1 to the writ petition) clearly shows that the land was purchased from late Hemai Rongpi and after purchase of the land, the Petitioners have been occupying the land without any objection. The learned Counsel also contended that the impugned notice dated 21.3.2002 directing the Petitioners to vacate the land within one month was not issued by the competent authority and therefore, the letter was issued without jurisdiction and the same is not tenable in law and is liable to be set aside and quashed. In support of this contention,

learned Counsel referred to Section 5 of the Mikir Hills District (Transfer of Land) Act, 1959 whereby the procedure for eviction is laid down. According to the counsel, it is only the Revenue Officer of the District Council who is authorised to issue eviction notice under the Mikir Hills District (Transfer of Land) Act, 1959 (Hereinafter called the Act) therefore, the impugned letter is liable to be set aside and quashed.

7. Mr. Sahewalla, learned Senior Counsel for the Respondent District Council submitted that Section 3 of the Act provides that no land under the District Council shall be transferred by a tribal to a non-tribal or by non-tribal to non-tribal without the previous sanction of the executive Committee of the District Council. In the instant case, the purchase of land by the Petitioners was made without the permission of the Executive Committee of the District Council, Therefore, any purchase made by the Petitioners without the permission of the District Council is null and void ab initio. By virtue of Section 5 of the Act the Petitioners are liable to be evicted from the land by following the provision of Section 5. Therefore, according to the counsel, the impugned letter issued directing the Petitioners to vacate the land is in exercise of power u/s 5 of the Act. The learned Counsel also submitted that the Assam Land and Revenue Regulation, 1886 is applicable in the Mikir Hills Autonomous District subject to such amendment as may be made by the District Council. In support of this contention, Mr. Sahewalla draws attention of this Court to the Mikir (Land and Revenue) Act 1953 by which the Assam Land Revenue Regulation Act 1886 was made applicable in the District.

8. Mr. C. Baruah, learned Senior Counsel for the Respondent No. 6 supporting the contention of Mr. G.N. Sahewalla also submitted that the Respondent No. 6 is the Patta holder of the land and that the Petitioners being non-tribal have no right to occupy or own any land within the District. The alleged Sale Deed was executed without the prior permission of the Executive Committee of the District Council. Therefore, the alleged Sale Deed (Annexure-1) is not a valid document in the eye of law. The learned Counsel further contended that the Act is a special Act passed by the District Council and therefore, the actions taken under the Act are just and proper. Learned Counsel also contended that the Assistant Survey Officer and EAC have the authority to issue the impugned letter dated 21.3.2002 as the land is situated within his jurisdiction.

9. In regard to the applicability of the Assam Land Revenue and Regulation Act in the District as submitted by Mr. Sahewalla, it is seen that the said Act was made applicable in the District by the Mikir Hills (Land and Revenue) Act, 1953. The Assam Land Revenue and Regulation Act 1886 therefore was made applicable to the District for the purpose of land and Revenue and not for the purpose of transfer of land. The said Assam Land and Revenue Regulation of Act was not made applicable under the Mikir Hills District (Transfer of Land) Act, 1959, therefore, the 1886 Act is not relevant in this case.

10. Section 3 of the Mikir Hills District (Transfer of Land) Act, 1959 reads as

follows:

3. Control of transfer of land-

No land under the District Council shall be sold, mortgaged, leased, bartered, gifted or otherwise transferred by a tribal to a non-tribal, or by a non-tribal to another non-tribal except with the previous permission of the Executive Committee:

Provided that no permission will be necessary in the case of a lease of a building on rent:

Provided, further, that reasons shall be recorded for any refusal of transfer from a tribal to a non-tribal or from non-tribal to another non-tribal.

11. By virtue of this section, no land can be transferred within the District by a tribal to non-tribal or by non-tribal to another non-tribal without the previous permission of the Executive Committee. The Petitioners could not produce any document to show that the Transfer Deed (Annexure-1) was executed after obtaining the permission of the Executive Committee. Therefore, the transfer was made in violation of Section 3 of the Act. The Transfer Deed is therefore not tenable in law as it is against the provision of Section 3 of the Act. The Petitioner didn't/do not acquire any right over the land by virtue of the Transfer Deed, Annexure-1 as admittedly no prior permission was obtained from the Executive Committee of the District Council. The occupation of the land by the Petitioners is therefore contrary to the provisions of the Act and it is an illegal occupation.

12. Section 4 of the Act provides for maintaining status-quo in respect of the rights acquired before coming into force of the Act. According to this Section, a person who has acquired right in respect of any land under any law before coming into force of the Act such right shall not be affected by the Act.

13. Section 5 of the Act provides as follows:

5. Ejectment:

If any person other than a tribal is found to be in possession of any land otherwise than in accordance with the provision of this Act, or in such possession thereof as found contrary to Section 4 above, the Revenue Officer or the District Council may evict the person concerned after serving a notice on him requiring him to vacate the land within three months from the date of service of notice and to remove any building or fence which may have been raised on such land subject to the condition that crops actually growing on the land may be allowed to remain till they are ripe for harvest.

14. A reading of the above provision of Section 5 it is clear that any person who is not a tribal is found to be in possession of any land and which possession is not in accordance with the provision of the Act is liable to be evicted from the land. The Section also provides that if such possession is found to be not in accordance with the provision of Section 4, the possession of such person over

the land is also liable to be evicted. This means that if a person is found in possession of the land after coming into force of the Act, his possession is illegal and he may be evicted from the land in accordance with the provision of Section 5 of the Act. This section also provides the procedure for eviction of a person by authorising the Revenue Officer of the District Coimcil to evict such person after serving a notice on him requiring him to vacate the land within 3 (three) months from the date of service of notice and to direct for removal of any building or fence which might have been raised on such land.

15. The Revenue Officer is not defined in Section 2 of the Act. There is also nothing in record to show that the Assistant Survey Officer and EAC (In-charge) of Phulani Circle is the Revenue Officer. The impugned letter was issued by the Assistant Survey Officer and the land described in the letter is measiuing 10 lechas covered by Dag No. 71 (Old)/203 (new) under Patta No. 56 which is the same land as per the Sale/Transfer Deed (Annexure-1 to the writ petition). However, according to the provision of Section 5 of the Act, it is only the Revenue Officer who is authorised to issue the eviction notice and also to direct for eviction of the person who is in occupation of the land in contravention of the Act to vacate the land. Section 5 also provides 3 (three) months" time for vacating the land after service of notice. But in the instant case, the notice was issued by the Assistant Survey Officer who is not flie Revenue Officer and the period given to the Petitioners to vacate the land is also only one month from the date of receipt of notice. Therefore, the notice was not issued in accordance with the provision of Section 5 of the Act. The notice was therefore issued without jurisdiction and the same is liable to be set aside and quashed.

16. For the aforesaid reasons, the impugned letter dated 21.3.2002 issued to the Petitioners 1, 3 and 4 is hereby set aside and quashed. The Respondent District Council is however at liberty to issue fresh notice to the Petitioners to vacate the land by following the procedure as laid down in the Act. After following the due procedure of law and the principles of natural justice the eviction order may be issued by the competent authority of the District Council as prescribed under the Act.

17. The petition is therefore allowed to the extent indicated above and disposed of.

Considering the facts and circumstances of the case, there shall be no order as to costs.