(2019) 05 GAU CK 0021

In the Gauhati High Court

Case No : Writ Petition (C) No. 5427 Of2015

Archana Purkayastha — APPELLANT

Vs

Union Of India And 7 Rs — RESPONDENT

Date of Decision : 07-05-2019

Acts Referred:

Evidence Act, 1872 — Section 78(6), 81, 115
Constitution Of India, 1950 — Article 226

Citation : (2019) 05 GAU CK 0021

Hon'ble Judges : Sanjay Kumar Medhi, J

Bench : Single Bench

Advocate : A K Rai, S Dasgupta S Dasgupta, B Malakar, K Rajbongshi, N Dhar, K K Sharma, P Sen, R P N Singh, S Dey, S P Roy, T U Laskar, A Talukdar, B Baishya, S Dasgupta, K K Parasar

Final Decision : Disposed Off

Judgement

1. Heard Shri N. Dhar, learned Counsel for the petitioner. Also heard Shri B.J. Talukdar, learned Standing Counsel, Revenue Department appearing on behalf of the respondent no. 2, Ms. R.B. Bora, learned State Counsel for respondent nos. 3, 4, 5, 6, 7 and 8. None appears for the Union of India/Respondent No.1 though the Cause List reflects CGC.

2. The extra ordinary jurisdiction of this Court is sought to be invoked by filing this petition under Article 226 of the Constitution of India by the petitioner seeking the relief for directing to initiate the process of survey of land measuring 1500 Bighas approx. under Mouzas-Ghugrakona Part-IV, Pan Jum, Batayapunjee, Barapunjee Part-1 and Chandkhani Chowk for part of old Patta No.6 Dag Nos. 9, 71 and 89 of Nilambazar Revenue Circle and Karimganj Revenue Circle and also for a direction to grant mutation in favour of the petitioner for 1000 Bighas of land.

3. The facts as projected in the writ petition can be put in a nutshell in the following manner:

4. The mother of the petitioner had purchased the Pallathal Tea Estate in the year 1954 from its owners, namely, Shri Pulin Behari Roy and Shri Beni Madhab Roy vide a Sale Deed being No. 1842 dated 06.01.1954. Subsequently, vide registered Gift of Deed No. 25590 dated 20.11.1974 registered at Sylhet (in Bangladesh), the Tea Estate was gifted to the petitioner.

5. It is the case projected in the petition that during the drawing of the Radcliff line at the time of partition of India, approximately half portion of the land of the Tea Estate had fallen into East Pakistan (Bangladesh) and half into undivided Karimganj district in the State of Assam, India. It is the further case of the petitioner that after land swapping with Bangladesh, the present land of the petitioner fell under Mouzas- Nayagram, Hazim, Angura, Kitte Madanpur, Ghugrakona Part-IV Pan Jum, Batayapunjee, Barapunjee Part-1 and Chandkhani Chowk for part of old Patta No.6 Dag Nos. 9, 71 and 89 in the Western part of India. The petitioner vide a Deed of Power of Attorney had nominated one Shri Satyabrata Roy to be her attorney who had submitted an application dated 22.08.2012 for mutation of land of the petitioner which is within the territorial boundary of India. However in the aforesaid application for mutation, there were inadvertent typographical error and names of the Mouzas were left out. Subsequently, the Circle Officer vide order dated 31.08.2013 had mutated the name of the petitioner for an area of land measuring 1000 Bighas of the aforesaid Dags. It is the case of the petitioner that although she is the absolute owner of land measuring 3500 Bihgas, the Revenue Authorities had taken steps for only 2000 Bighas leaving an area of approximately 1500 Bighas which is yet to be surveyed and are covered by the Mouzas, namely, Ghugrakona Part-IV, Pan Jum, Batayapunjee, Barapunjee Part-1 and Chandkhani Chowk for part of old Patta No.6 Dag Nos. 9, 71 and 89 and no step is taken for mutating the aforesaid land which is pending since the year 2012. Situated thus, the present writ petition has been filed for the relief as mentioned above.

6. Shri N. Dhar, learned counsel for the petitioner has submitted that the documents which the petitioner has brought on record by way of writ petition, rejoinder affidavit as well as additional-affidavit would prima facie make out a case that the relief claimed for are justified. Referring to the gazette notification dated 29.05.2015 which has been annexed as Annexure 4 to the additional-affidavit, the learned counsel has submitted that in the third schedule under Sl. No. D(II) it has been clearly indicated that Pallathal area in Assam sector is concerned, the boundary shall be drawn from the existing Boundary Pillar No. 1370/3-S to 1371/6-S to follow the outer edge of the "Tea Garden" and from Boundary Pillar No. 1372 to 1373/2-S along outer edge of the "Pan Plantation". Referring to the Indian Evidence Act, 1872 more specifically Section 78(6) thereof, the learned counsel has submitted that though the Gift Deed has been registered in Sylhet (Bangladesh) that by itself would not render the same unworthy of any evidentiary value. Rather under the aforesaid provision of law, documents of any class in a foreign country is also to be regarded as proof of such document if the procedure prescribed therein is followed. The learned

counsel further submits that in view of availability of sufficient materials, the inaction to make the survey and demarcate the remaining portion of the land is wholly unjustified.

7. Per contra Shri B.J. Talukdar, learned Standing Counsel, Revenue, State of Assam submits at the outset that question of facts has been raised in this writ petition which are disputed by the Department and therefore this Court in exercise of its writ jurisdiction may not be the appropriate forum for redressal of the grievance of the petitioner. Even assuming that the petitioner had been able to make out a case on merits, such adjudication can only be effectively made by a Civil Court of appropriate jurisdiction as the question of adducing evidence and proof of documents would arise which is not possible in a writ proceeding. Adventing on the merits of the case, the learned Standing Counsel submits by referring to the affidavit filed by the Settlement Officer, Karimganj, that in fact there is no Tea Estate named Pallathal Tea Estate in the Karimganj district. Secondly, the land covered by the aforesaid old Patta No. 6, Dag Nos. 9, 71 and 89 of the various mouzas mentioned above are Government land which were made khas land under Ceiling Case No. 35 of 1972-73. Thirdly, it is the submission of the learned Standing Counsel that the schedules in the Gift Deed and in the Deed of Attorney are different and at no point of time the petitioner had any right, title and interest or even possession of the said plot of land. In view of the same, the relief claimed in the writ petition is otherwise also wholly unjustified and not tenable either in law or on facts. As regards the provision of section 78(6) of the Evidence Act, Shri Talukdar, learned counsel submits that though there is no dispute that documents of a foreign country can be taken as a proof, the same has to be done only by the procedure prescribed in the said provision of law. For ready reference, section 78(6) is extracted herein below: "(6) public documents of any other class in a foreign country,- by the original, or by a copy certified by the legal keeper thereof, with a certificate under the seal of a Notary Public, or of [an Indian Consul] or diplomatic agent, that the copy is duly certified by the officer having the legal custody of the original, and upon proof of the character of the document according to the law of the foreign country."

8. The learned Standing Counsel submits that apart from the fact that the original or the certified copy with a certificate under the seal of Notary Public or of the Indian Consul or Diplomatic Agent has to be certified, in the instant case the prescription which is mandatory in nature have not been followed at all. Even otherwise, the materials on record would reveal that the schedule of the Deed of Power of Attorney and the Gift Deed are different and most importantly the land in question being declared as khas land in accordance with the Ceiling Case No. 35 of 1972-73, the basis of the claim that the petitioner is the absolute owner of the land in question falls through. As regards mention of "Tea Garden" in the Gazette notification, the Department Counsel clarifies that it is with reference to all Indian Tea And Trading Co. Ltd. as mentioned in paragraph 14 of the affidavit in opposition dated 20.06.2016. In view of such discrepancies, the relief prayed

for cannot be granted.

9. Ms. R.B. Bora, the learned State Counsel also endorses the submissions of Shri Talukdar and submits that since disputed question of fact are involved in this writ petition, the same are not liable to be adjudicated by this Court in exercise of jurisdiction under Article 226 of the Constitution of India.

10. Rejoining his submission, Shri Dhar, learned counsel for the petitioner submits that the pleadings in the affidavit-in-opposition cannot override the materials which are even in the gazette and the earlier orders. Referring to the provision of section 115 of the Evidence Act which relates to Estoppel, the learned counsel submits that the authorities are in fact estopped from taking a contradictory view other than that is stated in the orders as well as the official gazette. The learned counsel has also referred to Section 81 of the Evidence Act raising the presumption of the correctness of the contents of official gazette.

11. The rival submissions of the learned counsels have been duly considered and the documents before this Court have been carefully examined. There is no doubt that in this proceeding, questions of fact are involved. It is a settled principle of law that this Court exercising jurisdiction under Article 226 of the Constitution of India will refrain from adjudicating any matters involving question of facts which are disputed and in the instant case, after perusing of the stand of the official respondent in the affidavit it is found that the claim of the petitioner which are based on facts are seriously disputed.

12. Though Shri Dhar, learned counsel submits that even in case where disputed questions of facts are involved, a writ court in the interest of justice can intervene and in this connection relies upon a decision of the Apex Court reported in (2004) 3 SCC 553 (ABL International Limited and Another v. Export Credit Guarantee Corporation of India Limited and Others.

13. A perusal of the aforesaid decision would reveal that it is only on exceptional cases that the Hon'ble Apex Court has laid down that a writ court may entertain a petition under Article 226 involving disputed questions of fact though normally such petitions are not to be entertained. The Apex Court had also referred to earlier decision in Gunwant Kaur v. Municipal Committee, Bhatinda case reported in (1969) 3 SCC 769 wherein it has been laid down that where disputed question of facts involves interpretation or meaning of documents, there would be no embargo on the part of the writ court to entertain such petition. However in the instant case the facts are distinguishable as the very basis of the writ petition has been disputed by the respondent in their affidavit as well as by their submissions. When the instances of the Tea Garden itself within the territorial boundary of India has been said to be non-existing in the affidavit and the further fact that the land in question has been stated to be a part of Government Khas land, the question of making a direction for a further survey and mutation will not arise.

14. In view of the above, this Court is of the opinion that the present is not a fit

case for exercising the extraordinary powers under Article 226 of the Constitution of India and accordingly the petition is dismissed. However, it is clarified that since the dismissal is mainly on technical grounds as disputed questions of facts are involved, the petitioner would be at liberty to raise the grievance in an appropriate forum for adjudication on merits, if so advised. Since this writ petition was pending in this Court from the year 2015, delay if any would also be considered if the petitioner choose to raise his grievance in the appropriate forum subsequently.

15. The writ petition is accordingly disposed o

