
(2008) 02 GAU CK 0048
In the Gauhati High Court

Bhabani Shankar Bagaria

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 06-02-2008

Acts Referred:

Constitution of India, 1950 — Article 226
Land Acquisition Act, 1894 — Section 4, 6

Citation : (2008) 2 GLT 341

Hon'ble Judges : Iqbal Ahmed Ansari, J

Bench : Single Bench

Judgement

I.A. Ansari, J.—By its letter, dated 30.05.2007, Department of Revenue and Disaster Management, Government of Assam, requested the Deputy Commissioner, Dibrugarh, to take action in terms of the provisions of Rule 116 of the Registration Rules framed under the Assam Land and Revenue Regulation, 1886 (in short, "the ALRR") in respect of 236 Bighas, 3 Kathas and 15 Lechas out of the total land acquired from Beheating Tea Estate, the request for taking action under Rule 116 being made on the ground that out of the said total land acquired from Beheating Tea Estate, land measuring as much as 236 Bighas, 3 Kathas and 15 Lechas is under the occupation of people other than Beheating Tea Estate. Based on the letter, dated 30.05.2007, aforementioned, Deputy Commissioner, Dibrugarh, issued, on 04.06.2007, a notice, addressed to the present petitioner, as proprietor of the said tea estate, to show cause as to why the Grant No. 13/176 ORR, made in respect of the said 236 Bighas, 3 Kathas and 15 Lechas of land, which stand acquired by the Government under Land Acquisition Case Nos. DRA 7/2006 and DRA 12/2006, but is not being utilized for cultivation and is in the occupation of people other than the said tea estate, be cancelled. With the help of this application made under Article 226 of the Constitution of India, the petitioner challenges the legality and validity of the notice, dated 04.06.2007, aforementioned and seeks to get the same set aside and quashed, the case of the petitioner being, in brief, thus:

(i) By a registered Sale Deed, the petitioner's father, in order to expand the area

of his tea estate, known as Beheating Tea Estate, purchased, during his lifetime, vide registered sale deed, dated 17.10.1969, two plots of land measuring, in all, 383 Bighas, 4 Kathas, 19 Lechas. Upon the purchase, so made, the petitioner's father occupied the said land and started tea cultivation thereon. Upon purchase of the said land and coming into occupation thereof, the predecessor-in-interest of the petitioner and, after his demise, the petitioner planted tea bushes on most part of the land and the remaining part of the land, where tea bushes were not planted, were being utilized for ancillary purposes. This apart, due to the system of rotational plantation of tea, which the petitioner has been following, certain portions of the land, so purchased, remained vacant; but, at all material times, the entire land was utilized by the said tea estate for tea cultivation and for the purposes ancillary thereto. The land so purchased, forms part of the Lepetkatta Division of the said tea estate. In the year 1976, the petitioner had surrendered as much as 117 Bighas, 4 Kathas, 13 Lechas of land of the said tea estate as ceiling surplus land and the remaining areas have been utilized for rotational plantation of tea by the petitioner. In terms of Rule 40A of the Settlement Rules, framed under the ALRR, the settlement-holder of a land, who has not been utilizing the land for ordinary cultivation after the date of publication of Original Notification, dated 24.09.1931, but is found to have been utilizing the land for special cultivation, such as, tea, such settlement-holder was liable to pay premium at the rate fixed by the State Government. Acting upon the provisions of Rule 40A, the State Government directed the grantees of the tea estates to produce evidence of such land having been leased out to them for special cultivation, such as, tea. As most of the grantees were British Companies and as they had left during and after the independence, the present owners of the tea estates could not produce the evidence in respect of any grant/lease made in their favour. It was, therefore, inferred by the Government that the land, which were being utilized for special cultivation, such as, tea, had been actually settled for ordinary cultivation. The Government, therefore, decided to convert the settlement of such land from ordinary cultivation to settlement for special cultivation and accordingly realized premium from the grantees. Thereafter all the grants, having tea plantation, were converted to periodic patta land. However, for Government's own convenience, original numbers superimposed by different periodic patta numbers are maintained. Thus, the entire 383 Bighas 4 Kathas 19 Lechas of the land, covered by sale deed, dated 17.10.1969, aforementioned stood already converted into periodic patta land with the petitioner's name having been recorded, in the Record of Rights, as the pattadar. The petitioner has been accordingly paying land revenue.

(ii) In the year 1994, a group of people, led by one Sri Nandi Nath Hazarika, attempted to trespass into the said land of the petitioner. As the petitioner offered stiff resistance, the attempt for trespass failed. However, in the month of May, 1996, they trespassed into a portion of the petitioner's said land and illegally occupied the same. Because of such illegal occupation by the encroachers, the petitioner could not utilize the land, which had been so

encroached, for rotational plantation of tea. Claiming themselves to be the occupiers of the land, which they had so encroached upon, Sri Nandi Nath Hazarika and twenty two others applied to the Deputy Commissioner, Dibrugarh, to grant them ownership rights over the said land in terms of the provisions of the Assam (Temporary Settled Areas) Tenancy Act, 1971, on the strength of some Kacha Khatian obtained by them without the knowledge of the petitioner and in collusion with the revenue staff. The application, so made by the said encroachers, gave rise to Tenancy Case No. 76/87/Pt. On objection being raised by the petitioner to the request for settlement, so made, the Additional Deputy Commissioner, Dibrugarh, vide Order, dated 20.08.1997, rejected the said petition for settlement made by Sri Nandi Nath Hazarika and others. The said group of encroachers, then, preferred an appeal before the Assam Board of Revenue against the order, dated 20.08.1997 aforementioned. This appeal came to be registered as Case No. 182 RA(DB)/97. By its order, dated 26.05.2000, the Assam Board of Revenue dismissed the said appeal and affirmed the order, dated 20.08.1997, aforementioned. While rejecting the appeal, the Board held that the appellants had failed to establish their claim of having acquired ownership rights over the said land and upheld the petitioner's contention that the appellants were not tenants within the meaning of the Assam (Temporary Settled Areas) Tenancy Act, 1971. The order, dated 26.05.2000, aforementioned, passed by the Assam Board of Revenue, remained unchallenged and the same has attained finality. With the judgment and order, dated 26.05.2000, having attained finality, the status of those, who had been claiming to be lawful occupiers of the land, aforementioned stood belied and the petitioner's legal possession over the land stood confirmed.

(iii) In terms of the initiative taken by Reliance Assam Petro-Chemicals Ltd. (in short, "the REPL") to set up a gas cracker project, the Government decided to acquire land for such project. Notifications were accordingly issued u/s 4(1) of the Land Acquisition Act, 1894. In course of time, the Government decided to acquire, amongst others, the land, which formed part of the said encroached land. In terms of the requisite notifications, issued in this regard, two land acquisition cases, namely, LA Case No. DRA 8/2000 and LA Case No. DRA 17/2000, in respect of 158B-3K-11 Land 228B-2K-18 L of lands respectively, came to be registered. When the office of the Deputy Commissioner, Dibrugarh, prepared a list (JIRAT) for surface compensation, the petitioner was surprised to find that the said list included the names of the said encroachers. The petitioner, then, having obtained "No Objection Certificate" from the Deputy Commissioner, Dibrugarh, instituted twenty civil suits in the Court of the Civil Judge, Senior Division, Dibrugarh, along with applications seeking orders of injunction. In all the suits, injunctions stood granted prohibiting the respondents from making payment of compensation as per the said list. (iv) As the REPL backed out of its project of gas cracker, a period of uncertainty prevailed for some time. Thereafter, the Gas Authority of India Ltd. (in short, "the GAIL") decided to set up the said project in collaboration with the Assam Industrial Development

Corporation Ltd. (in short, "the AIDC). Consequently, land acquisition processes were initiated afresh and three cases came to be registered in respect of acquisition of the petitioner's land, these case being L.A. Cases No. DRA 7/2006, L.A. Case No. DRA 11/2006, and L.A. Case No. DRA 12/2006. While L.A. Case No. DRA 7/2006 is in respect of 228 Bighas, 2 Kathas, 18 Lechas of land of village Lepetkatta Kachari Gaon, under Mouza Mancotta Khanikar, L.A. Case No. DRA 11/2006 is in respect of 4 Bighas, 2 Kathas, 7 Lechas of land of village Borpathar Kakati Gaon, under Mouza Mancotta Khanikar. As far as L.A. Case No. DRA 12/2006 is concerned, it is in respect of the land measuring 152 Bighas, 4 Kathas, 4 Lechas of land of village Borpathar Kakati Gaon, under Mouza Mancotta Khanikar. Pursuant to the notifications issued u/s 4 of the said Act, the petitioner filed his objections thereto. Thereafter, the revenue authorities have made declaration u/s 6 of the said Act acquiring the land. Due to fresh land acquisition proceedings, the petitioner had to amend the complaints in the aforesaid suits. This apart, the tea estate of the petitioner is under mortgage to the Indian Overseas Bank against the loan facilities availed by the petitioner. As the land stood acquired by the Government, the petitioner wrote to the respondent No. 2, namely, Principal Secretary, Government of Assam, Department of Revenue, requesting the latter to make payment of the compensation, for the land acquired, directly to the said bank so as to liquidate the loan of the petitioner. A letter was also written even by the said bank to the respondent No. 2. If the payment to the bank is not made, the petitioner's loan account would be treated as NPA and, if it so happens, the future of the petitioner's tea estate along with the lives of the 800 workers, who entirely depend upon the said tea estate, would be jeopardized. By the impugned notice, dated 04.06.2007, aforementioned, the petitioner has, now, been informed that as the people in occupation of the land, which stands acquired, are demanding compensation and they are the ones, who are in occupation, why the grant of the land made in favour of the petitioner be not cancelled.

2. I have heard Mr. N. Dutta, learned Senior counsel, appearing on behalf of the petitioner, and Ms. H.N. Phukan, learned Counsel, appearing on behalf of the respondents.

3. Before I come to the merit of the writ petition, it is pertinent to point out that it is only respondent No. 3, namely, Deputy Commissioner, Dibrugarh, who has filed affidavit-in-opposition resisting the writ petition. The respondents' cases stand, in brief, thus: There is no definite proof of the fact that the petitioner had paid the premium for conversion of the said grant into periodic patta land. This apart, as twenty-eight families, belonging to Sonowal Kachari community, have been occupying the land, in question, since 1960, Kachha Khatian were also issued to them as tenants during the land settlement operation, they are the ones, who are still in occupation of the said land and the petitioner has not been utilizing the said land for tea cultivation, the Government is within its powers to cancel the grant made to the petitioner by taking recourse to Rule 116 aforementioned and settle the land in favour of the said twenty-eight families of

Sonowal Kachari community. The fact that the tea estate stands mortgaged to Indian Overseas Bank is of no material consequence, for, it is the petitioner's responsibility to look after his own tea estate and if the Government does not give settlement of the said land to the said landless families, it will make the said families homeless. As a result of abandoning by the petitioner of his objection in the said civil suits, payments for the JIRAT amount have already been made to the said twenty-eight families. Any land, which is not in occupation of a settlement-holder or a grantee, the Government has the power to cancel such settlement/grant by taking recourse to Rule 116 aforementioned. The impugned order is, thus, legal and valid and, hence, the writ petition deserves to be dismissed.

4. While considering the present writ petition, what needs to be noted is that since it is the notice issued under Rule 116 of the Registration Rules, framed under the ALRR, 1886, which forms the foundation for issuance of the impugned notice, it is appropriate to take note of these provisions. Rule 116 reads thus:

116. Power of Deputy Commissioner to order the name of a proprietor, of etc., be struck out of register--Whenever it comes to the notice of the Deputy Commissioner that any person whose name is recorded in the General Registers as proprietor, settlement-holder or manager of an estate is no longer in possession of any such interest in the estate, the Deputy Commissioner may order the name of such person to be struck out from the register.

Provided that the Deputy Commissioner shall not strike out the name of any recorded proprietor or land holder, or manager on behalf of a proprietor or land-holder, without giving him due notice and bearing any objections he may prefer against his name being struck out.

5. A cursory glance at the provisions of Rule 116 reflects as if a Deputy Commissioner can strike out the name of any recorded proprietor, settlement-holder or land-holder or manager of an estate from the revenue records if it comes to the notice of the Deputy Commissioner that the person, whose name has been recorded in the General Register as proprietor, settlement-holder or manager of an estate is no longer in possession of any such interest in the estate. What is, however, of utmost importance to note is that the expression "such interest in the estate" has been consciously used by the rule-makers in Rule 116. It is a settled principle of law that every word used in any statute, rules or regulations must be given its ordinary meaning unless the context indicates otherwise. The expression "such interest in the estate", if construed property, would obviously mean that the mere fact that a person, who is the proprietor, settlement-holder or manager of an estate, is no longer in possession of such estate, the power, under Rule 116, to strike out the name of such a person from the revenue records cannot be resorted to. What is also necessary for the purpose of enabling a Deputy Commissioner to take recourse to Rule 116 and issue notice under the proviso to Rule 116 to the recorded proprietor, settlement-holder or manager is that such person, who is the proprietor,

settlement-holder or manager of the estate, must be shown to have ceased too have interest in the land, which is no longer in possession of the estate. If Rule 116 is interpreted to mean that a lawful owner will lose his right over the land merely by an act of trespass by an encroacher, it would mean that if a person can manage, illegally and by dint of sheer muscle power, to trespass into a land, such a trespasser would be entitled to settlement of the land merely because of the fact that the recorded proprietor, settlement-holder or manager of the estate is not in possession of the estate or part thereof. Such an interpretation would lead to chaos and lawlessness. An interpretation of a provision, contained in an enactment or rule, which can lead to chaos and disorder in the society, must be eschewed by the Courts and the Courts shall favour that the interpretation, which would help maintain orderliness in the society, for, it is orderliness in the society, which the public interest demands and needs and not chaos and disorderliness. Viewed thus, it is clear that Rule 116 would be applicable only when a person, who is the proprietor, settlement-holder or manager of an estate, abandons his interest, as the proprietor, settlement-holder or manager, over such an estate or any part thereof.

6. In the backdrop of the law, as indicated above, when one turns to the facts of the present case, it becomes more than abundantly clear that in the case in hand, when the prayer made by the said encroachers to treat them as tenants, within the meaning of the Assam (Temporary Settled Areas) Tenancy Act, 1971, had been rejected and the order stood affirmed in the appeal by the Assam Board of Revenue and when the orders, so passed, have attained finality, it cannot be said that the petitioner, as proprietor of the said tea estate, has ceased to have interest over the said land nor can it be said to be a case, where the petitioner, as proprietor or settlement-holder, has ceased to have any interest over the said land, which forms the subject-matter of controversy in this writ petition. This apart, the civil suits are, admittedly, pending and in the civil suits, the petitioner, as plaintiff, has sought for, inter alia, declaration of his rights, title, interest and possession over the suit land, khas possession thereof by ejecting the defendants and also for permanent injunction restraining the defendants, their men and agents from trespassing into the suit land in future.

7. In the circumstances, as indicate hereinabove, it cannot be said that the petitioner has abandoned his interest over the land aforementioned nor the present one is a case, wherein the petitioner can be said to have acquiesced to the rights, if any, of the encroachers. The facts and circumstances, as pointed out hereinbefore, do not, therefore, satisfy the conditions precedent for invoking the provisions of Rule 116.

8. The power to issue notice under Rule 116 can be exercised only when the conditions precedent for issuance of such a notice exist. When the respondents are already in the know of the entire affair and when they know that the petitioner has been claiming and struggling to get vacant possession of the land, in question, it logically follows that the question of invoking the power of the

Deputy Commissioner, under Rule 116, to cancel the petitioner's status as the settlement-holder of the said land did not arise at all. If Rule 116 is interpreted to mean that as soon as a person, (who has been in occupation of a plot of land as a proprietor, settlement-holder or manager), loses his possession, his name as proprietor, settlement-holder or manager shall be struck off the revenue records, the logical implication would be that a trespasser or encroacher would be rewarded by the Government by making settlement of the encroached land in favour of such encroacher even if the proprietor, settlement-holder or manager of the estate keeps crying foul and keeps raising his objection and refuses to acquiesce to such illegal act of the trespass or encroacher. Such an approach would, undoubtedly, diminish the majesty of law, would not serve public interest and would not be in the interest of justice.

9. The enquiry, required to be made in this writ petition, is, if I may point out, of very limited nature. What this Court, in this writ petition, is really required to determine is as to whether the petitioner has abandoned his interest in the land, in question. If the answer to this question is found in the negative, there would remain no escape from the conclusion that the directions given, in the present case, to the District Collector, Dibrugarh, to take recourse to the provisions of Rule 116 are wholly illegal and cannot be sustained. It may also be pointed out that for the purpose of determining as to whether the respondents had with them any material whatsoever indicating or reflecting, even faintly, that the petitioner had abandoned his interest in the land, in question, presence of those, in whose favour the direction (s) were given, cannot be regarded as necessary or even proper parties.

10. Because of what have been discussed and pointed out above, it logically follows that the letter of the respondent No. 1, namely Commissioner and Secretary to the Government of Assam, Revenue Department, dated 30.05.2007, aforementioned requesting the respondent No. 3, namely, Deputy Commissioner, Dibrugarh, to take action in the matter under Rule 116, is wholly without jurisdiction and even the notice, dated 04.06.2007, aforementioned is without jurisdiction and needs to be set aside and quashed.

11. In the result and for the reasons discussed above, the impugned notice, dated 04.06.2007, is hereby set aside and quashed. With the above observations and directions, this writ petition shall stand disposed of. No order as to costs.