
(2007) 04 GAU CK 0024
In the Gauhati High Court

Bhaskarjyoti Sarma and Others

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 13-04-2007

Acts Referred:

Urban Land (Ceiling and Regulation) Act, 1976 — Section 10(1), 10(5), 8(3)

Citation : (2007) 3 GLT 55

Hon'ble Judges : Ranjan Gogoi, J

Bench : Single Bench

Judgement

Ranjan Gogoi, J.—Restoration of possession of land measuring 1 B 4 Ks 16 Ls of the petitioners, following the adoption of the Urban Land (Ceiling and Regulations) Repealing Act, 1999 by the State of Assam is the principal relief prayed for in this writ petition. Interference with the allotment of an area of 4 Ls of the aforesaid land to the Respondent No. 6, Gauhati Metropolitan Development Authority made by order dated 27.11.2003 is the further relief prayed for by the petitioners.

2. The relevant facts, which will be necessary to be noticed for an effective adjudication of the questions arising in the present writ petition, may briefly be stated at the outset:

The petitioners are the legal heirs of Late Bhabadeb Sarma, who died on 3.10.1997. According to the petitioners, Late Bhabadeb Sarma was the owner of a plot of land measuring 73.26 Acre (5 Bs 2Ks 7 Ls) covered by K.P. Patta No. 493 (old)/594 (new) in Dag No. 1008 (old) of Sahar Ulubari, 2nd Part under Mouza Ulubari, Guwahati. During his life time, Late Bhabadeb Sarma, according to the petitioners, sold most of the land retaining ownership and possession of 1 B 4Ks 16 Ls. On the basis of the return filed by the deceased under the provisions of the Urban Land (Ceiling & Regulation) Act, 1976, (hereinafter referred to as the Ceiling Act) a draft statement u/s 8(3) of the Act was prepared and served on Late Bhabadeb Sarma on 18.5.1982. On due consideration of the objections filed against the said draft statement by the owner of the land, i.e.,

Late Bhabadeb Sarma on 3.9.1982, the competent authority, under the Act, prepared and published the final statement u/s 9. A perusal of the draft and final statements prepared under the provisions of the Act, which have been enclosed to the writ petition, would go to show that a total area of 7981.48 Sq. mtrs. of land was identified as the vacant land required to be surrendered by the owner.

Thereafter, on 16.5.1984 a notification was published in the Official Gazette u/s 10(1) of the Act giving the particulars of the vacant land in excess of the ceiling limit and calling on persons interested to file their claims to the said vacant land. In the schedule to the notification dated 16.5.1984, the total area of and is mentioned as 7981.18 Sq. mtrs. Subsequently, a notification dated 1.1.1987 was published in the Official Gazette u/s 10(3) of the Act. According to the petitioners, Late Bhabadeb Sarma continued to pay the land revenue in respect of the land upto the year 1991, whereafter such land revenue was refused to be accepted by the concerned authority. The petitioners have also brought on record a copy of the jamabandi showing the deletion of the name of the Late Bhabadeb Sarma as the recorded pattadar in respect of Patta No. 594. Such correction, as evident from the endorsement made in the extract of the jamabandi enclosed, was made on the basis of the orders passed in the Land Ceiling Proceeding in respect of the land owned by Late Bhabadeb Sarma.

3. The further case pleaded by the petitioners is that notwithstanding the facts and events that had occurred, as noticed above, possession of the land declared as ceiling surplus by the notifications in question continued to remain with Late Bhabadeb Sarma and after his death on 3.9.1997 with the petitioners, who had inducted one Sanatan Baishya as the caretaker of the property in question. The petitioners have brought on record the electricity connection in respect of the premises standing on the land; documents of the postal authorities showing running of the business of a public call office in the said premises by the caretaker Sanatan Baishya and also the permission granted by the Gauhati Municipal Corporation authorities for running of a restaurant/tea stall in the said premises by Sanatan Baishya. According to the petitioners, the said documents effectively demonstrate their possession of the land even after finalization of the Land Ceiling Proceeding.

4. According to the petitioners, the Urban Land (Ceiling & Regulations) Act, 1976 was repealed by the Union Parliament by the Repealing Act of 1999 with effect from 22.3.1999. The said Act was adopted by the State of Assam on 6.8.2003 and the Gazette Notification in this regard was published on 5.12.2003. According to the petitioners, the Repealing Act did not affect the vesting of any vacant land u/s 10(3) of the Principal Act if possession of such land had been taken over by the State of Assam or any person duly authorized by the State Government. However, u/s 3(2) of the Repealing Act, though any land may have vested in the State Government u/s 10(3) of the Act, if possession of such land had not been taken over by the State Government or any person duly authorized by the State Government, such land is to be restored to the erstwhile owner

subject to return of any compensation that may have been received by such owner.

5. The petitioners have categorically contended, in the writ petition filed, that possession of 1 B 4 Ks 16 Ls of land out of the total land covered by the Land Ceiling Proceeding continued to remain with their predecessor and after his death with the petitioners notwithstanding the finalization of the Land Ceiling Proceeding. In this regard the petitioners have also contended that u/s 10(5) of the Act a person in possession of ceiling surplus land is entitled to receive a notice to deliver possession to the State and only in the event such possession is not delivered, possession by recourse to the provisions u/s 10(6) of the Act can be taken over. It is the categorical assertion of the petitioners that neither Late Bhabadeb Sarma nor the petitioners or their caretaker in possession of the land measuring 1 B 4 Ks 17 Ls, at any point of time, had received any notice u/s 10(5) of the Act to handover vacant possession of the land in question. Accordingly, the petitioners contend that as possession of the land had remained with them and such possession has not been taken over by the Government, by virtue of the Repealing Act, the petitioners are entitled to get back ownership of the land in question. In this regard it is the specific case of the petitioners that no compensation for the land, under the provisions of the Act, had been paid by the State either to their predecessor Late Bhabadeb Sarma or to the petitioners.

On the aforesaid premises the petitioners have challenged the allotment of 4 Ks out of the land in question in favour of the Respondent No. 6 as made by order dated 27.11.2003 as also the proceedings of eviction initiated by Eviction Notice issued under Rule 18(2) of the Settlement Rules framed under the Assam Land and Revenue Regulations, which has been issued to the caretaker of the petitioners [Annexures-11 and 11(A) to the writ petition].

6. The case set up by the petitioners has been denied and disputed by the Respondents, who have filed their separate affidavits in the case. A common thread of objections being noticeable in the counter affidavit of the Respondents, for the sake of brevity, the said objections may be understood as the common objections of all the Respondents.

The Respondents have denied and disputed that possession of the surplus land determined in the Ceiling Proceeding against late Bhabadeb Sarma was not acquired by the State. In this regard the Respondents have stated that unilateral possession of the land was taken over by the Revenue Authority on 9.12.1991 as the landowner had failed to handover possession under the provisions of the Act. The document evidencing such take over of unilateral possession on 7.12.1991 and the order (s) of the Revenue Authority confirming the said fact have been brought on record by the Respondents. According to the Respondents after the notification dated 16.5.1984 issued u/s 10(1) of the Act was published in the Official Gazette, the predecessor of the petitioners, Late Bhabadeb Sarma, had sold some parts of the land on 12.11.1984. Thereafter, after the notification dated 10.1.1987 u/s 10(3) of the Act was published and possession of the land

was taken over in the manner indicated, allotment of a part of the said land was made in favour of certain persons. When such persons had gone to take possession of the land, the persons who had purchased the land from Late Bhabadeb Sarma raised a dispute which was carried before the Court in a writ proceeding registered and numbered as CR Order 2568 of 1992. In the said writ proceeding the predecessor of the petitioners, Late Bhabadeb Sarma, was impleaded as Respondent No. 10. The said writ proceeding was disposed of by this Court on 21.5.2002 by holding that the transfers made by Late Bhabadeb Sarma after publication of the notification dated 16.5.1984 u/s 10(1) of the Act are void and contrary to the provisions of the Act. This Court further held that as the land had already vested in the State upon publication of the notification dated 1.1.1987 u/s 10(3) of the Act, the purchasers cannot be held to have acquired any right. On the said basis this Court by its order dated 21.5.2002 upheld the allotments made to the concerned persons from the ceiling surplus land in question and accordingly dismissed the writ petition. The Respondents have also brought on record an order dated 8.8.2003 of the Apex Court dismissing the SLP against the said order dated 21.5.2002, which was also affirmed in W.A. No.419 of 2002 by order dated 20.12.2002 passed by this Court.

7. Pointing out the above facts the Respondents have contended that at no point of time in course of the earlier proceeding before this Court, the question of possession was raised by the predecessor of the present writ petitioners. In fact, according to the Respondents, there is a clear and categorical finding recorded in the order dated 21.5.2002 passed by this Court to the effect that after publication of the notification u/s 10(1) of the Act, the predecessor of the petitioners had not filed any claim to the land in question. The Respondents, therefore, have urged that the issue now sought to be raised is squarely covered by the order/orders of this Court, as noticed above, inasmuch as, the allotment of the very same ceiling surplus land, though in part, has been upheld by the Court, which fact must be understood to be a clear pointer to the taking over of possession of the land by the State Government as no allotment could have been made without taking over such possession. In these circumstances, the Respondents have stated that the allotment of the remaining land to the Respondent No. 7 for building its office complex, though made a little belatedly, will not fundamentally affect the validity of the same. The Respondents have also asserted that the claimed possession of the land by the petitioners through their caretaker, Sanatan Baishya, being absolutely unauthorized, no premium can be gained by the petitioners from such possession, which possession, in any event, has sought to be nullified by initiation of an eviction proceeding under the Settlement Rules framed under the Assam Land and Revenue Regulations.

8. The rival submissions advanced on behalf of the respective parties have received the due and anxious consideration of the Court.

At the outset what must be considered by the Court is the question with regard to maintainability of the present action and availability of the present forum to

agitate the question raised, as noticed above, in view of the earlier judgment of this Court dated 24.5.02 passed in CR No. 2568/1992, which has attained finality in law. The basis on which this Court by its order dated 24.5.2002 passed in CR No. 2568/1992 had upheld the validity of the allotment made from the Ceiling surplus land of the predecessor of the petitioners and negative the claim raised by the purchasers of such land, is that the sale and purchase of the said land took place after publication of the notification u/s 10(1) of the Act and further that upon publication of the notification u/s 10(3) of the Act, the land had vested in the State. The question of taking over possession of the land by the State and/or the continued possession of the predecessor of the petitioners over such land was not an issue before the Court as under the Act of 1976 once the land had vested in the State Government, the question of possession was irrelevant for the purpose of deciding the existence of any further legal right of the land owner to the land in question. The question of taking over possession of the land by the State became relevant only after the Repealing Act of 1999 came into force on account of the provisions contained in Section 3 which contemplated re-conveyance of title, notwithstanding the vesting of the land in the State Government, if possession of the same had not been taken over by the State. As the proceedings in the earlier writ petition culminating in the order of the Apex Court were finalized before the notification of adoption the Repealing Act by the Assam State Legislature was published in the Official Gazette (Notification was published on 12.12.2003) this Court must hold that the question of taking over possession in order to determine the rights of the petitioners under the Repealing Act will be open for consideration by the Court in the present proceeding and cannot be understood to be foreclosed by the earlier order of this Court dated 24.5.2002 passed in CR No. 2568/1992.

9. The categorical assertion of the writ petitioners that after the finalization of the Land Ceiling Proceeding, at no point of time, notice u/s 10(5) of the Act was issued or served requiring them or their predecessor to handover possession has been replied to by the Respondents by contending that as the predecessor of the petitioners had failed to handover possession under the Act, such possession was unilaterally taken over by the Revenue Authority on 7.12.1991. The document showing such takeover of possession signed by the Revenue Authority has also been brought on record along with the letters of the said authority that the predecessor of the petitioners had failed to handover possession of the land in accordance with the provisions of the Act. The aforesaid documents leave no room for doubt that possession of the land was indeed taken over by the State. Confronted with the above facts, the petitioners have sought to overcome the situation by contending that the unilateral take over possession is an act contemplated u/s 10(6) of the Act, which provision would come into play after only compliance with the requirements of Section 10(5) of the Act. The said requirement, according to the petitioners, has not been met available in the present case. In other words, the petitioners now contend that taking over possession, as claimed by the State, has not been in accordance with the

provisions of the Act.

10. A reading of the provisions contained in Section 10 of the Act makes it clear that in the notification required to be published u/s 10(1) of the Act, after clear identification of the surplus vacant land, which is sought to be acquired, "persons interested" are to be invited to file their claims to the vacant land in question. Thereafter, the claims, as may be filed are required to be settled and notice to hand over possession u/s 10(5) of the Act may be served on the person in possession. This appears to be order or scheme of action under the Act. In the present case, the owner of the land, i.e., predecessor of the petitioners had already filed his objections u/s 8(3) of the Act in respect of the draft statement issued, where after, the final statement u/s 9 was prepared. Admittedly, the predecessor of the petitioners did not file any claim to the land after publication of the notification u/s 10(1) of the Act--a fact, which has been recorded by this Court in its order dated 24.5.2002 passed in CR No. 2568/1992. In such a situation, the Court cannot understand that any prejudice was caused to the owner of the land even if it is to be assumed that no notice u/s 10(5) of the Act was served, a conclusion that the Court feels safe to draw from the use of the word "May" in Section 10(5) of the Act. In any event, whether such a notice was issued or served on the predecessor of the petitioners is a seriously disputed question of fact in view of the clear stand taken by the Respondents in the affidavit filed that the predecessor of the petitioners not having handed over possession of the land, such possession was taken over unilaterally by the State.

11. There are certain other features of the case, which impel the Court to take a negative view with regard to the above contentions advanced by the petitioners. The fact that allotment of a part of the surplus vacant land covered by the Land Ceiling Proceeding in question was made by the Government which allotment had been found to be valid by this Court in the earlier proceeding is a significant fact that cannot be overlooked. Such allotment from the same surplus land, even if in part, tilts the balance on the question of possession against the petitioners. The correction of the revenue records, as evident from the extract copy of the jamabandi available on record, showing deletion of the name of Late Bhabadeb Sarma as the recorded pattadar of the land in question and the further endorsement showing such land as Government land, must also be construed by the Court to be a relevant fact for deciding the question of possession in favour of the State and against the petitioners. Viewed from the aforesaid context, the claimed possession of the petitioners through their caretaker, Sanatan Baishya, will hardly be relevant to judge their entitlements under the Repealing Act of 1999. The said Act, in the considered view of the Court, contemplates a clear abandonment of the rights of the State to take over possession of the surplus land that had vested in it u/s 10(3) of the Act rather than failure to continuously maintain such possession or combat attempts of re-possession or encroachment by the erstwhile owner or any other person.

12. For all the aforesaid reasons, the Court is of the considered view that the

claims made in this writ petition should not be acceded to. The petitioners cannot be held to be entitled to restoration of possession of the land in question by virtue of the Repealing Act of 1999; the said finding will also affect the tenability of the petitioners' claim as regards the invalidity of the allotment made in favour of the Respondent No. 6. Accordingly, this writ petition has to be dismissed, which I hereby do, however, without any order as to costs.