

(2006) 04 GAU CK 0014
In the Gauhati High Court
Case No : PIL No. 60 of 2003

Chitta Mohan Bora and Another

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 11-04-2006

Acts Referred:

Assam Land and Revenue Regulation, 1886 — Section 95A, 95A

Citation : (2006) 2 GLT 447

Hon'ble Judges : B.S. Reddy, C.J.; Brojendra Prasad Katakey, J

Bench : Division Bench

Advocate : B.K. Goswami and T. Goswami, for the Appellant; N. Dutta and B. Goyal, for the Respondent

Final Decision : Dismissed

Judgement

B.S. Reddy, C.J.—This writ petition is purported to have been filed by two individuals claiming themselves to be social activities. The controversy centers around settlement of village Grazing Reserves in favour of Respondents and others who incidentally belong to minority community. The Petitioners are aggrieved by the proposals submitted by Respondent Nos. 4 to 6 to de-reserve major portions of two Grazing Reserves, namely, Mowamari Grazing Reserve and Brahma Beel or Barama Beel Grazing Reserve in Samaguri Circle in the district of Nagaon.

2. The case set up by the Petitioners is that there are number of villages surrounding the said two Grazing Reserves which are meant for use by the villagers to graze their cattle and other livestock and also to maintain open space for the protection of environment and ecology. The fishery within the Barama Beel Reserve Forest according to the Petitioners produces huge quantify of fish.

3. According to the Petitioners on 19.09.2004 a public meeting was held at village Barama in Mouza Rongagora in Samaguri Circle, which was presided over by the Deputy Commissioner, in which the Revenue Minister and the Minister of

State for Home and Political Affairs, who happens to be the local MLA were also present amongst others. There was a demand of settlement of land in the two village Grazing Reserves by the people who are in occupation of the same and in response to said demand the Revenue Minister is stated to have declared that the demand made by the people would be considered and accordingly directed the Circle Officer to submit proposal for de-reservation and allotment of land in favour of the persons in possession thereof.

4. Thereafter the Circle Officer submitted four different reports in respect of the two Grazing Reserves and recommendations were accordingly made to allot/settle the said Grazing Reserves in favour of the encroachers. That, another similar report was also submitted duly recommending de-reservation of vast extent of land in favour of some encroachers in respect of Barama Beel Village Grazing Reserve. It is not necessary to notice the details and about the number of reports stated to have been submitted by the authorities concerned.

5. The case set up by the Petitioners is that vast extent of land in Grazing Reserves cannot be allotted to the beneficiaries belonging exclusively to one particular minority community. It is also urged that the allotment is proposed to be made in the name of different members in the same families thereby benefiting few chosen families and such a move can never be considered as the one in public interest.

The Deputy Commissioner, Nagaon sent the recommendations for de-reservation of land in Mowamari Village Grazing Reserve and as well as the land in Barama Beel Village Grazing Reserve without any application of mind. The proposals so submitted by the Deputy Commissioner for de-reservation of the major portions of the two Village Grazing Reserves and for allotment/settlement of land in favour of one particular minority community may in all probability be approved by the Revenue Department of Govt. of Assam since the proposals emanated from none other than the Revenue Minister himself.

6. The sum and substance of the case set up by the Petitioners is that the proposals as well as the recommendations made by the authorities are contrary to the Land Policy of 1989, which declares that all possible efforts and endeavour shall be made to preserve the existing Village Grazing Reserves for use of the members of public for the purposes for which those were constituted and encroachments, if any, may have to be removed. Appropriate direction have been issued directing the authorities to ensure that there shall be no further decrease of the land under Village Grazing Reserves by way of de-reservation and allotment except for public purposes under special circumstances. The Policy further declares that subject to availability of Govt. land, in each village at least 5 Bighas to 15 Bighas should be reserved as open space for environmental ecology and other public purposes. The attempts on the part of the Respondents to part away the Grazing Reserves is contrary to the Land Policy and directions issued by the Government from time to time.

7. It is also contended that the Respondents failed to follow the procedure as provided for in Rule 95 A of Assam Land Revenue Regulation, 1886 which is mandatory in its nature. The Respondents are bound to follow the procedure for the de-reservation of Grazing Reserves.

8. The proposals have been initiated at the instance of the Revenue Minister and another Minister and the recommendation so made by the Deputy Commissioner is only a formality which would ultimately be approved by the same Minister who initiated the move.

9. It is under those circumstances the present writ petition has been filed.

10. That, a detailed counted affidavit has been filed by the Deputy Commissioner, Nagaon in which it is, inter alia, stated that the Grazing Reserves in question are under the occupation of the Respondents and others since decades. There are dwelling houses, schools police out post, health center and market place. The land is no more being used for grazing purposes as such, and it has lost its character of being a grazing reserve.

11. It is, however, admitted that the meeting as alleged was held on 19.09.2004 presided over by the Deputy Commissioner, Nagaon in which a large number of people demanded for allotment/settlement of the said land in their favour on the strength of their possession. That, in response to the said demand the revenue Minister present in the meeting issued instructions to set the law in motion so as to enable the government to consider the request so made by the people in occupation of the land.

12. It is further explained that the Deputy Commissioner, Nagaon passed order as early as on 16.02.1966 on the application filed by fee individuals in occupation and accordingly allowed them to cultivate the grazing reserve land. The Land Advisory Board of Kaliabor Sub Division also in its meeting held on 17.11.1994 passed resolution for de-reservation of the grazing reserve land of Mowamari and Barama and advised to take necessary steps for allotment/settlement of the land in favour of the persons found to be in possession of the land. The proposals were accordingly submitted by the Sub divisional Officer (C), Kaliabor and in turn the Deputy Commissioner, Nagaon forwarded the same to the Government with his own recommendation.

13. It is stated that the decision to recommend the proposals for de-reservation of Grazing Reserves is not contrary to the Land Policy and has been taken as a special consideration to meet the minimum needs of the landless poor persons who are in occupation of the land since decades as alleged by the Petitioners.

14. That, no proposals for allotment/settlement of the land are submitted for consideration in favour of such persons whose citizenship is under cloud as alleged by the Petitioners.

15. The counter affidavit filed by the contesting Respondents contains more or less similar averments as in the affidavit filed by the official Respondents. It is

stated that the said Grazing Reserves are under the occupation of the Respondents and others for more than a period of fifty years. Resolutions have been passed in the Land Advisory Board meeting. The proposals of de-reservation are pending since several decades. That, not only the land in the aforesaid Reserves have been allotted to private individuals but also to public institutions, police out post and various schools, health centers, post office etc. It is submitted that more than six hundred families, which includes the private Respondents herein are in occupation of the land which ceased to be grazing land decades ago. The decision has been taken in public interest and the proposed allotment is for a public purpose. The Petitioners cannot raise any objection as regards the citizenship of the persons who are in occupation of the land. It is also stated that unfortunately the Petitioners have given a communal colour to the whole issue which cannot be countenanced by this Court.

16. We have heard the learned senior Counsel Mr. B.K. Goswami appearing for the Petitioners, Mrs. B. Goyal learned Govt Advocate for the official Respondents and Mr. N. Dutta, learned Senior Counsel for the private Respondents. We have perused the records made available.

17. There cannot be any doubt whatsoever that the Grazing Reserves in question had ceased to be Grazing Reserves years ago. The Respondents and various other individuals and their respective families are obviously in possession of the land in question for a very long time. There is no serious dispute as such raised in this regard. The demand and the proposals for de-reserving the Grazing Reserves and their settlement in favour of the persons in occupation are pending at least from the year 1966 onwards. In the light of repeated demands, the instructions issued by the Revenue Minister to set the law in motion in the matter cannot be found fault.

18. It is the duty of the political executive to be responsive to the demands made by the people. Consideration of such demands in particular of the people belonging to weaker and vulnerable section of the society is an integral part of democratic process. The State is duty bound to ensure that the ownership and control of the material resources of the community are so distributed as best to sub-serve common good. Delivering social justice to the community and down trodden is the prime constitutional obligation of the State and its instrumentalities. Deprived sections of the society constitutes itself into a class- be it may belong to majority or minority and are entitled to all the constitutional protection and privileges irrespective of their religion. Such deprived section cannot be further divided on the basis of their religion in the matter of delivery of social justice. Any such attempt may result in hostile discrimination and anathema to the doctrine of equality.

19. Proposals and recommendations obviously have been made as a measure of delivery of social justice and to protect possession of those individuals and families belonging to weaker sections of the society who are left with no other resource and even a shelter over their heads. The Petitioners who claim to be the

social activists and responsible citizens ought not to have raised the issue in the manner in which they did. Fortunately, the learned Senior Counsel appearing on behalf of the Petitioners did not seriously pursue the matter on those lines.

20. The next question that falls for our consideration is, whether the land policy of the Government altogether prohibits settlement of Grazing Reserve? Is there any such absolute inflexible ban imposed by the Government upon itself?

21. The land policy read with Section 95A of the Assam Land and Revenue Regulations suggest that the Deputy Commissioner is entitled to go into the question as to whether the village ground constituted under the rules is wholly or partly not needed for the purpose for which it was allotted. The said rules of course prescribe the procedure for forming opinion by the Deputy Commissioner in the matter of making his recommendation to the Government. Ultimate decision may have to be taken by the Government accepting, rejecting or modifying the recommendation of the Deputy Commissioner. The public purpose parameters obviously play dominant role in the matter of making recommendation by the Deputy Commissioner to the Government for its orders as well as in the Government taking appropriate decision in the matter based on the recommendation of the Deputy Commissioner. There is no doubt that a village grazing ground as constituted under the rules meant to be used by the public at large for grazing cattle. Such constitution is undoubtedly for a public purpose. But equally, there can be de-reservation of any of the grazing ground for a public purpose. Providing such grazing ground for an alternative public purpose when the same is not needed for the purpose for which it was allotted, is clearly permissible in law. The action or move to de-reserve the grazing ground in order to cater the needs of deprived sections of the society and more particularly after it ceased to be a grazing ground cannot be said to be not motivated by public purpose concerns. The expression "public" would always include a section of the public and the community at large. The inhabitants of a particular place always constitute into a class of public. Reservation of lands for grazing purposes and making provision therefore always constitutes public purpose; in equal measure its de-reservation when needed. Public purpose means a purpose conducive to the good and considerable section of the community at large or of the locality. Even if only a section of the public is benefited, still the purpose is a public one. The purpose sought to be achieved by proposing de reservation of Grazing Reserves cannot ordinarily be the subject matter of any serious debate in a judicial review proceeding as long as the same is not contra constitutional. In balancing the competing public purpose concerns the Government is entitled to take legitimate social and economic considerations into account; it is fully entitled while making such decisions to take into consideration such as promotion of regional stability, good governance etc. Variety of infinite factors and considerations creep into the decision making process while considering what constitutes a public purpose. Large latitude would have to be allowed to the executive while balancing competing interests of more than one deserving social group.

22. That, at any rate, we are not inclined to critically examine the proposals and as well as recommendations made by the authorities since the government did not pass any order directing any de-reservation as such. The proposals and recommendations are obviously under consideration of the Government which is expected to take an appropriate decision in the matter in accordance with law. The Court cannot presume that the government is likely to take decision contrary to law. As it appears, there is nothing to suggest that the same Minister who was present in the meeting is likely to take decision in the matter. Even otherwise, there is no law which precludes the Minister to take decision in the matter which is required to be in accordance with law.

23. The Petitioners and others if any, interested in the matter can always raise their objections before the government which may have to be considered on their own merits.

Public Interest Litigation:

24. Before we part with the case, a word about the public interest litigation. Social action litigation or public interest litigation as it is commonly known are mainly intended to vindicate the public interest, where constitutional rights and human rights of the people, who are poor, ignorant or in socially or economically disadvantageous position, unable to seek legal redress, are required to be espoused. It is meant to secure justice for the poor and weaker sections of the community, who are not in a position to protect their own interest. It is not meant to be used against the interest of disadvantaged sections of the society. Communal or caste considerations can never be allowed to play any role whatsoever in a public interest litigation. Meaningful attempts made by the State deliver social justice in order to protect the interest of vulnerable sections of the society cannot be allowed to be paralysed by the individuals masquerading as public interest litigants. Such litigation cannot be legitimately called to be public interest litigation. The Supreme Court in more than one case held that only a person or group of persons acting bona fide, will have a locus standi to approach the Court in public interest litigation, but not for personal gain or profit or political motive or any oblique consideration. "A writ Petitioner who comes to the Court for relief in public interest must come not only with clean hands like any other writ Petitioner but also with a clean heart, clean mind and clean objective." We are constrained to hold that stated ingredients are not satisfied in this writ petition purportedly to have been filed in public interest.

25. The manner in which the Petitioners have raised the issue doesn't suggest that the writ petition has been file in any public interest. The averments made in the writ petition do not inspire any confidence. The Petitioners obviously did not make any attempt whatsoever to collect correct and relevant information and materials, which they are bound, if they are seriously interested in the matter and consider themselves to be social activists and responsible citizens. Their action, and not a mere claim, should justify their plea of being the public spirited citizens. The forum of this Court and sacred space can never be allowed to be

utilized to resolve partisan issues.

26. For all the aforesaid reasons we find no merit in the writ petition and the same shall accordingly stand dismissed with costs.