

(2003) 08 GAU CK 0031
In the Gauhati High Court
Case No : Writ Appeal No. 10 of 2003

Dinanath Brahma

APPELLANT

Vs

Baleswar Shah and Others

RESPONDENT

Date of Decision : 04-08-2003

Acts Referred:

Assam Land and Revenue Regulation, 1886 — Regulation 162(2)

Citation : (2003) 3 GLR 588 : (2003) 3 GLT 319

Hon'ble Judges : P.P. Naolekar, C.J.;Aftab H. Saikia, J

Bench : Division Bench

Advocate : P. Roy, for the Appellant; None, for the Respondent

Judgement

P. P. Naolekar, C.J.—Heard Mr. P. Roy, learned counsel for the appellant. None appears for the respondents.

2. The facts in brief necessary for adjudication of the question involved in a case are set out herein below.

3. Shri Baleswar Shah purchased the following land from Smti. Urmila Brahama who admittedly belong to Scheduled Tribe, by registered sale deeds:

"(1) OB.2k. 2Ls. out of total 2B., 4K, 3Ls. in Dag No. 21, K. P. Patta No. 3 by Regd. Sale Deed No. 621 of 25.1.1973.

(2) OB.2K. 2Ls. out of total land 1B. 2K, 5 Ls. in Dag No. 104 covered by Annual Patta No. 1 by Regd. Sale Deed No. 622 dtd.25.1.1973.

(3) Again OB. IVz Ls. out of land in Dag No. 21, K.P. Patta No. 3 by Regd. Sale Deed No. 5380 dtd. 23.5.1974.

(4) OB. OK. 12? Ls. in Dag No. 104, Annual Patta No. 1 by Regd. Sale Deed No. 5381 dtd. 23.5.1974."

4. The Deputy Commissioner, Kamrup has issued notice-cum-order u/s 165 of the Assam Land and Revenue Regulation, 1886 (hereinafter shall be referred to

as "Regulation") for ejectment of Sri Baleshwar Sana, the transaction being contrary to the provisions of Section 164 of the Regulation for being transfer of the land of the Tribal Belt.

5. Aggrieved by the order of ejectment passed by the SDO, Guwahati, Sri Baleshwar Saha preferred an appeal directly before the Assam Board of Revenue and the Board of Revenue by its order dated 10.3.87 directed the appellant to move the Deputy Commissioner, Kamrup by taking appropriate action before it. The appeal filed before Deputy Commissioner was dismissed. Sri Baleshwar Saha further went in appeal before the Board of Revenue. The Board of Revenue allowed the appeal holding that Sri Baleshwar Shah belongs to Ex-Tea Garden Tribal and, therefore, is protected class of people u/s 160 of the Regulation and, therefore, the transfer effected in his favour was valid. The Board of Revenue has also recorded the findings that Sri Baleshwar Saha was in possession of the property. The Board of Revenue further held that he being permitted to reside over the disputed land his possession will be construed to be possession of the protected class of people and on this finding, the order passed by the Deputy Commissioner was set aside.

6. That, after the order of the Board of Revenue was passed, Dinanath Brahma, s/o Urmila Brahma, the original transferor, filed a review application contending therein that the appeal preferred before the Board of Revenue by Sri Baleshwar Shah has impleaded a dead person, Urmila Brahma as party respondent. Urmila Brahma expired in the year, 1979 and thus the order passed by the Board of Revenue would be against the dead person and as such could not be given effect. It was also contended that Sri Baleshwar Shah does not belong to the notified class of people u/s 160 of the Regulations and, therefore, transfer cannot be held valid in his favour. The Board of Revenue accepted the contentions raised by Dinanath Brahma and set aside its own order, as a result, thereof the order passed by the first appellate court dated 16.6.1993 has been confirmed.

7. Aggrieved by the said order, Baleshwar Shah preferred writ petition in the High Court. The learned Single Judge has held that Urmila Brahma was not a necessary party to the proceedings, she was added as a party as an abundant caution thus not impleading her as a part to the proceedings would not in any way affect the order passed by the Board of Revenue. Secondly, the court has held that the power exercised by the Board of Revenue while deciding the review application is akin to that of the appellate power which could not have been done. Thus, the decision rendered in the review application while exercising the revenue jurisdiction exercising appellate powers is not permissible. On the aforesaid reasoning, the order passed by the Board of Revenue in review application was set aside by the learned Single Judge. Aggrieved by the order passed by the learned Single Judge, the present appeal is filed.

8. Before we embark upon the consideration submissions made by the learned counsel for the appellant, we would like to refer certain relevant provisions which have direct bearing on the question required to be decided by us. Section 160 of

Regulation provides that for the protection of the classes who on account of their primitive condition and lack of education or material advantages are incapable of looking after their welfare in so far as such welfare depends upon their having sufficient land for their maintenance, the State Govt. may declare certain class of people, by the notification in the Official Gazette, as protected classes of people. In the notification issued u/s 160 dated 5th December, 1947, the following classes of people have been notified to be protected classes of people. They are plains tribals, hill tribals, tea garden tribals, santhals, Nepali Cultivator-graziers and Scheduled Castes. Thus, under this notification tea garden tribal are declared to be protected classes of people. Section 161 of the Regulation provides for constitution of belts or blocks on the basis of predominant residents of classes of people notified under the provisions of Sub-section (2) of Section 160. Section 162 gives authority to the State Govt. to issue notification in the Official Gazette directing that Chapter X shall apply to the areas, or any of the areas, constituted into belts or blocks under the provisions of Section 161. On publication of notification, disposal of the land by lease for ordinary cultivation, the nature and extent for rights conveyed by annual or periodic leases, the termination or forfeiture of such rights, the ejection of persons in occupation who have no valid right in the land, the management of letting out in form of land in certain circumstances by the Deputy Commissioner and the other allied or connected matters, so far as possible, shall be governed by the provisions of Chapter X and the Rules made thereunder. Sub-section 2 of Section 162 provides that notwithstanding anything to the contrary in any laws, usages, contract or agreement, no person shall acquire or possess by transfer, exchange, lease, agreement or settlement any land in any area or areas constituted into belts or blocks in contravention of the provisions of Sub-section (1). Thus, transfer of land in the interest in the belt or block and to remain in possession of the transferred land would be subject to the provisions of Chapter X and the rules made thereunder. Section 164 of the Regulation lays down that no land-holder shall transfer his land in a belt or block to:- (a) any person not belonging to a class of people notified u/s 160; or (b) to any; person who is not a permanent resident, in that belt or block. Therefore, any land which falls within the tribal belt or block could not be transferred to a people other than the people belonging to the protected class as notified u/s 160 or to a person who is a permanent resident of that belt or block. The proviso to Section 164 of Chapter X further puts restriction for a transfer in favour of a permanent resident of the belt or block and that is to the effect that no land holder shall transfer his land in favour of the permanent resident of that belt or block who does not belong to the classes of people notified u/s 160 except with the previous permission of the Deputy Commissioner. Therefore, the transfer effected to the permanent resident in the belt or block who does not belong to the notified class could be effected only on previous permission of the Deputy Commissioner. Bare reading of Section 164 of the Regulation clearly indicates that the transfer in favour of the non-notified class of persons of the land situated in the Scheduled Tribe belt or block would be a void transaction. The transfer of land in the belt or block in favour of

the person belong to notified class of person or in favour of permanent resident with the previous permission of the Deputy Commissioner only is recognised by law.

9. In the aforesaid scenario of facts and the legal provisions we are to consider whether the transfer effected in favour of Sri Baleshwar Saha would fall within the transfer permissible u/s 164 of the Regulation. It is admitted case of Sri Baleshwar Saha that he belongs to Ex-tea garden tribe. The Ex-tea garden tribal is not the notified protected tribal and, therefore, the transfer effected in his favour would be void ab initio. u/s 165 of the Regulation, the State gets jurisdiction to eject any person who is in possession of the land by virtue of illegal transfer effected in his favour by protected people. Admittedly, Sri Baleshwar Shah not being protected tribe would not have any rights to remain in possession of the land by virtue of the sale deed executed by Urmila Brahma, protected people.

10. For the aforesaid reason, we need not go into the question whether Urmila Brahma or his legal representatives were the necessary party to the proceeding or not nor whether the order passed by the Board of Revenue could not be sustained on account of the fact that it has been passed in the absence of the necessary party and against the dead person. For the aforesaid reasons, the appeal is allowed. The order dated 19.9.2002 passed by the learned Single Judge is set aside. However, since the counsel for the respondent has not entered appearance before us, we do not impose any costs.