(2014) 11 GAU CK 0008

In the Gauhati High Court

Case No : W.P.(C) Nos. 5199 of 2007 and 2220 of 2009

Dipak Saha and Others APPELLANT

Vs

State of Assam and Others RESPONDENT

Date of Decision : 13-11-2014

Acts Referred:

Citation : (2015) 3 GLT 107

Hon'ble Judges : Hrishikesh Roy, J

Bench : Single Bench

Advocate : M. Singh, G. Sinha, P. Bayan, P.K. Kalita, D. Choudhury, A.K. Choudhury, P. Das and U.K. Das, Advocate for the Appellant; D. Choudhury, A.K. Choudhury, P. Das, U.K. Das, M. Singh, P. Bayan, P. Kalita and N. Das, Advocate for the Respondent;

Final Decision : Disposed off

Judgement

Hrishikesh Roy, J.

1. In both these cases, the judgment dated 05.09.2007 in Appeal Case No. 26 RA (B)/02 rendered by the Assam Board of Revenue is challenged. The two petitioners in the WP(C) No. 2220/2009 are aggrieved by non-condonation of the delay in their challenge to the Bakijai Officer''s order dated 16.10.1967 in the S.S. Case No. 173/67-68, whereby the property owned by their predecessor late Aswini Sana, was sold in auction for default of land revenue. The 2nd case i.e. WP(C) No. 5199/2007 is filed by the son of the auction purchaser, Dinesh Karmakar, whose right to claim the purchased land was denied by the Revenue Board on the ground that the purchaser never got possession of the purchased property at any given time. Since the revenue records were not updated after the demise of the predecessor late Aswini Saha, the right claimed by the legal heirs of the recorded pattadar late Aswini Saha by virtue of possession, was repudiated. Consequently the Deputy Commissioner, Barpeta was directed to take over possession of the land from the appellants/writ petitioners and utilize the same for public purpose.

RELEVANT FACTS

Originally late Aswini Saha, the father and husband of the appellants/petitioners, was the owner of land measuring 1 katha 8 lechas at Ward No. 1 of Howly Town (Barpeta district) under Dag No. 372 covered by Patta No. 12(new). A pucca building was standing on this land and although Aswini Saha died around 30 years earlier, the appellants were all along residing in this house. However, the revenue records were not corrected and the land continued to remain in the name of the deceased pattadar Aswini Saha.

1.2 While the appellants were possessing the land, they were unaware of the revenue default and the resultant auction of the property by the Bakijai Officer, Barpeta on 16.10.1967. The family members claimed that they were unaware of the auction sale as they were served with no notice either of revenue default or of the auction of their family property.

1.3 In December, 2001 the appellants learnt that the name of the auction purchaser Dinesh Karmakar was inserted in the revenue records and since the appellants didn''t know the whereabouts of the auction purchaser Dinesh Karmakar, who never claimed possession over the purchased property during his lifetime, the appellants made enquiries and found that Dinesh Karmakar purchased the land at a nominal price of Rs. 55/-, in the auction held on 16.10.1967.

1.4 As the value of the land with the building was far higher and the appellants were residing in that property without any disturbance from any quarter, they approached the Revenue Board under Section 151 of the Assam Land Revenue Regulation (hereinafter referred to as the "Regulation") to challenge the order dated 16.10.1967 of the Bakijai Officer, whereby their family property was sold in auction. During this proceeding before the Revenue Board, attempt was made to trace out the records of S.S. Case No. 173/67-68. But the order itself reveals that the records could not be located in the office of the D.C., Barpeta, as by that time the original Barpeta Sub-Division was upgraded to a full-fledged district by segregating it from the erstwhile Kamrup district, whose headquarter was at Guwahati.

1.5 Before the Revenue Board, Haridas Karmakar as the son of the auction purchaser Dinesh Karmakar (writ petitioner in WP(C) No. 5199/2007) while claiming that his father purchased the land also admitted that the purchaser never resided in the purchased property.

1.6 On the appellants'' plea of lack of awareness about the auction sale, the Revenue Board disbelieved the appellants on the ground that as inheritors from late Aswini Saha, it was the duty of the legal heirs to have the land mutated in their names and they were not vigilant about their obligation to have the land records corrected after the demise of the original pattadar Aswini Saha.

1.7 On the other hand, the auction purchaser was found to be residing at

Guwahati without ever claiming possession of the purchased property and on this count, the mutation granted in favour of the auction purchaser without they being in possession, was found to be irregular by the learned Revenue Board.

ARGUMENTS

2. Mr. N. Das, the learned counsel for the successors of late Aswini Saha (appellants) submits that no time limit is prescribed under Section 151 and accordingly it is argued that the Revenue Board was in error in dismissing the appeal on the ground of limitation. In support of his contention, the learned counsel relies on the Full Bench judgment in Satyaranjan Paul Majumdar v. Assam Board of Revenue reported in AIR 1977 Gauhati 83 , which was subsequently followed in Md. Ayaz Ali and Another Vs. Md. Nurul Islam Choudhary and Others, . In these two decisions, the Court opined that there is no limitation for exercise of powers under Section 151 of the Regulation. But Mr. D. Choudhury for the other side contends that property was purchased through a bonafide procedure and therefore the possession should be given to the purchaser.

DISCUSSION

3. If we proceed with this Court''s interpretation of Section 151, it has to be held that the refusal by the Revenue Board to consider the plea of the appellants on merit on the ground of limitation, is an unsustainable decision.

4. Under Section 70 of the Regulation, when a permanently settled estate is in arrears of land revenue, such estates can be sold in auction. But notice of the proposed sale is required to be given under Section 72 of the Regulation. The applications to set aside sale can be filed by an aggrieved party under Section 78, 78A, 79 and 81 and when the sale becomes final, under Section 81, the purchaser is required to be put in possession of the sold property, by the Deputy Commissioner. From these legal provisions for auction sale of estates in default of revenue, it is clear that a notice must be given in the manner prescribed under Section 72, for the proposed sale. But in this case, the learned Revenue Board after rejecting the plea for condonation of delay, did not enter into the merit of the challenge to the auction sale and appellants'' plea was that they didn''t receive any notice.

5. As earlier noted, exercise of powers under Section 151 of the Regulation is not inhibited by any limitation period and therefore when the defaulting estate was sold at a nominal price as claimed by the appellants, I deem it appropriate to remand the matter for reconsideration. In this proceeding, both parties will be permitted to have their say in support/against the auction sale but the matter would be decided on merit without rejecting the same on the ground of limitation. To facilitate the fresh exercise without any further notice to the contesting parties, the learned counsel for both parties submit that their respective clients will appear before the Revenue Board on 01.12.2014. It is ordered accordingly. With the above direction, both cases are disposed of without

any order on cost. Therefore the Registry is directed to immediately communicate this order for information of the learned Revenue Board.