(1997) 03 GAU CK 0011

In the Gauhati High Court

Case No : Civil Rule No. 201 of 1996

Director General of Police, Manipur — APPELLANT

Vs

Sanamahi Devta and Ors. — RESPONDENT

Date of Decision : 19-03-1997

Acts Referred:

Manipur Land Revenue and Land Reforms Act, 1960 — Section 11(3), 11(3), 14(2)(a), 14(2)(a), 43, 43

Citation : (1999) 1 GLJ 267 : (1997) 3 GLT 530

Hon'ble Judges : A.K.Patnaik, J

Bench : Single Bench

Advocate : N.Kerani Singh, T.Nandakumar Singh, Advocates appearing for Parties

Judgement

1. In this writ petition under Articles 226 and 227 of the Constitution of India, the petitioner has prayed for quashing the order dated 4.10.95 of the Revenue Tribunal, Manipur passed in Revenue Revision Case No.46 of 1994.

2. The facts of the case as stated in the writ petition are that several plots of land including land measuring 2.46 acres under Patta No.98. Dag No. 1 in village No. 86 Thiyam Legishangkhong were directed to be recorded in the name of the EDO, Imphal West II Wangoi by order dated 23.5.88 in Mutation Misc Case No. 53/SDC/IW(H) of 1988 passed by the Sub Deputy Collector, Imphal West, Hiyangthang. Thereafter, 2.20 acres out of the said land were allotted by the Govt of Manipur in the Revenue Department by order dated 16.1.91 in favour of the petitioner for construction of Wangoi Police Station Building in exercise of power under section 14 (2) (a) of the Manipur Land Revenue and Land Reforms Act, 1960 and pursuant to the said allotment order, the Police Department took possession of the said land. In the meantime, however, the respondent Nos 1 and 2 filed Revenue Revision Case No. 7 of 1989 before the Deputy Commissioner, Imphal and obtained an order dated 14.1.93 to the effect that the said land would continued to be recorded in the name of the respondent No. 1.

The respondent Nos 6,7 and 8 then filed Revenue Misc Case No. 15 of 1993 before the Deputy Commissioner, Imphal under section 11 (3) of the Manipur Land Revenue and Land Reform Act, 1960 claiming that the land was Govt waste land and had been allotted to the Director General of Police by the allotment order dated 16.1.91. The Deputy Commissioner, Imphal passed orders on 5.9.94 in the said misc case stating that it was a fit casejbr review of the order dated 14.1.93 and that the name of EDO, Imphal West Wangoi Block in the record of right of the land should remain intact without any correction and alteration. Against the said order dated 5.9.94, respondent Nos 1 and 2 filed Revenue Revision Case No.46 of 1994 before the Revenue Tribunal, Manipur. By order dated 4. 10.95, the Revenue Tribunal, allowed the revision and set aside the order dated 5.9.94 passed by the Deputy Commissioner, Imphal in Revenue Misc Case No. 15 of 1993 and further directed that the name of the respondent No. 2 be record ed as Shebait of the respondent No. 1 in the record of right in respect of the aforesaid land. Aggrieved the petitioner has filed this civil rule challenging the aforesaid order dated 4.10.95 of the Re venue Tribunal.

3. At the hearing, Mr. NK Singh, learned counsel for the petitioner contended that the aforesaid land had been offered by the local leaders and other interested persons of the area for construction of Govt buildings and did not belong to the respondent No. 1. He further submitted that since there was a dispute between the parties as to whether the land belongs to the Govt or belongs to the respondent No. 1 the dispute can only be adjudicated under section 11 (3) of the Manipur Land Revenue and Land Reform Act, 1960 (for shdrt the Act). Mr. NK Singh submitted that is was the Deputy Commissioner who had the jurisdiction under the said section 11 (3) of the Act to decide such a dispute relating to any property or right over any property against the Govt or on behalf of the Govt and the decision of the Deputy Commissioner on such a dispute was final. It is for this reason that the respondent Nos. 6, 7 and 8 filed application under section 11 (3) of the Act claiming that the land was a Govt waste land and on such application the Deputy Commissioner, Imphal passed the order dated 5.9.94 in Revenue Misc Case No. 15 of 1993. He further submitted that the Revenue Tribunal committed a grave error of law by setting aside the said order dated 5.9.94 of the Deputy Commissioner. Imphal in Revenue Misc Case No. 15 of 1993.

4. Mr. T. Nanda Kumar Singh learned counsel appearing for the respondent Nos 1 and 2, on the other hand, submitted that this is not a dispute between the Govt and private person over title to a land but a dispute in a mutation case to which section 11 (3) has not application at all and section 46 of the Act applies. He submitted that so far as title to the land is concerned, true copies of the documents annexed to the affidavit in opposition of the respondent Nos 1 and 2 would show that the land had given to the respondent No. 1 Deity by the Maharaja of Manipur by a Parwana dated 2.5.06 and that the land stood recorded in the name of the respondent No. 1 Deity in the record of right upto 23.5.88 and that the respondent No.l Deity was paying the land revenue for the same, but by order dated 23.5.88 in Mutation Misc Case No.53/SDC/IW (H) of 1988 passed by

the Sub Deputy Collector, Imphal West, the land was directed to be recorded in the name of the EDO, Wangoi. The order dated 23.5.88 being erroneous was set aside in revision by the Deputy Commissioner, Imphal by his order dated 14.1.93. He further submitted that neither before the Deputy Commissioner not before the Revenue Tribunal did the Govt disputed the title of the respondent No. 1 to the land or showed any document to show the title of the Govt to the said land.

5. I find a lot of force in the said submission of Mr. T. Narida Kumar Singh learned counsel for the respondent Nos 1 and 2. Section 11 (3) of the Act on which reliance has been placed by Mr. NK Singh is quoted herein below :

?Section 11 (3): Where any property or any right in or over any property is claimed by or on behalf of the Govt or by any person as against the Govt and the claim is dispute, such dispute shall be decided by the Deputy Commissioner whose order shall, subject to the provisions of the Act, be final.?

A reading of the aforesaid provision would show that to attract the provisions of section 11 (3) of the Act, a claim in respect of a property or any right in ,or over any property has to be made by or on behalf of the Govt or any person against the Govt and the claim must be disputed. In the present case the application under section 11 (3) filed before the Deputy Commissioner was not by the Govt but by the private respondent Nos 6, 7 and 8. Hence there wasno claim made by or on behalf of the Govt to right over the land. Respondent Nos 1 and 2 also did not file any application under section 11 (3) of Act before the Deputy Commissioner, ?Imphal. Assuming, however, that the claim of the respondent No.l in Revenue Revision Case No.7 of 1989 was a claim against the Govt in respect of the land in question, such a claim was not disputed by the Govt before the Deputy Commissioner, Imphal as would be evident from the order dated 14.1.93 passed by the Deputy Commissioner, Imphal in Revenue Revision Case No. 7 of 1989. In my considered opinion, therefore, this was not a case of a dispute relating to title to a land between the Govt and the respondent No. 1 and to which only section 11 (3) of the Act applied.

6. In fact the records of the case indicate that the order dated 23.5.88 was passed by the Sub Deputy Collector, Imphal West for recording the land in favour of the EDO, Wangoi in a mutation proceeding and the order dated 14.1.93 was passed by the Deputy Commissioner, Imphal in a revision against the said order passed in a mutation proceeding. Moreover, while passing the order dated 5th December ''94 in Revenue Misc Case No. 15 of 1993 filed by the respondent Nos 6,7 and 8, the Deputy Commissioner has not taken resort to section 11 (3) of the Act but has stated that as there has been discovery of new and important matter of evidence and there were other sufficient reasons it was a fit case for review of the order dated 14.1.93 in Revenue Revision Case No.7 of 1987. The Deputy Commissioner, Imphal, therfore, has sought to exercise his powers of review under section 96 of the Act, the contention of Mr. NK Singh, learned counsel for the petitioner, therefore that the Revenue Tribunal, Manipur should not have

interfered in the matter and should have allowed the Deputy Commissioner to decide the dispute under section 11 (3) of the Act is without any merit.

7. It was next submitted by Mr. NK Singh, that by the allotment order dated 16.1.91 of the Govt of Manipur in the Revenue Department, 2.20 acres out of the aforesaid land had been allotted to the petitioner and hence the petitioner was an interested and necessary party to whom notice should have been served and opportunity of hearing given by the Revenue Tribunal before it passed the impugned order dated 4.10.95 in Revenue Revision Case No. 46 of 1994. But the * petitioner was not made a party nor given opportunity of hearing before the impugned order was passed by the Revenue Tribunal. Mr. T. Nanda Kumar Singh, learned counsel for the respondent Nos 1 and 2, however, contended that section 46 (2) of the Act would show that any person acquiring any right in land has to report about his acquisition of the right to the competent authority within 3 months from the date of such acquisition and the competent authority has thereafter to give written intimation to all persons who appear from the record of right to be interested in the mutation. But after the allotment the land in question in favour of the petitioner by the allotment order dated 16.1.91, the petitioner has not taken any steps under the said section of 46 (2) of the Act for mutating the name of the petitioner in the record of right relating to the land. He further submitted that the record of right stood in the name of the EDO, Wangoi and not in the name of the petitioner and hence the petitioner was not a necessary party in the revision before the Revenue Tribunal and was not required to be heard before the impugned order dated 4.10.95 was passed by the Revenue Tribunal. 8. Section 46 and 95 of the Act are extracted herein below :

?Section 46 : Register of mutation (1) There shall be maintained for every village a register of mutations in such form and in such manner as may be prescribed.

(2) Any person acquiring by succession, survivorship, inheritance, partition, purchase, exchange, gift or otherwise any right in land or where such person acquiring the right is a minor or otherwise disqualified, his guardian or other person having charge of his property, shall report his acquisition of such right to the competent authority within three months from the date of such acquisition and such authority shall give at once a written acknowledgement in the prescribed form for such report to the person making it.

(3) The competent authority shall enter the substance of every report made to it under subsection (2) in the register of mutations and also make an entry therein respecting the acquisition of any right of the kind mentioned in subsection (2) which it has reason to believe to have taken place and of which a report has not been made under the said subsection and at the same time, shall post up a complete copy of the entry in a conspicuous place in the village and shall give written intimation to all persons appearing from the record of rights of the register of mutations to be interested in the mutations and to any other person whom it has reasons to believe to be interested therein.

(4) Should any objection to any entry made under subsection (3) in the register of mutations be made either orally or in writing to the competent authority, the particulars shall be entered in the register of disputed cases and the competent authority shall at once give a written acknowledgement in the prescribed form for the objection to the person making it.

(5) The objections made under subsection (4) shall be decided on the basis of possession by the competent authority and orders disposing of objection entered in the register of disputed cases shall be recorded in the register of mutations by the competent authority :

Provided that a person who does not acquire any right under subsection (2) or by mortgage or lease, shall not make objection on the basis of possession.

(6) After the entries in the register of mutation have been tested and found correct, the entries shall be transferred to the record of rights and shall be certified by such officer as may be prescribed in this behalf.

95. Revision The Tribunal or the Deputy Commissioner may either on his own motion or on the application of any party, call for the records of any proceeding before any Revenue Officer subordinate to him for the purpose of satisfying himself as to the legality or the propriety of any order passed by such Revenue Officer, and may pass such order in reference thereto as he thinks fit:

Provided that he shall not vary or reverse any order affecting any right between private person without having given to the parties interested notice to appear or to be heard :

Provided further that no revision shall lie after the expiry of ninety days from the date of the order to be revised.?

The first proviso to section 95 would show that the Tribunal cannot vary or reverse any order affecting any right between private persons without giving any notice to the parties interested to appear or to be heard. The question, therefore, is as to whether the petitioner was entitled to notice to appear or be heard under the aforesaid first proviso to section 95 of the Act.

9. The records indicate that until 23.5.88, land measuring 2.46 acres under Patta No.98 and Dag No.l stood recorded in the name of the respondent No. l and it is only in a mutation case filed under section 46 of the Act that by order dated 23.5.88 passed in Misc Case No. 53/SDC/IW(H) of 1988 the name of the b respondent No. 1 as pattadar was cancelled and the aforesaid land was directed to be recorder in the name of the BDO/TWH, Wangoi. But on a revision being filed by the respondent No.l, the Deputy Commissioner, Imphal passed orders on 14.1.93 in Revenue Revision Case No.7 of 1989 directing that the respondent No. 1 continued to be recorded as the pattadar in respect of the aforesaid land. In the meanwhile, although by the allotment order dated 16.1.91, 2.20 acres out of the aforesaid land was alloted in favour of the petitioner, no steps were taken by the petitioner to have the said land mutated and recorded in the name of the

petitioner in accordance with section 46 of the Act. But an application was filed by the respondent Nos 6,7 and 8 and the Deputy Commissioner, Imphal passed order dated 5.9.94 in Review Misc Case No.15 of 1993 reviewing his earlier order dated 14.1.93 in Revenue Revision Case 7 of 1993 and directing that the mame of the BDO, Imphal West II, Wangoi would continue to remain entered in the record of rights of the land. On Revenue Revision No.46 of 1994 being filed by the respondent Nos 1 and 2, the Tribunal varied or reversed the aforesaid order dated 5.9.94 in Revenue Review Misc Case No.15 of 1993 of the Deputy Commissioner, Imphal. The effect of such variation or reversal of order dated e 5.9.94 was that the name of the BDO, Imphal West II, Wangoi was no longer to remain in the records of right in respect of the land. Hence it was only BDO, Imphal West, II, Wangoi who was affected by the order passed by the Tribunal in the aforesaid revision case and not the petitioner. The case would have been otherwise if the name of the petitioner had been recorded in the records of rights in respect of the aforesaid land in accordance with section 46 of the Act and the order of the Tribunal sought to vary or reverse such entry in respect of the land recording the name of the petitioner in the record of rights. The contention of the petitioner that it was entitled to hearing or notice before the Tribumal passed the impugned order is therefore misconceived.

10. Mr. NK Singh, learned counsel for the petitioner, finally submitted that the Revenue Tribunal exceeded its jurisdiction in coming to finding in the impugned order dated 4.10.95 that the respondent No.2 was the Shebait of respondent No. 1 Deity and in directing that the name of the respondent No.2 be recorded as such Shebait in the record of right in respect of the aforesaid land. Mr. TNK Singh learned counsel for the respondent Nos. 1 and 2 however, placed before me copies of various documents annexed to the affidavit in opposition filed on behalf of the respondents as Annexures DI, D2 and D3 to show that the aforesaid finding of the Tribunal was correct on facts.

11. Section 95 quoted above would show thatwide powers have been vested in the revisional authority to pass such orders as the revisional authority thinks fit in relation to an order passed by a Revenue Officer. The Tribunal, therefore, has not exceeded its jurisdiction in directing that the name of the respondent No.2 be recorded as Shebait of the respondent No.l. Moreover, the petitioner who is the Director General of Police, Manipur cannot have any, grievance as to who is recorded as Shebait of respondent No.l Deity and if a person interested in any manner in the affairs of the said Deity challenges the said order of the Tribunal for recording the name of the respondent No.2 as Shebait of respondent No.l Deity, the Court will consider the said challenge on its own merits. Since all the contentions raised in this civil rule fail, the same is dismissed. But considering the facts and circumstances of the case the parties shall bear their own costs.

