(2018) 06 GAU CK 0130

In the Gauhati High Court

Case No : Regular First Appeal No.33 Of 2013

Dudu Chakma APPELLANT

Vs

State of Mizoram and ors RESPONDENT

Date of Decision : 19-06-2018

Acts Referred:

Code of Civil Procedure, 1908 &mdash Section 80
ChakmaAutonomousDistrict(AgriculturalLand)Act, 1982 — Section 7(2), 11

Citation : (2018) 06 GAU CK 0130

Hon'ble Judges : Nelson Sailo, J

Bench : Single Bench

Advocate : C. Lalramzauva, A.R. Malhotra, C. Lalnunsiama, K. Laldinliana, Zoramchhana, Ruth Lalrinliani, C. Lalhruaitluangi, Johny L. Tochhawng, Noel L. Kompa, A.K. Rokhum,

Final Decision : Disposed Off

Judgement

1.Heard Mr. C. Lalramzauva, the learned senior counsel assisted by Mr. C. Lalnunsiama for the appellant. Also heard Mr. A.K. Rokhum, the learned

Addl. Advocate General appearing for the State respondents as well as the Chakma District Autonomous Council.

2. The appellant has filed the instant appeal against the Judgment & Order dated 25.07.2013 passed by the learned Senior Civil Judge, Lawngtlai

District, Lawngtlai dismissing Civil Suit No. 7/2007 filed by the appellant as plaintiff in the suit. For the sake of convenience, the plaintiff/appellant shall

be referred to as the appellant hereafter. Likewise, the defendants/respondents shall also be referred to as the respondents.

3. By filing Civil Suit No. 7/2007, the appellant sought for a declaration of right entitle of land covered by LSC No. 5/1983 dated 30.08.1983, as per the

boundary description specified therein in comprising of the Wet Rice Cultivation

(WRC area) and the adjoining highland area in favour of the appellant

and for declaration of the House Passes issued by the respondents concerned and the construction of a market within the boundary description of

LSC No. 5/1983 is null and void and for assessment of compensation payable to the appellant.

4. The appellantâ??s case is that her father Sh. Kalachand Tripura during his lifetime purchased a plot of land from Sh. Nutun Kumar alias Mortua

at Chawngte, Kamalanagar, while it was under the Village Council Pass comprising of the area covered by LSC No. 5/1983 and the adjoining highland

areas. After the death of her father, she looked after the land and developed the same by employing Sh. Gunni Chakma as a caretaker. The plaintiff

utilized the plain area as WRC and harvested paddy from it every year. She also planted various fruit bearing trees and valuable timbers on the

highland portion bordering the WRC area. With the coming into existence of the CADC (District Council), the appellant applied for transfer of her

land Pass from VC Pass to regular Revenue Pass to the respondent No. 5. Accordingly, her VC Pass was divided into WRC Pass and Garden Pass

separately. She then applied for a consolidated Pass against the two Passes issued to her to the respondent No. 5. However, on such application, the

respondent No. 5 misplaced the two Passes and after much persuasion, issued LSC No. 5/1983 on 30. 08.1983 covering only the WRC portion

showing the area as 2 hectares. According to the appellant, the LSC No. 5/1983 issued to her did not cover the highland portion of the land which was

earlier covered by the Garden Pass and situated next to the WRC area. Being dissatisfied with the same, the appellant through her husband Sh.

Vanlalrohluna approached the Revenue Department of the CADC and asked the Surveyor Sh. Surojoy Chakma, who conducted the survey and

measured the land prior to the issuance of LSC No. 5/1983. The Surveyor however, informed him that the area of the appellantâ??s land was

entered as 2 hectares only for the purpose of payment of taxes and that the original boundary therein was not changed. Thereafter, the appellant came

to learn that pursuant to the detailment of Surveyors vide Office Order dated 18.04.2001 issued by the CADC, the detailed Surveyors made a

verification on her land on 23.04.2001 and thereafter, submitted a report on 08.05.2001. The finding of the Surveyor was that the WRC area measured

20008.4 Sq. mts. while the highland adjoining the WRC area measured 300,084 Sq. mts. Thus the total area was 500092.4 Sq. mts. and therefore, the

same was exactly as per the boundary description in the appellantâ??s LSC. However, to her disappointment, the highland area was treated as a

vacant or â??Khasâ?? land and House Passes were issued to a number of persons and a market also was established without the knowledge and

consent of the appellant.

5. The appellant being highly aggrieve submitted a number of representations to the respondent No. 3 but the authorities of the CADC instead of

considering the grievance of the appellant did not permit her to pay revenue taxes payable on her land from the year 2002 onwards. The appellant then

served a notice under Section 80 of the Code of Civil Procedure, 1908 to the respondent on 02.03.2006 demanding compensation for the damages

caused upon her fruit bearing trees and timbers calculated to an amount of Rs. 85,200/- and a sum of Rs. 16,00,000/-towards loss of interest and land

for allotment of 20 plots of land to other persons from within her land.

6. The said notice was however not responded to by the respondents and as a result, the appellant filed the Civil Suit claiming reliefs as indicated in the

foregoing paragraphs. The respondent CADC against the plaint submitted their written statement contending inter alia that the suit should be dismissed

for non-joinder of parties, as the appellant failed to implead the alleged illegal allottees of House Passes as parties to the suit. It was also contended

that the land of the appellant covered by LSC No. 5/1983 was for an area of 2 hectares only and the same did not include the surrounding highland

which measured about 3 hectares after a survey was conducted. Therefore, the Executive Committee of the CADC took a decision to declare the 3

hectares of land as a Khas land. On such declaration, the same was allotted to those who did not have any plot of land.

7. The Civil Suit was contested by the parties wherein, the appellant produced 4 (four) witnesses while the respondent CADC produced and examined

2 (two) witnesses. The learned Trial Court framed five issues for deciding the suit. After deciding all the issues against the appellant, the learned Trial

Court dismissed Civil Suit No. 7/2007 vide its Judgment & Order dated 25.07.2013.

8. Mr. C. Lalramzauva, the learned senior counsel appearing for the appellant

submits that the learned Trial Court was clearly wrong in dismissing the

suit on account of non-joinder of parties, inasmuch as, there was no specific direction from the Trial Court directing the appellant to implead the parties

who were likely to be affected by the decision of the Trial Court. He submits that the respondent CADC illegally issue House Passes to various

persons from the area of land which belonged to the appellant and the respondent authority concerned failed to disclose who those persons were in

their written statement and therefore, it was not possible for the appellant to implead such authorities in the Civil Suit. He submits that at any rate, it

was the respondent authority concerned, who had issued the House Passes and therefore, even if the House Passes allottees were not impleaded in

the Suit, the respondent CADC would still be responsible for their illegal and arbitrary action. To substantiate his submission, the learned senior

counsel relies upon the case of Simanta Jyoti Baruah Vs Chairman, ASEB & Ors, reported in 2017 (1) GLT 294.

9. By referring to the examination of the witnesses before the Trial Court on behalf of the appellant as well as for the respondents, the learned senior

counsel submits that it is clear that the appellantâ??s land covered both the WRC area as well as the highland portion as per the earlier VC Passes.

Thereafter, the same was converted into WRC Pass as well as Garden Pass. When the appellant applied for a common and consolidated Pass, the

respondent CADC not only misplaced the 2 (two) Passes submitted by the appellant but also issued the LSC No. 5/1983 only with an area of 2

hectares. The adjoining highland areas were omitted but however, the fact remains that the boundary description of the appellantâ??s land covers

both the WRC area as well as the highland areas. He therefore submits that the appellant should be restored with both the areas of land covered by

the WRC as well as the highland areas. The learned senior counsel further submits that in case of a dispute between the area of the land and the

boundary of the same land, the boundary given in the Pass should prevail. In this connection, he refers to the Judgment & Order dated 05.05.2011

passed by a co-ordinate Bench of this Court in WP(C) No. 109/2009 (Malsawmi Pautu & 11 Ors Vs State of Mizoram & 24 Ors), wherein this Court

by relying upon the decision of the Patna High Court in Raghunandan Thakur Vs Kishnundeo & Ors reported in AIR 1926 Pat 257 as well as Rupal

Singh Vs Secretary of State for India reported in AIR 1926 Pat 258 (DB) held that if there was a dispute on the boundaries and the area over

particular land, the land actually covered by the boundaries will prevail. The learned senior counsel therefore submits that in view of such position, the

learned Trial Court having committed gross error in law and on facts, the impugned Judgment & Order should be set aside and quashed and the

appellant given all the benefits as prayed for in her plaint.

10. Mr. A.K. Rokhum, the learned Addl. Advocate General on the other hand, submits that there is nothing wrong in the dismissal of the plaint of the

appellant. He submits that as per the LSC issued to the appellant, the area of land comprises of 2 hectares and therefore, the appellant cannot claim

beyond what was given to her through the LSC. He submits that mere length of possession over the land in question per se, do not give the occupant

any right over the land unless a Pass is duly issued in accordance with law. In this connection, he refers to the CADC (Agricultural land) Act, 1982

(Agricultural Land Act), more particularly to Section 7(2) wherein, it has been provided that no person shall acquire by length of possession or

otherwise any right over land disposed of, allotted or occupied unless registered and Periodic Patta or Patta obtained in accordance with the provisions

of the Act. He therefore submits that as the appellantâ??s LSC only covered an area of 2 hectares, she cannot claim anything beyond the said area

merely by length of possession or otherwise.

11. Mr. A.K Rokhum further submits that though the appellant claimed that the respondents authorities concerned illegally issued House Passes to

other persons within her land, the appellant however failed to implead such illegal allottees as a party to the Suit and therefore, the learned Trial Court

rightly rejected the plaint on this ground amongst others. He further submits that there is also no evidence that the appellant developed the WRC area

of the land as well as the highland areas adjoining WRC. He submits that the terms and conditions of allotment of land as per the Agricultural Land

Act is that the allottees should develop the land within a period of 3 years from the date of allotment otherwise, the same was liable to be cancelled.

He submits that the appellant does not even reside permanently at Chawngte, Kamalanagar and in fact she resides at Lunglei. The appellant having

not developed her land covered by the LSC and also the adjoining highland, the

Executive Committee of the CADC upon making necessary

verification decided to declare the highland areas as Khas land and thereafter, allotted the same to those who did not have any land. He therefore

submits that the appellant cannot have any grievance against such allotment and moreover, when the same is not covered by LSC No. 5/1983 issued

to her.

12. Mr. A.K. Rokhum finally submits that in the event it is still concluded by this Court that the appellantâ??s land would cover the highland portion

of the land besides the WRC area while allowing the boundary given in the LSC to prevail, Court may direct that a spot verification be made to

ascertain that the description of the boundary given in the LSC actually covers both the WRC as well as the highland portion of the land as claimed by

the appellant.

13. I have heard the learned counsels for the rival parties and I have perused the materials available on records including the Lower Court Records.

14. As may be noticed, the appellant examined as many as 4 plaintiff witnesses which included Sh. Vanlalrohluna, Sh. L.H. Lawmsanga, Sh. Dudu

Chakma (the appellant) and Sh. Rabodi Mon. Sh. Vanlalrohluna is the husband of the appellant and in his examination-in-chief, he deposed that he has

known the appellant for more than 7 years and that the appellant told him as to how the land in question devolved upon her. He had gone to the

Revenue Department of the CADC to enquire from the Surveyor concerned i.e., Sh. Surojoy Chakma, who conducted the survey and measurement

of the land in question. On meeting the Surveyor concerned, he informed him that the area of the appellantâ??s land was entered as only 2 hectares

for the purpose of payment of taxes and that the original boundary was not changed. However, Sh. Surojoy Chakma was not examined by the

appellant as her witness in order to establish the version of Sh. Vanlalrohluna. Moreover, he has been described as â??Lateâ?? which would only

show that the Surveyor Sh. Surojoy Chakma already expired at the time when the evidence of Sh. Vanlalrohluna was taken. Besides this, the said

witness has mainly repeated the version of the appellant as set out in her plaint.

15. Sh. L.H. Lawmsanga, another witness of the appellant in his examination-in-chief claimed that he knew the appellant and that she had a land at

Kamalanagar since she grew up at Chawngte. He deposed that the entire land owned by the appellant under the VC Pass covered an area of more

than 5 hectares comprising of both the WRC area as well as the adjoining highland areas and the appellant looked after and developed her land.

However, the Revenue Authorities in the CADC illegally issued House Passes to different persons within the land of the appellant. The appellant

examined herself as her own witness and more or less repeated what she had stated in her plaint. She also stated that she had not paid any revenue

taxes for her land since the year 2002 as she was not allowed to do so. She however did not explain as to how and in what manner she was prevented

from paying such taxes. She has also exhibited as many as 8 documents amongst which Exhibit E-4 is the spot verification report submitted by the

Surveyors of the Revenue Department of the CADC.

16. The Surveyors upon being detailed to make the survey vide Office Order dated 18.04.2001 conducted the survey on 23.04.2001, wherein they

found the area covered by the WRC was 20008.4 Sq. mts. and the highland area surrounding was of 30084 Sq. mts. From the said report what can be

noticed is that the LSC No. 5/1983 for an area of 2 hectares appears to be of similar size, inasmuch as, 20008.4 Sq. mts. would roughly be equal to 2

hectares. There is nothing mentioned about the survey done as per the boundary description given in the LSC. Exhibit P-5 is a letter dated 08.05.2001

written by the appellant to the respondent No. 3 informing the said authority that the Pass issued to the appellant after she applied for a consolidated

Pass was only reduced to 2 hectares and therefore, such discrepancy in view of the findings of the Surveyors in their report be rectified and that she

was ready to pay the revenue tax once the area of the land was rectified. Sh. Rabodi Mon the last witness of the appellant also reiterated what was

stated by the other plaintiff witnesses in his examination-in-chief.

17. The two defendant witnesses, Sh. Kali Kumar Tongchangia and Nera Kumar Chakma deposed before the Court that the highland portion of the

land measuring 3 hectares was declared as a Khas land by the CADC pursuant to the decision taken by the Executive Committee in a meeting held

on 08.01.2002. The said decision was taken as a welfare measure so that the poor and landless people would also be able to have a land of their own.

The survey conducted on 23. 04.2001 by the Surveyors concerned also indicated that the WRC Pass of the appellant covered only 2 hectares of land.

Therefore, a resolution was taken by the Advisory Board on 28.01.2002 to the fact that the highland area should be declared as Khas land and the

land of the appellant demarcated as per the LSC No. 5/1983 and that the appellant be asked to surrender her Pass after correction if any. Likewise,

Sh. Nera Kumar Chakma similarly deposed that there was excess in the measurement of land of the appellant apart from the 2 hectares indicated in

the Pass and the excess land was allotted to landless people.

18. From an appreciation of the evidences led by the parties, it appears that the appellantâ??s LSC No. 5/1983 covers more than 2 hectares of land

as indicated in the body of the Pass. If that be so, the boundary description given in the Pass would have some bearing. It is also in evidence that the

appellant developed her land by cultivating paddy as well as by planting fruit bearing trees and timbers in the highland portion of the land apart from

the WRC area. From the evidence of the respondent CADC, it is also their case that they require the highland portion of the land in question for public

purpose and for that reason, a decision was taken to declare the same as a Khas land. Section 11 of the Agricultural Land Act provides that the

Executive Committee may cancel or take possession of any allotted land on greater public interest. However, for doing so, the Executive Committee is

required to compensate the allottee for cancellation of the land or taking possession thereof.

19. With regard to the non-joinder of necessary parties to the suit, it may be noticed that it was the respondent CADC who had made such allotment

of House Passes within the land of the appellant. Therefore, even if such allottees are not made a party to the Suit, the responsibility for making such

allotment would lie upon the respondent CADC and they will be answerable. Therefore, non-implementation of such allottee would not vitiate the Suit

proceeding. In a dispute between the boundary and the area of a given land, the law is well settled. As noticed herein above, in a dispute of such

nature, the boundary is to prevail. However, since the survey conducted on 28.04.2001 does not disclose as to whether measurement and survey of

the land was taken in terms of the description of the boundary given in the LSC of the appellant. Therefore, unless the same is ascertained by having a

proper verification conducted, the appellant cannot be given relief as prayed for by her in the plaint i.e., Civil Suit No. 7/2007.

20. Having taken such a view, I am of the considered opinion that there is merit in the appeal and that the learned Trial Court could not have dismissed

the Civil Suit in the manner it did. Accordingly, the Judgment & Order dated 25.07.2013 passed by the learned Senior Civil Judge in Civil Suit No.

7/2007 is hereby set aside.

21. Instead of remanding the case back to the learned Trial Court, I am of the considered view that the land of the appellant covered by LSC No.

5/1983 should be verified by the respondents, more particularly, the Revenue Department under the CADC in the presence of the appellant by taking

into account the boundary description given in the LSC. In the event, it is found that the LSC covers more than 2 hectares of land given in the LSC,

the appellant shall be restored her land as per the boundary description or in the alternative she will have to be compensated by the respondent CADC

by acquiring the land beyond the 2 hectares covered by LSC No. 5/1983 in accordance with the provisions of the land acquisition law applicable. In

such event, the respondent No. 3, 4 and 5 shall refer the matter to the Deputy Commissioner-cum-District Collector (Respondent No. 6) to make an

assessment within fifteen (15) days of making the verification. It is ordered accordingly.

22. The respondent No. 6 shall make the assessment within a month and communicate the same to the respondent Nos. 3, 4 and 5 who shall then

arrange necessary fund and pay the appellant the compensation within a period of three (3) months from the date of receipt of the assessment.

23. The appeal accordingly stands allowed and disposed of. The Lower Court Records be send back forthwith.