
(2015) 09 GAU CK 0041
In the Gauhati High Court
Case No : W.P.(C) No. 2303 of 2008

Ganesh Basumatary and Others

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 08-09-2015

Acts Referred:

Forest (Conservation) Act, 1980 — Section 2(ii)

Citation : (2015) 5 FLT 875

Hon'ble Judges : Hrishikesh Roy, J.

Bench : Single Bench

Advocate : J.I. Borbhuiya, F. Begum and L. Mohan, for the Appellant; R.K. Bora, for the Respondent

Final Decision : Disposed Off

Judgement

Hrishikesh Roy, J.—Mr. J.I. Barbhuiya, learned Counsel appears for the eight writ petitioners. The respondents are represented by Mr. R.K. Bora, the learned Govt. Advocate. Claiming to be landless persons, the petitioners applied for allotment of Govt. land and the Guwahati Sub-Divisional Level Land Advisory Committee (hereinafter referred to as "the Land Advisory Committee") in its meeting held on 19.1.2006 resolved to allot land to these tribal applicants. The Dy. Commissioner, Kamrup through his individual letter(s) dated 27.2.2006 (Annexure-1 series) informed the applicants of the Committee's resolution and directed them to pay the premium for the allotted land. The allottees deposited the premium on 2.3.2006 and thereafter steps were taken for issuing patta(s) for the beneficiaries. The names of the allottees were recorded in the draft chitha of village Mazpara under Bholagaon Mouza of the Palashbari Revenue Circle and eventually Kheraj Miadi Patta(s) was issued to the allottees and those are enclosed as Annexure-5 series, to the writ petition.

2. The total land allotted to the petitioners measures 60 Bigha 2 Katha 5 Lecha and this contiguous area is bounded on the West and North by paddy fields and on the Eastern side by a PWD road and on the Southern side by the village.

However while the petitioners were in peaceful occupation of the allotted land, the Ranger of the Rani Forest Range (respondent No. 6) obstructed the enjoyment of the land in May, 2008 and in fact attempt was made to dispossess the petitioners. However their possession was protected through interim order passed by this Court.

3.1. On behalf of the petitioners, Mr. J.I. Barbhuiya, the learned Counsel submits that allotment of land was made through a lawful process after resolution was taken by the Land Advisory Committee on 19.1.2006 and since the allottees had paid the premium and occupied the land for which Kheraj Miyadi Patta(s) was issued by the Revenue Authorities, the Range Forest Officer could not have disturbed the lawful occupation of the allottees.

3.2. The petitioners contend that the surrounding areas of the allotted land is being used for cultivation purpose and accordingly it is argued that the said area can't be considered as Forest Land.

3.3. Since the Revenue Authorities are expected to consider the status of the land before deciding allotment, Mr. Barbhuiya submits that the land in question was obviously available for allotment and therefore the Counsel argues that the possession of the allottees can't be disturbed, by considering the land to be part of the Reserve Forest.

4.1. On the other hand, the learned Govt. Advocate Mr. R.K. Bora refers to the counter-affidavit filed by the Ranger of the Rani Forest Range (respondent No. 6) on 16.7.2008 to project that the concerned land falls within the 3rd addition of the Jarasal Reserve Forest, which was notified on 6th March, 1929 and Mr. Bora accordingly argues that since the concerned area was declared to be Reserve Forest under section 17 of the Assam Forest Regulation, 1891, the same could not have been allotted by the Revenue Authorities.

4.2. The Govt. Advocate refers to the two Circulars dated 23.3.1964 and 28.10.1965 of the Revenue (Settlement) Department to argue that ban on settlement of Reserve Forest land was enforced in the State and accordingly it is contended that neither the Land Advisory Committee nor the Revenue Authorities could have allotted any land falling within the Jarasal Reserve Forest, for non-forest purpose.

4.3. Referring to the restriction imposed by section 2(ii) of the Forest (Conservation) Act, 1980 (hereinafter referred to as "the Forest Conservation Act"), the Govt. Advocate argues that notified forest land can't be used for any non-forest purpose and here since the land was allotted for cultivation, such use is contended to be prohibited by the Forest Conservation Act.

5. The pleadings of the Forest Officer reflects that the Jarasal Reserve Forest was originally notified on 17th October, 1878 and initially it comprised of 2376 acres of land. Subsequent addition(s) to the Jarasal Reserve Forest area was made and eventually 3104 acres were added through the 1st to 4th additions and these

additions were made about 85 years earlier. Such notified forest area is expected to be protected by all concerned and allotment of protected forest is prohibited by the two Govt. Circulars issued on 23.3.1964 and 28.10.1965 respectively.

6. The protection of notified forest land is undoubtedly the requirement of law under the Assam Forest Regulation and also under the Forest Conservation Act, but the question here is whether the allotted land is part of the subsequent addition(s) made from time to time, to the Jarasal Reserve Forest, which was originally notified on 17th October, 1878. If the allotted land is part of the protected Forest, the same could not have been allotted to anyone because of the two Govt. Circulars dated 23.3.1964 and 28.10.1965. But at the same time, if the land in question falls outside of the Reserve Forest area, the occupation of the petitioners can't be faulted.

7. Therefore in order to verify the legality of the action taken by the Range Forest Officer, it is necessary to confirm whether the land allotted to the petitioners is comprised within the Jarasal Reserve Forest. The learned Counsels for both sides suggest that all the concerned departmental authorities should be involved in the process. Accepting this suggestion, the verification is ordered to be carried out jointly by the authorities of the Forest, the Revenue and the Land Survey Department. The allottees should also be allowed to participate in the exercise and their projection should be taken into account before the matter is finally decided. If the allotted land is found to be part of the Jarasal Reserve Forest, steps should be taken for cancellation of allotment and refund of premium. On the other hand, if the allotted land is not found to be reserve forest land, the right of the allottees should be protected. The whole exercise of verification, hearing etc. should be completed within a period of four (4) months and until the matter is finally decided, status quo as on today shall prevail. It is ordered accordingly. With the above order, the case stands disposed of without any order on cost.