

(1999) 01 GAU CK 0037

In the Gauhati High Court

Case No : Civil Rule No. 2056 of 1990 and 311 of 1995

Gouri Shankar Bahati

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 12-01-1999

Acts Referred:

Assam Land and Revenue Regulation, 1886 — Section 147, 151, 40, 41, 41(2)
Mikir Hills (Land and Revenue) (Fourth Amendment) Act, 1973 — Section 3

Citation : (1999) 1 GLT 140

Hon'ble Judges : D.N. Chowdhury, J

Bench : Single Bench

Advocate : A.N. Goswami, K.P. Sarma and B. Chowdhury, for the Appellant; D. Goswami, H. Roy, H.N. Bhuyan and U. Bhuyan, for the Respondent

Judgement

D.N. Chowdhury, J.—Both these petitions are taken-up together as common questions of fact as well as law are involved in the petitions.

2. The legality and validity of the order dated 8.12.88, passed by the Chief Executive Member, Karbi Anglong District Council and the consequential order dated 24.09.90, passed by the Secretary In-charge, Revenue, Karbi Anglong District Council, is the subject-matter of the writ petition in Civil Rule 3056/90.

The Respondents in Civil Rule No. 2056/90, sought for correction of the revenue records before the Revenue officer, Karbi Anglong District Council, Diphu and the Revenue officer while examining the records, noted the Report of the Asstt. Revenue officer Donka circle dated 3.10.86. The Revenue officer observed that the entire patta was transferred in the name of M/s. Ramjidas Mukundaram Firm in the year 1945-46. Shri Naresh Chandra Dey, arrayed as Respondent No.5 in Civil Rule 2056/90 contended that the patta was illegally transferred to the name of M/s. Ramjidas Mukundaram Firm in the year 1945-46. The Revenue Officer consulted the records and found that the land-in-question was mutated in favour of M/s. Ramjidas Mukundaram Firm in the year 1945-46, on the strength of an order dated 8.10.45 passed in Mutation case No. 40 of 1945-46. Since the

applicant, Respondent No. 5 in this proceeding was admittedly, not in possession of the land and no land revenue was paid, as such, the revenue authority rejected the application of the applicant for revising the mutation order of 1945-46 u/s 151 of the Assam Land & Revenue Regulations, 1886. On appeal, the learned Chief Executive Member, Karbi Anglong District Council, Diphu, by its order dated 21.1.89, reviewed the order of the Revenue officer and allowed the appeal, directing the Asstt. Revenue officer to effect correction of the revenue records. The Asstt. Revenue officer on receipt of the appellate order from the Chief Executive Member, Karbi Anglong District Council, conveyed the difficulties faced by it in complying with the directions. The Asstt. Revenue officer pointed out that the patta stood in the name of M/s. Ramjidas Mukundaram Firm since 1946 on the strength of an order u/s 40 of the Assam Land & Revenue Regulations, 1886 by which the party was granted a Periodic Patta. The Asstt. Revenue officer reminded that once a periodic patta was granted under the law for the time being in force, the Revenue authorities have no power to cancel it even on the ground of fraud. The officer concerned examined the records and submitted the following report to the competent authority vide his communication bearing No. DMK/REV/MUTATION/89-90/1022-29 dated 15-5-89, the relevant portion of which reads as follows:

Now Naresh Ch Dey, son of late Gopal Chandra Dey is claiming his paternal property of the aid above mentioned record. Now if Gopal Chandra Dey is not available since 1946 the land is not in the physical possession of Shri Naresh Chandra Dey and the title of the land record since 1946 is also in the name of firm Ramjidas Mukundaram. During survey settlement operation and record attestation, Shri Naresh Chandra Dey did not file any objection as per law and now claiming the property. Thus it is seen that the final decision can be given by the civil court.

The present position of land of the said record is as follows. Out of the said land of the said record, another transfer in the name of Shri Gauri Shankar Bahati was made in the year 1979 and revenue periodic patta No. 52 was issued on 6.7.79 from Assistant Revenue Officer, Donka. During survey settlement operation, bearing Dag No. 84,85 was recorded u/s 40 and granted periodic patta No. 50/8 on 23.11.83 and he had been paying revenue since then. The particular of his last revenue paid is as follows:

Book No. 1 period 1988-89 amount Rs 180.00. The land is under the physical possession of Shri Gauri Sankar Bahati since a longtime. Prior to the transfer of the said patta, (sic) record is in the name, the land as well as old Assam Type House (shop) was under the physical possession of the said person, Sri Naresh Chandra Dey has no physical possession under this land since 1946. Another transfer out of the said land of Ramjidas Mukundaram was made in the name of Shrimati Narayani Biswas, wife of late Kuloda Biswas in the year 1977 and has been granted periodic patta No. 53 and bearing Dag No. 39 on 19.7.85 and survey settlement patta No. 42 bearing Dag No. 39 on 19.7.85 and survey

settlement patta No. 42 bearing Dag No. 7 was issued on 15.7.85. It is found that she has been paid her land revenue for the period 1988-89 vide book No. 634, Sl. No. 10 dated 11.4.89. She had been occupying this land since a long time, that is prior to transfer in her name. Out of the said land of Ramjidas Mukundaram, another transfer in the name of Shri Gomaram Choudhury and Shri Maliram Choudhury was done vide mutation. But objection being raised and the said mutation was cancelled on 5.7.84 and record of the title was kept in the original name of Ramjidas Mukundaram firm. Now over this said land Sri Gomaram Choudhury has been there since a long time and still occupying the land with his business of shop.

At present the name of firm Ramjidas Mukundaram land record shows that 8 bighas 2 lechas is available out of the total land of Ramjidas Mukundaram firm the other portion as transferred to Gauri Sankar Bahati, son of late are Srimati Mayarani Biswas, wife of late Kuloda Biswas. At present over the said land of Ramjidas Mukundaram firm the following persons are occupying the land as mentioned below.

1. Nirmal Das, son of Mirulmoy since 1970.
2. Sri Khoke Das, son of Kamini since 1970.
3. Sri Lakhi Bora, son of Lengai Bora of Ramji Prasad, since 1978.
4. Shri Sadha Prasad, son of Rameswar since 1970.
5. Shri Rajendra Prasad, son of Ranki Prasad since 1976.
6. Sri Rameswar Singh son of Jadu Singh since 1954.
7. Shri Om Prakash Agarwal, son of Gopitam Agarwal, Chaparmukh, an authorised person of Sri Ramjidas Mukundaram firm is also occupying the land since 1946.
8. Shri Gomaram Choudhury, son of Pancharam Choudhury since a long time, it is seen that he had been paying land revenue in the name of Ramjidas Mukundaram firm since 1972-73 and paid upto 1988-89 vide book No. 507 dated 9.1.89. But Shri Naresh Chandra Dey, son of late Gopal Chandra Dey has no any physical possession over this land.

Now Sri Parashuttamdas Ajitsaria son of late Kundamal Ajitsarai resident of Fancy bazar, Guwahati (Assam) Karta of Hindu undivided family known as Ranjdas Mukundaram Fancy Bazar is the legal heir. The said legal heir vide his affidavit dated 27.3.80 in the Court of 1st Class Judicial Magistrate, Guwahati stated that the land under patta No. 7 and house situated at Baithalangso belongs to him and through this affidavit authorised Sri Om Prakash Agarwal to represent in the matter of said land building situated at Baithalangso in any official works.

Now it is seen that there are four parties 1. Shri Naresh Chandra Dey, son of late Gopal Chandra Dey, 2. Sri Purushuttam Das Ajitsaria, son of late Kumdamal

Ajitsaria, the legal heirs of Ramjidas, Mukundaram firm, 3. Shri Gouri Sankar Bahati, son of Rameswar and 4. Srimati Mayarani Biswas, wife of late Kuloda Biswas. Out of them, four all other parties have record of title as well as possession except Shri Naresh Ch Dey. vide Ex Chief Executive Member's order No. 8763 dated 21.1.89 for correction of record of mutation case No. 40/43-46 will lead to cancellation of periodic patta (Land Revenue upto date) of Shri Ramjidas Mukundaram firm, 2. Shri Gauri Sankar Bahati and 1. Srimati Mayarani Biswas and re-recording of name of Shri Naresh Chandra Roy, Section 40 of Assam Land Revenue Regulation, 1886 shows that entries in the record rights are to be forwarded on the basis of actual possession. But Shri Naresh Chandra Dey has no any physical possession over the said disputed land since 1946. u/s 41 and 147 of Assam Land and Revenue Regulation, 1886, the decision of this dispute can be given by only civil court.

The Mikir Hills (Land & Revenue) Fourth Amendment Act 1973 published in Assam Gazette dated 13th June, 1973 has deleted Section 3 of the Principal Act. The Section 3 of the principal Act reads as follows:

Section 3, notwithstanding anything contained in the provision of the Assam Land Revenue Regulation, 1886 (Regulation 1 of 1886) appeal against the order of the Revenue officer shall lie to the Chief Executive member, Mikir Hills District Council within sixty days of the date of orders appealed against excluding the time needed for obtaining a copy of the order. Thus under the above mentioned amendment, the power of the Chief Executive Member to hear appeal is not existence. Further, the dispute of the land is relating to mutation of 1946 which is too old. It is not relating to settlement or allotment of land.

Under the above circumstances, correction of records of mutation case of 1946 will lead to more complication u/s 41 and 147 of Assam Land and Revenue Regulation, 1886. The dispute can be decided in the Civil Court.

The report is submitted for kind consideration and necessary action.

From the above report, it appears that the Asstt. Revenue Officer in fact indicated both the factual as well as the legal provisions. The District Council, however, by its communication bearing No. KAC/REV/CIVIL RULE/852/2/794 dated 24.9.90, ordered the Asstt. Revenue officer-cum-the Asstt. Settlement Officer, Donka Circle. Donka, to effect correction in the land records as intimated in its communication dated 21.1.89. Hence the writ petition, which was registered and numbered as Civil Rule No. 2056/90. A Division Bench of this court, by its order dated 7.11.90, upon hearing the learned Counsel for the Karbi Anglong District Council, set aside the aforesaid impugned order dated 21.1.89, passed by the Chief Executive Member, Karbi Anglong District Council, Diphu, on the ground of violation of principles of natural justice. Respondent No. 5 in Civil Rule No. 2056/90 and Respondent No. 7 in Civil Rule No. 311/95, Shri Naresh Chandra Dey, appeared before this Court and filed and Review Application which was registered and numbered as Review application No. 18/91 and this Court by

its order dated 23.3.92 considering the facts and circumstances of the case, allowed the review application and the order passed by this Court on 7.11.90 in Civil Rule 2056/90 was suspended. Thereafter the Civil Rule 2056/90 proceeded accordingly. No affidavit-in-opposition was filed by Respondent No. 5 in the case. On 14.6.94, the case was dismissed for default as none appeared on behalf of the parties. An application for restoration of the Civil Rule was subsequently filed which was registered and numbered as Misc. Case No.1313/94 and by its order dated 2.2.1998, this Court set aside the order dated 14.6.94 dismissing Civil Rule No. 2056/90 and the said Civil Rule was restored to file. In the meantime, it appears from the record that some portion of the land-in-question was acquitted by the State Government giving rise to a proceeding for compensation pertaining to the acquisition of the self same land. As a matter of fact, the Respondent No. 5 in Civil Rule No. 2056/90 and Respondent No. 7 in Civil Rule No. 311/95 moved the authority for paying him compensation on the strength of the order passed by the Chief Executive Member, Karbi Anglong District Council dated 21.1.89. The Addl. Deputy Commissioner and Collector. Diphu, by his order dated 21.9.94, indicated about the dismissal of Civil Rule No. 2056/90 vide order dated 14.6.94 and observed that the order of the Chief Executive Member, Karbi Anglong District Council, dated 8.12.88 in case No. 83/86 stood revived and decided the issue of entitlement of compensation in favour of Shri Naresh Chandra Dey, as directed by this Court in Civil Rule No. 4264/91 vide its order dated 7.3.94. However, by the order of this Court dated 22.11.94, passed in Misc. Case No 1313/94, this Court directed that until further orders, Respondent No. 5. viz. Naresh Chandra Dey, should not be paid any compensation for acquisition of the land-in-question. But from the records of L. A. Case No. 6 of 1987, it appears that on 15.11.94, the Additional Deputy Commissioner ordered for payment of Rs. 2,19,233.88 to Shri Naresh Chandra Dey, and according to the note of the Addl. Deputy Commissioner dated 5th December, 1994, the above payment was made on 16.11.94. The aforesaid action was, therefore challenged by the writ Petitioner in Civil Rule No. 311/95 wherein Naresh Ch. Dey has been impleaded as Respondent No. 7 However, by order dated 2.2.98 passed in Misc. Case No 1313/94, the Civil Rule No. 2056/90 was restored to file.

3. In both the Civil Rules, Naresh Chandra Dey, the private Respondent, entered appearance through his appointed counsel. However, no affidavit was filed on behalf of any of the said Respondents. Both the matters are finally posted for hearing today. Shri S N Bhuyan, Senior Advocate, assisted by Shri Ujjal Bhuyan, the learned Counsel appearing on behalf of Naresh Chandra Dey, stated in the Court that since briefs were withdrawn by the party since long, therefore, they are not representing them. The Respondents on calling did not appear, nor did he take any steps to represent his cause by any counsel. I have already mentioned about the impugned order dated 8.12.88, passed by the Chief Executive Member, Karbi Anglong District Council on the appeal petition filed by Naresh Chandra Dey, signed on and communicated vide Memo No. 8764 dated 21.1.89 Admittedly, the above order was passed in the absence of the Petitioner. The said

averment of the Petitioner was not disputed by Naresh Chandra Dey at any stage. The District Council also did not contest the fact that the impugned order dated 8.12.88, was passed in the absence of the Petitioner. Even otherwise also, the impugned order of the learned Chief Executive Member, Karbi Anglong District Council was without jurisdiction in as much as the provision empowering the Chief Executive Member, Karbi Anglong District Council for entertaining appeal, has been deleted/repealed by the amending Act 1973 which came into force on 13th of June, 1973.

4. Appeal is a creature of a Statute. The power of entertaining an appeal though initially was conferred on the Chief Executive Member by virtue of Section 3 of the Mikir Hills District (Land & Revenue) Act, 1953, the above provision was deleted from the Principal Act by the Mikir Hills (Land and Revenue) (Second Amendment) Act, 1959 which came into force from 13th of June, 1973. Thereafter, the Chief Executive Member acted beyond his jurisdiction by entertaining and allowing the appeal in purported exercise of the appellate power which, admittedly, was not vested on him.

Admittedly, a periodic Patta was granted in favour of the Petitioner which conferred a valuable right on the patta holder. But the authority did possess the power of resumption by adhering to the provisions contained in the Land and Revenue Regulation, 1886. An entry in the record of rights, until proved to the contrary, is presumed to be correct under Sub-section (2) of Section 41 of the Regulation, 1886. Entries made in the records u/s 40 of the Regulation, 1886 are founded on the basis of actual possession. The impugned order of the learned Chief Executive Member, District Council, on that ground also is not sustainable under the law.

For the foregoing reasons, the impugned order dated 8.12.88, passed by the Chief Executive Member, Karbi Anglong District Council, and the consequent order dated 24.9.90, passed by the Council as also the order dated 21.9.94, passed by the Addl. Deputy Commissioner & Collector, Diphu in L. A. Case No. 6/87, and all other consequent orders, are accordingly set aside.

It would, however, be open for the Petitioner to move the appropriate authority for legitimate compensation for acquisition of the land-in-question as per law.

The writ petitions are accordingly allowed. There shall, however, be no order as to costs.