

(2004) 12 GAU CK 0053
In the Gauhati High Court
Case No : C.R. No. 2750 of 1998

Jatirmay Das and Others

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 03-12-2004

Acts Referred:

Assam (Temporarily Settled Areas) Tenancy Act, 1971 — Section 21, 22, 23, 23(1), 23(2)
Assam (Temporarily Settled Areas) Tenancy Rules, 1972 — Rule 10, 11, 8, 9
Assam Land Revenue Re-Assessment Act, 1936 — Section 3

Citation : (2005) GLT 559 Supp

Hon'ble Judges : Amitava Roy, J

Bench : Single Bench

Advocate : N.K. Singh and A. Roshid, for the Appellant; M. Singh, G. Singh and Rekha Chakravarty, for the Respondent

Judgement

Amitava Roy, J.—The facts are few but the petition poses questions of considerable moment involving an occupancy tenant under the Assam (Temporarily, Settled Areas) Tenancy Act, 1971 (hereafter referred to as Act), namely whether an Occupancy tenant is divested of his acquired rights once the Act ceases to apply to his land of tenancy and is an heir of an occupancy tenant for acquiring the ownership rights under the Act required to be engaged in personal cultivation within the meaning of the said enactment. The Assam Board of Revenue (hereafter referred to as the Board) having answered both the questions in the affirmative and against the Petitioners, they seek redress in this petition.

2. I have heard Dr. N.K. Singh, learned Counsel for the Petitioners and M. Singh, learned Counsel for the private Respondents. Ms. R. Chakravarty, learned State Counsel, appeared on behalf of the State Respondents.

3. First a brief outline of the facts.

4. The Petitioners' father Late Kanta Prasad Das was an occupancy tenant under

the Act in respect of the land measuring 6 bighas 18 Kathas and 1 Chatak under the Dag No(s) 155, 156 and 157 of 2nd R.S. Patta No. 52 of at Mouza-Tulargram Part- II, PS. Sonapur of which Smt. Suruchi Bala Roy was the landlord. The Petitioners' father filed an application before the Deputy Commissioner, Cachar, Silchar, for acquisition of ownership rights u/s 23 of the Act on which a proceeding being AOR case No. 1/92-93 was registered. In the report that was called for from the Assistant Settlement Officer, Sonai Circle, submitted on 19/2/92, it was, inter alia, mentioned that Adhiar khatian No. 10 over the land stood in the name of the Petitioners' father as occupancy tenant being in possession of the land involved for last 30 years. It was further mentioned that in the meantime the original landlord, Suruchi Bala Roy had expired leaving behind four daughters including one Aruna Roy, a widow. The Reporting Officer, in view of the scripted facts recommended in favour of conferment of the ownership rights on the Petitioners' father. The application was thereafter allowed ex parte as Smt. Sudha Rani Roy, Respondent No. 4 (daughter of Smt. Suruchi Bala Roy) had failed to appear. The matter was taken in appeal by the Respondent No. 4 to the Board which after setting aside the order remanded the matter for fresh disposal. The District Revenue Officer/Additional Deputy Commissioner on remand by the order dated 13.9.96 again allowed the application and held that the present Petitioners (their father having expired in the meantime) were entitled to acquire the ownership rights in the land under the Act and directed computation of the compensation u/s 24. The impugned judgment and order passed by the Board is in Appeal No. 95/RA(C)/96 filed by the Respondent No. 4 reversing the determination of the lower Revenue Authority.

5. The land admittedly in the meantime by a communication dated 18.11.92 issued u/s 3 of the Assam Land Revenue Reassessment Act, 1936, along with other lands had been brought under Sonai Revenue Circle of Cachar District and declared as Sonai Revenue Town. The Petitioners' father and the original landlord Smt. Suruchi Bala Roy had in the meantime expired and the legal tussle continued with their successors in interest namely the Petitioners and the Respondent No. 4, the latter having taken a stand that on purchase of the land from the other heirs of her mother, she had become the exclusive owner thereof.

6. The Board has, inter alia, held that an occupancy tenant under the Act, cannot acquire a further right thereunder if the land is excluded from the purview of the Act, and therefore, the land involved having been included in Sonai Revenue Town by the notification dated 18.11.92, the Petitioners were not entitled to acquire the ownership rights therein. It further held that the Petitioners as the heirs of the original occupancy tenant were additionally required to establish their right as occupancy tenant and that they are cultivating the land in question. this Court by an order dated 8.6.98 while issuing rule had in the interim stayed the impugned judgment and order.

7. Dr. Singh, learned Counsel for the petitioners, referring to various provisions of the Act, more particularly, Section 5, 6 and 7 thereof, has emphatically argued

that the Petitioners' father being admittedly an occupancy tenant of the land, by operation of law, the said status had descended to them and therefore, the learned Board was manifestly in error in declining their prayer for ownership rights on the purported ground that they were further required to prove that they were occupancy tenants under the Act. According to him, the Petitioners' father at the relevant time being an occupancy tenant, had vested right to apply for the ownership rights in the land and that the notification dated 18.11.92 including the land in the Sonai Revenue Town was inconsequential having regard to the decision of this Court on the issue rendered in *Shri Niranjan Barua v. The State of Assam and Anr. and Sadau Asom Pattadar Sangha and Anr. v. State of Assam and Ors.* (1990) 1 GLR 32. He maintained that as the Petitioners, being the sons of the original occupancy tenant, have acquired the same status by inheritance it was not necessary to separately establish that they were engaged in personal cultivation of the land so as to be eligible to acquire the ownership rights under the Act.

8. Controverting the above, Mr. Singh has argued that with the inclusion of the land within the Sonai Revenue Town, the provisions of the Act cease to apply and consequent thereto the relationship of landlord and tenant between the parties ceased. In that view of the matter, acquisition of ownership rights thereafter was wholly inconceivable. According to him, the Petitioners had misread the decision of this Court in *Niranjan Barua*, (supra), and that the conclusion of the Board on this aspect of the controversy is legally acceptable. He urged that "holding of land" and "personal cultivation" envisaged under the Act are two distinctly different concepts and, therefore, assuming that the Petitioners being the heirs of the original occupancy tenant maybe deemed to be so on the formers death, they would not be entitled to acquire the ownership rights unless it is established that they are personally cultivating the land of tenancy. Mr. Singh buttressed his arguments by referring to various provisions of the Act with particular emphasis on the definition of personal cultivation contained in Section 3(10), Sections 21 and 23 thereof. He also invited the attention of the Court to Rules 8, 9, 10 and 11 of the Assam (Temporarily Settled Areas) Tenancy Rules, 1972, (hereafter referred to as the Rules). He argued that under the Act and the Rules, it was mandatory for an occupancy tenant desirous of acquiring the ownership rights to establish that he is personally cultivating the land of tenancy and in absence of any evidence to the said effect in the instant case, the report of the Assistant Settlement Officer, Sonai Revenue Circle, that the Petitioners' father was an occupancy tenant in possession of the land was not sufficient. He submitted that proof of personal cultivation is indispensibly essential to conclusively rule out the possibility of an under tenant as the paramount objective of the Act is to benefit the actual tillers of the land. Referring to the proviso to the Section 21 of the Act, the learned Counsel argued against the acquisition of the ownership rights by the Petitioners contenting that it was impermissible as one of the heirs of the original landlord namely Mrs. Aruna Roy was a widow whose land under the Act could not be acquired under any circumstances. He maintained that issuance of the

tenancy khatian in the name of the Petitioners" father was, therefore, not enough and that, in the absence of any evidence in support of personal cultivation of the land by the Petitioners, the decision of the Board in this regard cannot be faulted with.

9. Dr. Singh in a bid to make a clarification led this Court to the order of the Revenue Officer/Additional Deputy Commissioner, Cachar, recording the stand of the Respondent No. 4 that in the meantime she had purchased the shares of the other heirs. Therefrom the learned Counsel endeavoured to urge that the contention based on the proviso to Section 21 of the Act was thus evidently untenable.

10. The questions, which thus surface, can be paraphrased as hereunder.

(a) Does the exclusion of the land of tenancy from the purview of the Act strip an occupancy tenant of his said status and the concomitant rights thereunder?

(b) Is the criteria of personal cultivation of the land of tenancy an essential precondition to be complied with for making an occupancy tenant eligible to acquire the ownership rights u/s 23 of the Act?

11. The first question need not detain this Court for long inasmuch as this issue has been set at rest by an authoritative pronouncement of a Division Bench of this Court in CR179/ 84, Niranjana Barua v. State of Assam in CR 125/85, Sadau Assam Pattadar Sangha and Ors. v. State of Assam, reported in 1990 1 GLR 32. The controversy in that case arose following the amendment of the Act in 1983 whereby the definition of "town land" was modified. By the amendment, which was brought into force w.e.f. 5.3.73, large parcels of agricultural land, which were not included earlier within Guwahati Municipality came within the fold of Municipal Corporation of Guwahati. The question which fell for consideration, therefore, was whether the tenants who had acquired the status of occupancy tenants and were personally cultivating the land of tenancy could claim to acquire the ownership rights of their landlord u/s 23 of the Act in respect of those parcels of land which were not part of Municipality of Guwahati but were included within the limits of Guwahati Municipal Corporation after the amendment. The division Bench after an exhaustive survey of the law as well as the judicial pronouncements relevant to the issue concluded that as the Act had come into force initially on 10.11.1971, the tenants who had acquired the status of occupancy tenants with respect to the land of tenancy between 10.12.71 and 4.3.73 (as the 1973 was w.e.f. 5.3.73) could not be debarred from exercising their rights u/s 23 only because of the amendment. In other words, it was determined that the vested rights of an occupancy tenant before the amendment was given effect to, could not be divested thereby. In the conclusion, it was held that a tenant who had acquired the status of an occupancy tenant under the provision of Section 5 of the Act by 4.3.73 could endure his rights conferred by Section 23 of the Act at any time with respect to the land of tenancy.

12. In the instant case, the land of tenancy had been included in the Sonai

Revenue Town dated 18.11.92. The Petitioners' father had in the meantime acquired the status of an occupancy tenant thereof. The ratio of the above decision, therefore, squarely applies to the case in hand. The Petitioners being his heirs by dint of Sections 6 and 7 of the Act, the status has descended on them along with all incidental rights under the Act. The acquisition proceeding that was registered on the applications filed by the Petitioners' father, on his death, therefore, could be validly be pursued by them. As in view of the statement of law contained in the aforementioned judgment of the Division Bench, the Petitioners are entitled to enforce their rights as occupancy tenants u/s 23 of the Act, the contention to the contrary raised on behalf of the Respondents is untenable. By the same analogy the conclusion of the Board that the Petitioners have no right to acquire the ownership rights u/s 23 of the Act. In view of the notification dated 18.11.92 is unsustainable and is set aside.

13. The second point for determination warrants a survey of the Act as well as of its historical background. The Assam (Temporary Districts) Tenancy Act, 1935 (hereafter referred to as the 1935 Act), the precursor of the present Act was found to be deficient in providing the rights and protection to the tenants. The Adhiars were not able to acquire the status of occupancy Raiyats thereunder. The other tenancy laws namely Goalpara Tenancy Act, 1929, and Sylhet Tenancy Act, 1956, though conferred rights and extended protection to a large section of agricultural tenant of the State, did not prescribe for any occupancy right to the tenants who cultivated the land of other persons under the system adhi, barga, bhag, chukti, chukani etc. on the condition of delivering a share or quantity of produce to the landlord. The Assam Adhiar Protection and Regulation Act, 1948, was enacted to accord protection to the above mentioned class of tenants but this legislation as well did not offer any right of occupancy on the Adhiars. The 1935 Act though ushered in land reforms, with time, enactment of more progressive legislations was felt necessary to augment the concept of a socialistic pattern of society. With that end in view the 1971 Act was enacted replacing the 1935 Act and the Assam Adhiar Protection and Regulation Act, 1948. These form in short, the legislative history of the 1971 Act and the objects and reasons therefor. The statements of objects and reasons of an enactment always constitute an index of the motivating considerations therefore and is a helpful guide to its interpretation. Hence the introduction.

14. The short preamble of the Act discloses that it is a legislation to regulate rights and liabilities of the agricultural tenants and their landlords in temporarily settled lands in the State of Assam. One of the preeminent features of the Act is the provision empowering the Government to make a declaration that an occupancy tenant may acquire the ownership rights of the land under his occupation on payment of compensation to the owner. The Act also provides for acquisition by the under tenants of the rights of occupancy or non-occupancy tenant under whom they hold the land of tenancy as well as the ownership rights. A plain reading of the provisions of the Act manifests that it has been enacted for the amelioration of the sagging lot of the tilling community of the

State with adequate scope of acquiring the ownership rights of the tenancy lands thereby advancing the cause of social justice. This backdrop should, therefore, inform the interpretative process.

15. Chapter-III deals with occupancy tenant. u/s 5, a person who has continuously held the land for not less than three years as a tenant, shall have a right of occupancy in that land. Section 5(4) provides that a person shall be deemed to have held as a tenant any land held, by a person whose heir he is. In other words an heir of occupancy tenant holding land would also be deemed to be an occupancy tenant u/s 5. Section 6 lays down that an occupancy tenant shall have permanent, heritable and transferable right in the land of occupancy. The right of occupancy of a tenant dying intestate would subject to any custom, devolve in the manner as in any other immovable property as is envisioned in Section 7.

16. Chapter-VI deals with the acquisition of intermediary and ownership rights by the tenants. u/s 21, an occupancy tenant personally cultivating the land of his tenancy shall be entitled to acquire the right, title and interest of his landlord in terms of Section 23(1). The Proviso postulates that where the holding of an occupancy tenant is cultivated by an under tenant as defined in Assam (Temporary Settled District) Tenancy Act, 1935, from any date prior to enforcement of the Act, such under tenant shall be entitled to acquire the right, title and interest of his landlord, i.e., the intermediary rights as well as the ownership rights of the landowner of the holding in terms of Section 23(2). The second proviso to Section 21 prohibits acquisition of ownership rights of any land of a landlord, which is a widow, or a minor or a physically or mentally disabled person or a member of the Defence services.

17. Section 22 confers on the State Government the authority of declaring the transition of the right, title and interest of the landlords in favour of the occupancy tenants as well as intermediary rights and ownership rights of a landlords to the under tenants personally cultivating their respective lands of tenancy. The procedure for acquisition of owner rights and intermediary rights by the tenants as above has been outlined in Section 23 which provides that an occupancy tenant personally cultivating the land of a tenancy and desirous of acquiring the ownership right of the landlord may at any time make an application in writing to the Deputy Commissioner and thereafter on the determined compensation being paid by the occupancy tenant the declaration of acquisition of the ownership rights by the occupancy tenant free from all encumbrances shall be made. Section 23(2) provides for the procedure of acquisition of intermediary and ownership rights by the under tenants.

18. A conjoint reading of Sections 21,22 and 23 as above, unequivocally brings to the fore the essentiality of personal cultivation as a condition of eligibility for acquiring the ownership rights by the occupancy tenants as well as of the intermediary and ownership rights by the under tenants.

19. The Rules, inter alia, provide for the procedure to be adopted once an application is filed u/s 23 for acquisition of the ownership as well as intermediary rights. The application has to be in the prescribed form as mandated by Rule 9. The Deputy Commissioner, as required by Rule 10, has to make an enquiry to satisfy himself about eligibility of the applicant to acquire such rights before ordering further proceedings. In case of prima-facie satisfaction about the eligibility, he would issue necessary notices to the interested persons and as prescribed by Rule 11, after hearing of objections and recording of evidence, if any, adduced by the parties, pass necessary orders on the application. A cursory reading of the above provisions of the Rules makes it explicit that the acquisition of the ownership or intermediary rights on an application to that effect is not automatic but has to be compulsorily preceded by a fact finding enquiry to be made by the Deputy Commissioner involving recording of evidence and hearing of objections, if any. The enquiry, therefore, is an integral part of the decision making process on an application for acquisition of such rights. The logic of the procedure is understandable qua the pre-conditions for such acquisitions embodied in Section 23 of the Act. In other words, the purpose of the enquiry is to decisively ascertain whether the applicant satisfies the criteria prescribed by Section 23 of the Act lest the benefit is conferred on an undeserving person at the cost of the actual tillers of the land involved.

20. Keeping in view the avowed purpose of the enactment and the provisions of the Act and the Rules referred to herein above, I am of the considered view that requirement of "personal cultivation" is an essential pre-condition for acquisition of the ownership and intermediary rights and cannot be discarded as a unmindful superfluity or a casual surplus-age but is a conscious legislative precept bearing the insignia of social justice which the statute so religiously seeks to treasure for the tilling tenants. The mandatory attribute of the statutory prescription is manifested in the procedure outlined in the Rules making it obligatory for the Deputy Commissioner to conduct an enquiry into the essential aspects highlighted in Section 23 once an application thereunder is made. Acquisition of the status of an occupancy tenant or mere holding of the land of tenancy by an occupancy tenant is per se not demonstrative of the proof of personal cultivation which has to be independently substantiated to decisively establish the eligibility for the ownership rights thereof.

21. Section 3(10) defines personal cultivation, which for ready reference is set out herein below.

(10) "Personal cultivation" means cultivation by the person himself, or by member of his family or by hired labourers on fixed remuneration payable in cash or kind but not in crop share, under personal supervision of the person himself or any member of his family, provided it is accompanied by the bearing of the risks of cultivation by the owner and by residence in the village in which the land is situated or nearby village or town within a distance of 5 miles during the greater part of the agricultural season:

Provided that in the case of a person who is a widow or a minor, or is subject to any physical or mental disability or is a member of the Defence forces of the Indian Union or is a student below the age of 21 years of an educational institution recognized by the State Government, the land shall be deemed under personal cultivation even in the absence of such personal supervision.

22. A close up of the said definition yields the following features:

(i) The cultivation may be either by the person himself or by any member of his family or by hired labourers on fixed remuneration payable in cash or kind.

(ii) If cultivation is by hired labourers, it is to be under the personal supervision of the person himself or any member of his family.

(iii) In case of (ii), the owner has to bear the risk of the cultivation and his residence is to be either in the village of the land or in any village or town within a distance of 5 miles therefrom for a greater part of the agricultural season.

Under the proviso, relaxation has been provided to a widow or a minor or a person with physical or mental disability or a member of the Defence Forces of the Indian Union or a student below 21 years in a matter of personal supervision envisaged as above.

23. The definition of personal cultivation, therefore, evidently proclaims the requirement of personal association in the tilling exploits of the land even if the actual cultivation is done by another agency.

The requirement of personal cultivation as an inseverable condition of eligibility for acquiring the ownership rights accords not only with the legislative background of the statute and objectives which it seeks to achieve but also with the fundamental principle of interpretation of statutes that the language used in a statute if plain and unambiguous, the meaning conveyed thereby has to be accepted and the provisions thereof are to be given effect to unless the same produces absurd, preposterous or irrational results or leads to unintended inconvenience and hardship.

24. Maxwell in his authoritative treatise "The Interpretation of Statutes 12th edition at page 29 recited thus:

The rule of construction is "to intend the legislature to have meant what they have actually expressed". The object of all interpretation is to discover the intention of Parliament, "but the intention of Parliament must be deduced from the language used," for it is well accepted that the beliefs and assumptions of those who frame Acts of Parliament cannot make law.

....

....

Where, by the use of clear and unequivocal language capable of only one meaning, anything is enacted by the legislature, it must be enforced however

harsh or absurd or contrary to common sense the result may be. The interpretation of a statute is not to be collected from any notions which may be entertained by the Court as to what is just and expedient: words are not to be construed, contrary to their meaning, as embracing or excluding cases merely because no good reason appears why they should not be embraced or excluded. The duty of the Court is to expound the law as it stands, and to leave the remedy (if one be resolved upon) to others.

25. The mischief Rule as propounded in the well-known Heydon's Case (1854) 3 Co Rep 7 a underlining the four cardinal principles of interpretation of statutes, was also noticed by Maxwell at page 40 of his above celebrated book.

In Heydon's Case in 1584, it was resolved by the Barons of the Exchequer (at p. 7b) that for the sure and true interpretation of all statutes in general (be they penal or beneficial, restrictive or enlarging of the common law) four things are to be discerned and considered: (1st). What was the common law before the making of the Act, (2nd). What was the mischief and defect for which the common law did not provide. (3rd). What remedy the Parliament hath resolved and appointed to cure the disease of the commonwealth. And. (4th). The true reason of the remedy; and then the office of all the Judges and advance the remedy, and to suppress subtle inventions and evasions for continuance of the mischief, and pro privato commodo and to add force and life to the cure and remedy according to the true intent of the makers of the Act, pro bono publico." In 1898, Lindley M.R. said: "In order properly to interpret any statute it is as necessary now as it was when Lord Coke reported Heydon's Case to consider how the law stood when the statute to be construed was passed, what mischief was for which the old law did not provide, and the remedy provided by the statute to cure that mischief." Although Judges are unlikely to propound formally in their judgments the four questions in Heydon's Case, consideration of the "mischief or object of the enactment is common, and will often provide the solution to a problem of interpretation.

26. The above principles have been reiterated time out of number and I do not wish to burden this judgment copiously referring to all of them. The law has been astutely summed up by the Apex Court in J.P. Bansal Vs. State of Rajasthan and Another, the relevant portions of which are quoted herein below.

11. It is said that a statute is an edict of the legislature. The elementary principle of interpreting or construing a statute is to gather the mens or sentential legis of the legislature.

14. Where, however, the words were clear, there is no obscurity, there is no ambiguity and the intention of the legislature is clearly conveyed, there is no scope for the Court to innovate or take upon itself the task of amending or altering the statutory provision. In that situation the Judges should not proclaim that they are playing the role of a lawmaker merely for an exhibition of judicial valour. They have to remember that there is a line, though thin, which separates

adjudication from legislation. That line should not be crossed or erased. This can be vouchsafed by "an alert recognition of the necessity not to cross it and instinctive, as well as trained reluctance to do so". (See: Frankfurter: Some Reflections on the Reading of Statutes in "Essays on Jurisprudence", Columbia Law Review, p. 51)

27. The inevitable conclusion of the above narration is that an occupancy tenant who is engaged in personal cultivation of land in tenancy within the meaning of the Act would only be entitled to acquire the ownership rights u/s 23. Having regard to the issue involved, this conclusion for the purpose of the proceeding is confined only to the occupancy tenants.

Reverting to the facts, it is noticeable that though in the report of the Assistant Settlement Officer, Sonai Revenue Circle, and the order of the Additional Deputy Commissioner disclose that the Petitioners' father at the relevant time had been in possession of the land in tenancy, there is no finding that he was engaged in personal cultivation of the same. The records do not indicate either that the Petitioners themselves are also doing personal cultivation thereof. From the records available before this Court as well, it is not established with certitude that an enquiry as required under the Rules was conducted by the Deputy Commissioner and any finding was recorded that the Petitioners' father during his life time or the Petitioners thereafter had indulged in personal cultivation of the land as comprehended in the Act. Thus on facts an indispensable feature of the acquisition process is hedged in obscurity. The Board has considered this aspect of the matter and in my view in the right perspective. The conclusion of the Board on this aspect of the controversy thus cannot be faulted with. The order of the Additional Deputy Commissioner, therefore, cannot be approved.

28. Should the matter rest here? The Petitioners are admittedly occupancy tenants under the Act. Their father had applied for acquisition of ownership rights u/s 23 and on his demise they have been substituted in the pending proceeding. The contemporaneous records do not indicate that they are not engaged in personal cultivation. In this premises to terminally reject their prayer on this indeterminate consideration without causing a searching probe on this aspect of eligibility would be destructive of the underlying objective of the Act. The plea that the acquisition of ownership rights in the land involved is not permissible, in view of the fact that one of the heirs of the owner is a widow also needs to be examined in view of the embargo to such acquisition contained in the second proviso to Section 21 of the Act. Though the Respondent has claimed to have purchased the shares of the other heirs including the widow, no finding on the said claim has been recorded by the Courts below. As a determination of this would also have vital bearing on the claim of the ownership rights under the Act in my view, the same needs to be investigated into as well.

In the conclusion, this petition is, therefore, disposed of remanding the case to the Court of the Deputy Commissioner, Cachar, Silchar for conducting a fresh enquiry into the Petitioners' claim of ownership rights in the land involved strictly

in accordance with the provisions of the Act and the Rules. In conducting the enquiry the learned Court below would also examine whether the bar under the second proviso to Section 21 of the Act is attracted. Needless to say, the learned Court below would extend reasonable opportunities of hearing to both the sides and decide the controversy on the basis of the materials brought on record. As the parties are engaged in this litigation for long, it is expected that the learned Court below would conduct the process expeditiously to provide an early, quietus to the long drawn tussle. No costs.