

(2018) 03 GAU CK 0122
In the Gauhati High Court
Case No : WP (C) 4400 of 2012

KHAGEN MIKIR

APPELLANT

Vs

THE STATE OF ASSAM AND ORS

RESPONDENT

Date of Decision : 27-03-2018

Acts Referred:

Assam (Temporarily Settled Areas) Tenancy Act, 1971 — Section 23
Assam (Temporarily Settled Areas) Tenancy Rules, 1971 — Rule 10

Citation : (2018) 03 GAU CK 0122

Hon'ble Judges : PRASANTA KUMAR DEKA

Bench : Single Bench

Final Decision : Disposed Of

Judgement

1. Heard Mr. L. Talukdar, the learned counsel appearing on behalf of the petitioner and also Ms. K. Jain appearing on behalf of the respondent Nos. 5,

6, 7 and 8 and also heard Mr. T. C. Chutia, the learned Additional Senior Government Advocate for respondent Nos. 1 and 2.

2. In this writ petition the petitioner challenged the judgment passed by the Assam Board of Revenue in Case No. 14 RA (K)/2009 dated 02.07.2010.

Mr. Talukdar submits that the father of the petitioner was Kandura Mikir, son of Paplu Mikir who was an occupancy tenant under his landlord Sudhir

Chandra Benarjee with respect to land measuring 1 Bigha 1 katha 6 Lechas covered by Dag No. 549 of K.P. Patta No. 144 of Village Barsajai under

Mouza Beltola. Late Kandura Mikir had been in occupation of land since 1957-64 as an Adhiar under the same landlord and he was protected

under the Assam Adhiars Protection and Regulation Act, 1948. Thereafter, the said Kandura Mikir was the tenant as per the Assam (Temporarily

Settled Areas) Tenancy Act, 1971 (hereinafter referred as Act of 1971) till his

death in the year, 1984. After the death of Kandura Mikir, the present petitioner inherited the tenancy over the said land under the said Act of 1971. The petitioner filed an application under Section 23 of the said Act of 1971 before the Deputy Commissioner, Kamrup for acquisition of ownership right over the said land under occupation as a rayat. Sudhir Chandra Banarjee died and on his death, his brother, Kalipada Banarjee, became the landlord and after his death his two sons, namely, Ram Prasad Banarjee and Lakshmi Prasad Banarjee became the owners/landlords in respect of the said 1 Bigha 1 Katha 6 Lechas of land. The application for acquisition of ownership right was registered as Tenancy Case No. 51 of 2004 before the Additional Deputy Commissioner, Kamrup (Metro) in which all the present private respondents in this writ petition were impleaded as required under the prescribed Rules of the Act 1971. The present private respondent Nos. 5 and 6 raised objections in Tenancy Case No. 51 of 2004 thereby disputing that the father of the present petitioner, Late Kandura Mikir was not a tenant over the land concerned, rather one Kandura Kachari was the rayat on the land measuring 1 Bigha 1 Katha 6 Lechas. The said Tenancy Case No. 51 of 2004 was allowed vide order dated 12.02.2008 and the same was sent for approval of the Government.

3. Being aggrieved, the present private respondent Nos. 5, 6, 7 and 8 filed an appeal against the said order dated 12.02.2008 before the Honâ??ble

Assam Board of Revenue. The said appeal was registered as Case No. 14 RA (K)/09. The Assam Board of Revenue vide judgment and order dated

02.07.2008 set aside order dated 12.02.2008 passed in Tenancy Case No. 51 of 2004 and directed the petitioner to approach appropriate forum for

confirmation of his tenancy. The present petitioner has filed this writ petition challenging the said judgment dated 02.07.2010 passed by the

Honâ??ble Assam Board of Revenue.

4. Mr. Talukdar submits that the learned Member of the Board has exceeded his jurisdiction by entering into the issue in dispute whereby the learned

Member held that the petitioner failed to prove that he is the son of Late Kandura Kachari, who was the original tenant of the land referred in the

Khatian No. 28. Mr. Talukdar submits that the name of the rayat has been shown as Kandura Mikir, son of Paplu over the land covered by Dag No.

980 (old) and 549 (new) measuring 1 Bigha 1 Katha 6 Lechas as possessed by

the said Kandura Mikir under the landlord, Sudhir Chandra Benarjee.

The said Khatian was issued in the year 1957-64 settlement operation. In the subsequent settlement operation of 1973-75 the said Khatian changed to

new No. 51 wherein the old Dag number is shown to be the new Dag No. 549 in the Khatian No. 28 wherein also the name of the Pattadar has been

shown as Sudhir Chandra Benarjee and the name of the rayat has been shown as Kandura Kachari. The subsequent Khatian No. 47 was issued in

the name of Kandura Mikir son of Paplu covering the said land under Dag No. 549 showing the pattadar's name as Sudhir Chandra Benarjee.

5. A copy of Chitha was issued in the name of Kandura Mikir after the classification of the land was changed and the old Dag No. 549 was changed

to 2868 wherein the present petitioner has been shown as the son of Late Kandura Mikir who inherited the said tenancy over the land. Stressing the

said Khatian issued in the name of Kandura Kachari @ Kandura Mikir and the copy of Chitha showing the change in the old Dag No. 549 to 2868

and the change in classification of land, Mr. Talukdar submits that the Revenue Board as the Revenue Court cannot dispute the said copy of Chitha

wherein the name of the petitioner has been shown and his father's name has been shown as Late Kandura Mikir. Under such circumstances, the

findings of the learned Member of the Board are beyond the jurisdiction of the Revenue Court. Entering into such issue amounts deciding the title of

the suit land and the status of the petitioner afresh which the Revenue Board cannot enter into except by a Civil Court. According to Mr. Talukdar,

the impugned judgment is liable to be set aside.

6. Ms. Jain, on the other hand, submits that the Khatian No. 47 issued in the name of Kandura Mikir showing the land covered by Dag No. 549, which

as per her submission, remained in the possession of Kandura Kachari was obtained fraudulently by the petitioner and to that effect a complaint case

has already been filed and it has been registered as complaint Case No. 3936/2017 in the Court of Judicial Magistrate First Class, Guwahati. The

complaint has been taken into cognizance by the court below.

7. It is further submitted by Ms. Jain that if there is any grievance of the petitioner with regard to the findings of the learned Member of the Board, the

petitioner is supposed to raise his grievance in a Civil Court which they have rightly done by filing Title Suit No. 506/2010 pending in the Court of

Munsiff No.2, Kamrup (M) at Guwahati. As per the observation of the learned Member of the Board the petitioner had already filed a Title Suit.

There is no point in further interference by this Court of the impugned judgment passed by the Honâ??ble Board. Accordingly, Ms. Jain submits for

dismissal of the present petition. Mr. Chutia has supported the findings of the Honâ??ble Revenue Board.

8. Considering the submissions of the learned counsels it is seen that there is a finding of the learned Member of the Board that the order passed by

the Additional Deputy Commissioner in Tenancy Case No. 51/2004 was without receiving the report from the Circle Officer in order to draw his

satisfaction before issuing notice/(s) to the persons whom the Deputy Commissioner or the Additional Deputy Commissioner finds necessary for

disposal of the said application. Further finding is that the respondents disputed that the present petitioner is not the son of Kandura Kachari but as

seen from the impugned judgment passed by the learned Member it was held that a duty was cast on the Additional Deputy Commissioner, Kamrup

(M), to give a finding of the parentage of the petitioner in issue while passing the order in the said Tenancy Case No. 51 of 2004 and as such the

learned Member, came to the finding that the order dated 12.02.2008 passed in Tenancy Case No. 51/2004 is not in accordance with the prescribed

scope of the Act, 1971 and as such set aside the said order. Leaving aside the disputed question with respect to the legal heirship of the present

petitioner, it is seen that the Additional Deputy Commissioner while passing the order dated 12.02.2008 failed to obtain the report from the Circle

Officer which is a mandatory provision as per Rule 10 of Assam (Temporarily Settled Areas) Tenancy Rules, 1972 for satisfaction of the Deputy

Commissioner that there is a prima facie case for acquisition of ownership under Section 23 and only after such satisfaction, the Deputy

Commissioner must serve notice in Form-VI to all persons mentioned in the application or to any other person/(s) who in the opinion of the Deputy

Commissioner are interested in it. The learned Member of the Board has rightly come to the conclusion to that effect.

9. The finding of the learned Member that the learned Additional Deputy Commissioner ought to have ascertained as to whether the respondent No.3

is the actual legal heir of Kandura Kachari cannot be accepted. The Revenue Court and its enquiry prescribed by the Act, 1971 are summary in

nature. An issue like the ownership of a person and the claim over a particular plot of land as a tenant by a person claiming inheritance of the tenancy

from his father amounts to a declaration of the status of the person who sought for his tenancy right with respect to the tenancy he is holding. Such

declaration of the status is a total and complete domain of the Civil Court and the Revenue Court entering to the question of title of a person with

respect to the immoveable property amounts to exceeding of the jurisdiction circumscribed as a Revenue Court.

10. It is clarified that the word 'Title' with respect to a particular immovable property includes the meaning and interference that can be drawn

from the word 'Status' with respect to the said immovable property from which various consequential rights, emanate and settles with a person.

For example, a person who is a 'Tenant' as defined under the Act, 1971 is entitled to the rights endowed to such 'Tenant' including the right

of acquisition of ownership. The petitioner claiming the status of a tenant has preferred the petition for acquisition of ownership as per Section 23 of

the Act, 1971. The private respondents denied such status of tenant being devolved on the petitioner by way of inheritance. Under such

circumstances, the learned Member was wrong in asking the petitioner to move the appropriate court for redressal of his grievance in respect of the

land rather it is the private respondents who ought to have been directed to approach appropriate forum challenging the status of tenancy of the

petitioner.

11. The right of acquisition of ownership is itself a right flowing out of the status of a 'Tenant' under the Act, 1971 which right is a consequential

one arising out of the status of tenant. The petitioner has the right to file the said petition and Revenue Courts are bound to entertain such application

for acquisition of ownership. In order to halt the process of flowing such right under Section 23 of the Act, 1971, the present private respondents are

bound to dislodge the said status of tenant through an appropriate declaration from the competent Civil Court. Without such declaration Revenue

Courts cannot sit idle asking the petitioner to get the appropriate declaration from the appropriate Court. Moreover, a presumption always goes in

favour of the petitioner on the basis of the khatian issued in favour of his father that the petitioner inherited the said tenancy with respect to the land

concerned. In order to rebut the said presumption, burden is upon the private respondents and for that reason they are to move the appropriate forum

to disprove the status of petitioner as a tenant. The finding of the learned Member directing the petitioner to move appropriate forum to get the

declaration cannot be accepted.

12. There is no dispute at bar that the present petitioner has already approached the Civil Court in order to confirm his possession over the land

wherein he has claimed the tenancy by way of inheritance from Kandura Mikir @ Kandura Kachari. On the other hand, it is seen that no report from

the Circle Officer was obtained by the Additional Deputy Commissioner to draw up his prima facie satisfaction for initiating the ownership acquisition

process which is mandatory in nature.

13. Considering the same, I am of the opinion to set aside the judgment dated 02.07.2010 passed by the Honâ??ble Assam Board of Revenue,

Guwahati in Case No. 14 RA (K)/09 and remand the same to the Additional Deputy Commissioner, Kamrup (M) to decide the whole proceeding for

acquisition of ownership de novo after following the prescribed Rules under the Assam (Temporarily Settled Areas) Tenancy Rules, 1972.

14. Accordingly, the parties to this writ petition shall appear before the learned Additional Deputy Commissioner, Kamrup (M) on 25.04.2018. This

writ petition is accordingly disposed of and the Additional Deputy Commissioner shall make an endeavour to decide the merit of the said application

for acquisition of ownership by giving a hearing to the parties and to complete the proceeding within a period of 3(three) months from the date of

appearance of the parties to the writ petition. Interim order passed earlier stands vacated. Send back the LCR.