(1981) 08 GAU CK 0011

In the Gauhati High Court

Case No : Civil Rule No. 283 of 1976

Mahananda Sharma Medhi APPELLANT

Vs

Ghana Kanta Pathak and Others RESPONDENT

Date of Decision : 03-08-1981

Acts Referred:

Assam Land and Revenue Regulation, 1886 — Section 81
Constitution of India, 1950 — Article 226
Assam Board of Revenue Act, 1962 — Section 17(3), 7, 7(1)

Citation : (1981) 1 GLR 310

Hon'ble Judges : D. Pathak, Acting C.J.;T.C. Das, J

Bench : Division Bench

Advocate : J. Das, for the Appellant; G.K. Talukdar and P.N. Goswami, for the Respondent

Final Decision : Dismissed

Judgement

T.C. Das, J.—By this petition under Article 226 of the Constitution of India, the Petitioner has challenged the legality and validity of the order dated 28.10.74 passed by the learned Assam Board of Revenue at Gauhati in case No. 254 RA of 1973 and also the order dated 18.3.1976 in case No. 1 RA (RVW) of 1975, which arose out of a petition filed u/s 81 of the Assam Land and Revenue Regulation praying for setting aside the salt in respect of defaulting estate measuring UB-1K-16Ls situated in village Barsuha, Mouza-Nowgong, in the district of Kamrup covered by periodic patta No. 45 under Dag Nos. 58,110 and 157. The Petitioner in his application u/s 81 of the Assam Land and Revenue Regulation claimed himself to be the heir of the original pattadar late Sailabal Devi who expired as early as in the year 1971 and prayed for setting aside the sale on the allegation that no notice as required to be served under the provisions of the Assam Land and Revenue Regulation before such sale was ever served up on him and that there was irregularity and illegality "in publishing and conducting the sale. The Petitioner further stated that for arrears of "land revenue the entire land as mentioned above, was cold on 2.12.73, only for a nominal value of Rs.

91.00 which was purchased by Respondent No. 1 of this petition. The Respondent No. 2 herein claims to be a tenant in respect of the land in question and has been in occupation of the land since the time of the original pattadar and his name has also been recorded in the record of rights as a tenant since more than 15 years back on the basis of his possession. The said petition of this Petitioner before the learned Board of Revenue was contested by the Respondents. At the time of hearing the petition before the Board of Revenue, too Respondent raised a preliminary question of law as to the maintainability of the petition on the ground that the Petitioner has no locus standi to file the petition, he being not the heir of the original pattadar, nor a parson interested in the land in question. The Respondents controverted the contentions made by the Petitioner in his petition for setting aside the sale by filing an affidavit in-opposition before the learned Board of Revenue and categorically denied the Petitioner to be the heir of the original pattadar or a person interested in the land. A copy of the affidavit-in-opposition filed by the Respondent before the Board was also served upon the learned Counsel of the Petitioner but those contentions made in the affidavit-in-opposition were not controverted by the Petitioner.

2. The learned Board of Revenue on hearing the parties and on scrutiny of the papers and documents came to the finding that notice was served properly by affixing a copy on the estate in presence of the witnesses as the original pattadar was found to be dead. The learned Board also came to the finding that the Petitioner could not prove his title of the land either is heir of the original pattadar or as possessor of the land in any manner to show himself as a person interested. The learned Board on these findings and also on considering the various contentions raised by the parties by the order dated 28.10.74 upheld the preliminary objection raised'' by the Respondents on the ground of its maintainability and. rejected the petition filed by the Petitioner u/s 81 of the Assam Land and Revenue Regulation.

3. The Petitioner thereafter filed a petition for review u/s 7(1) of the Assam Board of Revenue Act, 1962 with frantic efforts precisely to prove his title to the land as the heir of the original pattadar which he failed to prove at the time of hearing of the main application u/s 81 of the Assam Land and Revenue Regulation. The said Review application was numbered as case No. 1 RA (RVW) of 1975. The learned Member of the Board of Revenue by the order dated 30.6.75 referred the matter to the Sub-Divisional Officer, Barpeta and directed to submit a report after making necessary enquiry as to whether the Petitioner is the legal heir of the original pattadar late Sailabal Devi, On receipt of he report, the learned Board of Revenue took up the matter for hearing and by its judgment and order dated 18.3.76 rejected the application of the Petitioner on the ground that there was no scope for review of Its earlier judgment. The learned Board of Revenue held that the provisions of Section 17(3) of the Assam Board of Revenue Act, 1962, though have empowered the Board to direct any authority against whose order an appeal or application is made, to make such further

investigation or to take additional evidence etc. but such scope is limited to an appeal or an application, as the case may be. It was further held that the said provision cannot be applied nor it can be attracted in any manner in a case for an application for review. The learned Board further held that an application for review filed u/s 7 of the Assam Board of Revenue Act, 1962 is analogous to an application filed under Order 47 of the CPC and that the review can only lie on the ground of discovery of new and important matters or on the ground of some mistake apparent on the face of the record. On the above findings, the learned Board of Revenue upheld the preliminary objection of the Respondent and rejected the review application.

4. We fully agree with the findings of the learned Board on this score and we observe that there is no scope for filing a review application on the facts and circumstances of the present case of the Petitioner.

5. Mr. J. Das, the learned Counsel appearing on behalf of the Petitioner has drawn our attention to a Division Bench, decision of this Court reported in AIR 1980 Gauhati 25 (Krianmayee Das v. Assam Board of Revenue) and submitted that in a proceeding for setting aside a sale u/s 81 of the Regulation, possession of a person in the land is irrelevant, The learned Counsel further submitted that the learned Board has committed'' an error in not concluding that the Petitioner though not held to be in possession of the land, yet he being the person interested in the land by his right as heir of the deceased pattadar ought to have allowed the petition on the ground of hardship and/or injustice.

We have gone through the above referred decision of this Court. The two important questions are to be considered in case of saving aside the sale u/s 81 of the Regulation viz., (t) whether the applicant has any interest in the land and (2) whether there was hardship and/or injustice. These are the two factors to be considered in such a case as enunciated in the case of Kiranmayee Das (supra) by the Court.

6. We have heard the learned Counsel for the parties and have carefully perused the record of the case. The findings of the learned Board of Revenue to the effect that are Petitioner failed to establish his right, title and interest in the laud as the legal heir of the original pattadar or to show by any evidence that he is in any way person interested in the land, is a finding of fact and we ate not inclined to interfere with those findings in our writ jurisdiction. In our conclusion we have come to this finding that the Petitioner has failed to establish that he is a person interested in the land competent to file petition u/s 81 of the Regulation to set aside the sale.

7. We, therefore, hold that there is no merit in this petitions and the same stands dismissed. On the facts and circumstances of the case, we make no order as to costs.

