
(2025) 06 GAU CK 0172
In the Gauhati High Court
Case No : WP(C) Of 1360 Of 2021

Maichana Laskar

APPELLANT

Vs

Assam Board Of Revenue And 10 Ors

RESPONDENT

Date of Decision : 17-06-2025

Acts Referred:

Constitution Of India, 1950 — Article 226

Assam (Temporary Settled Areas) Tenancy Act, 1971 — Section 8, 21, 24, 50

Citation : (2025) 06 GAU CK 0172

Hon'ble Judges : Sanjay Kumar Medhi, J

Bench : Single Bench

Advocate : H. Das, S. S. Roy, N. Alom

Final Decision : Dismissed

Judgement

Sanjay Kumar Medhi, J

1. The instant petition has been filed under Article 226 of the Constitution of India putting to challenge a judgment dated 05.01.2021 passed by the learned Assam Board of Revenue (hereinafter ABR) in Case No. 6RA(K)/2015 by which the appeal was dismissed and the order dated 29.09.2010 passed by the learned ADC, Kamrup (M) in Rayati Case No. 12/2010 was affirmed.

2. As per the facts projected, the petitioner had purchased the subject land from one Tagaru Koch by a registered Sale Deed. The said Tagaru Koch had also executed a Deed of Relinquishment. Thereafter, the private respondents who were the recorded pattadar had applied for cancellation of the Rayati khatian and vide the order dated 29.09.2010 passed by the ADC, Kamrup (M) and in the aforesaid Rayati Case No. 12/2010, the application was allowed and the Rayati Khatian was cancelled. It is the case of the petitioner that no notice was issued to her before such cancelation and accordingly an appeal was preferred in the learned ABR which was registered as 6RA(K)/2015. The learned ABR, vide the impugned judgment has affirmed the order passed by the ADC, Kamrup and

dismissed the same. It is the validity and legality of the order of the learned ABR which is the subject matter of challenge.

3. I have heard Shri H. Das, learned counsel for the petitioner. I have also heard Shri S. S. Roy, learned State Counsel for the official respondents whereas Shri N. Alom has appeared for the respondent nos. 5 to 11.

4. Shri Das, the learned counsel has submitted that the land in question was duly transferred by a registered Sale Deed which was purchased from one Tagaru Koch. He has also drawn the attention of this Court to the Deed of Relinquishment executed by the vendor. He submits that thereafter the petitioner had made constructions over the said land and long thereafter the application was made by the private respondents for cancellation of Rayati Khatian. In the said proceeding, no notice was issued and the Rayati Khatian was cancelled which would ultimately affect the rights of the petitioner. He has submitted that the learned ABR had passed the impugned judgment on 05.01.2021 ex-parte as the period concerned was the period of lock down and there were restrictions for the learned counsel for the petitioner to appear. He has also alleged that there was communication gap between the set of lawyers engaged by the petitioner.

5. The learned counsel for the petitioner has drawn the attention of this Court to the Assam (Temporary Settled Areas) Tenancy Act, 1971 and has submitted that under Section 21 thereof, acquisition of ownership rights and intermediary rights by tenants have been defined. He submits that the said provision starts with a non-obstante clause and is a beneficial piece of legislature wherein maximum benefit is to be given to the Rayats. He has submitted that by the initial order dated 29.09.2010 whereby the Rayati Khatian was cancelled, the petitioner was not duly notified of the said proceedings in spite of the facts that her rights were involved in the said case. The learned counsel has also placed reliance upon the following cases:

i. Sri Bikram Phukan Vs The State of Assam reported in 2016 O Supreme (Gau) 242.

ii. Baleswar Rangpi Vs Bahar Ali (Md) & Ors. reported in 2018 (4) GLT 533.

6. In the case of Bikram Phukan (supra) this Court had dealt with the Act in question and the subject matter was the conferment of ownership upon the Rayati on fulfillment of the conditions given the said Act.

7. In the case of Baleswar Rangpi (supra), this Court had held that the Act of 1971 being a beneficial piece of legislation, liberal construction is required whereby maximum benefits can be given to the Rayats.

8. Shri Das, the learned counsel accordingly submits that the instant writ petition be allowed and the impugned judgment be set aside. He has reiterated that the petitioner has constructed residential house by taking permission from the GMC and immense loss would be caused to her without any fault of hers.

9. Per contra, Shri N. Alom, learned counsel for the contesting respondent nos. 5 to 11 has contended that the very foundation of the case projected by the petitioner is erroneous. He has submitted that the land in question could not have been purchased by the petitioner from the Rayat, namely, Togaru Koch in view of clear bar under Section 50 of the Act. It is submitted that simply by executing a Deed of Relinquishment or a Sale Deed, the rights and interest cannot be transferred by a Rayat as it would be against the objective of the Act.

10. Shri Alom, the learned counsel has also refuted the contention advanced on behalf of the petitioner that the proceeding before the ADC was held without notice to the petitioner. He has highlighted the part of the order dated 29.09.2010 which records that not only notices were issued, the petitioner had appeared and submitted the Sale Deed which were taken into consideration.

11. As regards the allegation that the learned ABR had passed the impugned judgment dated 05.01.2021 without hearing the learned counsel for the petitioner, he has submitted that there were continuous default and in any case, the decision rendered is strictly in accordance with law. He has also submitted that the proposition of law in the two case laws relied upon by the petitioner, though not disputed will not have any application in the present case.

12. The rival submissions have been duly considered and the materials placed before this Court, including the original records have been carefully perused.

13. The Act of 1971 was enacted to give certain benefits to the tenants and the Preamble reads as follows:

"Whereas it is expedient to regulate to the rights and liabilities of agricultural tenants and their landlords in temporarily settled lands in the State of Assam."

14. Under Section 8, an occupancy tenant shall have the right of transfer in respect of holding with prior permission of the Government in the manner prescribed. The procedure has been laid down in Section 21 which is under Chapter 6 of the said Act. The amount of compensation which is to be paid has been laid down in Section 24.

15. However, there is a provision in the Act in the form of Section 50 regarding the forfeiture of tenancy. For ready reference Section 50 is extracted herein below:

"50. Forfeiture of tenancy on sub-letting and transfer- If a tenant sub-lets or transfers the whole or any part of his holding otherwise than in accordance with the provisions of this Act, then the tenant's interest thereon shall be forfeited ; and

(a) if the transferee is an agriculturist, he shall be deemed to have become a tenant under the landlord under the same terms and conditions as the transferor;

(b) if the transferee is a non-agriculturist then such transfer shall be void and the Deputy Commissioner may, after such enquiry as may be prescribed, and after

ejecting any persons in possession, place any landless agriculturist as a non-occupancy tenant of the landlord.”

16. The aforesaid Section clearly lays down that if a tenant sub-lets or transfers the whole or any part of the land in question, the interest of the tenant shall be forfeited. In the instant case, the original tenant namely, Tagaru Koch could not have executed any Sale Deed and execution of the Deed of Relinquishment will have no meaning. Though an argument may be made that the Sale Deed has not been put to challenge in a separate suit, this Court is of the view that the vendor did not have any right to transfer such interest which is barred by the Act itself. In that view of the matter, the first stage by which any right, title or interest has been projected to have accrued is apparently fallacious.

17. As regards the order dated 29.09.2010 passed by the ADC, Kamrup in Rayati Case No. 20/2010 is concerned, this Court has observed that notice was indeed served upon the petitioner, who had also placed on record the copy of the Sale Deed. This Court has also gone through the reasons cited by the ADC which appears to be in sync with the objective of the Act.

18. As regards the impugned judgment dated 05.01.2021 passed by the learned ABR, though the learned counsel for the petitioner may could be correct in contending that the same was passed in absence of the learned counsel for the petitioner, the second paragraph of the judgment itself makes it clear that several dates were given in the proceeding which was pending since the year 2015 and a last chance was given in spite of which there was no representation. For ready reference the said observations are extracted herein below:

“The instant appeal has been filed by the appellant in the year 2015 and since then several dates has been fixed for hearing. On last occasion i.e. on 17.11.2020 a last chance was given to both the parties to give their final submission on next date fixed. But the learned counsel for the appellant is absent without intimation and without taking any steps.”

19. Be that as it may, this Court has observed that the learned ABR has not only formulated the grounds of challenge but also has dealt with each ground in accordance with law. A Writ Court exercising certiorari jurisdiction is to oversee that the jurisdiction exercised by the Sub-ordinate Court or Tribunal is within its bounds. In the instant case, it is observed that the jurisdiction exercised by the learned Board was in accordance with law and the impugned judgment has been passed by taking into consideration all the relevant facts and circumstances.

20. As regards the case laws relied upon by the learned counsel for the petitioner, this Court is of the opinion that there is no dispute to the proposition of law laid down in the said decision which would however not come to the aid of the petitioner in the instant case.

21. In view of the above, this Court does not find any merit in this writ petition and accordingly, the same is dismissed.

22. At this stage, Shri Das, the learned counsel for the petitioner has submitted that his client may be given liberty to negotiate with the private respondents for transfer of the land in accordance with law. It is made clear that dismissal of this writ petition shall not be a bar for the parties to settle the matter in accordance with law.

23. Send back the records.