

(2023) 06 GAU CK 0068
In the Gauhati High Court
Case No : Writ Appeal No. 74 Of 2018

Marwari Panchayat

APPELLANT

Vs

Khagorijan Anchalik Krishak Suraksha Samiti

RESPONDENT

Date of Decision : 21-06-2023

Acts Referred:

Allotment of Grazing Grounds in Chapter-II of the Assam Land & Revenue Regulation, 1886 — Rule 95, 95A

Citation : (2023) 06 GAU CK 0068

Hon'ble Judges : Sandeep Mehta, CJ; Arun Dev Choudhury, J

Bench : Division Bench

Advocate : K.N. Choudhury, R. Dubey, P.K. Garodia, Sheeladitya, R.K. Borah

Final Decision : Dismissed

Judgement

Sandeep Mehta, CJ

1. The instant intra-Court writ appeal is directed against the judgment & final order dated 23.11.2017 passed by the learned Single Judge in WP(C) No.1896/2011 (Khagorijan Anchalik Krishak Suraksha Samiti -Vs- The State of Assam & Ors.), whereby the writ petition preferred by the respondent No.1/writ petitioner Samiti was accepted and the settlement of 75 Bighas of Village Grazing Reserve (VGR) land in favour of the appellant (respondent No.3 in the writ petition) located in Majorati VGR in Nizsahar Mouza, District - Nagaon vide the order dated 11.09.1970 issued by the Deputy Commissioner (respondent No.3 herein) and as approved by the State Government vide communication dated 06.10.1970, was interfered with and set aside.

2. A perusal of the impugned judgment & order would reveal that the learned Single Judge entertained the writ petition filed after nearly 40(forty) years of the settlement order accepting the plea of the respondent No.1/writ petitioner on the ground that the order of settlement never came into public domain and that the land in question was continuously being used by the villagers for grazing their

household cattle. For the first time, on 29.05.2010, some people from Nagaon Town made an attempt to occupy the grazing land, whereupon a law and order situation flared up. As the appellant herein started staking claims that it was the owner of the VGR land, the respondent No.1/writ petitioner collected details and information and came across the orders of settlement of the VGR land issued in the year 1970. It was pleaded in the writ petition that as the allottees never asserted their rights upon the VGR land for nearly 40(forty) years and tried to take possession only on 29.05.2010, the writ petition came to be filed and was not a belated action.

3. Pertinent ground to challenge the impugned order as set out in the writ petition was that the mandatory procedure for de-reservation of VGR land, as envisaged under Rule 95A of the Rules for the Allotment of Grazing Grounds in Chapter-II of the Assam Land & Revenue Regulation, 1886 (hereinafter referred to as the "Grazing Rules"), was disregarded. The affected villagers were not provided appropriate opportunity to file objections against the de-reservation proposal. It was pointed out that the Government also noticed illegality in the procedure by observing that the VGR land was being allotted without de-reservation and accordingly, a direction was issued to stop the settlement made in favour of the Goshala.

4. After examining the material available on record, the learned Single Bench, discussed the core issue agitated in the writ petition and adjudicated the same in the following terms:-

"14. Under the Land Revenue Regulation, the Deputy Commissioner is vested with the power for de-reservation of grazing land, but due process for de-reservation specified under Rule 95A of the Grazing Rules, must be followed in all such cases. Neither the case records nor the affidavits of the respondents suggest the publication of any notice inviting objection on the de-reservation proposal. Therefore it is obvious that the affected villagers were denied any hearing or opportunity to file objections. Hence clear infringement of the procedure for de-reservation envisaged by the Grazing Rules, is seen in the present case.

15. Now let us revert back to the fundamental question on whether land reserved for grazing purpose can be allotted, without first undertaking the exercise envisaged by Rule 95A of the Grazing Rules. The case records show that the proposal for de-reservation of the VGR was given much after the settlement was made on 11.09.1970. The learned Govt. advocate has produced the letter dated 15.11.1972, which shows that the proposal (for de-reservation of 75 bighas of land of the Majar Ati VGR) was approved only on 15.11.1972, by the Government.

16. Apart from the above infirmity, the entire allotment was made in a hush hush fashion keeping the affected villagers in the dark. They were denied the opportunity to file objection or to make their claim as envisaged by the Grazing

Rules. Moreover, the allottee too kept quiet about the allotment and never asserted their right of possession for around forty years during which, the local villagers continued to use the land for grazing their household cattle or to keep them protected on the high land, during flood times.

17. In the above circumstances, the allotment of reserved land in secrecy and without de-reservation, cannot be legally sustained and accordingly the allotment made on 11.09.1970 (Annexure-6) to the respondent No.3, is set aside and quashed. However, this verdict will not foreclose the option of the authorities to re-consider allotment, but this must be done only by strict adherence to the due process envisaged by Rule 95A of the Grazing Rules. In other words, notice on proposed de-reservation must be published to invite objection, the affected villagers must be heard and their entitlement be considered. Moreover, the revival of rights of those who surrendered their patta land for constitution of the VGR, must also be taken into account before any final decision is taken on de-reservation. It is ordered accordingly."

The said order has been assailed at the instance of the appellant allottee by way of this intra-Court writ appeal.

5. Mr. K.N. Choudhury, learned senior counsel representing the appellant, vehemently and fervently contended that though the initial steps taken by the authorities for settlement of the land in favour of the appellant Goshala were suffering from infirmity/irregularity of non-adherence to the provisions of Rule 95 of the Grazing Rules but when the State Government realized this procedural error, the settlement proceedings were stayed by communication dated 29.12.1970. Thereafter, fresh de-reservation proceedings were initiated by order dated 2.04.1971 (signed on 30.03.1971). Notice of this proposed de-reservation under Rule 95A of the Grazing Rules was issued seeking objections and was transmitted to the Gaonbura Majar Ali in accordance with the procedure provided under the Grazing Rules.

6. Thereafter, the Deputy Commissioner, Nagaon issued the order dated 22.04.1972 (wrongly mentioned as 22.04.1971 in the communication Annexure-15 annexed with the writ petition) recommending the settlement of 75 Bighas of land for the appellant Goshala with the observation that only a small group of persons had been objecting to the Goshala as well as the settlement made to Kanak Chandra Saikia, plenty of land would still be left for the VGR after the two settlements are given and consequently, the proposal for already settled 75 Bighas of land was again forwarded to the Government for approval. On receiving this communication, the State Government by letter dated 15.11.1972 proceeded to de-reserve the 75 Bighas of land covered by part of Dag Nos.156/6; 220/9; 6/678 and 4/682 from Majorati VGR in Nijshahar Mouza for allotment to Gopal Goshala.

7. Mr. Choudhury urged that the recommendation of the Deputy Commissioner, Nagaon clearly reflects that objections were invited and after due consideration

of the fact that alternative land was available for the village cattle grazing purposes, de-reservation was recommended. He urged that the impugned order of settlement did not suffer from any infirmity or illegality whatsoever warranting interference and thus, the learned Single Bench committed grave error in law while entertaining and accepting the highly belated claim of the respondents in the captioned writ petition filed with a gross delay of 40(forty) years.

8. Per contra, Mr. Sheeladitya, learned counsel representing the respondent No.1 has vehemently and fervently opposed the submissions advanced by the appellant's counsel. He contended that as per the Rule 95A of the Grazing Rules, de-reservation could only have been recommended after forming a positive opinion that the village grazing ground was wholly or in part not needed for the purpose for which it was allotted. He submitted that the Government authorities themselves found that the manner in which the settlement proceedings were undertaken was suffering from irregularity and illegality and thus, the order of de-reservation is on the face of the record, illegal and contrary to the provisions of the Grazing Rules. He thus, implored the Court to dismiss the appeal and affirm the judgment passed by the learned Single Judge.

9. Mr. R.K. Borah, learned Additional Senior Government Advocate, Assam, however, supported the arguments advanced by the appellant's counsel and urged that settlement made in favour of the appellant was in accordance with law.

10. We have given our thoughtful consideration to the submissions advanced at Bar and have gone through the impugned judgment & order and the material available on record. First and foremost, we are of the view that the bogey of delay cannot be a ground to throw out the challenge laid by the respondent/writ petitioner in the writ petition because they had been using the land for grazing purposes and only in the year 2010, when the appellants tried to assert their rights over the land that the settlement order came to light.

11. The procedure for de-reservation of the grazing ground is governed by Rule 95A of the Grazing Rules, which reads as below:-

"95-A. If at any time the Deputy Commissioner is of opinion that a village grazing ground constituted under the foregoing rules is wholly or in part not needed for the purpose for which it was allotted, he shall publish a notice regarding the proposed cancellation of the allotment, hear objections and forward his proceedings together with his recommendation to Government for final orders. The manner of publication of notice and hearing objections shall be the same as in the foregoing rules. In making his recommendation the Deputy Commissioner shall consider if any payment is to be made to the villages as a body for the cost of demarcation if any borne by them originally and whether the claims of persons who may have surrendered land for the purpose of constituting the reserve should revive on cancellation of the reserve or part thereof. The Government will pass orders either accepting, rejecting or modifying the

recommendation of the Deputy Commissioner.”

12. Manifestly thus, the very proposal of de-reservation has to be preceded by formation of affirmative opinion that a village grazing ground constituted under the foregoing Rules is wholly or in part, not required for the purpose for which it was allotted. Only after formation of such opinion, the procedure of issuing notice of the proposed cancellation, hearing objections and then forwarding the proceedings together with the recommendation to the Government for final orders follows. Apparently, no settlement of VGR land can be made without following this procedure, which is mandatory in nature.

13. The documents placed on record of the writ petition make very interesting reading. Initially, the Deputy Commissioner acted upon the application dated 10.10.1968 of the appellant and without calling for the objections, forwarded the de-reservation proposal dated 11.04.1970 to the State Government and which in turn, by order dated 11.09.1970 (Annexure-6 to the writ petition), approved the settlement of land in favour of the appellant. Notice to deposit the settlement premium to the tune of Rs.4875/-was issued to the appellant on 05.10.1970 (Annexure-7 to the writ petition), which the appellant deposited on the very same day. A formal order of delivery of possession was also issued on 06.10.1970 (Annexure-8 to the writ petition). It seems that some of the villagers filed an objection and thereupon, the settlement was stayed by the Government by order dated 29.12.1970. Thereafter, the Deputy Commissioner issued another letter dated 02.04.1971 to the State Government mentioning that the possession of land had been handed over to the Goshala even before the letter dated 29.12.1970 was received and that the Goshala had also deposited the premium on 06.10.1970. The State Government communicated back by letter dated 19.08.1971 (Annexure-11 to the writ petition) as to how inspite of public objections, possession of the land was delivered and premium realized, more so when the land had not been de-reserved.

14. Thereafter, the Deputy Commissioner started fresh proceedings of issuance of notice, inviting objections, etc., as have been referred to (supra). The recommendation letter dated 22.04.1971 (Annexure-15 to the writ petition) was again forwarded to the State Government, wherein it was expressed that plenty of land would still be left for VGR despite the settlement. The letter also indicated that the possession of the land had already been delivered to the Goshala after realizing premium and thus, there would be complications if allotment was cancelled and formal settlement was not given. Relevant extracts from the letter (Annexure-15 to the writ petition) are reproduced herein below for the sake of ready reference:-

“The site was inspected by me long ago and I am of the view that this is a good place for Go-sala and the low lying land for settlement with deserving landless persons. Further since the Go-sala has already been delivered the possession after realizing premium I think there will be a lot of complications if the allotment is cancelled and formal settlement not given. The institution ought to be

encouraged.

In the circumstances I would recommend the settlement of both 75 bighas of land with the Go-sala (already settled) and to settle 40 bighas of low lying land covered by dag No.156/6 with Sri Kanak Chandra Saikia and others who are the landless and most deserving persons after evicting the undeserving persons who are now encroaching.”

15. On receiving this recommendation, the State Government passed the order dated 15.11.1972 approving the proposal for de-reservation of 75 Bighas of land covered by part of Dag Nos.156/6; 220/9; 6/678 and 4/682 for allotment to Gopal Gosala. It is relevant to mention here that neither in the affidavit-in-opposition of the State Government nor in the reply filed by the appellant, is there a reference to any order of settlement having been issued in favour of the appellant after the proposal for de-reservation was approved by the State Government vide order dated 15.11.1972. Ex-facie, the recommendation dated 22.04.1971 (Annexure-15 to the writ petition) is in gross contravention to Rule 95A, reproduced herein above, because the Deputy Commissioner did not form any opinion in terms of the requirement of the Rule that the VGR land sought to be de-reserved was wholly or partly not required for the purpose for which it was allotted. In absence of recording such opinion, the proposal for de-reservation could not have been proceeded with.

16. Furthermore, there is another very important aspect of the matter. As is apparent, in the first round of proceedings, the Deputy Commissioner processed the application for de-reservation without calling for objections from the people of the village and the State Government, without there being de-reservation from VGR, approved the settlement of the land by order dated 11.09.1970. On receiving this order, the Deputy Commissioner notified the appellant to pay the premium to the tune of Rs.4875/- on 5.10.1970. The premium amount was deposited on the very same day. The State Government, however, realized that the possession of the land had been delivered and premium received without de-reserving the land, which was a grossly illegal exercise. Entering settlement of VGR land without de-reservation is nothing but putting the cart before the horse. As the earlier proceedings were declared to be irregular by the State Government, manifestly the settlement made earlier would not stand in the eyes of law.

17. Perusal of the impugned order and the documents available on record clearly establishes that the initial settlement was made in favour of the appellant on 11.09.1970, whereas the proposal for de-reservation was approved by the Government only on 15.11.1972. As the earlier round of proceedings were declared to be irregular/ illegal by the Government vide order dated 19.08.1971, the settlement earlier made lost the sanction of law and became non est. Hence, even if it is believed for a moment that the subsequent exercise of de-reservation was taken, apparently as no settlement was made as a consequence thereof, no rights accrued in favour of the appellant.

18. In wake of the discussions made above, we do not find any justifiable reason so as to interfere in the impugned judgment & order dated 23.11.2017 passed by the learned Single Judge in WP(C) No.1896/2011. Hence, the appeal fails and is dismissed as being devoid of merit.