
(2013) 11 GAU CK 0044
In the Gauhati High Court
Case No : W.P. (C) No. 3630 of 2012

Nabam Tapin

APPELLANT

Vs

State of Assam

RESPONDENT

Date of Decision : 28-11-2013

Acts Referred:

Citation : (2014) 3 GLT 281

Hon'ble Judges : Nishitendu Chaudhury, J

Bench : Single Bench

Final Decision : Disposed Off

Judgement

Nishitendu Chaudhury, J.—I have heard Mr. S.S. Dey, learned Senior counsel for the petitioners and Mr. U.K. Nair, learned counsel for the respondents. I have also heard Ms. V.L. Singh, learned counsel appearing for the official respondent. By this application under Article 226 of the Constitution of India two petitioners have challenged issuance of periodic patta in favour of respondent No. 5 on 20.06.1997 by way of conversion of earlier annual patta granted to the father of the respondent No. 5. According to the writ petitioners, the said area is covered by a notification u/s 162 of the Assam Land and Revenue Regulation and as such the said land can ordinarily be settled with any tribal only. The case of the writ petitioner is that the respondent No. 5 is non tribal and as such granting of patta in his favour is illegal.

2. Mr. U.K. Nair, learned counsel for the respondents submits that his predecessors had been in possession of the land since pre independence days and as such in view of Section 163(2)(c) there is no bar for granting settlement to the petitioner by way conversion of annual patta into periodical patta on the basis of inheritance. The learned Government advocate has drawn my attention to the affidavit filed on behalf of the official respondent. In paragraph 12 of the said affidavit it has been stated as follows:

"That with regard to the statements made in paragraph 10 of the petition, the

deponent begs to state that the land covered by Dag No. 443 is settled in the name of Shri Narendra Bora, S/O. Lt. Sisuram Bora during the last re-settlement operation being he is an indigenous person of Tribal Belt. Moreover, as per record he has got patta land in Tribal Belt prior to last settlement operation. After the death of Sri Narendra Bora the said land in question mutated in the name of Sri Bireswar Bora as legal heir of the pattadar."

3. The above paragraph itself shows the nature of consideration basing on which the settlement was made in favour of the private respondent. The scope of settling land to a non-tribal has been given on limited ground u/s 163(2)(c) of the Assam Land and Revenue Regulation (hereinafter referred to as "the regulation") Section 163(2)(c) is quoted below:

"163(1).....

(2).....

(c) Thirdly, if the extent of cultivable land available for settlement in belt or block be large enough, the bona fide needs of-

i) The persons belonging to the other classes of people residing in the belt or block from before the constitution of the belt or block;

ii) The persons belonging to the classes notified under sub-section (2) of Section 160, who are living elsewhere in the State."

The condition precedent for granting settlement to non-tribal under this section are:

(i) There is large area of cultivable land; and

(ii) The prospective allottee or his ancestors has/have been in possession from a period before inclusion of the area in tribal belt.

4. After hearing the learned counsel for the parties and on perusal of the aforesaid materials it does not appear that the jurisdictional authority had considered relevant aspects of the matter while issuing patta to the private respondent. Section 163(2)(c) empowers the settling authority to settle land with anyone other than in class of people for which the area is declared provided that large cultivable land is available in the block belonging to other class of people residing in the belt or block from period before the area was brought under Tribal belt. The preconditions for settlement to other class of people would be first, whether there is large amount of land under the Tribal belt within the meaning of Chapter-X of the Assam Land and Revenue Regulation Act 1886 and secondly, whether the person other than members of the class of people for whom the tribal belt is created has been staying there from before the constitution of belt or block. Paragraph 12 of the affidavit referred to above does not show that aforesaid considerations were in the mind of the Additional Deputy Commissioner when annual patta was converted into periodic patta or when annual patta was granted. In that view of the matter, I am inclined to dispose of the petition by

setting aside the impugned order with direction to the Deputy Commissioner to himself hold an enquiry in this matter in the light of Section 163(2)(c) of the Assam Land and Revenue Regulation, 1886 and thereupon to decide as to whether the respondent No. 5 is to be settled with the land by conversion of the annual patta land into periodic one. The whole exercise shall be done within a period of three months after receipt of certified copy of this order. Writ petition is disposed of. No order as to cost.