
(1998) 08 GAU CK 0018
In the Gauhati High Court
Case No : Civil Rule No. 3568 of 1995

Paresh Ch. Goswami

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 20-08-1998

Acts Referred:

Assam (Temporarily Settled Areas) Tenancy Act, 1971 — Section 59(2)
Constitution of India, 1950 — Article 226

Citation : (1998) 3 GLT 472

Hon'ble Judges : A.P. Singh, J

Bench : Single Bench

Advocate : C. Baruah, for the Appellant; B.C Das, for the Respondent

Judgement

A.P. Singh, J.—Heard Mr. C. Baruah, learned Counsel for the Petitioner. By means of present writ petition under Article 226 of the Constitution, Petitioner has challenged the order dated 13th April, 1995 passed by the Govt. of Assam, Revenue Reforms Deptt., Dispur in exercise of power u/s 59(2) of the Assam (Temporarily Settled Area) Tenancy Act, 1971 whereby the Petitioner's application for revision of tenancy records of rights in respect of Khatian No. 75 of village Janji of Mouja Borduar in Palasbari in the District of Kamrup has been rejected.

2. The brief facts of the case are that Petitioner is a recorded pattadar of KP Patta No. 201 (Dag No. 865) Respondent No. 4 obtained Khatian on the basis of possession claimed tenancy right over the said land. Accordingly Revenue authorities issued notice to the Petitioner. It was at this stage that Petitioner challenged the correctness of the record of rights including issuance of khatian in favour of the Respondent No. 4 by the revenue authorities in respect of the land by filing revision petition before the State Government u/s 59(2) of the Act. In his revision petition, amongst other things, Petitioner pleaded that entire exercise for entering the name of Respondent No. 4 in the khatian as tenant was carried out by the Revenue authorities secretly without his knowledge and

without affording opportunity of hearing to him as also without following the procedure which is prescribed in that regard under the Act and the Rules framed thereunder.

3. On Petitioner's revision the State Government issued notices to Respondent No. 4 as well as to the Deputy Commissioner. Deputy Commissioner submitted his para-wise comments whereas Respondent No. 4 appeared before the State Government. The record too was summoned by the State Government. From the records it was found by the Government that Petitioner had wrongly pleaded in the revision petition before it that he was not aware of the proceeding in relation to the issuance of khatian in favour of Respondent No. 4 at any stage and that khatian in respect of the land in dispute was issued to the Respondent No. 4 behind his back. State Government found from the record that Petitioner had appeared before the Settlement Officer and contested the case of Respondent No. 4. For issuance of khatian in respect of the land in dispute and the Settlement Officer after hearing the parties decided the case against the Petitioner after affording opportunity of hearing to him. Against the order of the Settlement Officer an appeal and thereafter a second Appeal though was provided under the Act but had not been filed by the Petitioner. He however approached the State Government by filing the revision after lapse of about 11 years from the date the passing of the order by the Settlement Officer. In the above circumstances, State Government found that the case set up by the Petitioner was wholly false.

4. Before the State Government Petitioner was raised the plea that the land could not be settled in favour of Respondent No. 4 as it lay in tribal area and Respondent No. 4 not being a tribal no khatian could have been issued in his favour.

5. Dealing with this aspect of the case set up by the Petitioner State Government observed that though the land fell in tribal area but the said area was scarcely inhabited by the tribals. The State Government also found that Respondent No. 4 had settled in that area for a very long time although he was not a tribal. Since he had been in possession of the land for a long time there was no reason for denying him the advantage of his long possession over the land in dispute. While taking this view the State Govt. also took into consideration the circular which had been issued by it in this regard on which strong reliance has been placed by the Petitioner before me. On the above view the State Government dismissed the Petitioner's revision petition.

6. In the present writ petition, Petitioner has not challenged the observation made by the State Government to the effect that from the record it was clear that the Petitioner had contested the case of Respondent No. 4 before the Settlement officer. Despite that the Petitioner has reiterated his grievance in the writ petition as well that at no stage he had been provided the opportunity of hearing before the issuance of khatian by the Settlement Officer in favour of Respondent No. 4 in respect of the land in dispute and that the entire proceedings in that regard had been carried out behind his back to his complete

ignorance and knowledge. This plea of the Petitioner taken in the writ petition being false would disentitle him from seeking any relief from this Court in exercise of its extra ordinary jurisdiction under Article 226 of the Constitution. For entitling oneself to get relief from this Court in exercise of the aforesaid power the applicant should have come to the Court with clean hands. He has to speak truth and make correct statement in the petition in a straight forward manner, It is strange that despite the observations made by the State Government in the impugned order to the effect that the Petitioner had contested the case of Respondent No. 4 before the Settlement officer, Petitioner in a most insolent manner has again chosen to repeat his false allegations that entire exercise in relation to issuance of khatian to Respondent No. 4 in respect of the land in dispute before the Settlement Officer was carried out without his knowledge and that he was never made aware of the said proceedings.

7. I have also examined the merits of the case. Once it is established that Petitioner had participated in the proceedings before the Settlement Officer to oppose the case set up by Respondent No. 4, Petitioner cannot be heard saying that he had not been afforded opportunity of hearing or that the procedure established in the Act and the Rules for issuance of khatian to Respondent No. 4 had not been followed.

8. In the above situation, it was open for the Petitioner to have challenged the order of the Settlement Officer by filing appeal which was however not done by him. He kept quite and seemingly felt satisfied with the order of the Settlement officer and it was after about 11 long years that he woke up to prefer the revision petition before the State Government on wholly false and concocted grounds. In the circumstances, in my opinion the State Government was absolutely right in dismissing the revision petition and ignoring the plea of the Petitioner regarding the land falling in the tribal area so as to disqualify Respondent No. 4 for the settlement of the land in dispute. In my opinion, the State Government has given cogent reasons for rejecting Petitioners revision. Since, Respondent No. 4 had been cultivating the land for very long time, the State Government was fully justified in not disturbing the record standing in the name of Respondent No. 4 as tenant of the land in dispute. Even if the Petitioner's plea that Respondent No. 4 was disqualified for settlement of the land being a non tribal, had force, this Court would not come to Petitioner's help first for the reason that he has not approached this Court with clean hands. Secondly he has allowed 11 long years to pass before he approached the State Government by invoking its revisional power.

9. On totality of the reasons given herein above and also for the reasons given by the State Government in its impugned order, I find no merit in the writ petition,

10. The petition is accordingly dismissed. Since Respondent No. 4 has not appeared, there shall be no order as to costs.