

(2018) 01 GAU CK 0057
In the Gauhati High Court
Case No : 6571 of 2011

PINAK KANTI ROY

APPELLANT

Vs

THE STATE OF ASSAM AND ORS

RESPONDENT

Date of Decision : 29-01-2018

Acts Referred:

Citation : (2018) 01 GAU CK 0057

Hon'ble Judges : Suman Shyam

Bench : Single Bench

Advocate : B MALAKAR, N. Dhar, S.R. Baruah, M.H. Rajbarbhuyan

Final Decision : Disposed

Judgement

1. Heard Mr. N. Dhar, learned counsel for the writ petitioner. Also heard Mr. S.R. Baruah, learned Govt. Advocate, Assam appearing for the

respondent Nos. 1 to 5 as well as Mr. M.H. Rajbarbhuyan, learned counsel appearing for the respondent Nos. 6, 7 and 8.

2. The order dated 07-10-2010 passed by the Assam Board of Revenue in Appeal Case No. 101 RA(KJ) of 2007 is under challenge in this writ

petition. By the impugned order, the learned Chairman of the Assam Board of Revenue has set aside the order dated 22-02-2006 passed by the

Settlement Officer in Misc. Case No. 02/2006 granting mutation in favour of the writ petitioner in respect of the land in question.

3. It appears from the record that the writ petitioner had applied for mutation in respect of two plots of land covered by Dag No. 453 in Khatian

No. 69 of Mouza- Karnamadhhu Part-I, Paragona Kushiarkul of Karimganj district and land covered by old Dag No. 538, 540 under Khatiyani

No. 77 of the same mouza. The aforesaid land was apparently purchased by the

respondent Nos. 6, 7 and 8 on the basis of sale deed No. 5266

dated 22-11-2005 and therefore, the private respondents have challenged the order of mutation granted in favour of the writ petitioner on the

ground that the purchase made by Sri Lal Mohan Bhattacharjee i.e. the predecessor-in-interest of the writ petitioner is invalid.

4. It is evident from the record that the respondent Nos. 6, 7 and 8 had instituted Title Suit No. 434/2006 in the Court of Munsiff No. 2,

Karimganj against the writ petitioner seeking a decree of declaration of right, title and interest over the aforesaid plot of land as well as for

consequential reliefs. During the pendency of the civil suit, the learned Revenue Board had set aside the order of mutation dated 22-02-2006

granted in favour of the writ petitioner by holding that the purchase of the land by the predecessor-in-interest of the petitioner was "fraudulent" on

account of the fact that the land of a tea company was not transferable and also on the ground that the land in question was acquired by the

Government before the same was purchased by the registered deed of sale by the predecessor-in-interest of the petitioner.

5. Mr. Dhar, learned counsel for the petitioner has invited the attention of this Court to Section 100 of the Assam Land and Revenue Regulation,

1886 (for short ""Regulation of 1886"") to contend that when there is an objection regarding the question of title over a plot of land, the revenue

authorities are required to be guided by the decree of the civil court. By referring to the provisions of Rules 42 and 43 of the Rules framed under

the Regulations of 1886, Mr. Dhar has further argued that there is no perpetual bar in transfer of land covered under special cultivation grant and

therefore, the reasoning of the learned Revenue Board is clearly erroneous on the face of the record. The learned counsel further contends that

during the pendency of the civil suit it was not correct for the Board of Revenue to make a declaration as to the validity of land transaction made

by means of registered deeds of sale.

6. Mr. Rajbarbhuyan, learned counsel appearing for the private respondents has fairly submitted that there was a civil suit pending between the

parties involving title dispute over the same plot of land but he submits that due to lack of contact with his client since past many years, he is not in

a position to apprise this Court as to the outcome of the civil suit.

7. After hearing the learned counsel for the parties and on consideration of the materials available on record, I find that there is a consensus at the bar that the validity of the sale transactions and the question of title of the contesting parties over the disputed land is a matter which would be governed by the decree passed in Title Suit No. 434/2006 instituted by the respondent Nos. 6, 7 and 8 against the writ petitioner concerning the same plot of land. But during the pendency of Title Suit No. 434/2006, the learned Board has passed the impugned judgment and order dated 07-10-2010, making certain observations therein, touching upon the question of right, title and interest of the parties over the land. In the absence of any statutory provision permitting exercise of such jurisdiction upon the Revenue Board, the learned Chairman of the Board, in the opinion of this Court, was not correct in making observation regarding the validity of the title over the suit land.

8. Section 100 of the Regulation of 1886 makes it eminently clear that when there is a dispute as to the question of title over any land which has not been determined by the civil court, the Deputy Commissioner shall not proceed with the question of partition of any revenue paying estate and in case of such objection being raised, the Deputy Commissioner may direct the applicant to institute a suit within the time fixed. Sub-Section 3 of Section 100 further provides that on a suit being institute to try any objection under this section, the Deputy Commissioner shall with reference to the objection be guided by the order passed by the civil court in the suit. Going by the scheme of the Regulation of 1886, it is apparent that the Deputy Commissioner exercises his power in the matters of granting mutation as revenue authority and would not have any jurisdiction or authority to entertain any dispute regarding question of title over any plot of land.

9. The Board of Revenue exercises appellate jurisdiction in entertaining an appeal against the order passed by the Deputy Commissioner or Settlement Officer or Survey Officer under the provision of Section 147 read with Section 151 of the Regulation of 1886. The Regulation of 1886 does not confer any power upon the Deputy Commissioner, Settlement Officer or Survey Officer of a district to decide any contentious issue of title over any plot of land and if and when such an objection is raised, the said authority is required to be guided by the decree passed by the civil

court in the matter. If that be so, the Revenue Board in exercise of appellate jurisdiction under Section 147 of the Regulation of 1886, in the

opinion of the Court, would also not have any jurisdiction to pass any order affecting the right, title and interest of the parties over any plot of land

that too, when a civil suit is pending before the competent court pertaining to the disputed land.

10. In such view of the matter, this Court is left with no hesitation in holding the impugned judgment and order dated 07-10-2010 is unsustainable

in the eye of law and the same is accordingly set aside. This writ petition is therefore, disposed of by providing that the claim of mutation over the

disputed plot of land would be governed by the decree that may be passed in the title suit stated to be pending before the civil court. There would be

no order as to cost.