(2011) 07 GAU CK 0009

In the Gauhati High Court

Case No : Writ Petition (C) No. 4962 of 2008

Pranab Kumar Ghosh and Another — APPELLANT

Vs

Assam Board of Revenue and Others — RESPONDENT

Date of Decision : 21-07-2011

Acts Referred:

Assam Board of Revenue Act, 1962 — Section 7
Assam Land and Revenue Regulation, 1886 — Section 147, 151, 40, 50

Citation : (2011) 5 GLR 523

Hon'ble Judges : U.B. Saha, J

Bench : Single Bench

Advocate : G. Lal, for the Appellant; B.N. Gogoi, S. Kalita and Mr. A. Ganguli, for the Respondent

Final Decision : Allowed

Judgement

U.B. Saha, J.—The challenge in this writ petition is the judgment, dated 5.5.2008, passed by the Assam Board of Revenue, Guwahati, (''Board of Revenue'') in 10 RA(K)(RVW)/07 whereby and whereunder the petition u/s 7 of the Assam Board of Revenue Act, 1962 filed by the petitioners praying for review of the judgment dated 22.5.2007 passed by the Board of Revenue in Appeal No. 106 RA(K)/2006 has been dismissed.

2. The pleaded case of the petitioners, in brief, is that the petitioners purchased 1 katha, 10 lechas of land from the respondent No. 5 vide sale deed No. 9885 of 2005 duly executed on 12.8.2005 by her which was registered in the office of the Sub-Registrar, Guwahati on 16.8.2005 after obtaining requisite sale permission issued from the office of the Deputy Commissioner, Kamrup, Guwahati vide Memo Dated 8.7.2005 (Annexure 2) and Guwahati Metropolitan Development Authority (GMDA) vide order dated 4.8.2005 (Annexure 3).

3. Thereafter, the petitioners applied for mutation of the aforesaid land in their names, but the Senior Assistant Settlement Officer, the respondent No. 3 herein, rejected the said prayer by an order dated 5.12.2005 (Annexure 4) passed in

Misc. Case No. 55/05-06 stating, inter alia, that:

At present the land is disputed and WP(C) No. 4082/2005 is pending before the hon''ble Gauhati High Court between Smt. Manjula Haque Islam v. State of Assam and Others. Since the land applied for mutation is disputed and the name of the seller is struck off from the land records, the petition for mutation cannot be considered for mutation. Hence, the petition is rejected.

4. Against the order of respondent No. 3, the petitioners filed an appeal which was registered as R.A. case No. 14/05-06. The Settlement Officer, Guwahati, the respondent No. 2 herein, by an order dated 23.8.2006 (Annexure 6) disposed of the said appeal observing that L

It is evident that Smt. Manjula Haque Islam S/o late Amirul Haque has submitted petition to the hon''ble Gauhati High Court for issue of writ under WP(C) No.4082/2005 against the order of the hon''ble ABR dated 20.5.2005 in case No. 107/RA(K)/2002 over the disputed land in this case. The hon''ble High court has already issued notices all concerned and the case is pending till now. Incidentally the above Manjula Haque Islam is the seller of land to the appellants. In view of the above, order of the Sr. A.S.O. as maintained above is upheld. Appeal is disposed of.

5. The petitioners then approached to the Assam Board of Revenue, Guwahati, respondent No.1 herein, by filing an appeal u/s 147(a) read with section 151 of the Assam Land and Revenue Regulation, 1886 against the order of the respondent No.2 which was registered as 106 RA(K)/2006. The Board of Revenue did not interfere with the impugned order dated 23.8.2006 (Annexure 6) passed by the respondent No.2 and while dismissing the appeal being not maintainable by its judgment dated 22.5.2007, it held that hon''ble High Court''s stay order dated 6.6.2006 in WP(C) No.4082/2005 does not amount to cancellation of the Board''s impugned order dated 20.5.2005 on declaring title over the suit land in favour of the respondent No. 1 in the revenue appeal, i.e. the respondent No. 5 herein, from whom the petitioners purchased aforesaid land.

6. Thereafter, the petitioners again filed an application u/s 7 of the Assam Board of Revenue Act, 1962 praying for review of the judgment dated 22.5.2007 passed by the Board of Revenue in appeal No. 106 RA(K)/2006. The review petition was also dismissed by the Board of Revenue by an order dated 5.5.2008 (Annexure 10).

7. Being aggrieved by the said order, the petitioners have filed the instant writ petition for setting aside the impugned order dated 5.5.2008 and also for directions to grant mutation to the petitioners in respect of the land they purchased vide sale deed No. 9885 of 2005.

8. It is to be noted here that the Board of Revenue passed the order dated 20.5.2005 allowing appeal No. 107 RA(K)/2002 u/s 147 read with section 151 of the Assam Land and Revenue Regulation, 1886 filed by the husband of the

respondent No.5 herein which has been challenged in WP(C) No.4082 of 2005.

9. None of the respondents filed any affidavit in opposition reverting the contention of the petitioners in the writ petition.

10. Dr. Lal, the learned counsel of the petitioners submits that admittedly the petitioners have purchased 1 katta, 10 lechas of land from the respondent No.5, Smt. Manjula Haque Islam vide sale deed. No. 9885 of 2005 duly executed on 12.8.2005 after obtaining proper permission from the Deputy Commissioner, Kamrup, guwahati vide Memo dated 8.7.2005 as well as GMDA vide order dated 4.8.2005, Annexures 2 and 3 to the writ petition respectively.

11. He further submits that it is also admitted position that the respondent No.5 is the owner of the land in question and the said land was mutated in her name which was subsequently cancelled by the Board of Revenue against which she preferred WP(C) No. 4082 of 2005.

12. He again contended that vide order dated 5.12.2005, the learned senior Assistant Settlement Officer rejected the prayer for mutation of the petitioner on two grounds -- (1) that the name of the seller Smt. Manjula Haque Islam (respondent No.5) was struck off from Dag No. 935 (old) 2453(new) covered by K.P. Patta No. 305(old) 30(new) by order of the Assistant Settlement Officer and that the records were corrected accordingly; (2) at present the land is disputed and WP(C) No. 4082/2005 is pending before this court which was filed by the vendor of the petitioner Smt. Manjula Haque Islam.

13. His further contention is that the senior Assistant Settlement Officer in his order nowhere stated when the name of the vendor of the petitioner was struck off from the record. According to him, even on 7.12.2004 when the petitioner verified the record of the land in question, the name of his vendor Smt. Manjula Haque Islam was very much in existence which would be evident from Annexure 5 and 5A to the writ petition.

14. He finally contended that both the Settlement Officer and Senior Assistant Settlement Officer failed to consider the fact that the Deputy Commissioner, Kamrup has granted permission for sale and purchase of the land in question on 8.7.2005 vide Annexure 2 and consequent thereto, the GMDA has also granted permission on 4.8.2005 vide Annexure 3 to the writ petition. Therefore, in the Government record, even on 4.8.2005, the vendor of the petitioner was shown as owner of the land. More so, on 6.6.2005, in WP(C) No.4082 of 2005 this court also stayed the judgment and order of the Revenue Board dated 20.5.2005 passed in case No. 107(RA)(K)/2002, thereby, the order of the Settlement Officer affirming the order of Assistant Settlement Officer in favour of the respondent No.5 was in operation and, thus, she had/has right to transfer the land and handing over the possession of the land. He also contended that from the affidavit of the respondent No.4, the Settlement Officer, Resettlement Operation, in his affidavit in WP(C) No.4082 of 2005 specifically stated that dispute over the possession was still on and it changed time and again, but recently Smt. Manjula

Islam, the respondent No.5 herein has sold 1 katta, 10 lechas land under Dag No. 935 of K.P Patta No. 305 to the petitioner vide registered sale deed No. 9885 dated 16.8.2005 and at present both the purchasers are in possession, meaning thereby the petitioner is also in possession.

15. He further contended that for granting mutation, possession is the sine quo non and admittedly, the petitioner is in possession over the land having purchased the same from the respondent No.5. Therefore, the senior Settlement Officer as well as the Revenue Board committed error by not granting mutation in favour of the petitioner on the ground that at present there is a dispute regarding the land in question and the writ petition being No. 4082 of 2005 pending in the High Court. He also referred to a decision of this court in Chandravadan Chunilal Shah and Others Vs. State of Gujarat and Others, wherein a coordinate Bench of this court while dealing with the provisions of sections 40 and 50 of the Assam Land and Revenue Regulation, noted that the Settlement Officer has to frame for each estate a record of right in the prescribed manner and entry in the record of rights is to be founded on the basis of actual possession and here admittedly the petitioner is in possession.

16. He also referred that decision of this court in Abdul Hasem and Ors. v. Haji Mahiuddin and Ors. AIR 1967 A&N 9 , wherein it is noted that entries in the record of rights are to be founded on the basis of actual possession. He also referred Dayal Hari Paul and Others Vs. Pradip Kumar Lahkar and Others, wherein this court again considering the provisions of section 50 of Assam Land and Revenue Regulation, 1886 held that order of mutation is only to facilitate payment of land revenue and the Revenue Court is not entitled to decide the title in respect of landed property which is the subject-matter of civil court. The Apex Court also in various decisions held that the order of mutation does not confer any title.

17. He finally contended that as this court is taking up the WP(C) No.4082 of 2005 and the instant writ petition for hearing, if this court decides the writ petition of the respondent No.5 in her favour, then the petitioner would be entitled to get mutation and in that case, this court has the power even to direct the settlement authority to allow the prayer of the petitioner for mutation. In support of his aforesaid contention, he also relied upon the decision in Bharat Chandra Haloi v. Jogeswar Sarma ILR (1949) 1 Assam 390 wherein the Chief Justice of Assam High Court while dealing with the revenue appeal relating to mutation noted that:

[F]or the respondent, the learned advocate contended that mere succession to an estate is not sufficient and that the person succeeding must also show that he obtained possession of the interest so transferred. As I pointed out above, the learned Additional Deputy Commissioner did not go into question of possession at all and did not reverse the decision of the Sub-Deputy Collector on the ground of want of possession. Further, the order of the Sub-Deputy Collector certainly shows some possession on the part of the appellants and indicates that there had been possession to a greater extent, but that they were subsequently ousted. In my opinion, there is nothing in the material before the court on the question of possession to justify me in holding that the appellants did not obtain possession.

In the result, therefore, the appeal is allowed. The order of the learned Additional Deputy Commissioner is set aside, and the appellants'' application for mutation is directed to be allowed.

18. In view of the above position. Dr. Lal further contended that this court has also the power to direct the Revenue authority for allowing the application for mutation of the petitioner.

19. Mr. Gogoi, the learned Government Advocate while resisting the submission of Dr. Lal would contend that the revenue authority, i.e., the Settlement Officer and the Board of Revenue rejected the prayer for mutation of the petitioner on the ground of pendency of the writ petition filed by the respondent No.5, though there is no dispute regarding the possession of the petitioners over the land in question in view of the affidavit of Settlement Officer in WP(C) No.4082 of 2005, as the respondent No. 4 therein..

20. He finally submits that the original record relating to the mutation proceeding is before the court and if the court after going through the relevant file and the affidavit of Settlement Officer in WP(C) No. 4082 of 2005 considers that the petitioner is entitled any relief sought for, then the court may allow the same for the interest of justice.

21. Mr. Kalita, learned counsel for the respondent No. 5 submits that when the respondent No.5 has transferred the land in question by way of executing a sale deed in favour of the petitioner she cannot oppose the prayer for mutation of the petitioner. He further submits that fact remains that the original pattadar of the land was the father of the respondent No.5 and the respondent No.5 get the aforesaid property on the basis of the oral gift by her father and it is also settled by the Apex Court that gift by a Mahammedan to another Mahammedan is not required to be in writing and consequently need not be registered under the Registration Act and gift being completed after taking over the possession of the land. In the instant case, admittedly the writ petitioner is in possession of the land in question as would be evident from the affidavit of respondent No.4 in WP(C) No.4082 of 2005 filed by the respondent No.5

22. Having heard the learned counsel of the parties and going through the decision as referred above, this court is of considered opinion that possession is the sine qua non for mutation of a land sought for by a party though the registration of sale deed, if any executed, is given more mileage to the claim of the applicant for mutation. As this court has discussed in detail regarding the case law cited herein above in WP(C) 4082 of 2005 and the facts relating to the nature of land in question and its original pattadar and subsequent transfer, it is not necessary for this court to go for detail discussion. This court has already

held in the writ petition filed by the respondent No.5, inter alia, that Revenue Board failed to consider what should be the necessary requirement for granting mutation and also set aside the order dated 20.5.2005 passed by the Board of Revenue in 107 RA(K)/2002 and affirmed the order dated 23.6.1993 passed by the Assistant Settlement Officer in mutation case Nos. 3424/92-93 and 3425/92-93 and the order dated 18.1.2001 passed by the ASO in Misc. Case No. 29 of 2000 and order dated 4.10.2002 passed by the Settlement Officer in R.A 9 of 2002 and also of the considered opinion that the petitioners being in possession over the land in question on the basis of sale deed as executed by the respondent No.5, the Revenue Authority committed an error rejecting the prayer for mutation while the name of his vendor was in the revenue record as would be evident from Annexure 5 and 5A to the writ petition, true copy of which supplied by the Revenue Authority on 7.12.2004.

23. In the result, the writ petition is allowed. The judgment and order dated 5.5.2008 passed by the Assam Board of Revenue in case No. 10 RA(K)(RVW)/2007 rejecting the review petition of the petitioner upholding the order dated 22.5.2007 passed by the Board of Revenue in Appeal No, 106 RA(K)/2006 is hereby set aside. Consequent thereto, the order dated 23.8.2006 passed by the Settlement Officer in R.A No. 14 of 2005 upholding the order dated 5.12.2005 passed by the Sr. A.S.O in Misc. Case No. 55/2005-06 is also set aside. The petitioner''s application for mutation is directed to be allowed by the State respondents. No order as to costs.