
(2005) 01 GAU CK 0018
In the Gauhati High Court
Case No : Writ Petition (C) No. 1457 of 2003

Prem Chand Gandhi	Vs	APPELLANT
State of Assam and Others		RESPONDENT

Date of Decision : 25-01-2005

Acts Referred:

Assam Land and Revenue Regulation, 1886 — Section 169

Citation : (2005) GLT 179 Supp

Hon'ble Judges : P.G. Agarwal, J

Bench : Single Bench

Advocate : S.K. Maheswari, for the Appellant; A. Roy and H.K. Mahanta, for the Respondent

Final Decision : Dismissed

Judgement

P.G. Agarwal, J.—Heard Mr. A.K. Maheswari, the learned Counsel for the Petitioner and Mr. A. Roy, learned Counsel for the Respondent No. 4 and Mr. H.K. Mahanta, learned Govt. Advocate.

2. The case of the writ Petitioner is that he is a member of "Chimba" community of Punjab, which is recognized as Backward Class in the State of Punjab. The Petitioner came to Jonai some time in 1949-50 and thereafter the Petitioner approached the Sub-Divisional Officer (C), Jonai for allotment of land and the Jonai Land Allotment Committee in their meeting held on 16.12.1999 recommended the name of the Petitioner for allotment of 10 lechas of land and accordingly the SDO (C), Jonai passed an order of settlement on 21.1.2001. Subsequently Respondent No. 4 Shri Deb Ram Pegu filed an application before the Deputy Commissioner, Dhemaji challenging the said settlement on the ground that the land in question falls under the Tribal Belt of Jonai and as the Petitioner does not belong to Tribal community, he is not eligible for settlement and the order of settlement needs to be set aside. Thereafter the Addl. Deputy Commissioner, Dhemaji upon hearing both sides vide order dated 13.3.2001 in Case No. 5/99 set aside the order of settlement in favour of the Petitioner.

Feeling aggrieved, the Petitioner filed an appeal before the Assam Board of Revenue in Case No. 29RA (DMJ)/2001 and the said appeal was dismissed affirming the order of the Addl. Deputy Commissioner, Dhemaji vide order dated 5.3.2002. The Petitioner filed a review application and the said review application was also dismissed on 19.12.2002 in Case No. 1 RA(DMJ) (RVW)/2002. Hence, the present writ petition.

3. Mr. A.K. Maheswari, the learned Counsel for the Petitioner submits that the land in question for which the order of settlement was passed and subsequently cancelled falls within the Tribal Belt of Jonai which was declared as Tribal Belt long before the order of settlement. We find that there is no dispute at the Bar that the Petitioner does not belong to the eligible Tribal community to get an order of settlement as because the "Chimba" community of Punjab is not included in the list of Tribes who are entitled to get an order of settlement of land situated in the Tribal Belt.

4. Mr. A.K. Maheswari, the learned Counsel for the Petitioner has, however, challenged the order of the Addl. Deputy Commissioner as well as the Assam Board of Revenue on the ground that the Respondent No. 4 Shri Deb Ram Pegu had no locus to challenge the settlement in favour of the Petitioner and that once the order of settlement was passed by the SDO(C), the Addl. Deputy Commissioner had no jurisdiction to entertain the appeal.

5. So far the question of locus, we do not propose to throw out the case of Respondent No. 4 as we find that the Respondent No. 4 has raised a pertinent question as regards the settlement of land to non-tribal under the Tribal Belt. Mr. A. Roy, learned Counsel for the Respondent No. 4 has, however, submitted that the Respondent No. 4 had filed an application for settlement of a plot of land and the same is pending. Notwithstanding the above submission we find that the Respondent No. 4 being a tribal and a resident of the said Tribal Belt raised an objection regarding settlement of land to non-tribal and the matter was examined by the Addl. Deputy Commissioner and the latter interfered with the matter. The Petitioner took up the issue before the Board of Revenue. The Board of Revenue also held that the settlement of land in a Tribal Belt to non-tribal is against the provisions of the land settlement Regulation and as such it is void ab initio and the order of settlement passed by the SDO (C) cannot create any right in favour of the Petitioner. The learned Counsel for the Petitioner was fair enough to submit that in the impugned order of settlement, the Land Advisory Board has recommended the settlement of 10 lechas of land only to the Petitioner Prem Chand Gandhi as reflected in serial No. 166 of the order of recommendation passed by the SDO (C). In these days of public interest litigation and when the question of jurisdiction of the SDO (C) in settling the land in question to a non-tribal or cancellation of the same is raised, we do not propose to throw out the matter on the ground of locus etc. The Board of Revenue also considered the provisions of Section 169 of the Land Settlement Regulation to hold that as the Respondent Deb Ram Pegu is a resident of Tribal Belt, there was no impediment

on his part to file application before the ADC.

6. Now coming to the question of jurisdiction of the Addl. Deputy Commissioner to entertain the application filed by the Respondent No. 4 as stated above, the order of settlement passed by the SDO (C), Jonai, it is submitted that the Respondent No. 4 has challenged the recommendation of the Land Advisory Committee and the SDO (C) who had passed the impugned order on the basis of the recommendation of the Land Advisory Committee only and for all practical purposes, the impugned order was passed by the SDO (Civil). Clause 169 of the Assam Land and Revenue Regulation, 1886 reads as follows:

169. (1) An appeal shall lie under this chapter:

(a) To the Deputy Commissioner, from any original order passed by any officer subordinate to him, and

(b) To the Board from any original order passed by the Deputy Commissioner.

(2) Except in regard to orders relating to periodically settled land, an order passed on appeal under Sub-section (1), Clause (a) shall be final.

(3) In regard to orders relating, to periodically settled land an appeal will lie to the Board from an appellate order of the Deputy Commissioner.

7. There is no dispute at the Bar that the SDO (Civil) is an officer subordinate to the Addl. Deputy Commissioner and as such the Addl. Deputy Commissioner had the jurisdiction to entertain the application. The learned Counsel for the Petitioner has, however, referred to Rule 26 of the Settlement Rules, which provides power to the Commissioner to affirm or cancel the order of settlement. The powers under Rule 26 to the Commissioner are not suppression of the power contained in Clause 169(1) of the Regulation. We, therefore, find no force in the submission that the Addl. Deputy Commissioner had no jurisdiction to pass the impugned order. Further, the Petitioner has approached this Court seeking equity but we find that the Petitioner being ineligible to get settlement of land in Tribal Belt, no relief can be given to him.

8. In view of the above, we find that there is no illegality or infirmity in the impugned order passed by the Addl. Deputy Commissioner as well as by the Assam Board of Revenue. Hence, the writ petition stands dismissed. The interim order stands vacated. The connected Misc. case also stands dismissed.

9. At this stage, the learned Counsel for the Petitioner prays for three months' time to remove the house etc and to hand over vacant possession of the land to the SDO (Civil), Jonai. Time as prayed for is allowed. The Petitioner is allowed to remove his house over the land within three months time from today.