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(2003) 03 GAU CK 0056

In the Gauhati High Court

Case No : Civil Rule No. 821 of 1997

Rafiquddin APPELLANT

Vs

Assam Board of Revenue and Another RESPONDENT

Date of Decision : 06-03-2003

Acts Referred:
Assam Land and Revenue Regulation, 1886 — Section 148(3)

Citation : (2003) 2 GLR 393

Hon'ble Judges : B.B. Deb, J

Bench : Single Bench

Advocate : G.N. Sahewalla, for the Appellant; B.K. Baruah, for the Respondent

Judgement

B.B. Deb, J.—Heard learned counsel for the parties.

2. This petition as virtually one under Article 227 of the Constitution of India and has been directed against the judgment dated 27.12.1996 passed by the learned Chairman, Assam Board of Revenue in case No. 176(s)/1994. The case before the Board of Revenue pertains to settlement of a land measuring 4 K 10 Ls in Dag No. 243 of Deoliakhat made by the Additional Deputy Commissioner, Sibsagar vide order dated 1.4.1992. Aggrieved by the aforesaid order of settlement, the respondent No. 4 Sri Bhai Mohammed alias Bhai Ali preferred the aforesaid appeal before the Board of Revenue. Before that he filed a petition before the Additional Deputy Commissioner seeking Review of the Settlement Order which was rejected by the Learned Addl. Deputy Commissioner vide order dated 24.8.1994. Being dissatisfied the private respondent filed the statutory appeal before the Board of Revenue and the Board of Revenue allowed the appeal, remanded the case back. Learned counsel for the petitioner submits that if person is aggrieved by the order of Additional Deputy Commissioner or Deputy commissioner regarding settlement of any Government land, he should prefer an appeal before the Board of Revenue. In the present case the private respondent filed Review petition before the Additional Deputy Commissioner to review the order of settlement dated 1.4.1992 which was rejected on 24.8.1994 against

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which the private respondent preferred the appeal, preferring appeal against the order of settlement itself. That aspect of the matter has been taken care of by the Board of Revenue. According to Board of Revenue the petitioner being misconceived filed a Review petition instead of preferring appeal before the Board of Revenue and he pursued the Review petition till it was rejected on 24.8.1994 and as such allowing the provision u/s 14(2) of the Limitation Act, the Board of Revenue entertained the appeal condoning the delay. Learned counsel for the petitioner submits that Section 14 of the Limitation Act has no manner of application in the present case. On perusal of the statutory provisions of Section 14 of the Limitation Act it reveals that the said provisions ordinarily is applicable to a Civil Court. More so, Section 14(2) of the Limitation Act does not contemplate condonation to be granted, what it contemplates is the exclusion of time consumed by a party in wrong forum on bona fide brief. Though the learned Board of Revenue misconstrued the provisions of Section 14(2) of the Limitation Act but in deciding the delay the Board of Revenue instead of acknowledging the right of the appellant to get the period excluded condoned the delay. The power of condonation is very much there with the Board of Revenue u/s 148(3) of the Assam Land and Revenue Regulation Act, 1982 in exercising that discretionary power allowing the condonation, in my considered opinion the Board committed no gross illegality, no miscarriage of justice has been caused. The Board of Revenue after admitting the appeal, quashed the order of settlement dated 1.4.1992 passed by the Additional Deputy Commissioner, Sibsagar settling 4 K 10 Lesses of land in favour of the private respondent and remanded the case back to the Deputy Commissioner, Sibsagar "to settle the land strictly as per provisions of the Act". The impugned order passed by the Board of Revenue needs no interference but a slight modification in order to protect the right of the writ petitioner who had once been settled with the land. On receipt of the record by the Deputy Commissioner, Sibsagar on remand as ordered by the Board of Revenue he is to issue notice upon the petitioner, namely Sri Rafiquiddin as well as upon the private Respondent No, 4 namely Sri Bhai Mohammed alias Bhat Ali and after hearing the parties, if necessary after recording the evidence shall decide the matter regarding settlement of 4K 10 Ls of land. With this modification the order of the Board of Revenue stands.

3. This petition is disposed of. No order as to costs.

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