
(2011) 09 GAU CK 0075
In the Gauhati High Court

Rahila Khatun

APPELLANT

Vs

Jiban Krishna Paul

RESPONDENT

Date of Decision : 15-09-2011

Acts Referred:

Citation : (2011) 09 GAU CK 0075

Hon'ble Judges : A.K.Goel, J and Amitava Roy, J

Bench : Division Bench

Advocate : For the Appellants : Shri T.C. Khatri, Sr. Adv. Ms. T. Goswami, Adv.,
For the Respondents : Shri B. Banerjee, Adv. Shri P.S. Deka, GA., Advocates
appearing for Parties

Judgement

A. Roy, J

1. In challenge is the judgement and order dated 21.03.2007 passed in WP(C) No. 4670/1999 negating the impugment by the present appellant, of the order dated 29.6.99, rendered by the Assam Board of Revenue, Guwahati (hereinafter for short, referred to as Board), in Revenue Appeal No. 103 RA (DBR)/98.

2. We have heard Mr. T.C. Khatri, learned senior counsel for the appellants and Mr. B. Banerjee, learned counsel for the respondents No. 1 to 10. Mr. P.S. Deka, learned State Counsel appearing for the Govt. of Assam is also heard.

3. The writ proceeding registered as WP(C) No. 4670/1999 had been initiated by Md. Mahabhat Bepari, predecessor in interest of the present appellant No. 1 to 5 and their uncle Md. Manu Bepari. During the proceeding, Md. Mahabhat Bepari having expired, he was substituted by the present appellant No. 1 to 5.

4. The factual background discloses that the respondents No.1 to 10 had applied for mutation of land covered by Dag No. 116 in Khatian No. 174 of Surya Khata Debottar Hat Nonagricultural village, on the basis of inheritance tracing their right to the purchase thereof by two registered sale deeds dated 2.8.1966 from Abdul Kader Bepari, the father of Md. Mahabhat Bepari (since deceased) and Md. Manu Bepari. Following enquiries made by the concerned revenue staff of the

jurisdictional settlement office, the Asstt. Settlement Officer, Dhubri, by his order dated 22.12.1997, passed in Mutation Case No. 14(B)/199798, granted mutation as prayed for. Being aggrieved, an appeal was preferred by the original writ petitioners before the Settlement Officer, Dhubri registered as Mutation Appeal No. 2/1998, which was allowed by order dated 6.7.1998. Consequently, the mutation granted in favour of the respondents No.1 to 10 was cancelled. They in turn preferred an appeal under Section 147 read with Section 151 of the Assam Land and Revenue Regulation, 1886 before the Board, which was registered as Revenue Appeal No. 103 RA (DBR)/1998. The Board by its order dated 29.6.99 having allowed the appeal and sustained the mutation granted in favour of the respondents No.1 to 10, the above referred writ proceeding was instituted.

5. Mr. Khatri has urged that as the respondents No. 1 to 10 had applied for mutation of the land covered by Dag No. 116 in Khatian No. 174, the grant of mutation in their favour in respect of the land covered by Dag No. 313 in the same Khatian is illegal and per se untenable. The learned Board of Revenue as well as the learned Single Judge having overlooked this vital aspect of the controversy, interference with the impugned judgement and order, is warranted in the interest of justice.

6. On being queried by this Court, the learned senior counsel has, however, not disputed the purchase of the plots of land by the predecessors in interest of the respondents No. 1 to 10 from Abdul Kedar Bepari (since deceased) as evidenced by the two registered sale deeds dated 2.8.66. He, however, has emphasized that the land conveyed by these instruments is included in Dag No. 116 and not Dag No. 313. Mr. Khatri has also urged undue delay on the part of the respondent No.1 to 10 in applying for mutation in respect of the land purchased, contending that due to lapse of time in between after the purchase thereof, they stood divested of their right, title and interest therein.

7. Mr. Banerjee, in reply has contended that it being apparent on the face of the records that the land sold by the two registered sale deeds were actually covered by Dag No. 313 in Khatian No. 174 and that the respondent No. 1 to 10 (Private respondents) had been in continuous possession thereof, the impugned judgement and order is valid and does not call for any interference.

8. We have perused the pleadings on record and analyzed the arguments advanced on behalf of the parties. Having regard to the rival contentions, it transpires that the area of controversy is limited to the Dag No. relating to the plots of land, otherwise admittedly, purchased by the predecessors in interest of the private respondents from the predecessors in interest of the appellants. Whereas, the appellants contend that the conveyed land was included in Dag No. 116, the private respondents insist that it is in Dag No. 313. The Asstt. Settlement Officer, Dhubri while granting mutation in favour of the private respondents, by his order dated 22.12.1997, inter alia, noticed that on the application for mutation of the land measuring 12? Lessas, the SubDeputy Collector, Bilashipara granted the same by his order dated 3.12.1968 in Mutation

Case No. 77(B)/6869, treating it to be a part of Dag No. 313 of Khatian No. 174. Vis?vis the application for mutation in respect of the plot measuring 4 Lessas, it was recorded that the report of the Mandal and Kanungo revealed that Dag No. 116 did not exist and only Dag No. 313 was in existence. It was further noted that the boundaries indicated in the sale deed disclosed that the applicants were in possession of the land covered by Dag No. 313. That the boundaries of the land referred to in the reports of Mandal and Kanungo tallied with those of the plots in possession of the applications, was also taken note of.

9. The Settlement Officer, Dhubri, however, by his order dated 6.7.98 passed in the appeal filed by the original writ petitioners, reversed the decision of the ASO, Dhubri chiefly on the ground that as the application for mutation had been made in respect of land covered by Dag No. 116, the grant of mutation for the land in Dag No. 313 was not sustainable. The learned Board having disagreed with the findings of the Settlement Officer, Dhubri, over turned this decision.

10. The learned Single Judge in the impugned order has duly taken note of the following factual features to sustain the decision of the Board :

a) No material could be produced by the writ petitioners to establish that the land in possession of the private respondents was not covered by Dag No. 313, Khatian No. 174.

b) The dispute raised by the writ petitioners at the most projected a plea of wrong description of the land, which if otherwise identifiable, there can be no impediment for granting mutation in respect thereof.

c) The enquiry made at the spot by the Revenue staff in connection with the prayer for mutation revealed that the same was in possession of the private respondents and was actually covered by Dag No. 313, Khatian No. 174.

11. After hearing the learned counsel for the parties and on an appreciation of the above disclosures of facts, we do not feel persuaded to interfere with the impugned judgement and order. That the land for which mutation was granted in favour of the private respondents, is in their possession and covered by Dag No. 313, Khatian No. 174 has been recorded consistently by the ASO, Dhubri, the learned Board as well as the learned Single Judge. It being a concurrent finding of fact supported by the materials on record, in the exercise of the power of judicial review under Article 226 of the Constitution of India, we are not inclined to intervene to upset the same. The decision impugned does not suffer from any illegality or irrationality.

12. The appeal lacks in merit, and therefore, is dismissed. There shall be no order as to costs.