
(2008) 02 GAU CK 0078
In the Gauhati High Court

Rajeev Goswami	Vs	APPELLANT
State of Assam and Others		RESPONDENT

Date of Decision : 14-02-2008

Acts Referred:

Constitution of India, 1950 — Article 31C, 38, 46

Citation : (2008) 2 GLT 500

Hon'ble Judges : H.N. Sharma, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

H.N. Sarma, J.—The writ petition WP(C) No. 3282/2006 has been filed by the petitioner Challenging the legality and the validity of the judgment and order dated 15.6.2006 passed by the Assam Board of Revenue in Case No. 115 RA(K)/2005 dismissing the appeal filed by the petitioner confirming the order passed by the Deputy Commissioner, Kamrup, in Encroachment Case No. 16/2005. Similarly, WP(C) No. 3283/2006 has been filed challenging the decision of the Assam Board of Revenue passed in Case No. 116 RA(K)/2005 upholding the notice of eviction dated 25.5.2005 issued by the Deputy Commissioner, Kamrup.

2. Both these two writ petitions have been filed by the same petitioner and the points involved for determination also being common, as prayed for, these writ petitions are heard analogously and disposed of by this common judgment and order.

3. I have heard Mr. P.C. Deka, learned senior counsel for the petitioner assisted by Mr. N. Deka, learned Counsel and Mr. PS. Deka, learned GA, Assam.

Mr. A.K. Phukan, learned Advocate General, Assam, has also assisted this Court as the matter pertains to certain policy of the State Government in the matter of land transfer/settlement falling within the Tribal Belt area, constituted u/s 160 of the Assam Land and Revenue Regulations, 1886, (for short the "Regulations").

4. The facts necessary for disposal of these two writ petitions are that the petitioner purchased an area of land measuring 5 B 1 K 5 L of land covered by Dag No. 654, KP Patta No. 109 of village Karsia, Mouza-Panbari in the district of Kamrup, by a registered sale deed, which falls within the Sonapur Tribal Belt area.

The petitioner also purchased another plot of land measuring 2 B covered by Dag No. 524, KP Patta No. 67 of the same village and Mouza in the district of Kamrup, in the same manner by a registered sale deed. After purchase of the land, the petitioner got his name mutated in the revenue record by way of Chitha mutation.

Complaints having been made against the petitioner challenging his right to hold land within the Tribal Belt constituted u/s 160 of the Assam Land and Revenue Regulations, 1886 (for short the "Regulations"), the Circle Officer, Sonapur Revenue Circle, after issuing notice to the petitioner, cancelled the mutation granted in favour of the petitioner and restored the aforesaid land to the original pattadar, vide order dated 29.11.2004. The petitioner being in possession of the land in question on the strength of the aforesaid purchase, notice to vacate the same was also issued by the Additional Deputy Commissioner, Kamrup (Metro) in Encroachment Case No. 16/2005. The petitioner challenged the aforesaid notice issued by the Additional Deputy Commissioner, Kamrup (Metro) before the Assam Board of Revenue in Case No. 115RA(K)/2005 and the order dated 29.11.2004 in Case No. 116RA(K)/2005. The learned Assam Board of Revenue vide the impugned judgment and order dated 15.6.2006 dismissed both the appeals filed by the petitioner, which is the subject matter in these two writ petitions.

5. Apart from challenging the impugned order, the petitioner has also raised a plea that the Constitution of South Kamrup (Guwahati) Tribal Belt within which the land in question falls was made in violation of the provisions of Section 161 of the Regulations and accordingly, no action can be taken against the petitioner on the basis of such illegal constitution of Tribal Belt and the said Tribal Belt is nonest in the eye of law. Accordingly, the petitioner has existing right to hold and possess land within the area under the law.

6. The State respondents have filed counter affidavit in both the writ petitions disputing the contentions of the petitioner. The stand of the State respondents is that the land purchased by the petitioner falls within the notified area of South Kamrup(Guwahati) Tribal Belt duly constituted u/s 161 of the Regulations and accordingly, the petitioner could not have exercised any right over the land in question without recourse to the provisions contained in Chapter X of the Regulations, inasmuch as, the petitioner do not fall within the notified category of persons entitled to possess such land within such Tribal Belt and to that effect no permission from the competent authority was obtained before effecting the transfer in his favour and the registration of the sale deed. Accordingly, the petitioner cannot be said to have acquired any valid right, title and interest recognized by law over the land in question by virtue of the alleged sale deed, which was executed and registered in total contravention of the provisions of

Section 161 of the Regulations. In view of the above facts situation, it is contended that the petitioner has no legs to stand in these two writ petitions.

7. The basic points urged by Mr. P.C. Deka, learned senior counsel, in these two writ petitions are that the constitution of the South Kamrup (Guwahati) Tribal Belt vide notification No. RD.74/16/172, dated 27.2.1950 comprising Sonapur Circle, Chandrapur Circle and Palasbari Circle was not in compliance of the provisions of Section 160 and 161 of the Regulations, so far it relates to the land falling within the Sonapur Circle is concerned and, as such, the rigor of these provisions would not be applicable over the land purchased by the petitioner falling within the village Karsia, Mouza-Panbari, PS-Khetri, District-Kamrup under the Sonapur Circle. In fact, both the plots of land were purchased by a common sale deed No. 3892/01 executed and registered on 30.4.2001. It is contended by the learned senior counsel that the land in question was purchased after granting necessary permission by the concerned authority and after purchase, the petitioner has been possessing the same paying necessary land revenue. The name of the petitioner was also mutated in the revenue records and consequently after ripening the right, title and interest over the land in question in his favour absolutely, the Circle Officer has committed grave illegality in canceling the mutation order in favour of the petitioner vide the impugned order dated 29.11.2004 and seeking to evict therefrom. It is also contended that the impugned notice dated 25.5.2005 issued by the Additional Deputy Commissioner, Kamrup (Metro) in Encroachment Case No. 16.2005 is also illegal and without jurisdiction, in view of the fact that the land in question cannot be said to be within the area of Tribal Belt properly and legally constituted under the provisions of Sections 160 and 161 of the Regulations.

8. In support of his contention, Mr. Deka relies on the census report for the years 1961, 1971 and 1991. The learned Counsel submits that from the census reports right from the year 1961 till date, it is abundantly clear that there are only 26.67% Scheduled Caste and Scheduled Tribes population in the related village. As per 1991 census, the percentage of such population has come down to 16.32% and again rises to 29.41 % as per 1991 census report. On the basis of the aforesaid facts, Mr. Deka submits that in view of such low percentage of population belonging to Scheduled Caste and Scheduled Tribes, it cannot be said that these classes predominantly occupy such area and hence, the constitution of South Kamrup (Guwahati) Tribal Belt was not only unjustified but also illegal and ultra vires to the related provisions of Sections 160 and 161 of the Regulations.

9. Mr. A.K. Phukan, learned Advocate General, Assam, referring to the scheme of Chapter-X of the Regulations submits that the State Government is authorized by law to adopt necessary measures for protection of certain classes of people who on account of their primitive conditions and lack of education or material advantages are incapable of looking after their own welfare in so far as such welfare depends upon their having sufficient land. On such considerations, the aforesaid provisions are in consonance with the Constitutional scheme and

mandate as provided in Articles 31(C), 38 and 46 of the Constitution of India. Learned Advocate General, submits that in constituting such Tribal Belts the magnitude of population inhabitants of such classes of people may not be the sole consideration, but what is most concern of the Government is their protection upon having sufficient land for their maintenance. The learned Advocate General contends that the notification No. RD. 69/46/19, dated 5.12.1947 was issued mentioning the classes of people entitled for protection as contemplated in Section 160(1) of the Regulations and such persons are the cultivators belonging to Plains Tribals, Hills Tribes, Tea Garden Tribals, Santhals, Scheduled Castes, Nepali Cultivator - graziers. That being the position, the action of the authorities by keeping in mind the Constitutional scheme, the necessary provisions having made for adequate protection for such categories of people in terms of the provisions contained in Sections 160 and 161 of the Regulations, is not assailable. It is rather a policy of the State Government, rather than giving or excluding certain benefits to certain sections.

10. On the awake of the rival contentions made by the learned Counsels, the point that falls for consideration are as to whether the Constitution of South Kamrup (Guwahati) Tribal Belt encircling Sonapur Circle, Chandrapur Circle and Palasbari Circle is illegal, unjust and improper as well as violative of Sections 160 and 161 of the Regulations and as to whether such action of the authorities infringed the right of the petitioner in acquiring and holding land in that area, which goes to the root of the dispute.

11. The Assam Land and Revenue Regulation was enacted in 1886. In the original enactment, Chapter-X was not there. Chapter -X was subsequently added by the Land and Revenue Amendment Act, 1947 (Act XV of 1947). Chapter-X provides for protection of backward classes in the matter of revenue administration containing Sections 160 to 171, which have also undergone further amendment vide the Land and Revenue Amendment Act, 1964 (Act XVI of 1964) and the Land and Revenue Amendment Act, 1981. Chapter-X was inserted in the year 1947, just after the independence to protect the interest of the people falling within the backward classes of the State of Assam.

Section 160(1) of the Regulations provides protection to certain classes of backward classes. It provides, inter alia, that notwithstanding anything earlier part of the Regulations, the State Government may adopt such measures as it deems fit for the protection of those classes who on account of their primitive condition and lack of education or material advantages are incapable of looking after their welfare in so far as such welfare depends upon their having sufficient land for their maintenance.

12. Section 160(2) authorises the State Government to specify the class of people whom it considers entitled to protection by such measures, by issuing necessary notification in the official gazette.

13. In consonance with the above provisions, the State Government immediately

after passing of the Amendment Act issued notification No. RD.69/46/19, dated 5.12.1947, notifying the classes of persons recognizing such population. The said notification is quoted hereinbelow:

Notification

Dated Shillong, the 5th December, 1947.

No. RD. 69/46/19-- In exercise of the powers conferred by Sub-section (2) of Section 160 of the Assam Land and Revenue Regulation, 1886 (Regulation I of 1886), as amended by the Assam Land and Revenue Regulation (Amendment) Act, 1947 (Assam Act XV of 1947), Government are pleased to specify the following classes of people, as classes entitled to protection contemplated in Sub-section (I) of the said section of the Regulation.

Cultivators pertaining to the following classes, namely plains tribals, hill tribes, tea garden tribals, santhals, Nepali Cultivator - graziers and Scheduled Caste.

Sd/- S.J. Duncan, Secy To the Govt. of Assam, Finance & Revenue Department.

14. After issuance of the aforesaid notification specifying classes of people whom the Government considered entitled for such protection, the South Kamrup (Guwahati) Tribal Belt was constituted vide notification No. RD. 74/46/172, dated 27.2.1950 covering Sonapur Circle, Chandrapur Circle and Palasbari Circle. For more than half of a century the aforesaid notification dated 5.12.47 has been holding the field.

15. Sub-section (1) of Section 162 of the Regulations provides that after making application of Chapter-X by issuing necessary notification in an area, the disposal of land by lease for ordinary cultivation, the nature and extent of rights conveyed by annual or periodic leases, the termination or forfeiture of such rights, the ejectment of persons in occupation who have no valid right in the management or letting out in farm of land in certain circumstances by the Deputy Commissioner, and other allied or connected matters shall, so far as possible, be governed by the provisions of this Chapter and the rules made thereunder.

16. Sub-section (2) of Section 162 of the Regulations provides that notwithstanding anything contrary in any law, usage, contract or agreement no person shall acquire or possess by transfer, exchange, lease, agreement or settlement any land in any area or areas constituted into belts or blocks in contravention of the provisions of Sub-section (1).

17. Sub-section (3) of Section 162 of the Regulations provides that from and after the commencement of the Assam Land and Revenue Regulation (Amendment) Act, 1964 no document evidencing any transaction for acquisition or possession of any land by way of transfer, exchange, lease, agreement or settlement shall be registered under the Indian Registration Act, 1908 (Act XVI of 1908) if it appears to the registering authority that the transaction has been effected in contravention of the provisions of Sub-section (2).

Sub-section (4) of Section 162 empowers the State Government in the like manner to direct that the provisions of Chapter-X would cease to apply to any area or part to which they were applied under Sub-section (1).

However, Sub-section (5) of Section 162 of the Regulations provides that the application of Chapter -X to any area aforesaid will not affect to land settled for special cultivation or purposes ancillary to special cultivation (including grants made for tea cultivation), lekhiraj, nisfikhiraj or special estates settled with non-cultivators for their maintenance, which land and estates and the rights and interests therein shall continue to be governed by the provisions of the foregoing Chapters of the Regulation and the rules made thereunder.

18. The scope and effect of Sections 161(1), (2), (3) and 162(3) of Chapter-X of the Regulations was extensively considered by Hon"ble Lahiri, J., (as his Lordship then was), in the case of *On the death of Upen Chandra Dey his heirs Manindra Chandra Dey and Ors. v. Kamal Chandra Bora and Ors.* reported in 1977 ALR 75; paragraphs 15, 16, 17, 18, 19, 20, 26 and 29 having relevance are quoted herein below:

15. Now comes the crucial question. This Chapter, namely Chapter-X of the Act, is a pre-constitutional Legislation. Credit must be given to the Legislature for giving shape of the things to come. In consonance with the letters and spirit of the Constitution this Chapter was brought, as far back as in 1947. The entire object of the Chapter is to protect "Backward Classes". The legislatures have laid down that only those persons who come under the provisions of Section 160 should be protected. Those persons have been fully defined, viz, "who on account of their primitive condition and lack of education or material advantages are incapable of looking after their welfare in so far as such welfare depends upon their having sufficient land for their maintenance".

16. The learned Advocate General has fairly pointed out that the object of Chapter-X is for the benefit of "the backward classes" and accordingly the provision of the Chapter should always be interpreted in favour of the said classes. There are classes of persons who require protection and they have already been notified under Sub-section (2) of Section 160 of the Regulation. The Government has declared "areas under Sections 161 and have extended the provisions of Section 164 and have extended the provisions of Section 161, in exercise of its power u/s 162(1) of the Regulation. Section 163 deals with disposal of the land in those areas or blocks. Rights of settlement holders and land holders in those areas have been restricted or curtailed u/s 164 of the Regulation" Special provisions have been made for ejectment or eviction of unauthorized occupants u/s 165 of the Regulation. Special powers have been invested u/s 168 to Special Officers and Special Appellate Authority constituted under the said section. Rules have already been framed u/s 171 of the Regulation.

17. As it appears, the State Government had to bring about necessary

amendments of the provisions which were stringent constrictive and styptic in nature. The amendment was made in the year 1964, but it is not at all necessary to discuss in details as to the object of bringing in the provisions as it now appears in Section 162 (2) and (3) of the Regulation after its amendments. They are self evident. The object of the Legislature to hold, discontinue and hold and put to an end transfer, exchange, lease, etc. of land in the Tribal Belts and Blocks. This had to be brought for the purpose of protecting those persons, who are incapable of looking after themselves. The amended Section 162(2) and (3) reads as under:

Section 162(2) of the Regulations provides that notwithstanding anything contrary in any law, usage, contract or agreement no person shall acquire or possess by transfer, exchange, lease, agreement or settlement any land in any area or areas constituted into belts or blocks in contravention of the provisions of Sub-section (1).

(3) From and after the commencement of the Assam Land and Revenue Regulation (Amendment) Act, 1964 no document evidencing any transaction for acquisition or possession of any land by way of transfer, exchange, lease, agreement or settlement shall be registered under the Indian Registration Act, 1908 (Act XVI of 1908) if it appears to the registering authority that the transaction has been effected in contravention of the provisions of Sub-section (2).

Sub-section (2) opens with a "Non-obstante clause" and its purpose is to give the provision an overriding effect in the event of a conflict between the sub-section and the rest of the section.

18. In my opinion the sub-section envisage that in spite of existence of contract law, usage and agreement transfer, exchange, lease or agreement or settlement, the transferee, exchangee, lessee or the person entering into the agreement or settlement holder, shall Acquire or Possess any right whatsoever over land if they are made in contravention of the provisions contained in Section 162(1) of the Regulation.

19. On a careful reading of Section 162(2), it appears that the right of the transferee, exchangee, lessee and so forth have also been taken away. What are these rights, which have been taken away? The rights are to Acquire or Possess any land in any such are. It is undoubtedly true that there is no expression to the effect that such transactions shall be invalid or illegal. But, this much is crystal clear that if there are such transfers or exchanges violative of Section 162(1) of the Regulation, the transferee, exchangee, lessee and so forth shall not derive any right to "Acquire" or "Possess" such land.

20. The learned Advocate General contended that transaction fully covered by Section 162(2) may not always nullify the transactions or the right of the parties. According to the Advocate General, Section 162(2) of "the Regulation" has denied some persons of certain rights which could ordinarily be acquired under

ordinary laws relating to transfer of property, usages or contract or agreement. It is not a blanket prohibition as held by the Court below. Certain exceptions have been made in the Regulation and they are to be found in Section 162(3) (a), (b) and (c) read with Rule 9 of the Rules framed under Chapter-X.

19. The effect of registration of document, i.e., sale deed transferring the land in favour of the appellant has also been considered in the aforesaid judgment in paragraphs- 26 and 29 as follows:

26. A question corollary to the above has been posed by the learned Advocate General, viz, that by virtue of the Act, the act of Registration of the Documents, the plaintiffs have acquired title in respect of the landed properties. Reading of Section 162(3) as a whole, I find that a discretion has been given to the Registering authority to register or refuse to register a document. If he finds that the document evidencing any transaction for acquisition or possession of any land by way of exchange, transfer, agreement, lease, or settlement are violative or contravention of the provisions of Sub-section (2), he shall not register the document. It is really very difficult for the registering officer to refuse to register a document merely because the land falls within the tribal belt or block. The parties to the transaction may claim their right u/s 163(2)(1)(b) and (c) read with Rules and may claim that they are entitled to have the land transferred to their favour. As such, the very fact that the document was registered, does not, "ipso facto" give any right or title in favour of a party. A Civil Court while considering the question of derivation of title arising out of such a transaction, is entitled to enter into the question as to whether, in fact, the said registration was in violation of Sub-section (3) of Section 162 of the Regulation or not.

29. Next question posed about the effect of a document violative of Section 162(2) of the Regulation is whether the provisions merely deprive the transferees, grantees, donees, etc. to acquire the rights or such documents are void ab initio. In fact, the validity of the title deed or the sale deeds is not very much relevant for the purpose of the appeal, inasmuch as, I am only concerned with the acquisition of rights by such transferees. But in view of the arguments advanced by the learned Advocate General, I shall dispose of the question as well. In my opinion, in the instant case, it is sufficient to say that if the sale deeds were violative of Section 162(2) of Chapter-X of the Regulation and not covered by Section 163(2) read with Rules, the transferee, exchangee, donee and so forth did not and cannot derive or acquire any right to possess or acquire the land in question and cannot get a declaration in whatsoever form.

20. I am in respectful agreement with the aforesaid decision rendered in the case of Manindra Chandra Dey (supra). The provisions of Section 160 do not restrict such specified classes of persons who needs such protection under the law only the Scheduled Castes and Scheduled Tribes people. It provides that such belts are required to be constituted for protection of those classes of persons who on account of their primitive condition and lack of education or material advantages are incapable of looking after their welfare in so far as such welfare depends

upon their having sufficient land for their maintenance. In terms of Section 160(1) the notification dated 5.12.1947 (supra) was issued by the Government mentioning therein the classes of people who needs such protection. The aforesaid provision is in consonance with the Constitutional Scheme for providing protection to such weaker sections and Article 31(C) saves such action adopted by the State authorities. Article 38 of the Constitution provides directive to the State in directing its policy to secure a social order for the promotion of welfare of the people by securing and protecting as effectively as it may a social order in which justice social, economic and political, shall inform all the institutions of the national life. Mandate of Article 38(2), requires the State to strive to minimize the inequalities in income and endeavour to eliminate inequalities in status, facilities and opportunities, not only amongst individuals but also amongst groups of people residing in different areas or engaged in different vocations.

21. The extract of census report submitted by Mr. Deka disclose percentage of population of Scheduled Castes and Scheduled Tribes only. The extract of the census report is silent about the existence and occupation of other classes of persons as enumerated in the notification dated 5.12.1947, namely plains tribals, hill tribes, tea garden tribals, santhals and Nepali Cultivator - graziers. In view of the aforesaid facts situation, the submissions made by Mr. Deka has no legs to stand. Consequently, I have no other alternative but to reject the same.

22. In view of the above discussions, the challenge made questioning the legality and the validity of the notification dated 27.2.1950 constituting the South Kamrup (Guwahati) Tribal Belt including the land at village Karsia in Sonapur Revenue Circle is not tenable in law and the same stands rejected.

23. In the result, I do not find any merit in these two writ petitions and accordingly, these are dismissed. The interim order stands vacated. No costs.