
(2004) 05 GAU CK 0059
In the Gauhati High Court
Case No : Writ Petition (C) No. 4034 of 2002

Rangmon Rongpi and Others

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 10-05-2004

Acts Referred:

Assam Forest Act, 1891 — Section 72
Constitution of India, 1950 — Article 21

Citation : (2010) 4 GLR 176 : (2010) 1 GLT 551

Hon'ble Judges : Amitava Roy, J

Bench : Single Bench

Advocate : S. Sarma, R. Islam and R. Dey, for the Appellant; R.K. Bora and S. Chauhan, for the Respondent

Final Decision : Dismissed

Judgement

Amitava Roy, J.—The instant petition exposes a mindless and irresponsible exercise of executive power resulting in forceful ouster of the petitioners from their hearth and home without following any procedure of law.

2. I have heard Mr. S. Sarma, Learned Counsel for the petitioners, Mr. R.K. Bora, Learned State Counsel and Mr. S. Chauhan, Learned Counsel for the opposite parties 6 to 12.

3. The facts lying in a short compass are that the petitioners claim to be the owners in possession of the land involved and as described in the schedule to the writ petition. The particulars of the different plots of land relatable to the petitioners are:

Petitioner Nos. 1, 2 and 3

A plot of land measuring 3 bighas, 4 kathas and 10 lechas covered by K.P. Patta No. 11(old)/1(New) Dag No. 21 and 26(old)/214 and 262(New) of village Madgharia Nonke under mouza Beltola and is bounded by

Petitioner No. 4

A plot of land measuring 2 bighas, 2 kathas 5 Ls covered by A.P. No. 14 and Dag No. 27 of village Madgharia Nonke under mouza Beltola and is bounded by

Petitioner No. 5

A plot of land measuring 5 bighas 2 kathas 14 lechas covered by Patta No. 14 and Dag No. 20 of village Madgharia Nonke, under Mouza Beltola and is bounded by

Petitioner No. 6

A plot of land measuring 3 kathas, 10 lechas, covered by A.P. No. 9 and Dag No. 29 of village Madgharia Nonke under Mouza Beltola and is bounded by

The petitioner Nos. 1, 2 and 3 are the owners of a bigger plot of land measuring 6B, 4K and 12 Ls covered by K.P. Patta No. 11(old), 1(New) Dag Nos. 21 and 26(old)/214 and 262(new) of village Modgharia Nonke. The land originally belonged to the father of the petitioner Nos. 1, 2 and 3 Late Kumal Mikir. Their names after his demise were recorded as the pattadars in respect of the said land. They had built their dwelling houses thereon and have been residing there for several years.

4. The petitioner No. 4 is the pattadar of the land shown against his name above and the petitioner Nos. 5 and 6 are also in occupation of their land. The case of the petitioner No. 6 is that he had purchased the land from the original owners Bastayam Mikir, Pasta Mikir and Anshu Mikir and the petitioner No. 6 had been occupying the said land since the year 1996. The petitioner Nos. 4, 5 and 6 also had dwelling houses on the land and had been residing there over the years.

5. On 21.5.2002 the forest authorities without any prior notice visited the land and by force demolished their structures and evicted them there from. It is the clear and categorical case of the petitioners that no prior notice or any opportunity of hearing was given to them before they were evicted on executive flat as above, After the eviction process was over, the petitioners however to sustain themselves and their family returned to their lands and have set up temporary structures. As their representation against the above action failed to evoke any response they approached this Court. By order dated 25.6.2002 the petitioners possession of their lands was protected.

6. In due course, the Revenue Department submitted its counter wherein a stand was taken that the petitioners were illegal occupants of reserved forest land. According to the forest department the land is within the Hengrabari Reserved Forest declared as such in the year 1992. As the petitioners were trespassers on the land they were evicted u/s 72(c) of Assam Forest Regulation 1891. The department, also questioned the authenticity and genuineness of the pattas said to have been issued in favour of the petitioners. According to the answering respondents, the eviction of the petitioners was valid and justified.

7. The counter filed by the Additional Deputy Commissioner Kamrup representing the Revenue Department however presented a different picture. It was averred that the following lands situated at village Madghania NC were patta lands standing in the name of Kamal Mikir the predecessor in interest of the petitioner Nos. 1, 2 and 3. Rupam Mikir, petitioner No. 4 and Bastayam Mikir, Pasta Mikir and Anshu Mikir the vendors of the petitioner No. 6. Incidentally the legal heirs of these three persons had been impleaded as respondent Nos. 6 to 12.

Area

Dag No

Patta No

Name

3B 4K 10 Ls

26

11

Kamal Mikir,

5B 2K 14 Ls

20

14

Rupam Mikir

2B 2K 5 Ls

27

14

do

1B 4K 18 LS

29

9

Bastayam,

Pasta,

Anshu.

It was however mentioned that the petitioner No. 6 was not a recorded pattadar of any land.

8. Noticing the discrepancies in the stand of the two department and on a

clarification being sought, an additional affidavit was filed by the Deputy Commissioner Kamrup which indicates that a joint survey of the disputed land, and that of the Hengrabari Reserve Forest had been conducted by the Revenue Department and the Forest Department on various dates which revealed that the land in dispute as per the revenue settlement operation in the year 1964 was covered by Annual Patta in the name of Kamal Mikir and after his death, the records were updated by granting mutation in favour of the petitioner Nos. 1, 2 and 3 and that the land covered by Dag Nos. 20, 26, 27 and 29 of village Madgharia was located outside the boundaries of the Hengrabari Reserve Forest. The statements made in the additional affidavit were supported by contemporaneous official documents.

9. The respondent Nos. 6 to 12 in a separate affidavit duly supported the claim of the petitioner No. 6 that he had purchased a plot of land measuring 3K 10 Ls under Dag No. 29 of Annual Patta No. 9 from their predecessor in interest.

10. In the above background of pleadings Mr. Sarma, has strenuously argued that the eviction of the petitioners from their land and that too without following any procedure prescribed by law was wholly unauthorized, arbitrary and unconstitutional and is liable to be adjudged as such. He maintained that as admittedly the land of the petitioners is beyond the Hengrabari Reserve Forest as sought to be represented by the Forest Department, the summary eviction provided u/s 72(c) of The Assam Forest Regulation 1891 is without any sanction of law. He, therefore, submitted that it having been revealed by the joint survey that the land involved was the patta land of the petitioners, their possession may be protected from such unauthorized actions in future. He also prayed for compensation for the loss suffered by the petitioners for their illegal eviction from the land.

11. Mr. Bora, Learned State Counsel in reply has submitted that though a portion of the land claimed by the petitioners is beyond the Hengrabari Reserve Forest, it cannot be said that the whole area of land as claimed by the petitioners is their patta land and, therefore, the impugned action cannot be condemned as wholly illegal and unconstitutional. As there is a dispute with regard to the status of the land claimed by the petitioners, they are not entitled to the reliefs as prayed and it is, fit a case where the controversy needs to be resolved by a civil court of competent jurisdiction.

12. Mr. S. Chauhan while reiterating the contents of counter filed by respondent Nos. 6 to 12 has urged that the land in possession of the petitioner No. 6 had been conveyed to him by the predecessor in interest of his client and, therefore, the said petitioner could not be evicted by force there from as a trespasser or as an unauthorized occupant.

13. The pleadings of the parties clearly demonstrate that the land from where the petitioners were evicted is beyond the Hengrabari Reserve Forest as clarified by the Revenue Department. Though on a comparison of the areas of the land as

described in schedule to the petition and referred to in the affidavit filed by the Deputy Commissioner, Kamrup a minor difference is noticeable, on a closer look more particularly with regard to the land from where the petitioners had been evicted, no such discrepancy is detected. In other words the land from which the petitioners complain that they had been evicted is the land referred to by the Revenue Department in its additional affidavit. No dispute with regard to identification of the land as such has been projected by the said department. From the clear and categorical stand of the Revenue Department there cannot be any manner of the doubt that the land in possession of the petitioners from which they had been evicted on 21.5.2002 is beyond the contours of Hengrabari Reserve Forest.

14. In this factual premise, the inescapable conclusion is that the action of the Forest Department in evicting the petitioners from their land is illegal arbitrary and without any authority of law. No attempt has been made by the Forest Department and rightly so to contest or dispute the stand taken by the Revenue Department on the basis of joint survey. The stand of the Forest Department that the eviction was effected u/s 72(c) of Assam Forest Regulation 1891, in view of above, falls, to the ground. The eviction of the petitioners by shows of force displays a reckless and irresponsible executive action resulting in untold harassment to the petitioners and colossal loss to them. There is no denial of the fact that no notice whatsoever had been served on the petitioners before carrying out the eviction. The impugned action is, thus, in violation of the constitutional guarantee preserved under Article 21 of the Constitution. of India and has to be adjudged illegal and unconstitutional.

15. In view of the clear and categorical stand of the Revenue Department in its affidavit, the contention of Mr. Bora that there still remains a dispute with regard to the identity of the land cannot be upheld. The petitioners have again rehabilitated themselves on the land. As it stands today, having regard to the pleadings available on records, the land in possession of the petitioners are their patta land beyond the Hengrabari Reserve Forest as declared in 1992. In that view of the matter-the petitioners possession of the land involved in the present proceeding cannot be disturbed in a summary manner without following the procedure prescribed by law.

16. The petitioners though have prayed for compensation for the loss suffered by them, in absence of adequate materials on record, I am not inclined to adjudicate the said claim. The petitioners may approach the authorities concerned for providing them appropriate compensation for the loss. Needless to say if the petitioners register such claim and place adequate materials in support thereof, the concerned authorities would consider the same in accordance with law and take an appropriate decision thereon.

With the above directions and observations, the petition stands closed.