
(2015) 01 GAU CK 0039
In the Gauhati High Court
Case No : W.A. Nos. 92 and 93 of 2008

Ranjeev Goswami

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 06-01-2015

Acts Referred:

Citation : (2015) 1 GLT 621

Hon'ble Judges : K. Sreedhar Rao, A.C.J; Prasanta Kumar Saikia, J

Bench : Division Bench

Advocate : A.K. Bhattacharyya, Senior Advocate, for the Appellant; B. Goyal, G.A., Advocates for the Respondent

Final Decision : Dismissed

Judgement

K. Sreedhar Rao, Acting C.J—The appellant in both the cases purchased a land measuring 7-bigha 1 -katha 5-lecha in dag 654 and 524 patta 109 and 67 in Karchia village under Panbari mouza in Kamrup (M) district. Before purchase, appellant made an application for granting permission. After considering the request a Mandal processed the matter and later sent a report to the circle officer and on the recommendation of the circle officer the Additional Deputy Commissioner (ADC) had granted permission for purchase vide annexure I dated 26th April, 2001. In the permission granted, it is stated that the purchase can be made by paying a price of Rs. 10,000/- a bigha. Accordingly for the above land purchased, Rs. 72,000/- was paid and a registered sale deed was obtained by the appellant. Later on the circle officer issued notice that the purchase of land by the appellant is contrary to the provisions of Section 162(2)(3) of the Assam Land and Revenue Regulation, 1886 (ALRR), and the provisions of the Assam Alienation of Land (Regulation) Rules, 1980.

2. Provisions of section 162(1)(2)(3) of the ALRR, relevant, are extracted herein below for convenient reference.

"The State Government may, by notification in the Official Gazette, direct that

the provisions of this chapter shall apply to the areas, or any of the areas, constituted into belts or blocks under the provisions of section 161. On such application, the disposal of land by lease for ordinary cultivation, the nature and extent for 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 land, the management or letting out in farm or land in certain circumstances by the Deputy Commissioner, and the other allied or connected matters shall so far as possible, be governed by the provisions of this chapter and the rules made thereunder.

Notwithstanding anything to the contrary in any laws, 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):

Provided that nothing contained in this chapter or in the rules made thereunder, shall affect any transfer by way of mortgage in favour of any nationalised bank, a Co-operative Society registered under the Assam Co-operative Society Act, 1949 (Assam Act I of 1950), or such other financing institution as may be approved by the State Government).

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, if it appears to the registering authority that the transaction has been effected in contravention of the provisions of sub-section (2)".

3. The above provisions declare that a person not resident of tribal belt/block is not permitted to purchase a land and all such purchase is held to be void and no registration for purchase or transfer should be permitted.

4. This Court in Dinanath Brahma Vs. Baleswar Shah and Others, (2003) 3 GLR 588 : (2003) 3 GLT 319 laid down as follows.

"Therefore, the transfer effected to the permanent resident in the belt or block who does not belong to the notified class could be effected only on previous permission of the Deputy Commissioner. Bare reading of Section 164 of the Regulation clearly indicates that the transfer in favour of the non-notified class of persons of the land situated in the Scheduled Tribe belt or block would be a void transaction. The transfer of land in the belt or block in favour of the person belong to notified class of person or in favour of permanent resident with the previous permission of the Deputy Commissioner only is recognised by law".

5. In the instant case, the appellant is not a resident of the tribal belt/block. The sale effected in favour of the appellant has been held to be void and the land is forfeited to be restored to the original pattadar. Aggrieved by the said order, appellant filed writ petitions - W.P. (C) 3282/2006 and 3283/2006. The learned

single Judge dismissed both the writ petitions. Hence these appeals.

6. It is evident that the law does not permit a non-resident to purchase a land in the tribal belt/block; however, the appellant (herein) has been gravely misled by the state authorities. The ADC has granted permission. The sub-registrar registered the purchase despite a mandate in law against registration. The govt. advocate produced before us a number of circulars/instructions issued to Deputy Commissioners, Circle Officers and Sub-divisional Officers not to grant permissions for purchase of land by non-residents in a tribal bell/block; and instructions have also been issued that any such purchase should be declared void and the land to be forfeited.

7. It is argued that despite such circulars/instructions from the government there are instances of illegal grant of permissions and registration. If at all the purchasers are misled the officers who have granted permissions should be individually held to be liable and they should be made to pay the compensation, besides the government would also initiate disciplinary and legal action against them.

8. Upon thorough consideration of the facts and submission we are not impressed by the submission made by the counsel for the government. The responsible officers of the government may be in flagrant violation of the law have granted permission and sub-registrar has also registered the documents. However with regard to purchase the appellant is an innocent and he was misled by the permission granted by the ADC and also the registration made by the sub-registrar.

9. It is said by the govt. advocate that there are several of such instances. If the government had taken stern action against the erring officers there would not have been repeat instances of such violations. Perhaps it is because of laxity and condonation of the violations made by officers, such instances are being repeated. The law takes care of the pattadars whose interests are protected by the above omissions. The law should also necessarily take care of the interests of innocent purchasers from being misled by the state authorities. In the instant case, appellant bonafidely made an application to the circle officer and the Mandal processed the request and later submitted his report to the circle officer and on the report of the circle officer the ADC has granted permission and the sub-registrar has duly registered the documents. There appears to be no suppression of facts or misrepresentation by the appellant. The appellant has lost a sum of Rs. 72,000/- plus the stamp charges for registration. It is therefore just and necessary in equity and law that the state refund the consideration money and registration and stamp charges to the appellant but without any interest since the appellant had been in possession of the land and had enjoyed its usufructs. Accordingly both the appeals are dismissed. Appellant shall surrender the land to the government.