

(1989) 11 GAU CK 0016

In the Gauhati High Court

Case No : Civil Rule No. 58 (SH) of 1989

Shri Govinda Misra alias Misir

APPELLANT

Vs

Shri Jyotish Chandra Roy and Others

RESPONDENT

Date of Decision : 03-11-1989

Acts Referred:

Citation : (1990) 1 GLR 57

Hon'ble Judges : S.K. Hom Choudhury, J;B.P. Saraf, J

Bench : Division Bench

Advocate : P.C. Kataky, A.K. Das, K. Agarwalla and S.N. Koch, for the Appellant;

Final Decision : Allowed

Judgement

B.P. Saraf, J.—By this writ application the Petitioner has challenged the judgment and order passed by the Chief Executive Member, Garo Hills District Council, Tura cancelling the periodic patta issued to him, which was communicated vide Memo dated 27.10.33.

2. The case of the Petitioner is that a plot of District Council khas land measuring 12 (twelve) lechas covered by Dag No. 1732 and Patta No. 786 at Fancy Valley of Tura town, was originally in permissive occupation of one Grajalal D. Shira for a very long time. On 28.1.65 the aforesaid Shri Grajalal D. Shira transferred the possession of the said land to the Petitioner who was in possession thereof since then. In the year 1972-73 the Petitioner applied to the Garo Hills District (hereinafter referred to as "the District Council") for settlement of the said land in his favour. The Secretary, Executive Committee of the District Council by his Memo dated 12.2.76 informed the Assistant Settlement Officer of the District Council that the land in question had been settled, with the approval of the Chief Executive Councillor of the District Council, with the Petitioner on an annual lease. On 9.2.73, the Petitioner being in possession under the aforesaid annual lease, applied to the District Council for conversion of his annual patta pertaining to the said land to a periodic patta. A report was called for from the Lat Maudal.

The Lat Mandal submitted his report on 18.3.78 recommending issue of periodic patta to the Petitioner. In the meantime the Secretary of the District Council also sought for a clarification from the Government of Meghalaya as to whether non-tribals could be given settlement of the land in Garo Hills District. The Government of Meghalaya issued clarification on 4.7.78. Thereafter the Executive Member, incharge Revenue of the District Council by his order dated 7.8.78 ordered conversion of the Petitioner's annual patta in respect of the land to a periodic patta. The said order was approved by the Chief Executive Member on 30.8.78. In pursuance of the aforesaid order a periodic patta was issued by the District Council in favour of the Petitioner on 22.9.78.

3. On 29.11 81. some dispute arose between the Petitioner and the Respondent No. 1--Shri Jyotish Chandra Roy, in regard to construction of a stone wall on the northern side of the land occupied by the Petitioner. According to the Petitioner the Respondent No. 1 attempted to encroach on his land. A title suit was filed by the Petitioner in the Court of the Additional Deputy Commissioner, West Garo Hills, Tura for declaration of title and khas possession over the land in question and also for a permanent injunction restraining the Respondent No. 1 from interfering with the possession of the Petitioner. The aforesaid suit was numbered as Title Suit No. 6/82. An application was also filed for interim injunction. By order dated 29.7.82 an ad interim injunction restraining the Respondent No. 1 from entering the disputed land was, however, granted by the learned Additional Deputy Commissioner, West, Garo Hills, Tura.

4. The Petitioner in the meantime received a notice dated 18.7.83 issued by the Assistant Settlement Officer, incharge Resettlement Branch of the District Council intimating him that a spot inquiry would be made on 19.7.83 at 10 A.M. in regard to the settlement of land to him and directing him to remain present with relevant documents. The Petitioner awaited at his house, as according to him no place was mentioned in the notice where he was required to be present. However, no person or authority turned up for the spot enquiry. The Petitioner thereafter made enquiries in the Office of the District Council in that regard. He could learn that a report was submitted on 9.9.83 by the Assistant Settlement Officer. It was also learnt that enquiries were made on an application filed by the Respondent No. 1 on 20.10.82 before the Chief Executive Member of the District Council praying for cancellation of the Petitioner's periodic patta pertaining to the land in question and praying for making settlement of the same with him. The Petitioner obtained a copy of the said application and filed written objection suo motu without any notice to that effect from the concerned authorities. In the objection filed by the Petitioner full particulars of the suit filed in the civil court in regard to the dispute over the same land between the Petitioner and Respondent No. 1, were given. Information was also given in regard to the ad interim injunction granted by the civil court.

5. No action was taken by the concerned authorities on the objection filed by the Petitioner. On the other hand by the impugned order dated 27.10.83 the Chief

Executive Member of the District Council cancelled the periodic patta granted to the Petitioner relating to the land in question and directed correction of the revenue records accordingly. The Petitioner has challenged the aforesaid order before this Court.

6. We have gone through the impugned order and heard the submissions of the learned Counsel. The facts stated by the Petitioner regarding settlement of the land in his favour on annual lease in 1976, report of the Lat Mandal dated 18.3.78, conversion of the Petitioner's annual patta into periodic patta by order dated 7.8.78, the approval of the Chief Executive Member thereto on 30.8.78, and the grant of periodic patta in pursuance of the aforesaid order on 22.9.78 are not in dispute. No counter has been filed by the Respondents. The fact regarding the filing of a suit by the Petitioner in regard to the title and possession over the land in question and grant of ad interim injunction are also not disputed.

7. From the impugned order dated 27.10.83 it appears that Respondent No. 1 filed an application for cancellation of the periodic patta granted in favour of the Petitioner. The Chief Executive Member considered the allegations without notice to the Petitioner and arrived at a finding that the suit land was obtained by the Petitioner by misrepresentation of facts and that Respondent No. 1 was in possession of the land in question and that none else except him was entitled to the suit land. On the basis of the aforesaid finding Patta No. 786, Dag No. 1732 issued by the District Council on 22.9.78 was cancelled without giving any notice or opportunity of hearing to the Petitioner and direction was issued for correction of the revenue records accordingly.

8. The sole question for consideration is whether the impugned order is violative of the principles of natural justice and whether it was incumbent on the part of the District Council to give notice to the Petitioner and afford him reasonable opportunity of hearing before passing the impugned order cancelling the periodic patta issued in his favour. We have carefully considered the questions and we are of the opinion that a periodic patta issued in favour of a person by the authorities cannot be cancelled in the manner it was done in the instant case. A periodic patta vests a valuable right on a person over a piece of land to which it relates. Such a valuable right cannot be taken away without following the due process of law. The authorities in such a case must strictly follow the requirement of law on the subject and the principles of natural justice. The person likely to be affected by the cancellation of the patta has to be given due notice and a reasonable opportunity of hearing before any action is taken against him which affects his vested right in the land.

9. "Notice" implies notice of all the relevant facts giving rise to the proposed action, if action has been initiated on an application filed by any third party, copy of such application must be supplied along with the notice. If some information has been received in pursuance of enquiry or otherwise, the result of such enquiry and other materials against the person concerned must be referred in the notice or made available to him, to enable him to make effective

representation in the matter. It is only when all allegations on the basis of which any action is proposed to be taken are clearly and succinctly stated in the notice that the affected person can be expected to make a representation. If required, materials on which allegation is based, should also be supplied or made available to such person to enable him to understand properly the case made out against him. It must be remembered that notice in such case is not a mere formality. It is given with a view to affording an opportunity to those against whom any action is proposed to be taken to contradict anything prejudicial to them. The affected person, therefore, must know the case which is made against him before he is called upon to have his say. He must know the statements made against him or any material or evidence collected against him. It is only then that it can be said that the affected person has been given fair opportunity of showing cause against the proposed action or contradicting the allegations made against him. Otherwise the opportunity of hearing will be a mere formality or a farce.

10. The right to a fair hearing in all cases affecting rights is no more *res integra*. *Audi alterem partem* (hear the other side) is well accepted principle of law to-day. In the instant case, apparently the principle of *audi alterem partem* was violated. No fair hearing was given to the Petitioner. The Petitioner was not given notice of the case of the other side nor an opportunity to adduce any evidence in support of his case. The periodic patta which granted a valuable right to the Petitioner over the land in question, was cancelled only on consideration of the application of the Respondent No. 1. Violation of the principle of natural justice is writ large on the face of the proceedings in the instant case and as such the impugned order passed in such proceedings cannot be sustained and the same is hereby quashed.

11. In the result, this writ petition is allowed. The impugned judgment and order passed by the Chief Executive Member, Garo Hills District Council is quashed. No order as to costs.