
(1998) 05 GAU CK 0009
In the Gauhati High Court
Case No : Civil Rule No. 3781 of 1993

Soneswar Basumatary

APPELLANT

Vs

Assam Board of Revenue and Others

RESPONDENT

Date of Decision : 19-05-1998

Acts Referred:

Assam Land and Revenue Regulation (Amendment) Act, 1990 — Section 146B, 160, 161, 162(2), 163(2)

Citation : (1998) 2 GLT 329

Hon'ble Judges : D.N. Chowdhury, J

Bench : Single Bench

Advocate : None, for the Appellant; None, for the Respondent

Final Decision : Allowed

Judgement

D.N. Chowdhury, J.—The legality and validity of an order passed by the learned Member, Assam Board of Revenue, Guwahati in Revenue Appeal Case No. 116(N)/92 dated 13.8.93 is the subject matter of litigation in this petition.

2. The writ petition pertains to a plot of land measuring 28 Bighas 4 Kathas 12 Lechas covered by Dag Nos. 195, 211, 212 and 386 of Patta No. 197, under Kandali Mouza, Kisan Barkandali Mikirpar, in the district of Nagaon, which, admittedly, is a land situated in the tribal belt. Respondent No. 7 is the owner and pattadar of the land in question as is indicated in the judgment of the Revenue Board. Respondent No. 7 entered into a contractual agreement for sale of the said land with Respondents Nos. 3 to 6 and to that effect, Respondent No. 7 received a sum of Rs. 30,000/-. The Respondents obtained permission from the Additional Deputy Commissioner (ADC in short), Nagaon for the transfer of the said land. The vendor accordingly presented the Sale Deed before the Sub-Registrar, Nagaon for registration, but the Sub-Registrar refused to register the same on the ground that the Additional Deputy Commissioner, Nagaon, by his order No. NRP(Ch-X)-13/92/58 dated 20.7.92, stayed the permission. On enquiry, the Respondents/purchasers and the vendor came to know that the ADC

stayed his own order by his order dated 20.7.92. The moved the authority for consideration of the order, but since that was not done, one of the vendors preferred appeal before the Assam Board of Revenue which was numbered as Case No. 116 RA(N)/92. The learned Member, Assam Board of Revenue, entertained the appeal by condoning the delay and upon hearing both the parties and after considering the materials on record, by his order dated 13.8.93, as referred to above, set aside the order passed by the learned ADC on 20.7.92. Hence this petition.

3. Before entering in to the respective merits of the decision, it is pertinent to refer to the provisions of the relevant law in this regard. The administration of land revenue in the State is regulated by the Assam Land and Revenue Regulation, 1886. By the Assam Land and Revenue Regulation (Amendment) Act, 1947 (Assam Act XV of 1947), a special provision was incorporated in Chapter X of the Assam Land and Revenue Regulation, 1886 for giving protection to the backward classes with regard to transfer or alienation of land belonging members of the backward classes to any other persons. The relevant provisions of the said Act are extracted herein below:

160. (1) Notwithstanding anything hereinbefore contained, the (State) Government may adopt such measures as it deems fit for the protection of these 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.

(2) The (State) Government may, by notification in the Official Gazette, specify the classes of people whom it considers entitled to protection by such measures as aforesaid.

161. The protective measures may include the constitution of compact areas in regions predominantly peopled by the classes of people notified under the provisions of Sub-section (2) of Section 160, into belts or blocks.

The boundaries of the areas so constituted shall as far as possible coincide with mauza boundaries or be otherwise easily distinguishable.

162. (1) The State Government may, by notification in the official Gazette, direct that the provisions of this Chapter shall apply to 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 lease, 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 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.

(2) Notwithstanding anything to the 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):

Provided that nothing contained in this chapter or in the rules made thereunder, shall effect any transfer by way of a mortgage in favour of any nationalised bank, a co-operative society registered under the Assam Cooperative Society Act, 1949 (Assam Act 1 of 1950) or such other financing institution as may be approved by the State Government.

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

(4) The State Government may in the like manner, direct that provisions of this chapter shall cease to apply to any area or areas or portions of any area, or areas, to which they have been applied under the provisions of Sub-section (1).

(5) The application of the provisions of this chapter to any area as aforesaid will not affect :

(a) Land settled for special cultivation or purposes ancillary to special cultivation (including grants made for tea cultivation).

(b) Lakheraj, nisfkheraj or special estate settled with non-cultivators for their maintenance which land or estate and the rights and interest therein shall continue to be governed by the provisions for the foregoing chapters of the Regulation and the rules made thereunder.

163. (1) The disposal of land in areas to which the provisions of this chapter apply for the purpose of ordinary cultivation or purposes ancillary thereto shall be in accordance with such policy and procedure as may be adopted and directed by the State Government.

(2) In adopting and directing such policy or procedure, the State Government shall take into consideration:

(a) First, the bonafide needs of persons belonging to the classes notified under Sub-section (2) of Section 160 who are permanently residing in such area from before its constitution u/s 161.

(b) Secondly, the bonafide needs of persons belonging to such classes who are temporarily residing in such area from before its constitution, but, who are settlement holders of land within the area, on the date of its constitution, and who are likely to undertake to become permanent residents therein within a reasonable time; and

(c) Thirdly, if the extent of cultivable land available for settlement in belt or block be large enough, the bonafide needs of.

(I) The persons belonging to the other classes of people residing in the belt or block from before the constitution of the belt or block;

(II) The persons belonging to the classes notified under Sub-section (2) of Section 160, who are living elsewhere in the State

(3) The policy adopted and directed under Sub-section (I) shall also provide that no settlement with the persons belonging to the classes of people mentioned in Clause (c) of Sub-section (2) of the State Government.

164. (1) A settlement-holder other than a land-holder shall have no right in the land held by him behind such as are expressed in his settlement lease.

(2) A land-holder shall have a right of use and occupancy in the land-holder by him subject to any restrictions or modifications prescribed in rules made under this Chapter, and to the provisions of Section 9.

Provided that no land-holder shall transfer his land in a belt or block to:

(a) Any person not belonging to a class of people notified u/s 160, or

(b) to any person who is not a permanent resident in that belt or block;

Provided further that no such land-holder shall transfer his land in a belt or block who is a permanent resident in that belt or block who does not belong to a class of people notified u/s 160 except with the previous permission of the Deputy Commissioner.

Provided also that in granting such permission the Deputy Commissioner shall have due regard to the interests of persons belonging to the classes notified under that section.

164. (A) Notwithstanding anything to the contrary contained in this Act or in any law relating to limitation, no person to whom any land is transferred in a belt or block in contravention of the provisions of this Chapter, shall acquire any right or title in that land by length of possession whether adverse or not.

(B). Penalty for transfer - If any transfer of land is effected in contravention of the provisions of this Chapter, both the transferor and the transferee shall be punished with simple imprisonment for a term which may extend to six months or with fine-which may extend to one thousand rupees or with both.

165. (1) In the case of unsettled land any person who without authority has encroached upon or occupied it shall be liable to ejectment forthwith.

(2) In the case of annually settled land, persons other than settlement-holders, if found in occupation thereof, shall be liable to ejectment forthwith. The settlement with the settlement holder shall unless terminated earlier for

infringement of the conditions of the lease, or for any action contrary to or inconsistent with the rights conferred on him by the lease, automatically terminate at the end of the period covered by the lease.

(3)(a) In the case of periodically settled land, persons who have entered into occupation without valid authority from the land-holder, or whose entry or occupation is or has come about in a manner, inconsistent with the provisions of this chapter, shall be liable to eviction.

(b) Such eviction shall be proceeded by service of notice requiring the occupants to vacate the land and to remove all buildings and other constructions erected and crops raised within a period not exceeding one month from the date of receipt of the notice.

(c) The Deputy Commissioner may, after the persons have vacated or have been evicted from the land, take the land under his own management, or may let in farm, for such period as he thinks fit, but shall give the landholder a reasonable opportunity of undertaking in writing that he will do everything in his power to prevent unauthorised occupation by other persons in future, and of agreeing in writing that on his failure to do so, he will forfeit his rights and status of a landholder in respect of the land. If satisfied with an undertaking and agreement as aforesaid, the Deputy Commissioner shall accept them, and they shall be deemed to govern the landholder's future rights and status in respect of the land and the land shall then be restored to the landholder. If the landholder subsequently contravenes the undertaking as aforesaid, or any of the provisions of Section 9, he shall be liable to forfeiture of his rights and status in respect of the land, which will then be available for settlement afresh subject to any lawful encumbrances subsisting upon it.

166. No suit shall lie against any public servant for anything done by him in good faith under this Chapter.

167. No Civil Court shall exercise jurisdiction in any of the matters covered by this Chapter.

168. The State Government may, by notification in the official Gazette, invest any Revenue Officer with the powers of the Deputy Commissioner under all or any of the provisions of this Chapter within such limits, with such restrictions and for such period as may be specified, and may withdraw from any such officer any of the powers so conferred upon him.

169.(1) An appeal shall lie under this Chapter;

(a) to the Deputy Commissioner, from any original order parsed by any officer subordinate to him, and

(b) to the (2) (Board) from any original order passed by a Deputy Commissioner.

(2) Except in regard to orders relating to periodically settled land and an order passed on appeal under Sub-section (1) Clause (a) shall be final.

(3) In regard to orders relating to periodically settled land an appeal will lie to the (2) Board from an appellate order of the Deputy Commissioner.

170. The Board or the Deputy Commissioner may call for the proceedings held by any officer subordinate to it or him and pass such order thereof as it or he thinks fit.

171. The State Government may, by notification in the official Gazette, make rules for purposes of carrying out the provisions of this Chapter.

4. Section 164(B) and Sections 165 to 169 along with Section 171 were incorporated by the Assam Land and Revenue Regulation (Amendment) Act, 1990 (Assam Act No. IV of 1990).

5. On perusal of the statutory provisions, it thus appears that the Legislature in its wisdom has created an embargo by specifically prohibiting transfer and/or alienation of lands within the tribal belt area. The legislature has delineated its will by introducing a non-obstante clause in Sub-section (2) to Section 162 of the Regulations. The Assam Land and Revenue Regulation (Amendment) Act, 1990, as indicated earlier, further fortifies its will not to permit unfair transfer of lands by landholders in a belt or block to any person not belonging to the class of people notified u/s 160 of the Regulations or to any person who is not a permanent resident in that belt or land. Even in case of a person who is a permanent resident in that belt, the granting of permission to transfer lands is not automatic. The Statute envisions that no such landholder shall transfer his land to any person who does not belong to a class of persons as stipulated u/s 160 except with the previous permission of the Deputy Commissioner ; provided that in granting such permission, the Deputy Commissioner is required to have due regard to the interest of the people of the classes as notified under that (Section 160) Section. The Legislature by incorporating this stringent provisions, sought to protect the interest of those protected classes, any contravention of the provisions of Chapter X entails penalty u/s 146-B of the Regulations.

6. From the foregoing reasons, it thus appears that grant of permission is not a mere formality. In the instant case, no doubt the authority had at one point of time granted its permission and after granting of permission, the learned ADC stayed his own order. That was only an interim order which he was entitled to pass within the four corners of the law keeping in mind the letter and the spirit of the Regulations (as amended). As alluded earlier, that was only an interim order. By that order he has not cancelled his earlier order, but only has kept it in abeyance to enable him to look into the facts and circumstances. The law as such, is a beneficial Statute which was enacted for protection of interest of a particular class of persons belonging Scheduled Tribes from social injustice and from all forms of exploitation. The Regulation, 1886 (as amended) as such was enacted by the State in conformity with the directive principles as laid down in Chapter IV of the Constitution. The learned Member, Assam Board of Revenue, Guwahati, gave emphasis on the forms rather than on the substance of the law.

There was no error of jurisdiction. The learned ADC in staying the operation of his earlier permission, fully acted within his jurisdiction and, therefore, the action of the ADC cannot be labelled as illegal or without jurisdiction.

7. The learned Member, Assam Board of Revenue, while setting aside the order of the learned ADC, fell into serious error which caused great miscarriage of justice. As indicated earlier, transfer of land in contravention of the provisions of Chapter X of the Regulation, 1886 (as amended), is ab initio void and such transfer does not confer a right to the acquirer or possessor of such land. This Court in the case of *Manindra Chandra Dey and Ors. v. Kamal Chandra Bora and Ors.*, Second Appeal No. 70/73, reported in AIR 1977 75 , pithily discussed the relevant provisions of the law which read as follows:

In my opinion, a person who does not acquire any right to "possess" or does not "acquire" any right over land or if he is evictable under the law, he cannot claim to have acquired any Title to the land. The lowest and most IMPERFECT DEGREE of title consist in the mere naked possession or actual occupation. The second step to a good and perfect title is the right of possession. If the lowest and imperfect degree of title cannot be acquired by a person in view of the provisions contained in Sub-section (2) of Section 162 of the Regulation, the question of his acquiring "Title" under any law for the time being in force cannot arise. Therefore, in my opinion, any person, who is a party to the violation of Section 162(2) of the Regulation cannot ask for and get any declaration of title and consequently cannot have any cause of action for getting possession, khas or otherwise.

(para 23)

Therefore, in the instant case, when once it is held that the land was within the tribal belt or block and that the persons were not backward as contemplated under the Chapter, the burden of proof was undoubtedly on the Plaintiffs to show and establish that they belonged to one of the categories of persons classified u/s 163(2)(a), (b) and (c) of the Regulation read with the Rules and entitled to get settlements - (para 36)

8. On over all consideration of the facts and circumstances of the case and for the reasons stated above, the judgment and order dated 13.8.93, passed by the learned Member, Assam Board of Revenue, setting aside the order dated 20.7.92 passed by the learned ADC, Nagaon, is hereby set aside. The order dated 20.7.92, passed by the learned ADC is upheld.

9. It will be open for the learned ADC, Nagaon to pass any order upon hearing the parties and in conformity with the provisions of the Regulation, 1886 (as amended).

The petition is allowed to the extent indicated above.