

(2005) 05 GAU CK 0006

In the Gauhati High Court

Case No : Writ Appeal No. 512 of 2002 and W.P. (C) No. 5628 of 2004

State of Assam and Others

APPELLANT

Vs

Prabin Ram Phukan and Others

RESPONDENT

Date of Decision : 06-05-2005

Acts Referred:

Assam Land and Revenue Regulation, 1886 — Rule 133, 134, 135, 136, 136A

Citation : (2005) 3 GLR 682 : (2005) 2 GLT 507

Hon'ble Judges : Ranjan Gogoi, J;D. Biswas, J

Bench : Division Bench

Advocate : M.K. Choudhury and D.K. Sarma, for the Appellant; M. Bhuyan, H. Das, P. Hazarika, S.K. Talukdar, S.N. Sarma and R.S. Mannan, for the Respondent

Judgement

Ranjan Gogoi, J.—Both the cases being connected, were heard together and are being disposed of by this common judgment and order.

2. To understand and appreciate the challenge made in the cases under consideration, a brief recital of the core facts will be required.

The respondents in both the cases, Shri Prabin Ram Phukan and Shri Suren Ram Phukan were the joint owners and possessors of the land measuring 59Bs-1K-14Ls covered by different dags of K.P. Patta No. 284 (New) and 269 (Old) of village Betkuchi in Mouza Beltola in the district of Kamrup. There having occurred a default in the matter of payment of land revenue in respect of the aforesaid land, the same was put up for auction sale in the process of which the land was purchased by the Government of Assam at a token price of Rs. 11. Thereafter, the settlement in the name of the patta holders was annulled. This happened in the year 1978. The patta holders taking the plea, that the aforesaid auction sale and annulment of the settlement in their favour having come to their knowledge in the year 1993, from a certified copy of the Jamabandi obtained by them, approached the learned Board of Revenue by filing an application under Rule 149 of the Rules framed under the Assam Land and Revenue Regulation. The aforesaid approach to the learned Board of Revenue was made in the year 1996

and the intervening period, i.e., between 1993 and 1996 was sought to be explained by the pattadars on the basis of a representation filed before the Revenue Minister, Government of Assam. The learned Board of Revenue, on being so approached, took the view that the applicants before it, i.e., the pattadars, had sufficiently explained the delayed-approach to the Board and, therefore, the case brought forward by the pattadars was fit for adjudication on merits. Thereafter, the learned Board of Revenue took the further view that the auction sale of the property and the annulment of settlement having been made without following the procedure prescribed by the relevant provisions of the Regulation and the Rules framed, the learned Board of Revenue by order dated 23.2.1998 allowed the application filed by the pattadars with the following directions : -

(i) To restore the land to the appellants excepting the land already transferred to the Indian Oil Corporation.

(ii) To allow the Indian Oil Corporation to retain possession of the land already transferred to the Corporation, and

(iii) To pay the balance amount of compensation money to the appellant.

It may be noticed at this stage that during the intervening period, approximately 40 bighas of land of the pattadars had been allotted to the Indian Oil Corporation (Assam Oil Division) and premium @ Rs. 26,000 per katha was tendered and received by the Government of Assam from the Indian Oil Corporation.

3. After the learned Board of Revenue had passed orders as noticed above, restoration of possession of the land of the pattadars excepting the land already allotted to the Indian Oil Corporation was made by the revenue authority of the State of Assam and correction of the revenue records, on payment of land revenue due from the pattadars, was accordingly made by the authority. However, the latter part of the order of the learned Board of Revenue, i.e., the payment of compensation not having been implemented, the pattadars filed a writ petition being W.P.(C) No. 2234/2000 before this Court praying for a writ of Mandamus directing the State to pay the premium amount collected by it from the Indian Oil Corporation. This court, by order dated 26.2.2001, disposed of the said writ application directing the respondents to pay the amount of compensation as ordered by the Board within a period of 3 months. It must be noticed at this stage that the aforesaid direction was issued by this Court in a situation where the State had already complied with a part of the directions issued by the Board in its order dated 23.2.1998 and the said order dated 23.2.1998 was not put to any specific challenge before any appropriate legal forum. It is against the aforesaid order dated 26.2.2001 passed in W.P.(C) No. 2234/2000 that Writ Appeal No. 512/2002 has been filed. During the pendency of the aforesaid writ appeal, the State of Assam has filed W.P.(C) No. 5628/2004 challenging the order dated 23.2.1998 passed by the learned Board of Revenue. It is the aforesaid two cases that are being presently considered by us.

4. We have heard Shri M.K. Choudhury, learned Counsel for the appellants in the writ appeal No. 582/2002 as well as the petitioners in W.P.(C) No. 5628/2004. We have also heard Mr. M. Bhuyan, learned Counsel appearing for the private respondents in both the cases, i.e., the pattadars of the land in question and also Shri S.N. Sarma, learned senior counsel, who has appeared on behalf of the Indian Oil Corporation in both the cases.

5. The arguments advanced by Mr. Choudhury, learned Counsel appearing for the writ appellants and the writ petitioners in two cases under consideration has been basically three-fold. Learned counsel has argued that the approach by the private respondents i.e. the pattadars to the learned Board of Revenue was under Rule 149 of the Rules, under which provision of the Rules, the Board of Revenue could be approached against an order of annulment of settlement. Yet, the learned Board of Revenue by its order dated 23.2.1998 has set aside the auction sale and had passed further orders/directions with regard to restoration of possession of the pattadars over a part of the land and for payment of compensation in respect of the land already allotted to the Indian Oil Corporation. Not only is the exercise of power by the Board of Revenue contended to be beyond jurisdiction and authority of law, learned Counsel has also submitted that the entertainment of the lis by the Board of Revenue was beyond the time fixed by the provisions of the Rules and there was hardly any cogent explanation for the delay. The delay, the learned Counsel points out, is inordinate, i.e., after the expiry of a period of over 18 years from the date of the auction sale and annulment of settlement. The reasons advanced for the aforesaid delay which has been accepted by the learned Board of Revenue, i.e., that the pattadars were unaware of the sale and the annulment on account of being outside Guwahati in connection with their service is not at all correct inasmuch as one of the pattadars, Shri Suren Ram Phukan, was all along working as a teacher in a local school, i.e., Sonaram High School at Guwahati.

The next ground of attack in the writ appeal and the writ petition filed by the State is that the procedure prescribed under the provisions of the Regulations as well as the Rules framed there under with regard to the attachment and sale of movable property of the defaulters as a prelude to the auction sale; the auction sale held as well as annulment made, having been scrupulously followed by the authority as would be indicated by the record in original produced before this Court, there could have been no occasion for the learned Board of Revenue to find fault with regard to any of the steps taken by the authorities in holding the auction sale and the annulment of settlement made with the private respondents.

Lastly, it has been argued that in any event, the learned Board of Revenue was not right in ordering for payment of compensation to the private respondents in respect of the land subsequently allotted to the Indian Oil Corporation. What was realised by the State from the Indian Oil Corporation for the allotment made is premium @ Rs. 26,000 per katha and it is contended that there was no jurisdiction vested in the learned Board of Revenue to direct for payment of

compensation to the private pattadars.

6. The arguments advanced on behalf of the appellant-petitioner-State have met with stiff resistance from the learned Counsel appearing on behalf of the private respondents. Shri Bhuyan, learned Counsel, has argued that the entire of the proceedings leading to the auction sale and the annulment of settlement has been ex parte and the private respondents, i.e., the pattadars had no prior notice of any of the proceedings leading to the divestment of their title to the land in question. There was no serious attempt on the part of the authority to serve notice of the different proceedings on the pattadars and no sooner the said pattadars had come to know of the impugned actions of the State, i.e., in the year 1993 they had approached the State Government and thereafter, the learned Board of Revenue. The learned Board of Revenue, being duly satisfied that the delay has been satisfactorily explained by the pattadars, proceeded to adjudicate the grievance raised on merits leading to the impugned order dated 23.2.1998. It has been farther argued by the learned Counsel for the private respondents that the order dated 23.2.1998 passed by the learned Board of Revenue has been implemented in part and restoration of the land of the pattadars except the portion already allotted to the Indian Oil Corporation (about 40 bighas) has already been made and the revenue records have been accordingly corrected. When the State has complied with a part of the order of the learned Board of Revenue, it will not be open for the State to challenge the second part of the same order. It has been further argued by the learned Counsel for the private respondents that in any event, there is no error in the order of the learned Board of Revenue directing for payment of compensation to the private pattadars inasmuch as the aforesaid directions are merely consequential to the interference made by the learned Board with the auction sale, Apart of the land measuring about 40 bighas, belonging to the pattadars, having been allotted to the Indian Oil Corporation and the Indian Oil Corporation in the meantime having built up its vital installations on the said land, what was directed by the learned Board of Revenue is for payment of the premium received by the State from the Indian Oil Corporation to the pattadars in order to compensate the pattadars for the loss of the land.

Shri S.N. Sarma, learned senior counsel appearing for the Indian Oil Corporation has submitted that the possession of a total area of about 51 bighas of land was received by the Indian Oil Corporation from the Government of Assam as far back as in the year 1989 for the purpose of establishment of a Terminus for storage of various petroleum products. It has been further submitted by Shri Sarma that the aforesaid terminus has in the meantime been completed by the Indian Oil Corporation by investment of several crore of rupees and that presently the terminus is catering to the supply of different petroleum products to the State of Meghalaya, Tripura and Arunachal Pradesh besides six neighbouring districts of the State of Assam.

7. Before advertng to the rival submissions advanced on behalf of the contesting

parties, the relevant provisions contained in Chapter-V of the Assam Land and Revenue Regulation and the provisions of the relevant Rules framed under the Regulation may be noticed. u/s 63 of the Regulation, land revenue payable in respect of any estate is due jointly and severally from all persons in possession of the estate. u/s 66 of the Regulation, every sum payable on account of land revenue is deemed to be due on such date and payable in such manner as may be prescribed. u/s 67 of the Regulation, land revenue not paid on the due date is deemed to be an arrear and every person liable for payment is deemed to be a defaulter. u/s 68 of the Regulation, if an arrear of land revenue is due in respect of an estate which is not a permanently settled estate, a discretion has been vested in "the prescribed officer" to issue a notice of demand calling on the defaulter to pay the amount due within a specified time before resorting to any of the processes for enforcing payment as prescribed by Chapter-V. u/s 69 of the Regulation, the Deputy Commissioner has been vested with discretion to order for attachment and sale of movable property of the defaulter for recovery of an arrear due whereas u/s 69A of the Regulation, the temporarily settled estate itself can be attached and brought under the management of the Deputy Commissioner until the arrear due is realised. u/s 70 of the Regulation, sale of a defaulting estate is contemplated and before proceeding with the sale. Section 72 of the Regulation enjoins on Deputy Commissioner a duty to prepare a statement specifying the property, which will be sold, the time and place of sale and the revenue assessed. The list so prepared is required to be published in the manner prescribed under Rule 136 of the Rules. In this regard the provisions contained in Section 72(3) of the Regulation which require the Deputy Commissioner to publish in the Official Gazette, the statement prepared u/s 72(1) in case the arrears of revenue exceeds Rs. 500, would be of particular significance in view of the specific submission advanced on behalf of the pattadars that the said provision of the Regulation was not adhered to in the present case. u/s 75 of the Regulation, a defaulter may pay the arrear land revenue due in respect of the property which is contemplated to be sold at any time before the day fixed for the sale whereas u/s 78A even after the estate has been sold, power has been vested in the Deputy Commissioner to set aside the sale subject to the existence of conditions contemplated. u/s 79 of the Regulation, at any time within 60 days from the date of sale, an application can be made to the Deputy Commissioner to set aside the sale on ground of material irregularity or mistake in conducting the sale. u/s 80 of the Regulation, a sale becomes final on the expiry of 60th day from the day of the sale and u/s 81 of the Regulation, an application can be filed before the Board of Revenue, within one year from the sale becoming final, for setting aside the sale for ground of hardship or injustice. Section 90 of the Regulation deals with the annulment of settlement and provides that in case of a estate which is permanently settled estate, if the arrear due cannot be recovered by any of the process provided for by Section 69 of the Regulation, the Deputy Commissioner may annul the existing settlement and relinquish the claim of the State Government to the arrear.

8. Having noticed the relevant provisions of the Regulation we may now turn to analyse the relevant provisions of the Rules framed under Chapter-V of the Regulation. Under Rules 133 and 134 a notice of demand u/s 68 of the Regulation is required to be served by delivery to the person to whom it is directed and such delivery may be effected at the usual place of abode of such person. The delivery of such notice is also contemplated by pasting a copy of the notice at some conspicuous part of the usual or the last known place of abode of such person. Under Rules 135 and 136 the statement and list of estates prepared u/s 72 of the Regulation is required to be published in the manner indicated by Rule 136. u/s 136A the list/sale statement is required to be served on the defaulter and if he cannot be found, by pasting it in a conspicuous part of the estate. Rule 136 of the Regulation which is relevant may be reproduced below :

136. The list of estates referred to in the foregoing rule shall be published --

- (a) in the court of the Revenue Officer by whom it has been prepared ;
- (b) at the office of the Sub-Deputy Collector in whose circle the estate is situated;
- (c) at the office of the Tahsildar or house of the mouzadar within whose tahsil or mauza the defaulting estate lies ; and
- (d) where gaonburas are employed, on the signboard of the gaonbura within whose charge the defaulting estate falls ;
- (e) at the offices of the Gaon Panchayat and the Anohalik Panchayat.

Under Rule 138, a proclamation of annulment of settlement u/s 90 of the Regulation is required to be published in the manner provided for and a copy of the same is also required to be pasted in a conspicuous part of the estate. Under Rule 141, a defaulting estate put up for sale for realisation of arrears of revenue can be purchased by the Revenue Officer conducting the same on behalf of the State Government for one rupee, if there is no bid and at an amount higher than the highest bid if the highest bid offered is insufficient to cover the arrear due. Under Rule 149 of the Regulation, an appeal is provided to the Board against an order of annulment of settlement whereas under Rule 150, when any settlement is annulled u/s 90 of the Regulation, a notice is required to be issued to the defaulter requiring him to vacate the land and remove there from any building erected and crops planted.

9. Having noticed the relevant provisions of the Regulation and the Rules framed, we may now proceed to take note of precise steps taken in the present case leading to the order passed and the actions taken which had been impugned by the pattadars in the proceedings before the learned Board of Revenue.

An order of attachment of movable property was issued on 18.11.1976 for recovery of land revenue to the extent of Rs. 731.70, due from the pattadars Shri Suren Ram Phukan and Shri Prabin Ram Phukan. The aforesaid order was sought to be delivered to the defaulters but the same could not be executed and

the Process Server submitted a report to the effect that the defaulters were in different places and, therefore, could not be contacted and their legal heirs/representatives when so contacted, had submitted that they do not know anything in the matter. The aforesaid endorsement of the Process Server was recorded in the presence of the two witnesses including a Gaonburah. On the said report, the Mouzadar, who had issued the order of attachment of movable property, had recorded a note to the effect that even if "movable" (appears to be wrongly recorded as immovable) is sold, nothing would accrue and, therefore, the revenue should realized by auction sale of the land. Thereafter, it appears that the statement/list contemplated u/s 72 of the Regulation was prepared mentioning 21.6.1977 as the date on which the estate will be sold. The aforesaid list/statement could not be served on the defaulter in spite of 3-4 attempts. The mother and other relatives of the defaulters refused to accept the same and thereafter, a notice was pasted on the wall of the house of the defaulters in presence of neighbours as witnesses and the copy of the notice was also published in the office of the Sub-Deputy Collector, Mouzadar and Gaonburah. Thereafter, it would appear from the order-sheet of the proceedings of sale that the sale was conducted on 21.6.1977, 22.6.1977, 23.7.1977, 24.6.1977, 25.6.1977, 27.6.1977 and finally, on 28.6.1977, a bid of one rupee was offered on behalf of the State Government, which was accepted by the officer conducting the sale. The amount of one rupee was deposited by a Treasury Challan dated 17th/18th August, 1977 and thereafter, on 29.6.1988, the sale was confirmed by orders passed by the Board.

10. Against the above backdrop, the court may now proceed to analyze what had happened in the present case and on that basis to decide the tenability of the rival projections made. The order dated 26.2.2001 passed by this Court in W.P. (C) No. 2234/2000 which has been impugned in Writ Appeal No. 512/2002, must necessarily be understood in the context of the circumstances in which the learned Single Judge had rendered the order dated 26.2.2001. At that point of time, not only a part of the order dated 23.2.1998 passed by the learned Board of Revenue was implemented, the later part of the order directing payment of compensation to the pattadars was not challenged by the authorities of the State of Assam either before this Court or before any other appropriate forum. It is in the aforesaid circumstances that the learned Single Judge had issued the directions contained in the order dated 26.2.2001. However, subsequently the order of the Board dated 23.2.1998 has come to be challenged in the writ proceeding filed by the State of Assam, which has been registered as W.P.(C) No. 5628/2004. The legality and tenability of the order dated 26.2.2001 passed by the learned Single Judge in W.P. (C) No. 2234/2000, therefore, though read in isolation would appear to be ex facie acceptable, the ultimate tenability of the said order will depend on the view taken by the Bench in the writ petition filed, i.e., W.P.(C) No. 5628/2004. It is to the aforesaid writ petition, therefore, that this Court now has to turn.

11. W.P.(C) No. 5628/2004 has been filed on 9th August, 2004 challenging the

order dated 23.2.1998 passed by the learned Board of Revenue and as already noticed, in a situation where the first part of the directions issued by the Board, i.e., for re-conveying the title and possession of the pattadars to the balance land (the land not already handed over to the I.O.C.) had been implemented not only by handing over such possession but even by correction of the revenue records. The scope and ambit of the writ petition, therefore, will have to be construed by this Court accordingly. Though the writ petition filed is a belated one, certain explanations have been furnished as to why the delay has occurred. Such explanations, primarily, are to the effect though instructions had been issued by the authority to the State counsel to take steps to challenge the order of the learned Board of Revenue, for one or the other reason, the same was not done. Having regard to the explanations offered and the public interest involved in the adjudication of the merits of the case filed by the State, we are inclined to take the view that W.P.(C) No. 5628/2004 should be heard and adjudicated by us on the merits of the challenge raised by the petitioner State.

12. Before proceeding any further in the matter, there is another aspect of the case that would require elaboration at this stage. In the recital of facts made in the preceding part of this order, it has been noticed that the learned Board of Revenue had proceeded on the basis that the land of the pattadars was not only sold in auction, the settlement was also annulled under the provisions of the Regulation. Accordingly, interference was made by the learned Board with the auction sale as well as the annulment made. The aforesaid course of action appears to have been adopted by the learned Board of Revenue on the pleadings contained in the application filed before it by the pattadars though the learned Board of Revenue has also referred to the records in original placed before it. In the writ petition filed by the State of Assam, the challenge, again, is in respect of the interference made with the auction sale as well as the annulment. We have considered the record placed before us and we do not find any order passed by the authority competent under the Regulation, annulling the settlement made with the pattadars. Under the provisions of the Regulation, the annulment of settlement u/s 90 of the Regulation is an alternative to sale by public auction. The provisions of the Regulation do not contemplate simultaneous proceedings for sale by auction as well as for annulment of the settlement made. The effect of both the proceedings being the same, i.e., extinguishments of the title of the pattadars, there is little justification or logic to seek to find in the Regulation any contemplation of two parallel proceedings in the Regulation. We, therefore, proceed in the instant matter by treating the order of the learned Board of Revenue to be one interfering with the auction sale of the land of the pattadars and the challenge made in the writ petition filed to be against such order of the Board.

13. Under the provisions of the Regulation, a sale can be interfered with on ground of material irregularity or illegality in the conduct thereof by the Deputy Commissioner (Section 79) and by the Assam Board of Revenue on ground of hardship and injustice u/s 81 of the Regulation. The grounds of hardship and

injustice on which a sale can be avoided u/s 81 of the Regulation cannot be understood to be independent of such consequences, i.e., hardship and injustice caused by any material irregularity or mistake in conducting the same. It is hardship or injustice caused to a pattadar for no fault of his that is contemplated by the power conferred u/s 81 of the Regulation. After all, any auction sale of land belonging to a pattadar is bound to bring about hardship to the pattadar but such hardship will not call for interference if the pattadar himself is responsible for the consequences ensuing, in the present case, before resorting to the power of sale u/s 70 of the Regulation, there was an attempt to realise the arrear due from the pattadars by sale of movable property of the pattadars. However, notice of such sale could not be effected as the pattadars could not be found and their legal representatives refused to accept such notice. In such a situation, the provisions of the Regulation for substituted service was followed. Thereafter, the power u/s 70 of the Regulation, i.e., to sell the estate was invoked and the statement/list of the defaulting estates required to be prepared u/s 72 of the Regulation was so prepared and the same was sought to be served on the pattadars which attempt, also, did not yield any result. The legal representatives of the pattadars once again refused to accept the same whereafter the said statement/list was served by pasting the same on the wall of the house of the pattadars in the presence of the neighbours and a copy of the same was also published in accordance with the provisions of Rule 136 Of the Rules framed. All this is evident from the endorsements) made by the Process Server which are available on the reverse side of the order of attachment of movable property as well as the statement/list prepared u/s 72 of the Regulation which are contained in the original record. The argument advanced on behalf of the pattadars that the statement/list prepared u/s 72 of the Regulation was not published in the Gazette though the arrear due was over Rs. 500/-, cannot come to the aid of the pattadars inasmuch as publication in the Official Gazette of the statement/list u/s 72 of the Regulation is for the benefit of intending purchasers. Insofar as the pattadars are concerned, the sale statement/list was sought to be served on the pattadars and, on such failure, was posted on the estate as required u/s 72(4) of the Regulation read with Rule 136 A of the Rules framed. It is only after taking of the aforesaid steps as enjoined by the provisions of the Regulation and the Rules framed thereunder that the auction sale was made in favour of the State at a token price of Re. 1 which, it must be noticed, is in accordance with the provisions of Rule 141 of the Rules framed under the Regulation. The sale was not to a private person but was in favour of the State and in accordance with the provisions of the Rules. The above facts impel us to take the view that in the conduct of the auction sale of the land of the pattadars leading to the divestment of the title of the pattadars and the purchase of the land by the State has been made in substantial, if not, in full compliance with the provisions of the Regulation and the Rules framed thereunder and there has been no illegality or irregularity in the procedure adopted leading to the extinguishment of the title of the pattadars. The contrary findings recorded by the learned Board of Revenue, cannot, therefore, have our acceptance and, consequently, the impugned

directions issued by the learned Board of Revenue for payment of compensation to the pattadars for the land handed over to the I.O.C. is not legally sustainable. We accordingly, interfere with and set aside the aforesaid part of the directions and as the rest of the directions issued by the learned Board of Revenue have already been implemented and we have construed the scope of the writ petition to be limited to the directions for compensation issued by the Board, we leave the matter at that and allow the writ petition of the State to the aforesaid extent only. Consequently, both Writ Appeal No. 512/2002 and W.P.(C) No. 5628/2002 shall stand allowed to the extent indicated above.