

(1999) 10 GAU CK 0019

In the Gauhati High Court

Case No : Writ Appeal No. 52 of 1995 (in Civil Rule No. 784 of 1989)

Sunil Krishna Paul

APPELLANT

Vs

Assam Board of Revenue and Others

RESPONDENT

Date of Decision : 15-10-1999

Acts Referred:

Assam Land and Revenue Regulation, 1886 — Rule 184, 100(1), 110, 111, 116
Criminal Procedure Code, 1973 (CrPC) — Section 144

Citation : (1999) 3 GLT 414

Hon'ble Judges : Brijesh Kumar, C.J.; B. Biswas, J

Bench : Division Bench

Advocate : K.K. Mahanta, for the Appellant; Govt. Advocate and G.P. Bhowmik, for the Respondent

Final Decision : Allowed

Judgement

Brijesh Kumar, C.J.—One of the main question involved in this appeal for consideration is about the powers and jurisdiction of the Sub-Deputy Collector (SDC) to issue a notice u/s 116-A of the Assam Land and Revenue Regulation, 1886 (hereinafter referred to as the Regulation) for the purpose of effecting partition of share, as decided in a proceeding for perfect partition u/s 98 of the Regulation.

2. We have heard Shri K.K. Mahanta, learned Counsel for the Appellant and Shri G.R Bhowmik, learned Counsel appearing for Respondent No. 3.

3. The facts in brief relevant for the purposes of disposal of this appeal are that the Petitioner/Appellant purchased land measuring 13 1/2 Leehas in Dag No. 313 of Periodic Patta No. 98 (New)/88 (Old) in Town Kachalukhowa Kisam in Mouza Town, district Nagaon, Assam in the year 1973. According to the Petitioner/Appellant, his name was also mutated in the relevant records. The case of the Petitioner/Appellant further is that since after the purchase of the land he is in physical possession thereof, having residential house, sanitary latrine, tube wells, etc. Respondent No. 3, Shri Baidya Nath Dutta, had also purchased land out of

the said Dag No. 313 measuring 13 3/4 Lechas. Two Ors. , who also held land out of the said Dag are Amalesh Chandra Paul and Dhiraj Das. According to the Petitioner/Appellant, Respondent No. 3, Baidya Nath Dutta, moved the Deputy Commissioner u/s 98 of the Regulation for issuance of a patta in his favour in respect of the land purchased by him, measuring 13 3/4 Lechas. Proceedings for perfect partition was initiated, being case No. PP18/79-80, before the Sub-Divisional Officer, Nagaon. Objections appeared to have been filed by the Petitioner/Appellant; but the partition was ultimately allowed by order dated September 20, 1982, which was approved by the Additional Deputy Commissioner on 29.9.82. An appeal was preferred by the Petitioner/Appellant before the Assam Board of Revenue, namely, Revenue Appeal No. 254(RA) (N)/82; but it was also dismissed. A separate patta No. 611, was issued in favour of Respondent No. 3 in respect of 13 3/4 Lechas of land. The partition case was closed by order dated 9.4.85.

4. After the closure of the partition case in 1985, as indicated above, the Sub-Deputy Collector, Nagaon Circle, issued a notice dated 18.11.88 indicating that the Petitioner/Appellant and his brother Amalesh Chandra Paul, had been possessing 2 1/2 Lechas of land covered by Patta No. 611, which land belongs to the Respondent No. 3. It was also stated that over the said part of the land, latrine and tube wells etc. were constructed. The Petitioner/Appellant was directed by the said notice to vacate the said part of the land measuring 2/4 Lechas. The notice is indicated to have been issued on the direction of the Additional Deputy Commissioner, Nagaon, dated 4.10.88, made in NRP/PP Case No. 18/79-80/27. The Petitioner/Appellant objected against the notice before the Assam Board of Revenue, in case No. 219 RA(N)/88, but the application was rejected by order dated 4.5.89. The Petitioner, thereafter, preferred Civil Rule No. 784 of 1989, which has been dismissed by the learned Single Judge.

5. The learned Single Judge dismissed the writ petition holding that a valid notice could be issued by the Sub-Deputy Collector under the directions of the Addl. Deputy Commissioner. It was also held that protection u/s 100(1) of the Regulation would not be available to the Petitioner/Appellant as latrine and tube well are not dwelling house and also for the reason that the said construction was made during the pendency of the partition case. Aggrieved by the said order, the present appeal has been preferred.

6. Partition is provided for under Chapter VI of the Regulation. An application for perfect partition lies u/s 98 of the Regulation. The subsequent provisions relate to further proceedings regarding objections to the partition prayed for and their disposal and other related matters. On completion of the proceedings for partition, a proclamation of partition is made by the Deputy Commissioner u/s 116 of the Regulation. It is published at his office and at some conspicuous places. The partition is to take effect from the beginning of the agricultural year next after the date of proclamation.

7. We now come to the relevant provisions, namely, Section 116A, which lays

down the procedure for giving effect to the partition, which reads as under:

116-A. Procedure to be followed by Deputy Commissioners in giving effect to the partition.

As soon as may be after the date on which the partition takes effect under the last proceeding Section, the Deputy Commissioner shall deliver to the several sharerers possession of the separate lands allotted to them, and for this purpose may, if necessary, summarily eject any proprietor or landholder who may refuse to vacate the same.

8. According to the provision quoted above, the partition is to be effected by the Deputy Commissioner by delivery of possession of the shares to the different sharerers separately of the lands allotted to them. He is also entitled to summarily eject any proprietor or landholder who may refuse to vacate the same.

9. "Deputy Commissioner" has been defined under Clause (m) of Section 3, as follows:

"Deputy Commissioner" includes and shall be deemed always to have included the Additional Deputy Commissioner;

10. The powers, therefore, as vested on the Deputy Commissioner u/s 116A, could be exercised by the Deputy Commissioner, or the Additional Deputy Commissioner.

11. Apart from the above noted two authorities, the power has been conferred upon the Sub-Divisional Officer to the effect partition under Chapter VI of the Act. For this purpose, we may peruse Section 126 of the Act, which provides as follows:

126. Powers of Sub-Divisional Officers.

(1) A Sub-Divisional Officer shall, in addition to any other powers conferred on him by or under this Regulation, have the following powers of a Deputy Commissioner, namely:

(a)....

....

....

(e) subject to the confirmation of the Deputy Commissioner power to receive applications and to do all that is necessary for effecting partition and union of estates under Chapter VI.

12. The provisions quoted above, leave no room to doubt about the power and jurisdiction of officers to effect partition, as provided under Chapter VI of the Regulation. The said power is specifically vested in the Deputy Commissioner by virtue of Section 116A of the Regulation and in the Additional Deputy

Commissioner by virtue of the definition clause quoted earlier, as the term "Deputy Commissioner" includes the "Additional Deputy Commissioner"; and then, by virtue of Clause (e) of Section 126(1), this power of effecting partition is statutorily conferred upon the Sub-Divisional Officer subject to the confirmation of the Deputy Commissioner. In our view, besides the above authorities, as mentioned above, no other authority is empowered to effect partition, nor such power to effect partition could be conferred or delegated to any other authority, they can be exercised by the Sub-Divisional Officer under Clause (e) of Section 126(1) subject to confirmation by the Deputy Commissioner. The Sub-Deputy Collector who has issued the notice in the present case u/s 116A of the Regulation, nowhere finds place in any of the provisions relating to effecting partition or conferring jurisdiction upon him at all. Where there are named officers under statute who can exercise a particular power or discharge any particular kind of function, no other officer would be entitled to exercise those powers or discharge those functions. There is no provision under which the Deputy Commissioner could delegate this power or function to the Sub-Deputy Collector. Therefore, the mention in the notice that it was being issued under the instructions of the Additional Deputy Commissioner in no way confers powers upon the Sub-Deputy Collector to effect the partition. Authorisation/delegation of the power to effect the partition by the Additional Deputy Commissioner in favour of the Sub-Deputy Collector is without sanction of law and invalid.

13. Our attention has also been drawn to Section 128 of the Regulation, which provides for subordination of Revenue Officers, which reads as under:

128. Subordination of Revenue Officers.

(1) All Revenue Officers in a district shall be subordinate to the Deputy Commissioner and shall exercise all powers conferred on them by or under this Regulation subject to his control.

(2) Subject to the general control of the Deputy Commissioner, all Revenue Officers, other than the Sub-Divisional Officer, in a subdivision of a district shall, unless the State Government otherwise direct, be subordinate to the Sub-Divisional Officer, and shall exercise all powers conferred on them by or under this Regulation subject to his control.

(3) Subject to the general control of the State Government, all Revenue Officers in a district which is included in a Commissioner's Division, shall be subordinate to the Commissioner, and shall exercise all powers conferred on them by or under this Regulation subject to his control.

(4) Subject to the general control of the State Government, all Revenue Officers shall be subordinate to the Board and shall exercise all the powers conferred on them by or under this Regulation subject to its control.

14. The above provision indicates the general control of different authorities upon the subordinate Revenue Officers. But, one thing which is clear is that each

Revenue authority is entitled to exercise only those powers as conferred on them by or under the Regulation subject to control of the superior authorities. Section 128 excludes any possibility of any Revenue Officer exercising powers which are not conferred on him by or under the Assam Land and Revenue Regulation, 1886. So far giving effect to the partition is concerned, those powers are conferred on the Revenue Officers u/s 116A and Section 126(1)(e) of the Regulation, and none of these provisions confers any power on the Sub-Deputy Collector to exercise the power or function of effecting partition. There is no provision enabling delegation of this power by the Deputy Commissioner or the Additional Deputy Commissioner upon any other Revenue Officer. Only the Divisional Officer could do it subject to confirmation by the Deputy Commissioner.

15. Shri G.P. Bhowmik, learned Counsel appearing for Respondent No. 3, submits that the impugned notice issued by the Sub-Deputy Collector was issued u/s 129 of the Regulation read with Rule 184 of the Rules framed under the Regulation; and not u/s 116A of Chapter VI. A perusal of Section 129 shows that it contains power to distribute work and authorities the Deputy Commissioner or Sub-Divisional Officer to refer any case to any Revenue Officer subordinate to him for investigation and report, or, in case the subordinate officer has power to dispose of the case, then for its final disposal. Rule 184 of the Rules is also to the same effect and provides that a matter shall not be referred to any Revenue Officer for investigation and report lower in rank than those mentioned in the Rule, namely, Tahsildar, mauzadar or Sub-Deputy Collector. The provisions as contained in Section 129 and Rule 184 are only confined to investigation and report which a subordinate officer may submit to the superior officer on being required to do so. These provisions do not empower the Deputy Commissioner or the Sub-Divisional Officer to delegate any of those functions statutorily vested in them, more particularly, u/s 116A and Section 126(1)(e) of the Regulation. The officers mentioned in the above noted provisions are named officers to carry out or to give effect to the partition under Chapter VI. Section 129 read with Rule 184 would not be applicable for the purposes of effecting partition under Chapter VI, nor it relates to any power beyond investigation and report about the actual spot possession or needs of that nature alone.

16. A perusal of the notice dated 18.11.98 issued by the Sub-Deputy Collector, Sadar Circle, Nagaon, shows that as per direction of the Additional Deputy Commissioner issued on 4.10.88 in NRP/PP Case No. 18/79-80/27, the Petitioner/Appellant was ordered to remove the latrine house and the tube well from the 2 1/2 Lechas of land immediately and was required to report compliance in his office by 13.12.88, in pursuance of the order of perfect partition failing which appropriate action was to be taken. It was not a notice for a matter in which the Sub-Deputy Collector was required to investigate and report; but by virtue of direction of the Additional Deputy Commissioner, he had himself required the Petitioner/Appellant to remove possession from the latrine house and the tube well by a particular date. As indicated in the earlier paragraphs, such a function could not be delegated nor partition could be effected by the Sub-Deputy

Collector by virtue of any provisions under the Regulation.

17. The learned Counsel for the Appellant has submitted that even giving effect to partition is an important function, as u/s 110 of the Regulation, in case it is found that an estate or a part of it assigned to one sharer is occupied by a dwelling house or a building in the possession of Anr. sharer, he may be allowed to retain it with any building thereon, on condition of his paying a reasonable ground rent for it to the sharer into whose portion it may fall. The submission is that this is an important right which the Appellant would be entitled to assert before an officer authorised to effect partition. Sub-Deputy Collector is an officer much lower in rank as compared to the Deputy Commissioner, Additional Deputy Commissioner as well as the Sub-Divisional Officer. Our attention has also been drawn to Section 154 of the Regulation, which indicates that jurisdiction of the Civil Court is barred in the matters relating to partition. Hence, it is all the more necessary that only the competent authority as empowered under the law should be allowed to deal with the matter, rather than a lower authority having no jurisdiction is allowed to deal with the same.

18. It has even been submitted that the learned Single Judge without any reasoning has baldly observed that the latrine house or tube wells are not dwelling house. It is submitted that a latrine and a tube well would be an essential part and parcel of a dwelling house, without which it would be of no use. It is submitted that some reason should have been recorded to give any definite finding on this question. We find some force in the submission made on behalf of the Appellant. According to Section 111 also, tank, wells water-courses and embankments, etc. are considered to be attached to the land for the benefit of which they were originally made. We feel, such aspects should have been gone into in a bit detail to come to any conclusion as to whether they constitute a part of the building or house or not. A bald observation that latrine and tube well are not dwelling house u/s 110 of the Regulation cannot be accepted. Similarly, in regard to the finding recorded by the learned Single Judge that the latrine and the tube well were constructed during the pendency of the partition case, it is submitted that it is based on some preliminary order issued in proceedings u/s 144 , Code of Criminal Procedure, but ultimately, those proceedings initiated by the other side were dropped, being based on false facts. We are of the view that these matters would better be dealt with and considered by an appropriate authority legally entitled and vested with the power of effecting partition.

19. We are, therefore, of the view that these questions should be left open to be considered and decided by the appropriate authority. We hold that the Sub-Deputy Collector has no jurisdiction to issue notice u/s 116-A of the Regulation for effecting partition.

20. In the result, the appeal is allowed. The order of the learned Single Judge, dated 14.11.94, passed in Civil Rule No. 784 of 1989, as well as the notice dated 18.11.88, issued by the Sub-Deputy Collector, Sadar Circle, Nagaon, on pursuance of the order of perfect partition and orders passed by the Additional

Deputy Commissioner in NRP/PP Case No. 18/79-80/27, dated 4.10.88, directing the Appellant to hand over possession of 2 1/2 Lechas of land covered by Patta No. 611 in favour of Shri Baidya Nath Dutta, are set aside.

21. It will, however, be open for the appropriate authority under the law to proceed with the matter and effect partition in accordance with law, disposing of any ground or objection, if raised by the Petitioner Appellant