



GAHC010107622010

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THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/6395/2010

DILIP KUMAR MAZUMDAR and ANR.
S/O LT. NARENDRA KR MAZUMDAR R/O P N G BARUAH PATH,
MALIGAON, GHY-11, P.S. JALUKBARI, DIST. KAMRUP M, ASSAM.

VERSUS

THE STATE OF ASSAM AND ORS
REP. BY THE COMMISSIONER and SECY, GOVT. OF ASSAM, REVENUE
DEPARTMENT, DISPUR, GHY.

2:THE ASSAM BOARD OF REVENUE

KAMRUP
ASSAM
REP. BY ITS CHAIRMAN
PANBAZAR
GHY-1.

3:SHRI PRASANNA KR MAZUMDAR
S/O LT. NARENDRA KR MAZUMDAR
R/O P N G BARUAH PATH
MALIGAON
GHY-11
P.S. JALUKBARI
DIST. KAMRUP
ASSAM. AT PRESENT RESIDENT OF ADABARI
GHY.

4:THE SETTLEMENT OFFICER

KAMRUP
GHY

For the Petitioner(s)

: Mr. S. P. Roy, Advocate



For the Respondent(s)

: Mrs. R. D. Mozumdar, Advocate

: Mrs. S. Baruah, Standing Counsel

**BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH**

JUDGMENT AND ORDER (ORAL)

Date : 09-11-2023

1. The instant writ petition has been filed by the Petitioners challenging the order dated 16.09.2010 passed by the learned Assam Board of Revenue in Case No.155 RA(K)/2003 whereby the learned Assam Board of Revenue disposed of the said appeal by directing the Deputy Commissioner Kamrup (M) to re-examine the settlement made in respect of the entire 3 Kathas 5 Lechas of land covered by Dag No.489 and also various other enquiries were directed to be conducted by the Deputy Commissioner, Kamrup (M).

2. Before dealing with the facts involved in the instant writ petition, it is relevant to take note of that by way of the instant writ petition, what the petitioners are seeking is a writ in the nature of certiorari for setting aside the impugned judgment dated 16.09.2010 passed in Case No.155 RA(K)/2003 by the learned Assam Board of Revenue. In that perspective therefore, this Court finds it relevant to take note of the law as regards the exercise of jurisdiction under Article 226 of the Constitution by this Court for issuance of a writ in the nature of certiorari. In a recent judgment of the Supreme Court in the case of ***Central Council for Research in Ayurvedic Sciences and Another Vs. Bikartan Das and Others*** reported in (2023) SCC Online SC 996, the Supreme Court laid down that there are two basic principles which needs to be kept in mind while

exercising the jurisdiction under Article 226 of the Constitution by the High Court while issuing a writ in the nature of certiorari. Paragraph Nos. 50, 51 and 52 of the said judgment being relevant are quoted hereinbelow:

“50. Before we close this matter, we would like to observe something important in the aforesaid context:

Two cardinal principles of law governing exercise of extraordinary jurisdiction under Article 226 of the Constitution more particularly when it comes to issue of writ of certiorari.

51. The first cardinal principle of law that governs the exercise of extraordinary jurisdiction under Article 226 of the Constitution, more particularly when it comes to the issue of a writ of certiorari is that in granting such a writ, the High Court does not exercise the powers of Appellate Tribunal. It does not review or reweigh the evidence upon which the determination of the inferior tribunal purports to be based. It demolishes the order which it considers to be without jurisdiction or palpably erroneous but does not substitute its own views for those of the inferior tribunal. The writ of certiorari can be issued if an error of law is apparent on the face of the record. A writ of certiorari, being a high prerogative writ, should not be issued on mere asking.

52. The second cardinal principle of exercise of extraordinary jurisdiction under Article 226 of the Constitution is that in a given case, even if some action or order challenged in the writ petition is found to be illegal and invalid, the High Court while exercising its extraordinary jurisdiction thereunder can refuse to upset it with a view to doing substantial justice between the parties. Article 226 of the Constitution grants an extraordinary remedy, which is essentially discretionary, although founded on legal injury. It is perfectly open for the writ court, exercising this flexible power to pass such orders as public interest dictates & equity projects. The legal formulations

cannot be enforced divorced from the realities of the fact situation of the case. While administering law, it is to be tempered with equity and if the equitable situation demands after setting right the legal formulations, not to take it to the logical end, the High Court would be failing in its duty if it does not notice equitable consideration and mould the final order in exercise of its extraordinary jurisdiction. Any other approach would render the High Court a normal court of appeal which it is not."

3. In the backdrop of the above principles, this Court finds it relevant to take note of the facts involved in the instant case. The Respondent No.3 as Appellant had instituted an appeal proceedings under the provisions of Section 147 read with Section 151 of the Assam Land and Revenue Regulation, 1886 (for short "the Regulation"). In the said Appeal, it was the case of the Respondent No.3 that he along with his mother and others were occupying a plot of land measuring 2 Kathas 6 Lechas covered by Dag No.489 of village Maligaon under Mouza Jalukbari for more than 50 years which have been described in the said Memo of Appeal. It was stated that the mother of the Appellant (Respondent No.3 herein) had constructed an Assam Type house on the said land. An application was filed by the mother of the Appellant (Respondent No.3 herein) for settlement of the said land in her favour. It was also mentioned that the mother of the Appellant (Respondent No.3 herein) had also executed a Will registered vide Deed No.5 dated 30.01.1998 relating to the landed properties including the plot of land in question and the Respondent No.3 was appointed as the Executor of the said Will. On 16.01.1996, the mother of the Respondent No. 3 expired and upon her death, the Respondent No.3 continued to possess the landed properties including the land in question belonging to and occupied by the mother for an on behalf of all the legal heirs of his deceased mother. It was specifically stated that the mother of the

Respondent No.3 died leaving behind six sons and two daughters. Further to that, it was also mentioned that in the month of August, 2003, the Respondent No.3 was informed by one Shri Ratul Talukdar that some Misc. cases were filed by the Petitioner before the Assistant Settlement Officer. The Respondent No.3 appeared before the Assistant Settlement Officer and requested him to furnish a copy of the application filed by the Petitioner. Subsequently, the said application was furnished to the Respondent No.3. Upon receipt of the said application, the Respondent No.3 came to learn that the Petitioner had filed a Misc. Case No.5 in relation to the said plot of land in which he had entered his name as joint pattadar along with his mother Late Joyabala Mazumder. Further to that, the Respondent No.3 could come to learn from making enquiries that the settlement was given in the name of the Petitioner as far back as in the year 1992 and a new Patta No. 49 was allotted thereafter and it was only in the year 2003 vide Misc. Case No.5/2003, the said aspect was disclosed by the Petitioner. It is on the basis of the said facts, the appeal was filed by the Respondent No.3 which was registered and numbered as Case No.155 RA(K)/2003 wherein the Respondent No.3 as Appellant sought for setting aside the order for settlement in the name of the Petitioner as well as the subsequent action arising out of the order for settlement of the land in the name of the Petitioner and to pass an order directing status quo to be maintained in respect of the land mentioned in the schedules.

4. It reveals from the records that the Respondent No.3 had also filed an application seeking condonation of delay. The Petitioner herein who was Respondent No.2 in the said appeal proceedings appeared and filed objections against the condonation of delay as well as also on merits. The record further shows that one of the sisters i.e. Smti Anjali Mazumdar who is the Petitioner

No.2 herein had filed an application in the said appeal proceedings and was impleaded as the Respondent No.3. The record further reveals that vide an order dated 16.08.2010, the delay in filing the appeal was condoned. The said order however has not been challenged in the instant proceedings. At this stage, this Court also finds it relevant to mention as it would be apparent from a perusal of the writ petition that there was a challenge to the said order dated 16.08.2010 in WP(C) No.4887/2010 which was however withdrawn on 13.09.2010 with a liberty to file a fresh one. In Paragraph No.48 of the writ petition, it was mentioned that on the basis of the liberty, another writ petition was filed being WP(C) No.5079/2010 challenging the order dated 16.08.2010. Be that as it may, vide an order dated 05.01.2011, the said writ petition i.e. WP(C) No.5079/2010 was closed without interfering with the order dated 16.08.2010.

5. The learned Assam Board of Revenue pursuant to the order dated 16.08.2010 took up the Appeal on merits. Vide an order dated 16.09.2010, after hearing the parties, the learned Assam Board of Revenue remanded the matter back to the Deputy Commissioner, Kamrup (M) for re-examination of the settlement made in respect of the entire 3 Kathas 5 Lechas of land covered by Dag No.489 by examining all records and giving notices to all affected parties and further directed to examine various issues. The issues which were directed to be examined were:

(i) The status of land was directed to be examined at the time when the recommendations were made for settlement on 02.01.1987 by the Deputy Commissioner, Kamrup (M) inasmuch as it was the view of the learned Assam Board of Revenue that the land in question could not have been a La Khiraj

grant standing in the name of Kamakhya Temple as well also an Annual Patta being issued at the same time as both would be contrary to each other.

(ii) It was observed by the learned Assam Board of Revenue that in the communication dated 02.01.1987 on the basis of which recommendation was made by the Deputy Commissioner for settlement had shown that 1 Katha 8 Lechas of land was under the possession of Late Jogabala Mazumdar i.e. the mother of the Petitioners and Respondent No.3 and 5 Lechas of land was under the possession of the Petitioner No.1. Therefore, under what circumstances, the settlement was made of 2 Kathas 6 Lechas of land as per the statement of the Appellant therein or 2 Kathas 13 Lechas as per the Petitioners herein.

(iii) The third point was also directed to be examined is as to how Late Jogabala Mazumdar i.e. the mother of the Petitioners and Respondent No. 3 along with others could pay their revenue for more than 30 years without the land in their names.

6. Being aggrieved by the said directions, the Respondent Nos. 2 and 3 in the Appeal as Petitioners herein have jointly filed the instant writ petition challenging the judgment dated 16.09.2010.

7. I have heard the learned counsels for the parties and have perused the materials on record. The edifice upon which the land was settled in favour of the Petitioner No.1 and his mother was the recommendation made on 02.01.1987 by the Deputy Commissioner, Kamrup. Therefore, it is very relevant to take note of the communication dated 02.01.1987. The said communication has been enclosed as Annexure-19 to the writ petition. A perusal of the said

communication reveals that the Deputy Commissioner, Kamrup had made recommendation that (i) Smti Jogabala Mazumdar (since deceased), (ii) Shri Dilip Kumar Mazumdar, (iii) Shri Joyram Rajbongshi and (iv) Shri Paresh Chandra Das representing the Bishnu Temple should be granted settlement under the provisions of the Assam State Acquisition of Land Belonging to Religious or Charitable Institution of Public Nature Act, 1959 (for short "the Act of 1959"). The contents of the said communication dated 02.01.1987 is very pertinent for the adjudication of the instant dispute inasmuch from a perusal of the said communication, it reveals that it was inter alia stated that upon an enquiry being conducted on the basis of the applications submitted by (i) Smti Jogabala Mazumdar (since deceased), (ii) Shri Dilip Kumar Mazumdar, (iii) Shri Joyram Rajbongshi and (iv) Shri Paresh Chandra Das representing the Bishnu Temple, it was found that Smti Jogabala Mazumdar and others have been regularly paying the revenue in respect of 3 Kathas 5 Lechas of land in Dag No.489 of Kheraj Annual Patta No.6 situated at village Maligaon under Mouza Jalukbari since 1954. It was mentioned that these persons have been enjoying the possession of the said land by raising their houses etc. thereon. It was further mentioned that the draft Chitha showed that the land was earlier covered by Lakheraj Patta standing in the name of Kamakhya Temple and this "debuttar" land was acquired by the Government in 1971 under the provisions of the Act of 1959 vide Government Notification No.17/67/19 dated 01.03.1967. It was however mentioned that Annual Patta No.6 which contained Dag No.489 measuring 3 Kathas 5 Lechas was standing in the name of Manindra Basu and Pirika Basu. Further to that, it was mentioned that the said Manindra Basu and Pirika Basu never had possession of the said land and Smti Jogabala Mazumdar and others have been in possession of the said land for

almost 30 years and they have been living on the land by paying the Government revenue regularly. In the said communication, the respective possession of the persons were also duly mentioned which were (i) Smti Jogabala Mazumder (since deceased) - 1 Katha 8 Lechas, (ii) Shri Dilip Kumar Mazumdar - 5 Lechas, (iii) Shri Joyram Rajbongshi - 14 Lechas and (iv) Bishnu Temple represented by Shri Paresh Chandra Das 4 - Lechas and (v) Shri Tarun Das - 4 Lechas; totaling to 3 Kathas 5 Lechas. Further to that, it was also mentioned that although the Railway Department had informed that they had acquired the said land but as per the records available with the Office, the land was never acquired. It was also mentioned that during the Rayati Survey of 1971, the land should have been brought under the purview of Rayati Khatian and separate patta should have been issued in respect thereof. Under such circumstances, it was recommended that as the persons were in occupation since 1954, they should be considered for settlement under the provisions of the Act of 1959. It was further mentioned that the Annual Patta in respect of which there was no possession of the said Manindra Basu and Pirika Basu should be cancelled. Further, it was also stated that the SDC, Guwahati Circle had already been asked to note the names of the actual occupants in the "REMARKS" column of the chitha.

8. This Court further finds it relevant to take note of the draft chitha enclosed as Annexure-26 to the writ petition. A perusal of the said draft chitha also shows that initially the land contained in the Dag No.489 of Annual Patta No.6 had 3 Kathas 5 Lechas of land. Thereafter, the area of the land was reduced to 3 Kathas 2 Lechas and the Annual Patta No.6 was made Periodic Patta No.49. It also reveals that initially the name was entered as Kamakhya Temple. This entry was struck off and the name of Manindra Basu and Pirika

Basu were inserted. Subsequently, the names of Manindra Basu and Pirika Basu were struck off and the names of Smti Jogabala Mazumdar, Shri Dilip Kumar Mazumdar and Shri Joyram Rajbongshi was inserted. Further to that, it is also seen that out of 3 Kathas 5 Lechas of land, 2 Kathas 6 Lechas of land were settled in favour of Smti Jogabala Mazumdar and Shri Dilip Kumar Mazumdar and 16 Lechas of land was settled in favour of the Shri Joyram Rajbongshi and the remaining 3 Lechas of land was in the name of the Bishnu Temple. It is also seen that for this 3 Lechas of land, a separate Dag being Dag No.523 was created.

9. From the materials on record as discussed hereinabove, the question arises is as to whether in the facts involved, the learned Assam Board of Revenue was justified in passing the impugned judgment thereby directing the Deputy Commissioner, Kamrup (M) to re-examine the matter on the basis of the available materials and giving opportunity of hearing to all the parties. As already observed by the Supreme Court in the case of ***Central Council for Research in Ayurvedic Sciences and Another (supra)***, the High Court while exercising the jurisdiction under Article 226 of the Constitution for issuance of a writ in the nature of certiorari does not sit as an Appellate Authority but would interfere only when there is an error apparent on the face of the record.

10. Let this Court note down certain anomalies which were taken into consideration by the learned Assam Board of Revenue. The Draft Chitha portrays a completely contradictory picture inasmuch as if the land belonged to the Kamakhya Temple, how Annual Patta No.6 was issued in favour of the Manindra Basu and Pirika Basu inasmuch as annual pattas or periodic pattas are issued by the Deputy Commissioner as per the Settlement Rules in respect

to Government lands. On the other hand, it is seen from the communication dated 02.01.1987 that the land was acquired in the year 1971 under the Act of 1959.

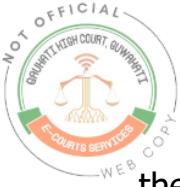
11. It is also relevant to take note of that if the Annual Patta is cancelled, the land would revert back to the Government and not to the religious institution. If that be so, how by virtue of the Act of 1959, the settlement can be made inasmuch as in such circumstances, the settlement has to be made as per the Settlement Rules framed under the Regulations and not as per Section 15 of the Act of 1959. Further to that, it is also pertinent herein to note that a perusal of the draft chitha shows that out of 3 Kathas 5 Lechas of land contained in Dag No.489, 16 Lechas of land was allotted to one Shri Joyram Rajbangshi and 3 Lechas of land to the Bishnu Temple. Then how 2 Kathas 13 Lechas of land could have been allotted/settled in favour of Late Jogabala Mazumdar and Shri Dilip Kumar Mazumdar as per the Petitioners inasmuch as after issuance of periodic patta in favour of the Bishnu Temple and Shri Joyram Rajbangshi, the remaining land is only 2 Kathas 6 Lechas which is also seen from a perusal of the Draft Chitha. These discrepancies can be looked into by the Deputy Commissioner, Kamrup (M) by examining the materials on record and by giving the opportunity hearing to all the affected parties.

12. At this stage, this Court also finds it relevant to mention that all the pattadars of the Periodic Patta No.49 are not before this Court. They were also not before the learned Assam Board of Revenue. It is also seen from the impugned judgment that the learned Assam Board of Revenue has also duly taken note of that aspect of the matter and exercised its revisional jurisdiction under Section 151 of the Regulation.

13. In view of the above observations, this Court is of the opinion that the learned Assam Board of Revenue was justified in passing the judgment dated 16.09.2010 directing the Deputy Commissioner, Kamrup (M) to re-examine the settlement made in respect of the entire 3 Kathas 5 Lechas of land covered by Dag No.489 by giving an opportunity of hearing to all the parties. Consequently, this Court therefore finds no reason to interfere with the impugned judgment and order dated 16.09.2010 passed in Case No.155 RA(K)/2003 more so, in view of the principles laid down by the Supreme Court in the case of ***Central Council for Research in Ayurvedic Sciences (supra)***.

14. This court however finds it relevant to observe and direct that the Deputy Commissioner, Kamrup (M) while making the re-examination as directed by the learned Assam Board of Revenue shall issue notice to the Petitioners as well as the Respondent No.3 including the other pattadars of Khiraj Patta No.49 and giving them an opportunity of hearing before arriving at the decision. This Court further grants liberty to the other legal heirs of Late Jogabala Mazumdar to appear before the learned Deputy Commissioner, Kamrup (M). They shall be entitled to raise their claims on the basis of the right of inheritance based on their mother's right and the learned Deputy Commissioner, Kamrup (M) shall duly consider the same. It is however made clear that if issues of title relating to partition amongst the heirs of Late Jogabala Mazumdar arise, the Deputy Commissioner, Kamrup (M) after examining the settlement and the issues as directed by the learned Assam Board of Revenue shall refer the parties to the Civil Court as per Section 100 of the Regulation.

15. This Court further finds it also relevant to make an observation that as



the said dispute has been pending for more than 20 years, the Deputy Commissioner, Kamrup (M) or the Additional Deputy Commissioner if so entrusted, shall decide the said aspect as directed by the learned Assam Board of Revenue in the judgment dated 16.09.2010 as expeditiously as possible and preferably within a period of 6 (six) months from the date of submission of the certified copy of the instant judgment.

16. With above observations and directions, the instant writ petition therefore stands disposed of. The interim order so passed earlier no longer survives in view of the disposal of the writ petition.

JUDGE

Comparing Assistant