



GAHC010211102011

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

Case No. : WP(C)/49/2011

SRI BALESWAR RANGPI and ANR.
S/O LATE PRABHAT RANGPI, R/O VILL. DEOCHATAL, MOUZA
RAMCHARANI, GUWAHATI, P.S. AZARA, DIST. KAMRUP, ASSAM.

2: SUKLESWAR RANGPI
S/O LATE PRABHAT RANGPI
R/O VILL. DEOCHATAL
MOUZA RAMCHARANI
GUWAHATI
P.S. AZARA
DIST. KAMRUP
ASSAM

VERSUS

ON THE DEATH OF BAHAR ALI HIS LEGAL HEIRS, (1.1) GOLAYA BEGUM
AND 5 ORS
W/O LATE BAHAR ALI, R/O GANDHIBASTI, ISLAMPUR, P.S. CHANDMARI,
GUWAHATI 781003, DIST. KAMRUP (M), ASSAM.

1.2:HOOR E BAHAR
D/O LATE BAHAR ALI
R/O GANDHIBASTI
ISLAMPUR
P.S. CHANDMARI
GUWAHATI 781003
DIST. KAMRUP (M)
ASSAM.

1.3:NOOR E BAHAR
D/O LATE BAHAR ALI
R/O GANDHIBASTI
ISLAMPUR
P.S. CHANDMARI



GUWAHATI 781003
DIST. KAMRUP (M)
ASSAM.

1.4:SHEMIM BAHAR
D/O LATE BAHAR ALI
R/O GANDHIBASTI
ISLAMPUR
P.S. CHANDMARI
GUWAHATI 781003
DIST. KAMRUP (M)
ASSAM.

1.5:JESHMINE BAHAR
S/O LATE BAHAR ALI
R/O GANDHIBASTI
ISLAMPUR
P.S. CHANDMARI
GUWAHATI 781003
DIST. KAMRUP (M)
ASSAM.

2:THE ASSAM BOARD OF REVENUE
GUWAHATI

For the Petitioner(s) : Mr. R. Sarma, Advocate

For the Respondent(s) : Mr. A. C. Sarma, Advocate

**BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH**

JUDGMENT AND ORDER (ORAL)

Date : 29-08-2023

1. The extraordinary jurisdiction of this Court under Article 226 of the Constitution seeking a writ of certiorari have been invoked by way of the instant writ petition challenging the judgment and order dated 11.05.2007 passed in Case No.117RA(K)/2004 as well as the judgment and order dated 16.06.2009 passed in Case No.13RA(K)(RVW)/2007 by the learned Assam Board of Revenue.

2. The facts involved in the instant case as could be discerned from the writ petition is that one Prabhat Rangpi (since deceased) was the tenant under Late Md. Hussain who was the landlord of a cultivable plot of land measuring 4 Bighas covered by KP Patta No.100 of Dag No. 14(old)/703(new) of village Pamohi under Mouza Ramcharani, in the district of Kamrup(M), Assam. It has been alleged in the writ petition that during the lifetime of Late Prabhat Rangpi, he was a occupancy tenant under the Assam (Temporarily Settled Areas) Tenancy Act, 1971 (for short "the Act of 1971"). Late Prabhat Rangpi had paid regular Chukani i.e. 1/5th of the produce of his land cultivated by himself for the land and he was issued a Khatian No.54. After the death of Late Prabhat Rangpi, his sons i.e. the Petitioners herein applied for mutation by virtue of inheritance. The competent authority on completion of all formalities, granted mutation on 19.08.1995 and the names of the Petitioners were entered into Ryoti Khatian on 08.07.1997 by striking off the name of Late Prabhat Chandra Rangpi. It was further stated that during the lifetime of Late Prabhat Chandra Rangpi, he was paying the Chukani from time to time to Md. Bahar Ali who on receipt of the said Chukani duly acknowledged the same. It is also the case of the Petitioners that the Petitioners were also paying the land revenue from time to time.

3. The Petitioners thereupon filed an application before the Deputy Commissioner, Kamrup (M), Guwahati in 1995 for ownership right over the land. The said application was registered and numbered as Case No.66/1995. The Additional Deputy Commissioner passed an order on 29.09.1995 whereby the ownership right was granted to the Petitioners and the Petitioners were directed to deposit an amount of Rs.146/- as compensation by treasury challan and upon payment, a copy of treasury challan was directed to be deposited

before the Deputy Commissioner, Kamrup (M), Guwahati. Pursuant to the said order, the Petitioners deposited the amount of Rs.146/- by treasury challan to the State Bank of India, Guwahati Branch as compensation on 13.10.1995 under the head of account 8443 Revenue Department and a receipt thereof was submitted to the Deputy Commissioner, Kamrup, Guwahati as was directed in the said order passed by the Additional Deputy Commissioner on 29.09.1995 in Case No.66/1995.

4. The Respondent No.1 Md. Bahar Ali who was the owner of the land filed an appeal before the learned Assam Board of Revenue against the order dated 29.09.1995 passed by the Additional Deputy Commissioner, Kamrup. The said appeal was registered and numbered as Case No.188RA(K)/1995. Vide a judgment and order dated 14.03.1997, the learned Assam Board of Revenue set aside the said order dated 29.09.1995 passed by the Additional Deputy Commissioner, Kamrup and remanded the matter back to the learned Deputy Commissioner, Kamrup for re-examination afresh.

5. It is further seen from the records that on receipt of the case on remand, the learned Additional Deputy Commissioner, Kamrup asked both the parties to adduce evidence. The Petitioners herein examined 3 (three) witnesses and the Respondent No.1 herein adduced the evidence of 2 (two) witnesses. The Respondent No.1 had also filed some documents in support of his case. Pursuant thereto, the Additional Deputy Commissioner, Kamrup vide an order dated 07.09.2004 upheld the earlier ex-parte order dated 29.09.1995 granting ownership rights in respect to the land in favour of the Petitioners herein.

6. The Respondent No.1 herein being aggrieved, preferred an appeal before the learned Assam Board of Revenue which was registered and numbered as



Case No.117RA(K)/2004. The said appeal so filed by the Respondent No.1 was allowed vide judgment dated 11.05.2007. In the said judgment, the learned Assam Board of Revenue observed that it was an admitted fact that the original pattadar in respect to the land in question was Md. Hussain Ali and the Respondent No.1 herein purchased the land in question from Md. Hussain Ali in the year 1969 through a Registered Deed No.4936/69 and got his name mutated by way of purchase and possession. Further to that, the Respondent No.1 was a physically handicapped person. It was observed that as per Section 21 of the Act of 1971, ownership rights of any land of a landholder who is physically disable person shall not be liable to be acquisitioned under the Act of 1971. It was observed that as admittedly the Respondent No.1 herein was the landholder of the land in question and at the time of applying for ownership right by the Petitioners herein, the Respondent No.1 was a physically handicapped person, the land in question was exempted from acquisition of ownership right in terms with Section 21 of the Act of 1971. The learned Assam Board of Revenue further held that from the evidence on record, it was seen that the land in question was not a cultivable land at the time of filing of the application seeking ownership by the Petitioners herein and on the other hand it was also seen from the evidence that the Petitioners were not cultivating tenants at the time of filing the petition seeking ownership right. It was observed that in terms with Section 23 of the Act of 1971, any occupancy tenants personally cultivating the land of his tenancy was entitled for acquisition of ownership rights of the land and as the Petitioners herein were not occupancy tenants personally cultivating over the land in question and as such the provisions of Section 23 of the Act of 1971 cannot be made applicable in favour of the Petitioners herein thereby entitling them to acquisition of

ownership over the land in question under the Respondent No.1.

7. It was further observed that the impugned order dated 07.09.2004 by which the Additional Deputy Commissioner, Kamrup had again granted the ownership rights to the Petitioners herein was passed mechanically without passing a speaking order and without discussing the relevant facts and question of law and without considering the fact that the learned Assam Board of Revenue had previously set aside the order dated 29.09.1995 vide the order dated 14.03.1997 passed in Case No.188RA(K)/1995. Accordingly, the appeal was allowed thereby setting aside the order dated 07.09.2004 passed by the learned Additional Deputy Commissioner, Kamrup in tenancy Case No.66/1995.

8. It further reveals from the records that the Petitioners thereupon filed a review application before the learned Assam Board of Revenue which was registered and numbered as Case No.13RA(K)(RVW)/2007. The said review application was rejected vide a judgment and order dated 16.06.2009 by the learned Assam Board of Revenue. While rejecting the said review application, the learned Assam Board of Revenue held that as per Section 23 of the Act of 1971, any occupancy tenant personally cultivating the land of his tenancy would be entitled for acquisition of ownership of the said land. It was observed that the relevant evidence on record showed that the land in question was not a cultivable land at the time of filing the application by the Petitioners herein for ownership rights and the Petitioners were not cultivating tenants of the said land at that time. It was further observed and reiterated that the Respondent No.1 who was the landlord was a physically handicapped person and as such, as per Section 21 of the Act of 1971, land of a physically disabled person cannot be acquisitioned for ownership right of an occupancy tenant.



9. The Petitioners thereupon being aggrieved by the judgment and order dated 11.05.2007 passed in Case No.117RA(K)/2004 as well as the rejection of the Review petition vide the judgment dated 16.06.2009 in Case No. 13RA(K) (RVW)/2007 have approached this Court by filing the present writ petition.

10. The records reveals that this Court vide an order dated 07.01.2011 issued Rule and in the interim directed that the possession of the Petitioners as on the date of the said order shall not be disturbed. It reveals from the records that the Respondent No.1 filed an Affidavit-in-Opposition on 30.06.2011. It was mentioned in the said Affidavit-in-Opposition that the predecessor in interest of the Petitioners i.e. Late Prabhat Chandra Rangpi cultivated the land involved in the case for sometime so long the land was fit for paddy cultivation but subsequently, the nature of the land changed. It was further mentioned that the land turned into a very deep and became marshy covered with hyacinth. It was further mentioned that the Petitioners were neither cultivators nor the land was fit for cultivation. It was further stated that the Petitioners never possessed the land by doing paddy cultivation. In paragraph No.6 of the said Affidavit-in-Opposition, it was stated that the Petitioners were not entitled to get mutation as occupancy tenants since the land has not been in possession of the Petitioners and the nature of the land had also changed. It was stated that the Petitioners had obtained mutation through misrepresentation. In paragraph No.7 of the Affidavit-in-Opposition, it was stated that Late Prabhat Rangpi paid the Chukani rent so long the land has been used for cultivation but he ceased to pay the rent as soon as the same turned to be deep and marshy. It was denied that the Petitioners paid any rent/Chukani to the Respondent No.1 as they never cultivated the land at any point of time. It was further stated in the Affidavit-in-Opposition that the Respondent No.1 purchased the

plot of land measuring 4 Bighas covered by Dag No.703 of K.P. Patta No.100 of village Pamohi under Ramcharani Mouza, vide a registered Deed of Sale on 11.04.1969 and thereafter he got his name mutated in respect of the land and the Jamabandi was corrected by inserting his name. To the said Affidavit-in-Opposition, various documents have been enclosed issued by the S.D.M. & H.O. of the Office of the Joint Director of Health Services, Senior Medical and Health Officer, Khanapara State Dispensary as well as by the Office of the Department of Orthopaedics, Guahati Medical College showing that the Respondent No.1 was a physically handicapped person.

11. To the said Affidavit-in-Opposition, an Affidavit-in-Reply was filed denying the contents of the Affidavit-in-Opposition and enclosing therewith various revenue receipts relating to payment of Revenue by the Petitioners as well as the order passed by the Additional Deputy Commissioner, Kamrup dated 29.09.1995 which was gazetted in the Assam Gazette dated 08.09.2004 as well as the record of rights.

12. This Court further finds it relevant to take note of the Additional Affidavit filed by the Petitioners on 18.05.2023. In the said Additional Affidavit, there have been various photographs enclosed as Annexure-10 (colly). These photographs have been enclosed to show that the Petitioners are cultivating on the said land. This Court would deal with this aspect of the matter at the later stages of the instant judgment.

13. This Court finds it relevant to observe that the Respondent No.1 expired on 16.12.2016. The Petitioners however did not substitute the legal representatives of the Respondent No.1. This Court vide a judgment and order dated 08.09.2017 disposed of the writ petition passing certain directions



against the deceased Respondent No.1. Thereupon, a Writ Appeal was preferred by the legal representatives of the Respondent No.1 before the Division Bench of this Court which was registered and numbered as WA No.46/2018. The Division Bench of this Court vide an order dated 14.02.2019 had set aside the judgment and order dated 08.09.2017 and restored the writ petition to the file of this Court. It further reveals from the record that an Interlocutory Application was filed before this Court seeking substitution of legal representatives of the Respondent No.1 which was registered and numbered as I.A.(Civil) No.3783/2019. The said application was disposed of vide an order dated 16.11.2020 whereby the Respondent No.1 was substituted by his legal representatives who have been arrayed as Respondent Nos. 1(i), 1(ii), 1(iii), 1(iv) and 1(v).

14. I have heard the learned counsels for the parties and have perused the materials on record including the LCR which was called for from the learned Assam Board of Revenue. As narrated hereinabove, the learned Additional Deputy Commissioner, Kamrup, Guwahati in Tenancy Case No.66/1995 had granted the ownership rights to the Petitioners ex-parte without hearing the Respondent No.1. This order was put to challenge in Case No.188RA(K)/1995 vide a judgment dated 14.03.1997. The said order of the Deputy Commissioner dated 29.09.1995 was set aside and quashed and the matter was remanded back to the learned Additional Deputy Commissioner, Kamrup for deciding afresh.

15. It is relevant to take note of that in the judgment and order dated 14.03.1997, the learned Assam Board of Revenue had categorically observed that the learned Additional Deputy Commissioner, Kamrup shall re-examine



afresh and disposed of the petition filed by the Petitioners seeking ownership strictly in accordance with the provisions of law as well as what has been discussed in Paragraph Nos. 4, 5, 6, 7, 8, 9 and 10 of the said judgment. Thereupon, the learned Additional Deputy Commissioner, Kamrup passed an order on 07.09.2004. Surprisingly, the said order was not enclosed to the writ petition. Be that as it may, a perusal of the order dated 07.09.2004 shows that there was nothing mentioned to show that the directions so passed by the learned Assam Board of Revenue in its judgment dated 14.03.1997 in Case No.188RA(K)/1995 was taken into consideration. There was no reason also assigned as to how the Petitioners were entitled to the ownership rights by virtue of Sections 21 and 23 of the Act of 1971 in spite of the specific case of the Respondent No.1 that the land was not cultivable; there was no cultivation carried out by the Petitioners as well as that the Respondent No.1 was physically handicapped. Upon the order dated 07.09.2004 being challenged before the learned Assam Board of Revenue in Case No.117RA(K)/2004, the learned Assam Board of Revenue which is the last Court of facts had observed that the Respondent No.1 was a physically disabled person; the land was not cultivable and the Petitioners could not show that they were personally cultivating the land. On the basis of the said findings of facts, the learned Assam Board of Revenue interfered with the order dated 07.09.2004 vide a judgment dated 11.05.2007 which has been impugned in the instant proceedings.

16. The record further shows that there was a review petition filed by the Petitioners which was registered and numbered as Case No.13RA(K) (RVW)/2007. The said review application was also rejected reiterating the findings of facts which have been arrived at by the learned Assam Board of

Revenue in its judgment dated 11.05.2007.

17. In the backdrop therefore, the question which arises before this Court as to whether this Court can exercise its extraordinary jurisdiction under Article 226 of the Constitution more particularly, when it comes to issuance of a writ of certiorari. This Court finds it relevant at this stage to refer to 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***. This Court finds it relevant to take note of Paragraph Nos. 50, 51 and 52 of the said judgment which are reproduced as hereinunder:

“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."

18. From the above quoted paragraphs, it would show that the Supreme Court had observed that there are two cardinal principles of law governing exercise of extraordinary jurisdiction under Article 226 of the Constitution when it comes to issuance of a writ of certiorari. The first cardinal principle is that in granting such a writ of certiorari, the High Court does not exercise the powers of an Appellate Tribunal. The High Court does not review or reweigh the evidence upon which the determination of the inferior tribunal purports to be based. The High Court only 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. It was observed that the writ of certiorari can be issued if an error of law is apparent on the face of the record and such a writ being a high prerogative writ, should not be issued on mere asking.

19. The second cardinal principle is that 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 can refuse to upset it with a view



to doing substantial justice between the parties. It was observed by the Supreme Court that 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. It was observed that 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. It was observed that any other approach would render the High Court a normal Court of appeal which it is not.

20. Taking into account the above principles settled by the Supreme Court in the above quoted paragraphs of the judgment referred to hereinabove, it would be seen that the learned Assam Board of Revenue which is the final Court of facts had on the basis of evidence come to a finding that the land in question was not a cultivable land; the Petitioners are not personally cultivating upon the said land and that the Respondent No.1 was a physically handicapped person. It is inter alia on the basis of the said findings of fact that the learned Assam Board of Revenue had set aside the order dated 07.09.2004 passed by the learned Additional Deputy Commissioner, Kamrup in Tenancy Case No.66/1995.

21. This Court had also made a specific query upon the learned counsel for the Petitioners as to whether the exercise of jurisdiction by the learned Assam Board of Revenue was without any authority or was palpably erroneous causing manifest injustice to the Petitioners. Nothing could be shown to that

effect by the learned counsel appearing on behalf of the Petitioners. This Court further finds it relevant to take note of that the learned Assam Board of Revenue had the jurisdiction to pass the order dated 11.05.2007 thereby setting aside the order dated 07.09.2004 passed by the Additional Deputy Commissioner in Tenancy Case No.66/1995.

22. The findings of facts also could not be shown to be perverse by the Petitioners during the course of hearing though a feeble attempt was made by drawing the attention of this Court to the Additional Affidavit filed by the Petitioners wherein certain photographs were enclosed as Annexure-10 (colly). This Court also finds it relevant to take note of that the exercise of jurisdiction under Article 226 of the Constitution is limited only to adjudicate the decision making process and not to review or reweigh the evidence which have been duly taken note of by the learned Assam Board of Revenue. Under such circumstances, it would not be proper on the part of this Court at this stage to take into account the photographs so enclosed as Annexure-10(colly) to the Additional Affidavit. Further to that, it is also relevant to note that those photographs at Annexure-10(colly) have been disputed by the Private Respondents and the learned counsel for the Respondents had placed two photographs to contradict the photographs enclosed as Annexure-10 (colly). These photographs are kept on record and marked with the letter "X" and "Y".

23. Be that as it may, it is the opinion of this Court that the photographs so enclosed by the Petitioners to the Additional Affidavit are also not based upon any certificate as required under law. Further to that, there is no mention who had taken those photographs as well as when such photographs were taken inasmuch as the photographs at page Nos. 39, 40 and 41 of the Additional



Affidavit are completely contrary to the photographs at page Nos. 42, 43 and 44 of the said Additional Affidavit. In the same vein, the photographs as page No.45 cannot be said to be a photograph of the land at page No.39. This aspect of the matter cannot be adjudicated under Article 226 of the Constitution.

24. Consequently, in view of the above analysis and observations made, this Court finds no infirmity with the judgment and order dated 11.05.2007 passed in Case No.117RA(K)/2004 by the learned Assam Board of Revenue as well as the judgment and order dated 16.06.2009 in Case No.13RA(K)(RVW)/2007, for which the instant writ petition stands dismissed.

25. The Registry is directed to forthwith return the LCR.

JUDGE

Comparing Assistant