



GAHC010084992022

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

Case No. : WP(C)/3003/2022

HIRANYA KUMAR GOSWAMI
S/O RAJANI KANTA GOSWAMI, R/O VILL. NIJ CHENGA, P.O. CHENGA, P.S
TARABARI, MOUZA-CHENGA, DIST. BARPETA, ASSAM, PIN-781305

VERSUS

THE STATE OF ASSAM AND 2 ORS
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM,
REVENUE DEPTT. DISPUR, GUWAHATI-781006 ASSAM SACHIBALAY

2:THE DEPUTY COMMISSIONER
BARPETA
DIST. BARPETA
PIN-781301

3:THE CIRCLE OFFICER
CHENGA REVENUE CIRCLE
CHENAG
DIST. BARPETA
PIN-78131

Advocate for the Petitioner : MR. D K KOTOKY

Advocate for the Respondent : SC. REVENUE

BEFORE

HON'BLE MR. JUSTICE SANJAY KUMAR MEDHI



Advocates for the petitioner : Shri DK Kotoky

Advocates for the respondents : Shri D. Saikia, AG, Assam
Shri A. Bhattacharyya

Date of hearing & Judgment : **17.01.2023**

JUDGMENT & ORDER

Heard Shri DK Kotoky, learned counsel for the petitioner. Also heard Shri D. Saikia, learned Advocate General, Assam assisted by Shri A. Bhattacharyya, learned counsel appearing for the State respondents.

2. Before going to the issue which requires a determination, the facts of the case may be put in a brief.

3. The petitioner is the legal heir of one Rajani Goswami, who along with four others claimed to be the recorded pattadars of a permanently settled Estate land measuring 101 Bigha 9 Lechas land covered by Nisf- Khirja Patta No. 1, village Ganakpara of Chenga Mouza in the district of Barpeta. The petitioner claims that he has a permanent, heritable and transferable right over the share of his deceased father, who was a pattadar.

4. It is the case of the petitioner that a case was instituted by six persons being TR Case No. 80/2003-04 wherein the pattadars were impleaded. In the said case, ownership right was prayed for over a plot of land measuring 17 Bigha 2 Katha 6 Lechas covered by Dag No. 318 of N.K. Patta No. 1 claiming themselves to be the riyat. In the said case, an order dated 09.01.2004 was passed in favour of the applicants (Riyats). Against the aforesaid order dated 09.01.2004, an appeal was preferred before the learned Assam Board of Revenue which was registered as Appeal Case No. 22RA(B)/2004. It is the case of the petitioner that the learned ABR had passed a judgment dated 18.07.2005 with an observation that "it cannot be disputed now that the land is not *Xatra* Land". The petitioner alleges that the appeal was disposed of without any conclusive proof of the facts that the said land is a *Xatra*

Land.

5. In terms of the said judgment, the Deputy Commissioner, Barpeta has passed an order dated 11.04.2022 directing the Circle Officer, Chenga Revenue Circle to correct the land records in favour of the **Pirala Xatra** in village Ganakpara, Mouza-Chenga, N.K. Patta No. 1 measuring 101 Bigha 0 Katha 9 Lechas. The said correction was required to be done in terms of the judgment dated 18.07.2005 passed by the learned ABR in the aforesaid appeal. The order had also observed that the correction to be done as per the provision of the Assam State Acquisition of Lands Belonging to Religious or Charitable Institution of Public Nature Act, 1959 along with Section 15(a) and Section 151 of the Assam Land and Revenue Regulation, 1886. It is this order dated 11.04.2022 which is the subject matter of challenge.

6. Shri Kotoky, learned counsel for the petitioner has submitted that the impugned order dated 11.04.2022 is not sustainable on the following counts. He submits that there was no *Xatra* in the name of **Pirala**. In other words, he submits that **Pirala Xatra** was not an existing *Xatra*. Secondly, it is submitted that the aforesaid Act of 1959 is not applicable as recourse to the said Act is done for acquisition of land and in the instant case, since there is no *Xatra* called **Pirala Xatra**, there is no application of the said Act. Shri Kotoky has also referred to the Article 31A of the Constitution of India whereby reference has been made to the proviso that in case of acquisition by the State, the land which are under the personal cultivation cannot be acquired.

7. *Per contra*, Shri Saikia, learned Advocate General, Assam however vehemently opposes the writ petition. By drawing the attention of this Court to the pleadings filed in the form of a counter affidavit as well as in additional affidavit, it is submitted that the *bona fide* of the petitioner in approaching this Court is very much under doubt. In this connection, the averments made in paragraph 18 of the affidavit-in-opposition filed on 03.11.2022 has been referred to. For ready reference, the said averments made in paragraph 18 is extracted hereinbelow-

“18. That the deponent has strong reason to believe that the writ petitioner is not personally aggrieved, but he has filed the present writ petition at the behest of some vested interests. This notion on the part of the deponent is fortified from the fact that neither the writ petitioner nor any of his relatives are residing in the Xatra land in question since last several decades. Therefore, the instant writ petition is devoid of merit and the same is liable to be dismissed with costs.”

8. Shri Saikia, learned Advocate General, Assam while acknowledging that though an affidavit-in-reply has been filed, there is no denial at all of the allegations doubting the *bona fide* of the petitioner in instituting the present case. In the course of argument, Shri Kotoky, learned counsel for the petitioner has also referred to a communication dated 08.07.2019 issued by the Circle Officer, Chenga Revenue Circle wherein the *Xatras* existing under the said Revenue Regulation were named which were Sri Sri Haridev Satra, Bahari and Srimanta Sankardev Bhoridhuwa Ghat Satra, Chenga and there was no mention of **Pirala** Xatra. The learned counsel for the petitioner submits that the said document would substantiate his first submission that there was no *Xatra* in the name of **Pirala**. The aforesaid submission is also dealt with by the learned Advocate General, Assam by stating that while the communication relied on by the petitioner is of the year 2019, there are communications of later period including which started from a petition dated 14.06.2021 submitted by the *Xatradhikar* and amongst others, the **Pirala** Xatra.

9. The learned Advocate General fairly submits that though initially there was indeed some doubt on the existence of the said *Xatra* which finds mention in the communication dated 23.06.2021, after thorough investigation, a specific conclusion was arrived at which was communicated vide letter dated 15.03.2022 regarding the existence of the *Xatra* which was said to be wholly under illegal occupation of persons of doubtful citizenship. The learned Advocate General further submits that while the communication dated 11.04.2022 is the subject matter of challenge, the basis of the

said communication namely, the judgment dated 18.07.2005 of the learned ABR is not challenge and therefore, the petition itself is not maintainable. He further submits that pursuant to the impugned order dated 11.04.2022, the correction in the land records were already done on 06.05.2022 and the interim order passed by this Court is of a subsequent date i.e. 11.05.2022 which did not have any effect on the proceeding.

There is no further action seen from the side of the petitioner in either filing a subsequent petition or amending the present petition to bring into the ambit of challenge, the earlier judgment dated 18.07.2005 or the subsequent order dated 06.05.2022.

10. The learned Advocate General, Assam has also placed before this Court an additional affidavit filed on 09.01.2023 wherein excerpts of the Interim Report of the Assam State Commission for Review and Assessment of Problems of *Xatra* Lands in Assam dated 29.10.2022 as well as Final Report dated 30.12.2017 by the Committee for Protection of Land Rights of Indigenous People of Assam has been put on records. On perusal of the reports, the existence of **Pirala** *Xatra* and the fact that the same is under illegal occupation clearly comes out.

11. At this stage, Shri Kotoky, learned counsel for the petitioner submits that without giving him an opportunity of denial, the same facts should not be taken into account.

12. This Court has given its anxious consideration to the submissions made by the learned counsel for the parties.

13. The primary stand of the writ petitioner is that there is no *Xatra* in the name of **Pirala** which was existing and to substantiate the same a communication dated 08.07.2019 was pressed into service. The aforesaid communication dated 08.07.2019 was issued by the Circle Officer, Chenga Revenue Circle on the subject of the status report of the *Xatra* land. Though it is a fact that only two *Xatras* have been mentioned in the said report, the subsequent communication gives no manner of doubt regarding

the existence of the **Pirala Xatra** and also the fact that the same is under illegal occupation. Though Shri Kotoky, learned counsel for the petitioner may be correct in stating that without giving him an opportunity the subsequent materials should not be taken into consideration, the materials placed on record are on public domain and cannot be constructed as something which this Court cannot take judicial notice of. However, even ignoring the contents of the said Reports placed on record, this Court finds the existence of the *Xatra* in other contemporaneous documents.

Further, what is intriguing is that while the order dated 11.04.2022 has been challenged, the basis of the said order which is the judgment dated 18.07.2005 passed by the learned ABR has not been challenged in any manner. There is not even a passing reference that the petitioner is aggrieved by the said judgment of the learned ABR. At this stage, a reference may be made to the prayers made in the petition, which reads as follows:

“It is therefore, prayed that Your Lordships may be pleased to admit this petition, call for the records, issue a Rule calling upon the respondents to show cause as to why a writ in the nature of mandamus and/or any other appropriate writ or writs, order of direction of like nature shall not be issued to cancel / set aside the impugned order dated 11.04.2022 issued vide No. BRKG-35/2020/Demarcation / 144 to the Circle Officer, Chenga Revenue Circle, Chenga (Annexure-6) and after hearing the cause or causes that may be shown and perusing the records Your Lordship may be pleased to set aside / cancel the impugned order dated 11.04.2022 issued vide No. BRKG-35/2020/Demarcation / 144 and may pass any other order / orders or direction as to Your Lordships may deem fit and proper.

-AND-

Pending disposal of this petition, Your Lordships may be pleased to issue necessary order or direction in staying the operation of the impugned order dated 11.04.2022 issued vide No. BRKG-35/2020/Demarcation / 144 and may



pass any other order or direction as to Your Lordships may deem fit and proper.”

14. Without there being a specific challenge to the basis of the impugned order dated 11.04.2022, this Court is not even required to look into the other aspects of the matter. This Court also finds force in the submission made by the learned Advocate General that the order dated 11.04.2022 was already acted upon and the correction made on 06.05.2022 and the subsequent action has not been put to challenge. The question which the State has raised doubting the *bona fide* of the petitioner in instituting the present case in absence of a specific denial is also a relevant factors which this Court has considered. On a specific query, learned counsel for the petitioner has submitted that the petitioner is a teacher and therefore by no means can be assumed to be personally cultivating the land in question wherein the provisions of Article 31A might come in. In any case, the said protection is only in the matter of acquisition of land and not for making the land encroachment free and therefore the recourse to the constitutional provision is not at all applicable in the instant case. This Court also finds force in the argument of the learned Advocate General, Assam that the Act of 1959 provides for an appeal and in case, the petitioner was aggrieved by any provisions of the Act, he can prefer an appeal under Section 21(3).

15. Under the aforesaid facts and circumstances, this Court is of the unhesitant opinion that there is no merit in this writ petition and therefore, the same is dismissed. The interim order passed earlier accordingly stands vacated.

16. No order as to cost.

17. The records of the Case No.22RA(B)/2004 in original are returned back to Shri Bhattacharyya, learned counsel for the respondents.

JUDGE

Comparing Assistant