

(2023) 01 GAU CK 0011

Gauhati High Court

Case No: Writ Petition (Civil) No. 5478 Of 2012

Md. Sahidul Islam And
4 Ors

APPELLANT

Vs

Prafulla Kalita And 2
Ors.

RESPONDENT

Date of Decision: Jan. 3, 2023

Acts Referred:

- Constitution Of India, 1950 - Article 226, 227
- Assam (Temporarily Settled Areas) Tenancy Rules, 1972 - Rule 10, 11, 12(2), 14(2)
- Assam (Temporarily Settled Areas) Tenancy Act, 1971 - Section 23

Hon'ble Judges: Kalyan Rai Surana, J

Bench: Single Bench

Advocate: R Rabha

Judgement

1. Heard Mr. S.K. Goswami, learned counsel for the petitioners. Also heard Ms. M. Barman, learned Govt. Advocate appearing for the respondent

no.2. None appears on call for the respondent nos.1 and 3 in spite of the note given in Supplementary Cause List for 03.01.2023 that this matter of part-II hearing list would be taken up for hearing.

2. The respondent no.3 is the Assam Board of Revenue, whose order is assailed in the present writ petition. Therefore, the respondent no.3, being a formal party, has no interest in the litigation, the non-appearance of the respondent no.3 is of no consequence.

3. By filing this writ petition under Article 226 read with Article 227 of the Constitution of India, the petitioner has assailed the order dated 02.07.2012

passed by the learned Chairman, Assam Board of Revenue at Guwahati in Revenue Appeal Nos. 146RA(K)/2009 and 85RA(K)/2011, arising out of

Tenancy Case No. 1/2000.

4. The case of the petitioners is that they were the owner and title holder of land measuring 4 Bigha-3 Katha-12 Lecha covered by Dag No. 768 of

K.P. Patta No. 172 of Village- Bankakata, Mouza Chhaygaon Pantan, in the district of Kamrup, Assam. The said land was inherited from their

predecessor-in-interest, namely, Late Samir Ali.

5. On death of their predecessor-in-interest, the names of the petitioners were entered in the record of land by way of inheritance.

6. The father of the respondent no.1, namely, Amrit Kalita (since deceased), was a tenant in respect of the said land by virtue of entry of his name in

Khatian No. 33. On his death, the name of the respondent no.1, namely, Prafulla Kalita was recorded as a tenant under the petitioners in respect of

the said land. The respondent no.1 had filed Tenancy Case No. 1/2000 before the Deputy Commissioner, Kamrup under section 23 of the Assam

(Temporarily Settled Areas) Tenancy Act, 1971 claiming ownership over the said land. The petitioners, on receipt of notice of the said case, had

submitted their objection raising several points. The narration of those points is not material for the purpose of the order. In connection with the said

proceedings, the respondents had examined 3 (three) witnesses, namely, Prafulla Kalita, Suren Kalita and Shraddha Kalita, who were cross-examined

and discharged.

7. The learned counsel for the petitioners has submitted that the petitioners' side had also examined 3 (three) witnesses, namely, Ahmed Hussain,

Giridhar Kalita and Samnur Ali.

8. As per the memo of appeal filed before the Assam Board of Revenue, in paragraph 9, a statement is made by the petitioners to the effect that 2

(two) witnesses were cross-examined, but the cross-examination of the third witness, namely, Samnur Ali was not completed and the learned Addl.

Deputy Commissioner did not allow the petitioners to adduce complete evidence on their behalf. The learned Addl. Deputy Commissioner, by order

dated 02.07.2009, had disposed of the proceedings of Tenancy Case No. 1/2000 by passing the following order:

“The first party is present and filed hazira. The second party is not seen present. This case has been registered on the basis of an

application filed under Section 23 of the Assam (Temporarily Settled Areas) Tenancy Act, 1972 by Sri Prafulla Kalita, son of Late Amit

Kalita whereby he has prayed for ownership right in respect of land measuring 4 Bighas 3 Kathas 12 Lechas of Dag No.768 of Village-

Bankakata, Mouza-Chhaygaon Pantan.

Notice has been issued. The process server has submitted his report after service of notice upon the pattadars. Seen the report of the Circle

Officer. The first party/ petitioner has been occupying the aforesaid land by cultivating over the same. As the predecessor of the tenant was

occupying the disputed land as tenant hence the petitioner Sri Prafulla Kalita, son of Late Amit Kalita, is considered to be eligible to get

ownership right as a listed tenant.

That further order will be passed if the tenant deposits 50 times the land revenue in respect of land measuring 4 Bighas 3 Kathas 12 Lechas

i.e. Rs.1,180/- through treasury challan. The pattadars may filed their objection, if any, against the aforesaid. compensation amount as per

Rule 14(2) of the Assam (Temporary Settled Areas) Tenancy Rules.

Fixing 25-08-2009.”

9. The learned counsel for the petitioners has projected that the compensation amount of Rs.1180/- was determined by order dated 02.07.2009, which

was deposited after a lapse of 6 (six) months. Accordingly, it is submitted that the proceeding had lapsed.

10. By referring to the provisions of section 23 of the Assam (Temporarily Settled Areas) Tenancy Act, 1971 read with Rule 10 and the Assam

(Temporarily Settled Areas) Tenancy Rules, 1972, it is submitted that it is the prescription of law that the Deputy Commissioner shall cause an enquiry

to satisfy himself about the eligibility of the application to acquire the intermediary rights and the ownership rights before ordering further proceedings

and thereafter, to issue notice in Form 6 to all person concerned. It is submitted that under Rule 11 of the 1972 Rules, the following is prescribed:

“11. Proceeding for acquisition:- The Deputy Commissioner shall hear all objections presented within one month of the service of notice under

Rule 10 and make a memorandum of the evidences, if any, adduced by the parties and shall, for the purpose of the enquiry, have all the powers of a

Civil Court.â€

11. Accordingly, it is submitted that under Rule 11 of the 1972 Rules, the memorandum of evidence is to be recorded and accordingly, it is submitted

that it was incumbent on part of the concerned Addl. Deputy Commissioner who was making enquiry in Tenancy Case No. 1/2000 to take note of the

evidence tendered by both sides and then to pass appropriate order.

12. It is also submitted that as per Rule 12(2) of the 1972 Rules, the compensation, as determined, is required to be paid within a period of 1 (one)

month. Hence, it is submitted that as the compensation was paid after lapse of 6 (six) months, the proceeding initiated in the Tenancy Case No. 1/2000

is deemed to have been terminated with imposition of reasonable cost.

13. The learned Govt. Advocate, upon instruction has submitted that she is in receipt of letter dated 16.10.2017 from the Addl. Deputy Commissioner,

Kamrup, Amingaon that the relevant records relating to Tenancy Case No. 1/2000 has been searched thoroughly, but could not be located at the Land

Reforms Branch.

14. Be that as it may, it appears from the records of Revenue Appeal Nos. 146RA(K)/2009 and 85RA(K)/2011 that as the photocopy of certified

copy of the evidence of P.W.1, P.W.2 and P.W.3 are available. It is also seen that in the memo of appeal filed before the Assam Board of Revenue,

the petitioners had taken a plea that they have examined 3 (three) witnesses.

15. On perusal of the impugned order dated 02.07.2012 passed by the learned Chairman, Assam Board of Revenue at Guwahati in the two

hereinbefore referred Revenue Appeal cases, it is apparent that the learned Assam Board of Revenue had not considered that the Addl. Deputy

Commissioner, while adjudicating the proceedings of Tenancy Case No. 1/2000 had failed to discuss the evidence in its order. Rather, the observation

of the Assam Board of Revenue in the impugned order is to the effect that â€œIt is seen that the learned Addl. Deputy Commissioner has examined

all evidence and the report of the Circle Officer. He has found that the Respondent was a recorded tenant and so was entitled to get ownership rights.

Based on this he has arrived at a conclusion that the Respondent was entitled to what he was praying for and granted the same. There is nothing wrong in this and the same need not be interfered with.â€

16. The order of the learned Addl. Deputy Commissioner as reproduced hereinbefore does not reflect the evidence of the witnesses were discussed.

Although, there is a mention that the learned Addl. Deputy Commissioner had seen the report of the Circle Officer, but from the order, it does not

transpire as to what was the contents of the said report. Therefore, it appears that while deciding the Tenancy Case No. 1/2000, the learned Addl.

Deputy Commissioner had committed the fundamental error of non-adherence to the provisions of Rule 11 of the 1972 Rules, as the memorandum of

evidence of the witnesses was not taken into consideration while passing the final order dated 02.07.2009 in Tenancy Case No. 1/2000.

17. Although, an appeal is generally considered to be an extension of the proceedings, the learned Assam Board of Revenue also did not take into

consideration the evidence adduced by the witnesses and to make an effort to find out as to whether the evidence led to a conclusion that the

respondent no.1 or his predecessor-in-interest were in fact cultivating the land, which is one of the essential requirement of acquiring ownership right

within the provisions of the Assam (Temporarily Settled Areas) Tenancy Act, 1971. It appears that the records of Tenancy Case No. 1/2000 was

called for by the learned Assam Board of Revenue.

18. Therefore, having found that the manner and procedure adopted by the learned Addl. Deputy Commissioner in deciding the Tenancy Case No.

1/2000 is not in accordance with the procedure prescribed under Rule 11 of the 1972 Rules, the Court finds that the adjudicatory order dated

02.07.2009 is vitiated and therefore, the Court has no hesitation to set aside the impugned order dated 02.07.2012 passed by the learned Chairman,

Assam Board of Revenue at Guwahati in Revenue Appeal Nos. 146RA(K)/2009 and 85RA(K)/2011 as well as impugned order dated 02.07.2009

passed by the learned Addl. Deputy Commissioner, Kamrup, Guwahati (now Kamrup, Amingaon) in Tenancy Case No. 1/2000.

19. Resultantly, the proceedings of the Tenancy Case No. 1/2000 stands restored to the file of the Addl. Deputy Commissioner, Kamrup, Amingaon.

20. It is provided that it would be open to the learned Addl. Deputy Commissioner, Kamrup, Amingaon to take a decision whether or not to re-

construct the file, which is reported to be untraceable as per his communication to the learned Govt. Advocate and/or to examine the possibility of any

alternative way to proceed with the adjudication. In any event, on re-registering the case, the Addl. Deputy Commissioner shall decide the matter in

accordance with law, preferably within the outer period of 6 (six) months after re-construction of record or recovery of record.

21. The petitioners shall appear before the learned Addl. Deputy Commissioner, Kamrup, Amingaon on 03.02.2023 and by producing a certified copy

of this order before the said authority, await further instruction from the said authority.

22. Let the LCR received from the Assam Board of Revenue be returned along with a photocopy of this order.