(2007) 02 GAU CK 0033

Gauhati High Court

Case No: None

Pulin Boro and Others	APPELLANT
Vs	
State of Assam and Others	RESPONDENT

Date of Decision: Feb. 5, 2007

Acts Referred:

- Constitution of India, 1950 - Article 14, 21, 300A

Citation: (2007) 2 GLT 619

Hon'ble Judges: Maibam B.K. Singh, J; Amitava Roy, J

Bench: Division Bench

Judgement

Amitava Roy, J.
Being unsuccessful in their assailment of the decision of the official respondents to settle the land in their occupation in favour of the respondent No. 4, the appellants, being aggrieved, seek redress in the instant appeal.

2. We have heard Mr. A. Dasgupta, Advocate assisted by Mr. S. Chakraborty, Advocate for the appellant/writ petitioners, Mr. B.J. Talukdar, learned State Counsel for the respondents 1, 2 and 3 and Mr. N. Dutta, Sr. Advocate assisted by Mr. J. Roy, Advocate for the respondent No. 4.

3. The appellants claiming themselves to be occupancy tenants under their erstwhile landlord as defined by the Assam (Temporary Settled Areas) Tenancy Act, 1971 (hereafter referred to as the Tenancy Act) have maintained that the land in their occupation had been declared as ceiling surplus under the Assam Fixation of Ceiling on Land Holdings Act, 1956, (hereafter referred to as the Ceiling Act). According to them, they were thus entitled to have the settlement thereof in accordance with the provisions of Section 16 of the Ceiling Act. While the process for such settlement in their favour following the deposit of allotment fees as required of them was at the final stages, the same was endeavoured to be allotted to the respondent No. 4.

4. Elaborating on their claimed status of occupancy tenants, the appellants have averred that they and their ancestors were tenants under one Padmadhar Bora and his brother Lakhidhar Bora who held land measuring 323 B 2 K 18 L in their name in village Sila Senduri Ghopa Mouza in the district of Kanirup under Patta No. 1. They have stated that they are agriculturists, individually cultivating the land owned by the above named landlord. They have asserted that they are the occupancy tenants and had been issued khatians by the competent revenue authorities under the Tenancy Act. The khatians contained the names of their landlord, area and other particulars of the land. In the year 1976, 280 Bighas of land held by Padmadhar Bora was declared as ceiling surplus under the Ceiling Act. The appellants were some of the agricultural occupancy tenants on the land declared as ceiling surplus and were thus entitled to the right of ownership under the Tenancy Act as well as to have settlement of the land held by them under the Ceiling Act. Accordingly, all of them applied for the grant of ownership rights under the Tenancy Act but their request remained un-responded. The Government, however, following the acquisition of land under Ceiling Act required all the agricultural tenants including the appellants to deposit allotment/conversion fees for the purpose of settlement of the land involved. Though the appellants along with others deposited the allotment fees, they were neither conferred with the ownership rights nor granted settlement of the lands in their possession inspite of due compliance of all the stipulations of the above two legislations. On the contrary, by the impugned decision contained in memorandum No. RRT. 132/01/115-A dated 02.02.2002 of the Joint Secretary to the Government of Assam, Revenue (Reforms) Department, Dispur, the land was sought to be settled with the respondent No. 4 for setting up a private industrial park. Their representation against the said decision did not evoke any positive response. The appellants have contended that the impugned decision is violative of their rights under Article 14, 21 and 300A of the Constitution of India and in the background of facts is a fraud on the exercise of executive power.

5. The respondent Nos. 2 and 3 in their written response while admitting the appellant''s possession of the land in question conceded that some of them had been issued katcha khatian during the last tenancy resettlement operation of the district but asserted that no final khatian had been issued to them and that therefore they were not the recorded tenants of the land under the Tenancy Act. The answering respondents, with reference to the relevant records have averred that the Deputy Commissioner, Kamrup, Guwahati, had issued allotment certificate to the appellants in the year 1976 on the basis of their possession of the land involved and that some of them had even paid premium for settlement of the land in their occupation. The respondents also admitted that the appellants and some of their ancestors were tenants of the former pattadar from whom land measuring 323B 2K 18L had been acquired under the Ceiling Act in Land Ceiling Case 185/76. They, however, reiterated that no final Khatian had been issued to the appellants who continued to cultivate the land even after such acquisition. According to them,

therefore, the appellants could not be considered for acquisition of ownership right u/s 23 of the Tenancy Act, as they were not the recorded tenants at the time of acquisition of land under the Ceiling Act.

6. The respondents, however, admitted that the Circle Officer, North Guwahati Circle, by his letter No. U-GUCHA 4/93/357 dated 21.04.1993 had submitted a proposal for settlement of land measuring 207B 1K 10Ls in favour of 131 occupants therefore after the acquisition and that on the examination of the proposal, the Deputy Commissioner, Kamrup, accepted it for only three persons namely Herombo Boro, Puma Boro and Mokora Boro for land measuring 5B 2K 8L. The proposal for the rest land was returned for re-submission after appropriate verification. The land records, however, were not corrected, as the three individuals did not apply for settlement. The impugned action was endorsed pleading that the land involved had not been settled in favour of anyone else.

7. Though the respondent No. 4 did not file any affidavit to the writ petition, it disclosed its stand in the application filed for vacation of the interim order dated 01.04.2003 protecting the appellant/writ petitioner''s possession of the land. They asserted that the appellants/writ petitioners while projecting their claim for land measuring 52B-2K-8Ls had suppressed material facts. According to it, being desirous of setting up a private industrial park with necessary infrastructure, it submitted a proposal before the Government of Assam. While according a positive response to the proposal, the answering respondent was advised to approach the Department of Industries and Commerce for necessary assistance. Pursuant to the letter dated 31.08.2001 of the Commissioner and Secretary to the Government of Assam, Industries and Commerce Department on the proposal, it thereafter started the process of locating suitable land for the project in course of which land measuring 300 acres situated at village Sila under Mouza Sila Sinduri Ghopa, North Guwahati, was identified. Contemplating to develop 200 acres of land therefrom in the first phase, the answering respondents purchased 50 acres of land from private individuals.

8. As the land ascertained included about 103 acres of ceiling surplus land, it also decided to approach the Government for settlement thereof in its favour. It, therefore, submitted a representation dated 22.10.2001 before the Chief Minister of the State enclosing a map of the proposed area praying for settlement of the said land on payment of necessary charges. The request was thereafter processed by the revenue authorities at different levels in course of which the Circle Officer, North Guwahati, Assam, was instructed to enquire into the matter and submit a report as per the land policy. Accordingly the report was submitted by the said authority on 21.11.2001, which disclosed encroachment over the land by cultivation. Some of such cultivators were stated to be paying Tauzi Bahira fine. After due assessment of the land, the valuation thereof was determined to be approximately 14,666/- per bigha. The Deputy Commissioner, Kamrup, also made further enquiries at the

instance of the higher administrative authorities with regard to the status of the land in question. After due inspection and verification of the office records, the Circle Officer, North Guwahati Revenue Circle, submitted a report on 18.01.2002 reiterating that the land was under seasonal encroachment through cultivation but the encroachers were not tenants. After the completion of all necessary formalities, the Government eventually decided to settle land measuring 280 bighas with the answering respondent which asked deposited the entire premium amount of Rs. 42 lakhs as required. The office of the Deputy Commissioner (Settlement Branch) thereafter issued letter No. KRS. 753/2001/83 dated 04.07.2002 requiring the Circle Officer, North Guwahati Revenue Circle, to handover possession of the proposed land in favour of the said respondent. It contended that the appellants had no right over the land and that the delay in delivery of possession was prejudicially affecting it in view of the huge investments already made.

9. The learned Single Judge by the impugned judgment and order entered a finding that the appellants had failed to establish that they were the occupancy tenants under the previous land holders and that therefore the provisions of the Tenancy Act were not applicable to them. It was further held that the land had not been settled with them by the competent authority. Responding to the submission of the learned Government Advocate to the effect that the respondent authorities were ready to consider the case of the appellants if found entitled to allotment of any other land, the learned Single Judge parted with the matter expressing hope and twist that the State authorities would consider their cases accordingly. The petition, however, was dismissed. While admitting the instant appeal noticeably no interim order was passed.

10. Mr. Dasgupta has forcefully urged that the appellants being cultivating tenants within the meaning of Section 16 of the Ceiling Act, they had a right to be settled with the land in their occupation under the said statute. In the alternative, the appellants being the occupancy tenants under the original recorded pattadar in terms of the Tenancy Act, they having been issued kacha khatians, they are entitled in law to be conferred the ownership rights of the said land. Pointing out that the appellants after the acquisition proceedings under the Ceiling Act, had been issued allotment certificates and that they had, as demanded deposited the conversion fees, the learned Counsel argued that the impugned decision of settling the land in favour of the respondent No. 4 was in blatant violation of the provisions of both the legislations. The official respondents having admitted the appellants possession of the land involved through cultivation, issuance of kacha khatian and payment of premium, the learned Single Judge erred in sustaining the impugned settlement, he urged. Without prejudice to the above, the learned Counsel contended that the appellants in any view of the matter, are entitled to adequate compensation in case the land in their occupation are not settled with them.

11. In reply the learned State Counsel, with reference to the relevant official records argued that mere possession of the land by cultivating the same did not confer any right in the appellants to claim settlement thereof. The names of the appellants not being recorded as tenants in accordance with law, issuance of kacha khatian and allotment orders per se was not a recognition of their status of cultivating tenants. According to the learned Counsel, the appellants had no subsisting right to claim settlement of the land in question and, therefore, the challenge to the impugned decision is unsustainable in law.

12. Mr. Dutta elaborating the above has maintained that as the Tenancy Act does not have any application to Government land, reference thereof to claim ownership rights thereunder is misconceived. As the invocation of the provisions of the Tenancy Act presupposes subsistence of title in the landlord the ceiling surplus land having reverted to the Government under the Ceiling Act, the claim of ownership right under the Tenancy Act under such circumstances is patently untenable. Referring to the definition of landlord and tenant under the said statutes and the Assam (Temporarily Settled Areas) Tenancy Rules (hereafter referred to as the Tenancy Rules), the learned Sr. Counsel contended that in face of the exhaustive procedure prescribed for the preparation of record of rights, the kacha khatians ipso facto did not establish any tenancy in favour of the appellants. Drawing the attention of this Court to the various provisions of the Ceiling Act, Mr. Dutta argued that a cultivating tenant to be entitled to the settlement of the surplus land thereunder has to be in continuous occupation thereof in the said capacity. According to him, the writ petition is devoid of material facts pertaining to the incorporation of their names as tenants in the return to be submitted by the recorded pattadar in the ceiling proceeding being Ceiling Case 185/76 and the payment of any compensation to them as such. This, according to Mr. Dutta, is an acid test to ascertain the appellants'' status as cultivating tenants.

13. Relying on Rule 16 of the Assam Fixation of Ceiling on Land Holding Rules, 1957, (hereafter referred to as the Ceiling Rules), the learned Sr. Counsel urged that there being no material on record to suggest that the appellants had within six months from the acquisition of the ceiling surplus land submitted applications for settlement of the land in their occupation, it was open for the State respondents to settle the same in terms of the Rules framed under the Assam Land and Revenue Regulations, 1886, (hereafter referred to as the Regulations). According to him, a person to be entitled to be settled with the ceiling surplus land u/s 16 of the Ceiling Act, not only has to be a cultivating tenant but must continue as such in course of the enquiry on his application for settlement. The writ petition being deficient in the above facts, the claim of the appellants to the said effect was rightly dismissed by the learned Single Judge, he contended. Referring to the allotment orders of the appellants, Mr. Dutta underlined that it was evident therefrom that their possession was that of trespassers, they being required to deposit touzi bahira revenue. The allotment orders, therefore, did not acknowledge the appellants status as tenants,

he contended. The learned Sr. Counsel urged that the impugned settlement in favour of respondent No. 4 was preceded by a policy decision to develop the-areas as an industrial belt for the economic development of the State and that the possession of the land involved having already been delivered to M/s Brahmaputra Consortium Private Limited, which in turn had made huge investments, no interference in this appeal is warranted. Mr. Dutta even questioned the bonafide of the appellants for insisting on compensation in the alternative, they having claimed to be landless cultivators.

14. The competing arguments have been duly considered. The appellants'' challenge at the cost of repetition is founded on the following considerations.

(1) They were occupancy tenants under the original recorded pattadar, Padmadhar Bora and his brother Lakhidhar Bora.

(2) They had been issued katcha khatian

(3) They had applied for ownership right under the Tenancy Act.

(4) They were cultivating tenants in possession when the land was acquired under the Ceiling Act.

(5) They were issued allotment orders/certificates.

(6) They had paid conversion fees/premium for settlement of the land u/s 16 of the Ceiling Act.

15. The Tenancy Act in terms of Section 2 thereof does not apply inter alia to the land owned by the Union or State Government or by a Local Authority, which is used for any public purpose. The Statute classifies tenants contemplated thereunder into two categories namely occupancy tenant and non-occupancy tenant. A person who for a period of not less than three years has continuously held land, as a tenant would have a right of occupancy in that land as prescribed by Section 5. An occupancy tenant is acknowledged to have permanent and heritable right of use and occupancy in the land in terms of Section 6. This right of occupancy, if a tenant dies intestate devolves on his death. Sections 21, 22, 23 deals with acquisition of ownership and intermediary rights by the occupancy tenants and under tenants. u/s 23, in particular, an occupancy tenant personally cultivating the land of his tenancy and desirous of acquiring the ownership rights of his landlord may at any point of time make an application in writing to the Deputy Commissioner and thereupon on the determination and payment of the compensation the Deputy Commissioner of the District would declare the said occupancy tenant to have acquired the ownership right free from all encumbrances.

16. u/s 55, the State Government may, where the settlement operation under the Regulation is not in progress, make an order in the case of any local area estates or part thereof directing that all record of rights with or without survey for all or any

class of tenants be prepared by the Settlement Officer. The said provision requires that the survey has to be made and the record of rights prepared in accordance with the Rules framed by the State Government.

17. Chapter- VII of the Tenancy Rules deals with the procedure for preparation of record of rights. Rule 29(A) envisages the various stages of the process. u/s 30, the mode of preliminary survey and record writing is provided. Thereunder after the boundaries of all the holdings of the tenants are surveyed and demarcated, a "draft chitha", or Field Index shall be prepared by the Land Records staff under the direct supervision of the Assistant Settlement Officer. The chitha would be arranged according to the serial number of the plots in the map and would show the name and residence of the tenants, the area of the plot, length of possession of each tenant, the amount of rent and other necessary particulars. Thereafter the Assistant Settlement Officer would cause draft khatian to be prepared from the chitha. The khatian in addition to the particulars in the chitha would also contain the landlords name, address, the number of the patta held by him and the revenue payable in respect of the plot. Each tenant and his landlord would be furnished with a copy of the draft khatian and in the process of record attestation that would follow the Assistant Settlement Officer would hear and decide the dispute, if any with regard to the notice appearing in the draft khatian. After the necessary corrections and attestations, the Assistant Settlement Officer would prepare and publish a draft record of rights in the local area or village informing the landlords and tenants concerned about the same.

18. Finally the record of rights would be prepared after all objections raised with regard to the draft records have been disposed of and the appeals from the orders of the Assistant Settlement Officers are decided by the Settlement Officer and essential corrections are made. The final record of rights of an area or a Village would be published and a proclamation informing the landlords and the tenants of the place would also be made disclosing that the final records were open for public inspection. A certificate of final publication would be furnished within a month of the last day of the final publication of the record of rights.

19. A combined reading of the above provisions of the Tenancy Act and the Tenancy Rules proclaims that a kacha khatian or a draft khatian is not of definitive significance vis-a-vis a person in cultivating possession of a land governed thereby. In view of the comprehensive procedure for preparation of the record of rights under the said Rules, the appellants'' claim of occupancy tenants under Padmadhar Bora and Lakhidhar Bora at the time of the acquisition of the land under the Ceiling Act cannot thus be adjudged to be absolute, unqualified and conclusive. The appellants have not asserted that their names as occupancy tenants had been incorporated in the final record of rights. No assertion has been made either that any process for preparation of the record of rights under Chapter-VII of the Tenancy Act had at all been undertaken involving the land in their occupation. The materials

available on record on the other hand only demonstrate their categorical case of being issued kacha khatians. In that view of the matter, the stand of the official respondents that the petitioners were not recorded tenants and thus not entitled to be conferred with the ownership rights under the Tenancy Act or settlement under the Ceiling Act cannot be lightly brushed aside.

20. Understandably with the acquisition of the land as ceiling surplus under the Ceiling Act, the Tenancy Act ceased to have any application thereto. The definition of tenant as provided in Section 3(o) of the Ceiling Act being relevant is extracted herein below:

Tenant means a person who holds land under another person and is, or but for a special contract would be, liable to any rent for that land to the other person and includes a person who cultivates the land of another person on condition of delivering a share of the produce.

The definition as provided in Section 3(17) of the Tenancy Act is as hereunder.

Tenant means a person who cultivates or holds the land of another person, and is, or but for a special contract (express or implied) would be liable to pay rent for that land to that other person, and includes a person who under system generally known as ''Adhi'' (whether Guchiadhior Gutiadhi), ''barga'', ''chukti'', ''bhag'' or ''chukani'' cultivates the land of another person on condition of delivering a share or quantity of the produce of such land to that person:

Provided that a person who cultivates or holds land immediately under the State Government is not a tenant within the meaning of this definition.

"Landlord" as defined in Section 3(7) of the said Statute means a person immediately under whom a tenant holds but does not include any Government.

21. u/s 5 thereof, any person who on the date of the commencement of the Ceiling Act holds, as owner or tenant, land which in the aggregate, exceeds the limit fixed by Section Section has to within the prescribed period, submit to the Collector a return providing the particulars of all his lands in the prescribed form and stating therein his selection of plots or plot of lands (not exceeding in the aggregate the limit fixed u/s 4 which he desires to retain under the provisions of the Act. On the basis of the information so furnished in the returns, the Collector would prepare a draft statement showing, amongst others, the total area of land held by such person, the specific plot selected for retention and also the land in excess of the limit fixed u/s 4 remaining under such selection. A draft statement would thereafter be published in the Office of the Deputy Commissioner, Sub Divisional Officer, the Circle Sub-Deputy Collector and the Mouzadar and a copy thereof would be served on the person or persons concerned in the manner prescribed. If any objection is received on the draft settlement, the Collector would pass appropriate orders thereon after providing the objector an opportunity of hearing. On completion of

the said process, the draft statement would be made final in terms of the orders passed on the objections, if any. The final statement would then be published in manner similar to that of the draft statement.

22. Significantly, the prescribed Form A for submitting the return u/s 5, contains a column requiring disclosure of the name of any tenant in occupation of the excess land as well as the nature of tenancy. In other words, if the ceiling surplus land or the excess land decided to be surrendered is in occupation of a tenant, the person submitting the return u/s 5 of the Ceiling Act is obliged to disclose the name of such tenant and the nature of tenancy. This assumes importance in view of the prescription of appointment of compensation between the owner and the tenant as mandated in Section 12. Thereunder, if the land is under the occupation of a tenant, then the compensation has to be apportioned between the owner and the tenant and the share of the owner, if the tenant has occupancy right would be 15 times and in other cases 20 times the annual land revenue.

23. On a perusal of the file No. KRL-423/85 and KRS-753/01 of the Land Reference Branch (RLC) and Settlement Branch respectively, it transpires that in the final statement, published u/s 7 of the Ceiling Act, no reference of the appellants as tenants in respect of the surplus land had been made. The records do not disclose either that the appellants had claimed or been paid any compensation for the acquisition of the said land. The Certificates of allotment issued in favour of the appellants reveal that thereby they were permitted to process and use the plots referred to therein amongst others on the payment of tauzi bahira revenue. It was clarified that the certificate was not to be treated as annual or periodic patta under the Regulation and that the allotters would be issued patta on payment of premium in accordance with the provisions of the Ceiling Act.

24. The certificates visibly are not documents evidencing settlement of the plots mentioned therein in favour of the appellants. These only permitted occupation of the lands in their possession on payment of touzi bahira revenue. Thereby their status as tenants either under the Tenancy Act or the Ceiling Act was not acknowledged. Though the appellants have avowed to have filed applications praying for settlement of the plots in their occupation held on the strength of the above certificates, they have not provided the necessary particulars thereof. The official records produced before this Court also do not contain the same though treasury challans of payment of conversion fees by several of them exist. This was in the year, 1992. Noticeably the State respondents in their counter have admitted the appellants'' possession of the land, issuance of allotment certificates and the payment of conversion fees by some of them. They seek to defend the impugned action contending that the petitioners were not recorded tenants.

25. u/s 16 of the Ceiling Act, if there is any cultivating tenant in occupation he should be given settlement of the land within a prescribed period on conditions delineated therein. If such excess land is not disposed of u/s 16, the State Government or any

officer empowered by it would be entitled to settle the same in the same manner as any other land at the disposal of the Government u/s 12 of the Regulations. In making the settlement, however, amongst others, the landless cultivator would be entitled to a preference.

26. The period referred to in Section 16 within which the settlement is to be awarded is six months from the date of acquisition as is evident from Rule 16 of the Ceiling Rules. In absence of the essential facts indicating the date on which the appellants had made applications for settlement of the plots in their possession under the Ceiling Act, absence of their names in the final settlement u/s 7 and any evidence of claim or payment of compensation to them as tenants, in our considered view, their possession of the land, the certificates of allotment and payment of conversion fees by them notwithstanding, they cannot be construed to be cultivating tenants within the meaning of Section 16 of the Ceiling Act. Their claim for settlement of the land in their possession under the above provision of law, therefore, is unsustainable in the prevailing fact situation.

27. Settlement of land in their favour not having been made within the period of six months as prescribed, the same was available to the Government for its disposal in terms of Section 12 of the Regulations. A scrutiny of the official records referred to above reveals that the ceiling surplus lands are in occupation of the villagers who cultivate paddy thereon but they are not the recorded tenants. The records disclose that the concerned administrative authorities after conducting a series of survey and on the basis of the reports thereon have declared the area to be an industrial site and accordingly settled the land measuring 280 bighas covered by various dags situated in village Sila under the Sila Sundori Mouza in favour of the respondent No. 4 for setting up a private industrial park and that the possession thereof had been handed over to it on 01.03.2004. In terms of the operative directions contained in the impugned judgment and order, a process at the appropriate governmental level has also been initiated in terms thereof for the appellants.

28. From the documents produced before this Court in course of the arguments, it appears that the State Government had taken a conscious decision to develop the area as an industrial site and in the industrial park to be developed by the respondent No. 4 as many as 40 industries are proposed to be set up. In the meantime, the respondent No. 4 has made substantial investments, which have been sought to be demonstrated by producing various documents at the hearing. At the time of admission of the appeal, no interim order had been passed protecting the possession of the appellants and it is now evident from the disclosures in the official records that the respondent No. 4 is in physical possession thereof.

29. In view of the determination on the appellants claimed right of settlement of the land, we are of the considered opinion that no interference with the impugned settlement is called for. The land in question being available to the Government u/s 17 of the Ceiling Act for disposal in terms of the Regulations, it was within the

jurisdiction of the executive authorities to decide the manner of settlement to best suit the interest of the State and its people. The declaration of the area to be an industrial site cannot be condemned as arbitrary or whimsical. The decision is informed with a purpose, which cannot be discarded as antithetical to public interest. This is more so in view of the failure of the appellants to convincingly demonstrate their right to claim settlement of the land in law.

30. We have perused the impugned judgment and order and agree with the ultimate conclusions recorded therein but for the reasons alluded hereinabove. We, however, part with the issue with the direction that the Government and its functionaries would meticulously examine the aspect of identifying alternative plot(s) of cultivable land for the rehabilitation of the appellants in terms of the directions issued by the learned Single Judge in this regard. The appellants are left at liberty to bring to the notice of this Court any discernible omission on the part of the administrative authorities in implementing the above. No costs.