
(2016) 09 GAU CK 0044

GAUHATI HIGH COURT

Case No: Writ Appeal No. 295 of 2016

Shri Bikram Phukan

APPELLANT

Vs

State of Assam

RESPONDENT

Date of Decision: Sept. 5, 2016

Acts Referred:

- Assam (Temporarily Settled Areas) Tenancy Act, 1971 - Section 23, Section 3(14)

Citation: (2016) AIR(Gauhati) 187 : (2017) 1 NEJ 73

Hon'ble Judges: Mr. Ajit Singh, CJ. and Mr. Justice N. Chaudhury, J.

Bench: Division Bench

Advocate: Mr. B.N. Sarma, Senior Govt. Advocate, Mr. P.K. Deka, Advocate, for the Respondents; Mr. S.P. Roy and Ms. A. Talukdar, Advocates, for the Appellant

Final Decision: Dismissed

Judgement

N. Chaudhury, J. - The judgment and order dated 16.06.2016 passed by learned Single Judge of this Court in WP(C) No. 660/2010 has been called in question in the present writ appeal.

2. The predecessor-in-interest of the respondents No. 5 to 9 herein was Patela Boro who became an occupancy tenant with respect to land covered by Dag No. 118 of Kheraj Patta No. 143 of Mouza Beltola in village Betkuchi under predecessor-in-interest of the present appellant. A Khatian was issued in favour of the original occupancy tenant under Chapter X of the Assam (Temporarily Settled Areas) Tenancy Act, 1971 (hereinafter referred to as "the Act") which unless rebutted is liable to be presumed to be correct under Section 58 of the Act. An occupancy tenant, as defined in Section 4(1)(i) of the Act is one who has been holding immediately under a proprietor, landholder or settlement holder other than landholder having right of occupancy over the agricultural land under occupation. Right of occupancy, on the other hand, can be acquired by a person who has continuously held a land as tenant as provided under Section 5 of the Act. Section 23

of the Act entitles an occupancy tenant to acquire ownership right and intermediary rights. He has to file an application in writing to the Deputy Commissioner in prescribed Form and thereupon the Revenue Officer would assess compensation to be paid to the landlord under Sections 24 and 25 of the Act. Once such amount is paid by the occupancy tenant, the Deputy Commissioner shall declare that the said occupancy tenant had acquired the ownership rights free from the encumbrances.

3. Four sons of Late Patela Boro having inherited the occupancy right under Sections 6 and 7 of the Act filed application before the Revenue Officer at Kamrup under Form No.5 prescribed under Rule 9 of the Assam (Temporarily Settled Areas) Tenancy Rules, 1972 (hereinafter referred to as "the Rules"). They mentioned the name of predecessor of the present appellant as one of the pattadars in the application in the prescribed Form. In fact, the names of three pattadars were duly mentioned in the application. The applicants prayed for ownership right with respect to land covered by Khatian No. 166 and with respect to land covered by K.P. Patta No. 143 and Dag No.118 having land revenue of Rs. 9.90. The Deputy Commissioner thereafter issued notice under Form No.6 to the landlords and one Hemen Phukan accepted the notices. As no objection was filed thereafter from the side of the landlords the Extra Assistant Commissioner, who is a Revenue Officer within the meaning of Section 3(14) of the Act, passed an order on 03.05.1986 in the Tenancy Case No. 586/1984 giving opinion that the raiyots named in the proceeding is entitled to get ownership right by giving compensation to the landlord equivalent to 50 times of the land revenue which was Rs.9.40 per year at that time as per Appendix-24 of the Act. The landlords, however, were given the liberty to file an objection within a month from the order and the applicant was directed to deposit Rs. 470.00 in the Treasury for realisation by the landlords. On the basis of the aforesaid order ultimately the Additional Deputy Commissioner, Kamrup, passed a final order on 12.02.2003 declaring that the aforesaid tenants/petitioners had acquired the ownership right over the plot of land measuring 4 bigha 3 katha 17 lechas in K.P. Patta No. 143 (Khatian No.166) of Dag No.118 pertaining to village Betkuchi under Beltola Mouza. Consequently, the petition filed by Jogen Chandra Boro, the tenant, in Form No. 5 stood allowed and Form No. 7 issued under Rule 13 of the Rules also stood approved. The tenant having deposited the amount, thus, acquired ownership right over land measuring 4 bigha 3 katha 17 lechas in K.P. Patta No. 143 under Khatian No.166 and Dag No. 118 of village Betkuchi under Beltola Mouza. The statutory period for preferring appeal under Section 67 of the Act is 60 days but no appeal was preferred by the landlords in such time.

4. Be that as it may, one Nripendra Ram Phukan being one of the pattadars preferred an appeal before the Assam Board of Revenue on 14.12.2006 under Section 147 of the Assam Land & Revenue Regulation, 1886 read with Section 67 of the Assam (Temporarily Settled Areas) Tenancy Act alleging that he was the absolute owner of the land in question which is a cultivable land and has always been under his possession. The respondent No.2 and his brothers fraudulently and in collusion

with the Revenue authority obtained Khatian No. 166 and then filed application claiming ownership before the Deputy Commissioner leading to registration of Tenancy Case No. 586/1984. Although no notice was served on the appellant and other pattadars, yet, the Revenue Officer passed order conferring ownership on the tenant. Having come to know about this, the appellant had engaged a lawyer for the purpose of preferring appeal but actually he did not file it and hence the appeal was belatedly filed on the grounds mentioned therein. The Assam Board of Revenue registered Appeal No.157RA(K)/2006 on the basis of the aforesaid appeal and ultimately after hearing both sides passed an order on 12.04.2007 allowing the appeal and setting aside the order passed by Additional Deputy Commissioner under Section 23 of the Act. The tenant Jogen Boro, thereafter, filed an application under Section 7 of the Assam Board of Revenue Act, 1962, praying for review of the appellate judgment and order dated 12.04.2007. The learned Assam Board of Revenue this time after hearing the parties allowed the review petition and dismissed the Revenue Appeal No.157RA(K)/2006 holding that no appeal having been preferred within the prescribed period of 60 days and even thereafter with the permission of the appellate authority the appellant of Revenue Appeal No.157RA(K)/2006 did not take any action for years together to get the matter adjudicated. In that view of the matter, the earlier appellate order invoking provision of Section 151 of the Regulation for cancelling an order passed way back in 1986 was not warranted. But as an error inadvertently crept in while passing the order dated 12.04.2007 it needed to be reviewed and accordingly it stood reviewed. Thus, it is to be seen that the original order conferring ownership on the tenants on 03.05.1986 stood restored thereby.

5. The aforesaid landlord, thereafter, filed a writ petition before this Court being WP(C) No. 660/2010 not only challenging the review order passed by the Revenue Board but also challenging the correctness of the order passed by the Revenue Officer declaring ownership right of the private respondents over the tenanted land. The learned Single Judge having considered the pleadings of both sides and upon consideration of the original records arrived at the finding that the learned Assam Board of Revenue did not commit any error in passing the impugned order and there was no error in declaring ownership right of the tenant over land covered by Dag No. 118 of K.P. Patta No. 143 of village Betkuchi under Mouza Beltola. The learned Single Judge has considered all the materials available on record and the earlier judgment of this Court in the case of **Sadou Assam Pattadar Sangha v. State of Assam, reported in (1990)1 GLR (NOC) 32** as well as order dated 28.09.1995 passed by the Hon'ble Supreme Court in SLP(C) No. 8503/1990 and passed the detailed judgment dismissing the writ petition which is under challenge in the present appeal.

6. We have heard Mr. S.P. Roy, learned counsel for the appellant, Mr. P.K. Deka, learned counsel for the private respondents and Mr. B.N. Sarma, learned Senior Government Advocate, Assam. We have also perused the materials available on

record.

7. Mr. S.P. Roy, learned counsel for the appellant, has challenged the findings of the learned Single Judge on limited points. According to him, no notice was served on the landlords in the manner prescribed under Order 5, Rule 15 of the Code of Civil Procedure read with Rule 9 and 10 of the Rules. One Hemen Phukan, a pattadar, appears to have accepted the notices while the Revenue Officer proceeded on the basis of such service and passed the impugned order. He submitted that the Revenue Officer of the first instance described the land to be covered by Dag No. 114 of K.P. Patta No. 143 under the aforesaid village and mouza which really does not exist and so the impugned judgment and order is liable to be set aside and quashed.

8. Per contra, Mr. P.K. Deka, learned counsel for the private respondents, called attention to the finding of the learned Single Judge that notices sent to the three patta holders in Form No.6 was received by one Hemen Phukan who appended his signature to the notice on 13.04.1985. The patta holders appeared thereafter and that is how the presence of both parties were reflected in the order dated 09.04.1985 in the Tenancy Case No.586/1984. He emphasised that acceptance of notices by Hemen Phukan is valid inasmuch as he is the son of a pattadar and so he comes within the meaning of "adult family member" as provided under Order 5, Rule 15 of the Code of Civil Procedure. The notices having been duly served there is no illegality in passing order under Section 26 of the Act. He further argued that although Revenue Officer of first instance described the land to be covered by Dag No.114 but it was an inadvertent typographical error which has been corrected by the final order passed by the Additional Deputy Commissioner while declaring ownership right of the tenant over the land in question. The land has been rightly described as to be covered by Dag No.118 of the concerned village and mouza and so there is really no error in existence.

9. Having considered the rival contentions of both sides we have gone through the various orders passed by the Revenue Officers. The Extra Assistant Commissioner is a Revenue Officer within the meaning of Section 3(14) of the Act. He entertained the application and issued notice to the parties. Even on his own showing one Hemen Phukan accepted notice on 13.04.1985 and so in the absence of the argument that Hemen Phukan is not a family member of the pattadars, such acceptance of service cannot be interfered with. Rule 9 and 10 of the Rules, therefore, cannot be said to have been violated and the learned Single Judge has rightly held that there is no error in declaring ownership right of the tenant under Section 23 of the Act. The final order passed by the Additional Deputy Commissioner declaring ownership right contained Dag No.118 of village Betkuchi under mouza Beltola and not Dag No.114 as reflected in the initial order passed by the Extra Assistant Commissioner. Learned Single Judge having considered the provision of the Rules has rightly held that Extra Assistant Commissioner being a Revenue Officer was duly delegated with

the power to entertain such application. The final order ultimately has been passed by the Additional Deputy Commissioner. The post of Deputy Commissioner includes the post of Additional Deputy Commissioner and so there is no error of jurisdiction whatsoever. Relying on the earlier judgment of this Court in the case of Sadou Assam Pattadar Sangha (supra) the learned Single Judge has held that Khatian was issued in 1991 when the land was beyond Guwahati Municipal area. Under such circumstances right acquired by the tenant under Section 5 of the Act would continue and thus in terms of Khatian No.166 the tenant became entitled to ownership rights under Section 23 of the Act.

10. The judgment and order passed by the learned Single Judge has taken care of all the objections raised by the appellant before us. The impugned findings are based on the materials on record and in conformity with the provisions of the Act and the Rules. This being the position, we do not find any merit in this writ appeal. It is accordingly dismissed. No order as to cost.