

GAHC010089462021



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

Case No. : WP(C)/3076/2021

ARUN CHANDRA PAUL
S/O. LT. SACHI MOHAN PAUL, R/O. KHARUPATIA, P.S. AND P.O.
KHARUPATIA, DIST. DARRANG, ASSAM, PIN-784147.

VERSUS

THE STATE OF ASSAM AND 6 ORS
REP. BY THE COMMISSIONER, MUNICIPAL ADMINISTRATION DEPTT.,
DISPUR, GUWAHATI-06.

2:DIRECTOR MUNICIPAL ADMINISTRATIVE DEPTT.

ASSAM
RUKMINIGAON
GUWAHTI-781022.

3:DEPUTY COMMISSIONER

DARRANG
MANGALDOI
PIN-784125.

4:KHARUPATIA MUNICIPAL BOARD

REP. BY EXECUTIVE OFFICER KHARUPATIYA
DARRANG-784147.

5:UTTAM SAHA

S/O. LT. REBATI MOHAN SAHA
R/O. WORD NO.-7
GOPAL NAGAR

KHARUPATIA
P.O. AND P.S. KHARUPATIA
DIST. DARRANG
ASSAM-784147

6:BHABA RANJAN ROY
S/O. LT. SURJA KANTA ROY
R/O. WORD NO.4
GURU PALLY
KHARUPATIA
P.O. AND P.S. KHARUPATIA
DIST. DARRANG
ASSAM-784147

7:ASHIM ROY
S/O. LT. ROHI DAS
R/O. WORD NO.1
JAYANTI NAGAR
KHARUPATIA
P.O. AND P.S. KHARUPATIA
DIST. DARRANG
ASSAM-78414

For the Petitioner(s) : Mr. D. P. Chaliha, Advocate

For the Respondent(s) : Mr. S. Chouhan, Advocate
: Mr. C. Goswami, Advocate

Linked Case : WP(C)/5334/2013

UTTAM SAHA and 2 ORS
S/O LT. REBATI MOHAN SAHA
W/NO.7
GOPAL NAGAR
KHARUPETIA
P.O. KHARUPETIA
DIST- DARRANG
ASSAM

2: BHABA RANJAN ROY
S/O LT. SURJA KANTA ROY
W/NO.4
SRI GURU PALLY
KHARUPETIA
P.O. KHARUPETIA
DIST- DARRANG

ASSAM

3: ASHIM ROY
S/O LT. ROHI DAS
SAHA ROY
W/NO.1
JAYANTI NAGAR
KHARUPETIA
P.O. KHARUPETIA
DIST- DARRANG
ASSAM

VERSUS

THE STATE OF ASSAM AND 4 ORS
REPRESENTED BY THE SECRETARY TO THE GOVT. OF ASSAM
MUNICIPAL ADMINISTRATION DEPARTMENT
DISPUR
GHY-6

2:THE DIRECTOR
MUNICIPAL ADMINISTRATION DEPARTMENT
ASSAM
RUKMINIGAON
OPP. HDFC BANK GANAPATI BHAWAN
H/NO.23
NEAR SADHI COM
P.O. KHANAPARA
GHY-22

3:THE DY. COMMISSIONER
DARRANG
MANGALDOI

4:THE KHARUPETIA TOWN COMMITTEE
KHARUPETIA TO BE REPRESENTED BY THE CHAIRMAN
KHARUPETIA
P.O. and P.S. KHARUPETIA
DIST- DARRANG
ASSAM

5:ARUN CHANDRA PAUL
S/O LT. SACHI MOHAN PAUL
W/NO.3
RAMKRISHNA PALLY
KHARUPETIA TOWN
DIST- DARRANG
ASSAM

For the Petitioner(s) : Mr. C. Goswami, Advocate

For the Respondent(s) : Mr. S. Chouhan, Advocate

**BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH**

JUDGMENT AND ORDER (ORAL)

Date : 07-09-2023

1. Both the writ petitions are taken up for disposal vide this common judgment and order taking into account that both the writ petitions are interconnected.

2. The disputes between the parties herein relates to a stall bearing No.100/86 measuring 20 Sq. Meters in the daily market of Kharupetia Town Committee which is a Committee registered under the provisions of the Assam Municipal Act, 1956. It is seen from the records that one Fateh Chand Saroogi was allotted the land on which Shop No.100 was located in the daily market, Kharupetia by the then Chairman, Local Board against treasury Challan No.18 dated 06.09.1954 and the Challan No.39 dated 20.10.1954. Thereupon, the said Fateh Chand Saroogi transferred the stall to one Shri Shib Karan Sarmah and this transfer was approved by the then Chairman, Kharupetia Town Committee dated 01.03.1990. Subsequent thereto, the said Sib Karan Sarmah transferred the said Stall No.100/86 measuring 20 Sq. meters of the daily market to the Petitioner i.e. Shri Arun Ch. Paul who is the Petitioner in WP(C) No.3076/2021.

3. The record further reveals that the Petitioner in WP(C) No.3076/2021 rented out the said stall to the Respondent Nos. 5, 6 and 7 of WP(C)

No.3076/2021. It is further relevant to take note of that there were various litigations between the Petitioner and the Respondent Nos. 5, 6 and 7 relating to rent dispute for which the Petitioner sought for eviction of the Respondent Nos. 5, 6 and 7. Though initially the learned Trial Court had decreed the suit in favour of the Petitioner, but subsequently, the said decree was reversed by the First Appellate Court and the said order of the First Appellate Court was confirmed by this Court in exercise of the powers under Section 115 of the Code of Civil Procedure, 1908.

4. While the above disputes were pending, the Kharupetia Town Committee through its Executive Officer vide an order dated 05.11.2002 cancelled the allotment made in favour of the Petitioner. This cancellation was put to challenge before this Court in WP(C) No.7073/2002. However, the said writ petition was dismissed by this Court vide an order dated 02.06.2009. Thereupon, the Petitioner preferred an appeal before the Division Bench of this Court which was registered and numbered as WA No.26/2011. The Division Bench of this Court vide an order dated 09.10.2012 set aside the order dated 05.11.2002 passed by the Executive Officer of Kharupetia Town Committee without expressing any opinion on merits and directing the Executive Officer of the Kharupetia Town Committee for a fresh decision in the matter. The Respondent Nos. 5, 6 and 7 herein were the Respondent Nos. 4, 5 and 6 in the said writ appeal who claimed that they were in possession of the stall in question. Under such circumstances, the Division Bench of this Court directed the Executive Officer of the Kharupetia Town Committee to take a decision afresh in accordance with law and the parties were directed to appear before the Executive Officer for further proceedings on 20.12.2012. On the basis of the directions so passed by the Division Bench of this Court on 09.10.2012 in

WA No.26/2011, the Chairman of Kharupetia Town Committee passed an order on 20.08.2013 whereby it was mentioned that it was decided that Respondent Nos. 5, 6 and 7 herein should vacate the occupation in respect to the stall in question as the said occupation was without having any authority of law. It was further mentioned that if the said Respondent Nos. 5, 6 and 7 herein do not vacate, legal action as per law would be taken to recover the possession of Ghumti No.86. This order dated 20.08.2013 was put to challenge by the Respondent Nos. 5, 6 and 7 as petitioners in WP(C) No.5334/2013.

5. This Court vide an order dated 13.09.2013 issued Rule and in the interim directed that status quo be maintained as regards the possession of Ghumti No.86 of Kharupetia Daily Market however liberty was given to the Respondents to come up for modification/vacation/alteration of this order, if so advised. It however reveals from the records that there was no modification whatsoever to the said order sought for by the Respondents in WP(C) No.5334/2013 i.e. the Petitioner herein as well as the Kharupetia Town Committee. The status quo as regards the possession thereupon continued. Though the matter was pending before this Court and there was a status quo order passed by this Court as noted above, the Executive Officer of the Kharupetia Municipal Board passed an order on 18.02.2021 whereby the earlier decision of 20.08.2013 was reversed and it was opined that the claim of the Respondent Nos. 5, 6 and 7 herein be considered for allotment. It was also opined that the order of the Executive Officer of the Kharipetia Municipal Board dated 05.12.2002 may be allowed to continue and the petition of the Petitioner was disposed of accordingly. This order dated 18.02.2021 was put to challenge before this Court in WP(C) No.3076/2021.

6. This Court vide an order dated 24.06.2021 issued notice and stayed the operation of the order dated 18.02.2021 passed by the Executive Officer, Kharupetia Town Committee till further orders. It is further relevant to take note of that the said orders dated 13.09.2013 in WP(C) No.5334/2013 as well as the order dated 24.06.2021 in WP(C) No.3076/2021 still continues to hold the field. It further transpires from the records that in both the writ petitions, affidavits have been filed by the contesting Respondents.

7. I have heard the learned counsels for the parties and have perused the materials on record. Upon hearing the learned counsels for the parties, it transpires that the dispute pertains to a stall bearing No.100/86 measuring 20 sq. meters which was initially allotted by the Kharupetia Town Committee to one Fateh Chand Saroogi. This allotment was thereafter transferred to one Shri Shib Karan Sharma and the said transfer was permitted by the Chairman of the Kharupetia Town Committee on 01.03.1990 subject to payment of the tolls to the office as per the rates prescribed. Subsequent thereto, on 07.05.1993, the said Shiv Karan Sharma transferred the stall No.100/86 to the Petitioner in WP(C) No.3076/2021. In view of the above circumstances, this Court had put a specific query upon the learned Senior counsel appearing on behalf of the Petitioner in WP(C) No.3076/2021 as well as also to Mr. S. Chouhan, the learned counsel appearing on behalf of the Kharupetia Town Committee as to what are the rights which were conferred upon the allottee and as to whether the allottee can again sublet. Nothing could be shown before this Court except the orders by which the Executive Officer or the Chairman of the Kharupetia Town Committee have accorded the approval to the transfers so made from one allottee to the other. The original allotment order is not also on record. Further to that, nothing has been placed before

this Court that by virtue of the allotment, an absolute, permanent, hereditary and transferrable right accrues upon the allottee. Under such circumstances, this Court has to fall upon the provisions of the Assam Municipal Act, 1956 (for short "the Act of 1956").

8. This Court first takes note of Section 148 of the Act of 1956. A perusal of the said provision of the Act of 1956 would show that the rights so conferred upon the allottee or the lessee is not perpetual, transferrable and hereditary. In fact, the perusal of Sub-Section (3) of Section 148 of the Act of 1956 would show that there can be no lease beyond 3 (three) years. This Court further finds it relevant to take note of provisions of Section 62 of the Act of 1956 which relates to Municipal Property. Section 63 of the said Act of 1956 stipulates the power given to the Board to purchase or take on lease or by gift any land for the purpose of the Act of 1956 with the approval of the State Government. In terms with Sub-Section (2) of Section 63, no Board shall sell, let, exchange or otherwise dispose of any land vested under Section 62 except with the sanction of the State Government. In terms with Section 64, it is also the requirement that the Board has to enter into and perform any contract necessary for the purpose of the Act and unless the said contract is executed in the manner stipulated in Sub-Section (2) of Section 64, such contract shall not be binding on the Board. It is also relevant to take note of that on the basis of the powers conferred under Sections 147, 148 and 301 of the Act of 1956, the Rules of procedure for sell of pounds and markets by the Municipal Board and Town Committees in Assam was brought into force. These Rules prescribe the manner in which the sell of pounds and markets by Municipal Boards and Town Committees are to be regulated. From the said Rules, it also transpires that there is no right in perpetuity being created in favour of the

allottee.

9. In the backdrop of the above, this Court therefore fails to understand as to how the stall in question being numbered as 100/86 measuring 20 sq. meters had been allotted to one person and thereupon being transferred and re-transferred though the said property is a municipal property. It is the opinion of this Court that in view of the Act of 1956 and the Rules as framed thereinunder as discussed above, a Municipal Property cannot be transferred in perpetuity as had been done in the instant case. The right of the lessee or the allottee has to be within the parameters of the Act of 1956. In the instant case, it is seen that though the stall is Municipal Property but for all purposes, the Petitioner in WP(C) No.3076/2021 as well as the Respondent Nos. 5, 6 and 7 have assumed that the allotment of the said stall confers permanent, heritable and transferable rights which is contrary to the provisions of the Act of 1956. Accordingly, the allotment made in favour of the Petitioner in WP(C) No.3076/2021 of the stall in question stands quashed.

10. Now the next question arises as to what is the right of the Respondent Nos. 5, 6 and 7 taking into consideration that such rights emanates from the rights of the Petitioner in WP(C) No.3076/2021. In the opinion of this Court that as the Petitioner in WP(C) No.3076/2021 does not have a right for continuation of the allotment for the reasons above mentioned, no right therefore stands transferred or conferred upon the Respondent Nos. 5, 6 and 7 by the Petitioner in WP(C) No.3076/2021.

11. In view of the above analysis, let this Court therefore consider the two impugned orders. The order dated 20.08.2013 which have been impugned in WP(C) No.5334/2013, in the opinion of this Court does not require any

interference on the ground that no rights have been conferred upon the Respondent Nos. 5, 6 and 7 i.e. who are the Petitioners in WP(C) No.5334/2013 by the Kharupetia Town Committee and as such the said Respondent Nos. 5, 6 and 7 have no rights over the Ghumti/Stall bearing No.100/86 in the Kharupetia Daily Market.

12. Now, coming to the order dated 18.02.2021 impugned in WP(C) No.3076/2021, it shocks and surprises this Court as to how the said order was passed when the matter was pending adjudication before this Court. Further to that, a perusal of the said order dated 18.02.2021 also shows that there is no reason assigned as to why the claim of the Respondent Nos. 5, 6 and 7 was required to be considered dehors the other persons who may have an interest over the stall in question. The stall in question is a municipal property and the same has to be settled in the manner recognized by law meaning thereby that the settlement or allotment of the said stall in question has to be by way of inviting applications from the interested persons and not in the manner in which it has been done vide the impugned order dated 18.02.2021. This Court further finds it relevant to observe that the said impugned order dated 18.02.2021 is on the face of it arbitrary, irrational and violates the mandate of Article 14 of the Constitution. Accordingly, the impugned order dated 18.02.2021 is set aside and quashed.

13. In view of the above observations, this Court therefore disposes of the instant writ petition with the following directions.

- (i) The impugned order dated 20.08.2013 is not interfered with.
- (ii) The impugned order dated 18.02.2021 is set aside and quashed.

(iii) It is observed that the Petitioner i.e. Sri. Arun Ch. Paul does not have a permanent, heritable and transferrable right over the stall being Stall No.100/86 at Kharupetia Daily Market and the continuation of the right of the Petitioner over the said stall is in derogation to the provisions of the Assam Municipal Act, 1956 and the Rules framed thereunder. Accordingly, the allotment in favour of the Petitioner in WP(C) No.3076/2021 is also set aside and quashed.

(iv) This Court further directs the Kharupetia Municipal Board to take necessary steps as per the Assam Municipal Act, 1956 as well as the Rules framed thereunder if the Kharupetia Municipal Board proposes to settle or allot the Stall No.100/86 in question.

(v) The interim orders passed in both the writ petitions causes to have effect with the passing of the instant judgment.

JUDGE

Comparing Assistant