

GAHC010017982014



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

Case No. : WP(C)/5873/2014

BRAJEN HALOI
S/O LT. RATNESWAR HALOI, R/O BARSIMALUGURI, MOUZA- PASCHIM
BAKSA, P.S. BARAMA, DIST- BAKSA, BTAD, ASSAM, PRESENTLY R/O
KHARJARA, NALBARI

VERSUS

THE STATE OF ASSAM AND 4 ORS
REP. BY THE SECY. TO THE GOVT. OF ASSAM, REVENUE DEPTT. , DISPUR,
ASSAM

2:THE DY. COMMISSIONER
NALBARI

3:THE CIRCLE OFFICER
NALBARI REVENUE CIRCLE
NALBARI

4:THE BOARD OF REVENUE ASSAM
REP. BY THE REGISTRAR
ASSAM BOARD OF REVENUE
GUWAHATI
ASSAM

5:BIPUL DEKA
S/O LT. MADHAB DEKA
R/O BELSOR
MOUZA- DHARMAPUR
P.S. BELSOR
DIST- NALBARI
ASSA

BEFORE
HON'BLE MR. JUSTICE DEVASHIS BARUAH

For the petitioner(s) : Mr. D. Choudhury, Advocate.

For the respondent(s) : Mr. A. Dhar, Advocate R-5.

Date of hearing and judgment : 14.09.2023

JUDGMENT & ORDER

1. The instant writ petition has been filed by the Petitioner challenging the judgment dated 25.06.2014 passed by the learned Assam Board of Revenue in Revenue Appeal No.156(NL)/2012, whereby the appeal filed by the Petitioner challenging the order dated 19.10.2012 passed by the Additional Deputy Commissioner, Nalbari was dismissed.

2. From a perusal of the materials on record, it transpires that the Petitioner herein claims that he had purchased a plot of land measuring 2 Kathas covered by Dag No.144 included in NK Patta No.25 of Village-Kharjara under Khata Mouza in the District of Nalbari. The said purchase was made on the basis of a registered Deed of Sale bearing Deed No.371/2011 dated 20.08.2011. On the basis of the said Deed of Sale, the Petitioner was granted mutation vide an order dated 03.02.2012 passed in Misc. Case No.7/2012 by the Circle Officer, Nalbari. The record further shows that the Respondent No.5 thereupon filed an appeal before the Additional Deputy Commissioner, Nalbari being Revenue Appeal No.49/2011-2012 challenging the order dated 03.02.2012 passed by the

Circle Officer, Nalbari in Misc. Case No.7/2011-2012. The Deputy Commissioner, Nalbari passed an order on 28.02.2012 to cancel the mutation granted in favour of the Petitioner and directed the Circle Officer, Nalbari to restore the mutation of the Respondent No.5 in respect to the land by way of correction. This order was put to challenge by the Petitioner in Revenue Appeal being Case No.18RA(NL)/2012 before the Assam Board of Revenue and vide an order dated 12.03.2012 the order passed by the Additional Deputy Commissioner dated 28.02.2012 was set aside. It was also directed by the learned Assam Board of Revenue in its order dated 12.03.2012 that the order of the Circle Officer which was also challenged in the Revenue Appeal No.49/2011-2012 would be stayed pending disposal of the appeal before the learned Additional Deputy Commissioner. Subsequent thereto, the learned Additional Deputy Commissioner passed an order dated 19.10.2012 thereby allowing the appeal of the Respondent No.5.

3. The Petitioner thereupon being aggrieved had again approached the learned Assam Board of Revenue by filing an appeal which was registered and numbered as Revenue Appeal No.156 RA (NL)/2012. The record further shows that the said appeal filed by the Petitioner was dismissed vide the judgment dated 25.06.2014 by the learned Assam Board of Revenue which is the subject matter of challenge before this Court.

4. I have heard the learned counsel for the parties as well as have perused the materials on record including the records pertaining to Case No. Revenue Appeal 156 RA(NL)/2012.

5. From the records it is seen that rightly or wrongly there exists a registered Sale of Deed bearing No. 371/2011 dated 20.08.2011 in favour of the Petitioner. There is also no denial to the fact that the Petitioner is not in possession of the land in question. Under such circumstances, by virtue of the said Deed of Sale the right over the land stood transferred upon the Petitioner by operation of law as well as the said Deed of Sale, subject to cancelation of the said Deed of Sale in a manner provided under law. The record further shows that there is a suit filed by the Respondent No.5 challenging the said Deed of Sale which had been registered and numbered as Title Suit No.05/2012 and was pending in the Court of the learned Civil Judge, Nalbari and presently re-numbered as Title Suit No.71/2020 pending before the Court of the Munsiff No.1 at Nalbari. The fact that the said Deed of Sale has been challenged on various grounds of fraud cannot divest the title of the Petitioner till such time the said Deed of Sale is cancelled in accordance with law by a decree of the competent Court.

6. Now coming back to the facts involved in the instant case it would be seen that both the orders passed by the Additional Deputy Commissioner dated 19.10.2012 in Revenue Appeal No.49/2011-2012 as well as the judgment dated 25.06.2014 passed in Revenue Appeal No.156(NL)/2012 show that both the authorities had presumed that the said Deed of Sale executed in favour of the Petitioner is bad in law and as such, have set aside the mutation made in favour of the Petitioner. The said assumption by the Revenue Authorities in the opinion of this Court is totally misconceived, inasmuch as, as already stated hereinabove by virtue of the Deed of Sale bearing Deed No.371/2011 dated 20.08.2011 the rights in respect to the land in question stood transferred in favour of the Petitioner.

7. This Court further finds it relevant at this stage to take note of the submission of Mr. A. Dhar, learned counsel appearing on behalf of the Respondent No.5, who submits that the observations so made in the instant judgment should not affect the Respondents in the suit pending before the Civil Court wherein the said Deed of Sale bearing Deed No.371/2011 has been assailed. In the opinion of this Court, the said submission is a fair submission.

8. In view of the above analysis, this Court therefore set aside the judgment dated 25.06.2014 passed in Revenue Appeal No.156(NL)/2012 by the learned Assam Board of Revenue as well as the order dated 19.10.2012 passed by the Additional Deputy Commissioner in Revenue Appeal No.49/2011-2012 and thereby restores the order dated 03.02.2012 passed in Misc. Case No.7/2012 by the Circle Officer, Nalbari. It is made clear that the said restoring of the order dated 03.02.2012 passed in Misc. Case No.7/2012 shall be subject to the outcome of the Title Suit No.71/2020.

9. This Court further finds it relevant to observe that mutation does not confer any title and the mutation is done by the Revenue Authorities only for the purpose of collection of revenue and as such the said mutation done in favour of the Petitioner shall not effect the adjudication of the suit pending before the Court of the Munsiff No.1, Nalbari in Title Suit No.71/2020. This Court further observes and clarifies that the observations made hereinabove as regards the rights of the Petitioner on the basis of the Deed of Sale bearing Deed No.371 dated 20.08.2011 shall not effect the adjudication of the suit being Title Suit No.71/2020 pending before the Munsiff No.1, Nalbari and the learned

Trial Court is directed to adjudicate the matter on the basis of the materials available on record and not to be influenced by the observations made hereinabove.

10. With the above, the writ petition stands disposed of.

11. Registry is directed to forthwith return the LCR.

JUDGE

Comparing Assistant