

GAHC010028622018



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

Case No. : WP(C)/893/2018

PRATIMA DAS AND ANR
W/O. LT. GOPAL DAS, R/O. DALGAON, P.O. AND P.S. KOKRAJHAR, DIST.
KOKRAJHAR, B.T.A.D., ASSAM.

2: RINTU DAS
R/O. DALGAON
P.O. AND P.S. KOKRAJHAR
DIST. KOKRAJHAR
B.T.A.D.
ASSAM

VERSUS

THE SETTLEMENT OFFICER AND 5 ORS.
DHUBRI AND KOKRAJHAR AT DHUBRI, PIN-783301

2: THE ASSTT. SETTLEMENT OFFICER
GOSSAIGAON REVENUE CIRCLE
GOSSAIGAON
DIST. KOKRAJHAR
B.T.A.D.
ASSAM
PIN-783360

3: SWAPON KR. DAS
S/O. LATE MADHUSUDHAN DAS
R/O. VILL. DALGOAN
P.O. AND P.S. DALGAON
GOSAIGAON SUBDIVISION
DIST. KOKRAJHAR
B.T.A.D. AREA
ASSAM
PIN-783360

4:TAPAN KR. DAS
S/O. LATE MADHUSUDHAN DAS
R/O. VILL. DALGOAN
P.O. AND P.S. DALGAON
GOSAIGAON SUBDIVISION
DIST. KOKRAJHAR
B.T.A.D. AREA
ASSAM
PIN-783360

5:NIRANJAN CHANDRA DAS
S/O. LATE MADHUSUDHAN DAS
R/O. VILL. DALGOAN
P.O. AND P.S. DALGAON
GOSAIGAON SUBDIVISION
DIST. KOKRAJHAR
B.T.A.D. AREA
ASSAM
PIN-783360

6:BADAL CH. DAS
S/O. LATE MADHUSUDHAN DAS
R/O. VILL. DALGOAN
P.O. AND P.S. DALGAON
GOSAIGAON SUBDIVISION
DIST. KOKRAJHAR
B.T.A.D. AREA
ASSAM
PIN-78336

Advocate for the Petitioner : MR. M J BARUAH

Advocate for the Respondent : GA, ASSAM

**BEFORE
HONOURABLE MR. JUSTICE MANISH CHOUDHURY
JUDGMENT AND ORDER [ORAL]**

Date : 14-03-2023

The 2 [two] petitioners have instituted the writ petition invoking the extra-ordinary jurisdiction of this Court under Article 226 of the Constitution of India to assail a judgment and order dated 01.12.2017 passed by the Assam Board of Revenue, Guwahati in a revenue appeal, Case no. 75 RA [DBR]/2016. By the judgment and order dated 01.12.2017, the Assam Board of Revenue dismissed the revenue appeal preferred by the petitioners against

an Order dated 08.04.2016 passed by the Settlement Officer, Dhubri & Kokrajhar.

2. The background facts necessary for adjudication of the issues that have arisen herein can be delineated, in brief, as follows :-

2.1. One Dipali Das was the wife of one Madhusudhan Das. Madhusudhan Das and Dipali Das were permanent inhabitants of Gossaigaon Town, District – Kokrajhar and were having landed properties. Madhusudan Das and Dipali Das had 5 [five] sons viz. [1] Gopal Das @ Gopal Chandra Das, [2] Swapan Kumar Das, [3] Tapan Kumar Das, [4] Niranjana Chandra Das, and [5] Badal Kumar Das. Madhusudhan Das pre-deceased his wife, Dipali Das. Dipali Das pre-deceased her son, Gopal Das @ Gopal Chandra Das [hereinafter referred to as 'Gopal Das', for easy reference].

2.2. The petitioner no. 1 was the wife of Gopal Das and the petitioner no. 2 was the son of Gopal Das. Gopal Das died on 11.08.2014. It is reflected from the death certificate issued, on 13.08.2014, by the Department of Health and Family Welfare, Government of West Bengal that Gopal Das died at N.B.M. College & Hospital.

2.3. Dipali Das owned a plot of land measuring 4 Bighas 0 Katha 14 Lessas [4B-0K-14L], covered by Dag no. 20[old]/143[new] & K.P. Patta no. 29[old]/96[new], located at Village – Dalgaon, Gossaigaon Sub-Division, District – Kokrajhar [hereinafter referred to as 'the subject-land', for easy reference]. After the death of Dipali Das, the names of her 5 [five] sons being Class-I heirs, stood mutated in respect of the subject-plot by way of inheritance vide a Mutation Order dated 24.09.2014 passed by the Assistant Settlement Officer, Gossaigaon. Pursuant to the Order dated 24.09.2014, the name of Gopal Das i.e. the predecessor-in-interest of the petitioners stood recorded along with the names of his 4 [four] brothers in the revenue records [draft chitha] pertaining to the subject-plot.

2.4. Subsequent to the death of Gopal Das on 11.08.2014, the petitioners made an application for mutation of their names in substitution of the name of Gopal Das as his legal heirs, in respect of the subject-plot, before the Assistant Settlement Officer, Gossaigaon. On

receipt of the application, a mutation case being Mutation Case no. 2/2014-2015, was registered on 13.01.2015. After such registration, the Assistant Settlement Officer, Gossaigaon in connection with Mutation Case no. 2/2014-2015, issued notices to the other 4 [four] sons of Dipali Das viz. [i] Sri Swapan Kumar Das [the respondent no. 3]; [ii] Sri Tapan Kumar Das [the respondent no. 4]; [iii] Sri Niranjan Chandra Das [the respondent no. 5]; and [iv] Sri Badal Chandra Das [the respondent no. 6], inviting objections, if any, from them in respect of the application submitted by the petitioners seeking their mutation in place of Gopal Das in the revenue records pertaining to the subject-plot. The details of the subject-plot were mentioned in the notice.

2.5. It transpires from the copy of the draft *Chitha* of Dalgaon Village, Gossaigaon that the Assistant Settlement Officer, Gossaigaon by a Mutation Order dated 17.03.2015 ordered for mutation of the names of the petitioners in place of Gopal Das in respect of the subject-plot by way of inheritance. Subsequent to passing of the Mutation Order dated 17.03.2015, the respondent no. 3 preferred an application before the Assistant Settlement Officer, Gossaigaon seeking cancellation of the Mutation Order dated 17.03.2015 passed by the Assistant Settlement Officer, Gossaigaon [the respondent no. 2]. The Assistant Settlement Officer, Gossaigaon had, in turn, forwarded the application to the Settlement Officer, Dhubri & Kokrajhar, District – Kokrajhar for consideration. By an Order dated 08.04.2016, the Settlement Officer, Dhubri & Kokrajhar [the respondent no. 1] directed the respondent no. 2 to delete the names of the petitioners in the revenue records pertaining to the subject-plot and correct the same accordingly. The respondent no. 1 did not review his Order dated 08.04.2016 when the petitioners, later on, preferred an application with the prayer to restore their names in respect of the subject-plot in terms of the Mutation order dated 17.03.2015 and the respondent no. 1 intimated the respondent no. 2 about the same by his letter dated 24.06.2016. While intimating that the Order dated 08.04.2016 was not reviewed, the respondent no. 1 had observed in his letter dated 24.06.2016 that the aggrieved party may move a higher court seeking remedy. Aggrieved by the Orders, dated 08.04.2016 & dated 24.06.2016, the petitioners preferred an appeal under Section 147 r/w Section 150 and Section 151 of the Assam Land & Revenue Regulation, 1886 before the Board of Revenue, Assam [‘the Board of Revenue’, for short] for setting aside of the Orders passed by the

respondent no. 1 in respect of the mutation related to the subject-plot. The Board of Revenue after hearing the parties and consideration of the matter, did not interfere with the Order passed by the respondent no. 1 i.e. the Settlement Officer, Dhubri & Kokrajhar, and dismissed the appeal by a judgment and order dated 01.12.2017. Aggrieved thereby, the petitioners have approached this Court by the instant writ petition seeking the relief, mentioned above.

3. I have heard Mr. M.J. Baruah, learned counsel for the petitioners; Ms. R.B. Bora, learned Standing Counsel, Bodoland Territorial Council [BTC] for the respondent nos. 1 & 2; and Mr. G. Baishya, learned counsel for the respondent nos. 3 – 6.

4. Mr. Baruah, learned counsel for the petitioners has submitted that the Order dated 08.04.2016 passed by the respondent no. 1 was in clear violation of the principles of natural justice as the respondent no. 1 prior to interfering with the Order dated 17.03.2015 passed by the respondent no. 2, did not afford any kind of opportunity of hearing whatsoever to the petitioners enabling the petitioners to present their side of the case before him. The fact that no prior notice was issued to the petitioners by the respondent no. 1 is clear from the observation of the Board of Revenue in its judgment and order dated 01.12.2017 wherein it has been recorded that the respondent no. 1 had passed the Order dated 08.04.2016 in an **ex-parte** proceeding. It is further submitted that the respondent no. 1 and the Board of Revenue while considering the matter of mutation, had taken into consideration a compromise agreement allegedly executed between Madhusudhan Das [the father], and Gopal Das [the son] on 15.02.2004 prior to their deaths, in the office of the All Bodo Students Union, Regional Office, Gossaigaon in presence of a number of persons. It is his submission that compromise agreement had no relation whatsoever with the subject-plot in respect of which the names of the petitioners stood mutated in Mutation Case no. 2/2014-2015.

5. Mr. Baishya, learned counsel for the respondent nos. 3 – 6 has submitted that the Settlement Officer is vested with the power to correct the revenue records as Section 53A of the Assam Land & Revenue Regulation, 1886 has prescribed that notwithstanding anything contained in Section 50 to Section 53 thereof, the Settlement Officer may make an order directing registration of a name of a person on the basis of the information received by him.

It is his submission that such information may either be on the basis of information received by him from a source or on the basis of an application made before him by an applicant. Supporting the Order dated 08.04.2016 passed by the respondent no. 1, he has submitted that the question of right, title and interest is not to be decided in a mutation proceeding and the Board of Revenue has rightly directed the appellants therein i.e. the petitioners herein to take recourse to remedies before the civil court. He has, thus, submitted that there is no ground to interfere with the judgment and order dated 01.12.2017 passed by the Board of Revenue affirming the Order dated 08.04.2016 passed by the respondent no. 1.

6. I have duly considered the submissions of the learned counsel for the parties. I have also perused the materials brought on record by the learned counsel for the parties through their pleadings and have also gone through the records of revenue appeal, revenue appeal Case no. 75 RA [DBR]/2016, received pursuant to the order dated 14.02.2020 requisitioning for the same.

7. Chapter IV of the Assam Land & Regulation, 1886 has provided for 'Registration'. 'Registration' is also interchangeably known as 'Mutation'. Section 50 has mentioned about the liability of persons succeeding to estates to give information of succession. It has **inter alia** been provided therein that every proprietor or land holder succeeding to any estate, or share in an estate, whether by transfer or inheritance, and obtaining possession of the same, shall within the stipulated time period provided therein from the date of taking possession, has to apply to the concerned Deputy Commissioner of the district for registration of his name as such proprietor or land holder, and of the nature and extent of the interest in respect of which the application is made.

8. Section 52 and Section 53 have provided for the procedure about the application to be made for registration and inquiry to be caused by the Deputy Commissioner for effecting the registration. According to the said provisions, on receipt of an application, the Deputy Commissioner shall, if considers that there are sufficient grounds for proceeding with the application, publish a notice requiring all persons who object to the registration of the name of the applicant, or who dispute the nature or extent of interest in respect of which

registration is applied, to state their objections in a written statement; and to appear on a day to be specified in the notice. If an application mentions that the applicant has acquired possession of the estate, or share in an estate in respect of which he applies for registration by transfer from any person, a copy of the notice has to be served on the alleged transferor and if the alleged transferor is dead, then upon his heirs. The Deputy Commissioner has to consider the application and the objections, if any, and after an enquiry when it is found necessary to ascertain the truth of succession or assumption of charge or possession, etc. alleged in the application, shall, if it appears to him that the succession, etc. accompanied by possession has taken place or that charge has been assumed or that the applicant is in possession, as the case may be, make an order directing the registration. Thus, it can be seen that the provisions contained in Section 50 to Section 53 have provided for one mode of registration which is to be initiated on the basis of an application submitted by the person seeking registration [mutation].

9. On the other hand, the provisions under Section 53A of the Regulation, 1886 has provided for the other mode of registration, that is, registration on the basis of information otherwise than through application. Sub-section [1] of Section 53A starts with a non-obstante clause with regard to the provisions contained in Section 50 to Section 53. It has been prescribed that when the Deputy Commissioner has received information, otherwise than through an application, of any such taking of possession or assumption of charge, as is referred to in Section 50, he may make an order directing the registration [mutation] of the name of the person so taking possession or assuming charge, provided that [a] the information has been verified by local inquiry made by an officer not below the rank of an Assistant Settlement Officer; or [b] notice has been published and inquiry has been held in the manner prescribed by Section 52 and Section 53 as if an application for registration had been received, from the person to whom the information relates. Thus, the provisions in sub-section [1] of Section 53A of the Regulation, 1886 has provided for the other mode of registration, notwithstanding the provisions contained in Section 50 to Section 53 of the Regulation, 1886.

10. During the settlement operation, the Government for the purpose of carrying out

operations, appoint under Section 133 of the Regulation, 1886, a Settlement Officer and one or more Assistant Settlement Officers. By a settlement operation, it ordinarily means an operation of fresh land survey, classification as per land use, assessment of new rate of revenue and preparation of record-of-rights on a notified area. The Settlement Officer, appointed under Section 133 of the Regulation, 1886 by the State Government, is in-charge of the settlement notified by the notification issued under Section 18 and all Assistant Settlement Officers are subordinates to the Settlement Officer. A process of revenue attestation of each village is taken up by the Settlement Officer and/or by an Assistant Settlement Officer. By virtue of Rule 4 of the Settlement Rules, framed under the Regulation, 1886, a Settlement Officer can exercise the powers of the Deputy Commissioner as conferred by rules, provided that he shall not settle any land which has been expressly reserved by the Deputy Commissioner for settlement. Thus, during a settlement/re-settlement operation, a Settlement Officer or a Assistant Settlement Officer may, in exercise of powers under Clause [a] of the proviso to sub-section [1] of Section 53A of the Regulation, 1886, pass an order of registration [mutation] in favour of legal heirs of a deceased pattadar or to a reported transferee of a periodic patta land after holding a summary field enquiry.

11. Reverting back to the facts of the case in hand, when the petitioners made an application before the Assistant Settlement Officer, Gossaigaon [the respondent no. 2], the respondent no. 2 proceeded to register a mutation case vide Mutation Case no. 2/2014-2015 and issued the notices to all the stakeholders including the respondent nos. 3 – 6, whose names were reflected in the revenue records [draft chitha] jointly along with Gopal Das [since deceased] in respect of the subject-plot. That notices were sent to the respondent nos. 3 – 6 is evident from the notice dated 13.01.2015, [Annexure-D to the writ petition], by which the respondent no. 2 put the respondent nos. 3 – 6 on notice by asking them to submit their objections in respect of the application made by the petitioners for mutation of their names as legal heirs of Gopal Das [since deceased]. After conclusion of the proceedings of Mutation Case no. 2/2014-2015, the respondent no. 2 had passed the Mutation Order dated 17.03.2015 ordering registration [mutation] of the names of the petitioners against the name of Gopal Das [since deceased] in the revenue records pertaining to the subject-plot. Pursuant to the Mutation Order dated 17.03.2015, the names

of the petitioners came to be recorded in the revenue records [draft chitha] pertaining to the subject-plot.

12. After the Order dated 17.03.2015, the respondent no. 3 had preferred an application before the respondent no. 2 seeking cancellation of the mutation made in the names of the petitioners in respect of the subject-plot mutated vide Mutation Order dated 13.01.2015. The respondent no. 2 on receipt of the application, had forwarded the same to the respondent no. 1 for consideration. The respondent no. 1 on receipt of the said application, had made an enquiry and thereafter, proceeded to order deletion of the names of the petitioners from the revenue records [draft chitha] pertaining to the subject-plot by the Order dated 08.04.2016.

13. From a look at the Order dated 08.04.2016 passed by the respondent no. 1, it is noticed that the respondent no. 1 took into consideration a compromise agreement [Annexure-F to the writ petition], which is a document in the nature of a family settlement between Madhusudhan Das [since deceased] and Gopal Das [since deceased], executed in a public meeting held on 15.02.2004. By the said compromise agreement, as mentioned hereinabove, Madhudushan Das and Gopal Das had decided that Madhusudhan Das would hand over a land area measuring 4 feet X 32 feet along with the shops standing thereon, located at Ward no. 1, Gossaigaon Town to Gopal Das. With the handing over the said land area by Madhusudhan Das to Gopal Das, Gopal Das would have no further claim in respect of any of the properties belonging to Madhusudhan Das.

14. From the Order dated 08.04.2016, it is further reflected that the subject-plot was owned by Dipali Das subsequent to its purchase from one Gobindra Chandra Paul by way of a registered sale deed. After purchase of the subject-plot by way of a registered sale deed, the name of Dipali Das came to be mutated in respect of the subject-plot in place of its earlier owner, Gobindra Chandra Paul pursuant to a Mutation Order dated 22.06.1989. Thus, it is clearly demonstrated that the subject-plot belonged exclusively to Dipali Das i.e. the mother of [i] Gopal Das [since deceased], [ii] Sri Swapan Kumar Das [the respondent no. 3], [iii] Sri Tapan Kumar Das [the respondent no. 4], [iv] Sri Niranjana Chandra Das [the

respondent no. 5] and [v] Sri Badal Chandra Das [the respondent no. 6] and she acquired its ownership by way of purchase for consideration and such ownership of the subject-plot by purchase had no direct or indirect relationship with the compromise agreement. Thus, the subject-plot is distinct from the land in respect of which the compromise agreement was entered into on 15.04.2004 between Madhudhdan Das and Gopal Das. Thus, it is clearly evident that the compromise agreement executed between Madhusudhan Das and Gopal Das on 15.02.2004 was a separate arrangement with which the subject-plot belonging to Dipali Das had no relation whatsoever. As Madhusudhan Das pre-deceased Dipali Das, the 5 [five] sons of Dipali Das after her death, had bona fide claims to register their names in her place in respect of the subject-plot. It was in that situation, the names of the 5 [five] sons of Dipali Das came to be mutated in respect of the subject-plot by the Mutation Order dated 24.09.2014 of the Assistant Settlement Officer, Gossaigaon. Subsequent to the death of Gopal Das on 11.08.2014, the petitioners made an application before the Assistant Settlement Officer, Gossaigaon for mutating their names in place of Gopal Das [since deceased] and it was on that basis, the case, Mutation Case no. 2/2014-2015 was registered on 13.01.2015 and the Mutation Order dated 17.03.2015 came to be passed, after sending notices to the other stakeholders including the respondent nos. 3 – 6. It is further reflected that the respondent no. 1 while proceeding to delete the name of the petitioners recorded vide Order dated 17.05.2015 in Mutation Case no. 2/2014-2015, did not afford any kind of opportunity to the petitioners prior to passing of the Order dated 08.04.2016 and did so in an ex-parte proceeding.

15. Having heard both the parties and recording the background events, the Board of Revenue had observed in the impugned judgment and order dated 01.12.2017 that the proceeding undertaken by the respondent no. 1 leading to the passing of the Order dated 08.04.2016, was an ex-parte proceeding. It had further observed that the respondent no. 1 relied entirely upon the compromise agreement [Annexure-F] submitted by the respondent no. 3 and had observed that the same was not tenable in law. It had further observed that the alleged compromise agreement was executed between Madhusudhan Das and Gopal Das whereas the subject-plot belonged only to Dipali Das and not to Madhusudhan Das. Even after observing so, the Board of Revenue had gone on to observe that a

comprehensive view of the entire matter encompassing all the properties of Madhusudhan Das and Dipali Das had to be taken and in that view of the matter, it would not be advisable to take up separate landed property individually or on piecemeal basis to the exclusion of other landed properties. The Board of Revenue was of the view that the civil court would be the appropriate and competent court to adjudicate upon the dispute between the parties and passing an order regarding only a part of the inheritance might not give justice to all the inheritors concerned.

16. It is settled proposition of law that the mutation entry does not confer any right, title and interest in favour of the person and the mutation entry in the revenue records is only for the fiscal purpose. As per the settled proposition of law, if there is any dispute in respect to the title, the party who is claiming right and title has to approach appropriate civil court and get his rights crystallised. It is clear that mutation of property in the revenue records neither creates nor extinguishes title to the property nor has any presumptive value on title. Such entries are relevant only for the purpose of collecting land revenue. The Order dated 17.03.2015 passed by the respondent no. 2 was a mutation order simpliciter passed in exercise of the powers vested in the said authority under the Assam Land & Revenue Regulation, 1886 r/w the Settlement Rules. In such view of the matter, the observations made by the respondent no. 1 in its Order dated 08.04.2016 and by the Board of Revenue in its judgment and order dated 01.12.2017 as regards right, title and interest in respect of the subject-plot, was uncalled for and extraneous to the subject-matter of mutation.

17. It is clearly demonstrated from the records that the respondent no. 1 while proceeding to consider the application submitted by the respondent no. 3 for deletion of the mutation entry made in respect of the petitioners and in respect of the subject-plot, gave no prior opportunity to the petitioners of being heard. Before reversing the Mutation Order dated 17.03.2015 passed by the respondent no. 2 by the order dated 08.04.2016, admittedly, no notice of the proceedings undertaken by him to reopen the case for deletion was given to the petitioners, whose names he ordered for deletion. It is not for this Court to speculate what would be the stands taken by the petitioners in case notices were issued to them by the respondent no. 1 and whether those stands taken by the petitioners would

have materially affected the final outcome. This Court has, thus, refrained itself from making any further observation in this regard.

18. It is true that the Board of Revenue in its appellate jurisdiction is competent to enter upon an enquiry but making an enquiry it may act in flagrant disregard of the rules of procedure or where no particular procedure is prescribed, it may violate the principles of natural justice. The Hon'ble Supreme Court of India in a 5-Judges Bench decision in **T.C. Basappa vs. T. Nagappa and another**, reported in **AIR 1954 SC 440**, has observed that a writ of certiorari may be available in such cases. An error in the decision or determination itself may also be amenable to a writ of certiorari but it must be a manifest error on the face of the proceedings e.g. when it is based on clear ignorance or disregard of the provisions of law. In other words, it has to be patent error which can be directed by certiorari but not a mere wrong decision. It has also observed that a writ of certiorari is not to be issued as a cloak of an appeal in disguise. The writ of certiorari under Article 226 of the Constitution of India is intended to enable the High Court to issue it in grave cases where the subordinate tribunals or bodies or officers act wholly without jurisdiction, or in excess of it, or in violation of the principles of natural justice, or refused to exercise a jurisdiction vested in them, or there is an error apparent on the face of the record, and such act, omission, error or excess has resulted in manifest injustice [Ref:- **Veerappa Pillai vs. Raman and Raman Ltd.**, **AIR 1952 SC 192**].

19. A 7-Judges Bench decision of the Hon'ble Supreme Court of India in **Hari Vishnu Kamath vs. Ahmad Ishaque and others**, reported in **AIR 1955 SC 233**, has laid down the following propositions as established : [1] 'Certiorari' will be issued for correcting errors of jurisdiction, as and when an inferior Court or Tribunal acts without jurisdiction or in excess of it, or fails to exercise it; [2] 'Certiorari' will also be issued when the Court or Tribunal acts illegally in the exercise of its undoubted jurisdiction, as and when it decides without giving an opportunity to the parties to be heard, or violates the principles of natural justice; and [3] The Court issuing a writ of 'certiorari' acts in exercise of a supervisory and not appellate jurisdiction.

20. It is also a settled position in administrative law that an adjudicatory body cannot base its decision on any material or document unless the person against whom it is sought to be utilised has been apprised of it and given an opportunity to respond to it. It is settled that if an authority is going to rely on any material or document for its decision against a person, then such material or document is required to be brought to the notice of such person and such person is to be given an opportunity to respond to or rebut it. The procedure is a fundamental principle of natural justice that no material or document is to be used against a person without giving such person an opportunity to respond to or rebut it. If without bringing such material or document to the notice of a person who is likely to be adversely affected if an order is passed against him on the basis of such material or document, the authority takes it into consideration and decide an issue against the person, then such a decision would suffer on the premise of denial of an opportunity of being heard and in such situation, the decision is liable to be interfered with.

21. Reverting back to the facts and circumstances of the case in hand, it has emerged, from the discussion made above, that there was abject failure on the part of the respondent no. 1 to observe the principles of natural justice while passing the Order dated 08.04.2016 against the petitioners resulting in denial of any prior opportunity of being heard to the petitioners. Further, the said authority while passing the Order dated 08.04.2016 thereby reversing the Mutation Order dated 17.03.2015 passed by the respondent no. 2 in respect of the subject-plot, had taken into consideration the Compromise Agreement dated 15.02.2004 which had no relation or bearing whatsoever with the subject-land, that too, without bringing the Compromise Agreement dated 15.02.2004 to the notice of the petitioners. When the Order dated 08.04.2016 was challenged by way of an appeal before the Board of Revenue in Case no. 75 RA [DBR]/2016, the Board of Revenue despite noticing the fallibility of the Order dated 08.04.2016, passed in an ex-parte proceeding by the respondent no. 1, on the afore-said two counts, had ignored the same on the specious ground that a civil court would be the appropriate and competent court to adjudicate upon the dispute with the observation that passing of an order regarding only a part of the inheritance might not do justice to all the concerned inheritors. It needs reiteration that the subject-matter of challenge before the Board of Revenue was a mutation order simpliciter. But the Board of

Revenue while deciding the appeal, had gone beyond the mutation order simpliciter and took into consideration certain irrelevant aspects to dismiss the appeal. In such view of the matter, the Order dated 08.04.2016 passed by the respondent no. 1 and the judgment and order dated 01.12.2017 passed by the Board of Revenue in revenue appeal, Case no. 75 RA [DBR]/2016 are liable to be set aside and quashed. The same are accordingly set aside and quashed.

22. With the setting aside and quashing of the Order dated 08.04.2016 passed by the respondent no. 1 and the judgment and order dated 01.12.2017 passed by the Board of Revenue in revenue appeal, Case no. 75 RA [DBR]/2016, the Mutation Order dated 07.05.2015 stands restored. With the interference so made, the parties are at liberty to proceed further from the stage at which the interference has been made. With the findings arrived at, the observations and orders made and the directions given above, the writ petition stands allowed to the extent indicated. The interim order passed earlier, stands merged with this order. The LCR be returned forthwith. There shall, however, be no order as to cost.

JUDGE

Comparing Assistant