

GAHC010031072018



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

Case No. : WP(C)/1119/2018

PRADIP DUTTA

S/O- LATE DEBAN DUTTA, VILL NO.2, KATHIAKHUNDA, SAPEKHATI, DIST-
JORHAT, ASSAM, R/O- CHANDAN NAGAR, BYE LANE NO.11, BLOCK NO.
13, LISUBARI, JORHAT TOWN, P.S- JORHAT, DIST- CHARAIDEO, ASSAM

VERSUS

THE STATE OF ASSAM AND 2 ORS.

REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT OF ASSAM,
REVENUE DEPTT., DISPUR, GUWAHATI-6

2:THE DEPUTY COMMISSIONER

CHARAIDEO

SONARI

DIST- CHARAIDEO

ASSAM

3:THE SUB DIVISIONAL OFFICER (CIVIL)

CHARAIDEO

SONARI

DIST- CHARAIDEO

ASSA

Advocate for the Petitioner : MR. J AHMED

Advocate for the Respondent : GA, ASSAM

**BEFORE
HONOURABLE MR. JUSTICE MANISH CHOUDHURY**

ORDER

Date : 07-06-2023

Heard Mr. J. Ahmed, learned counsel for the petitioner; Mr. A. Bhattacharjee, learned Standing Counsel, Revenue Department for the respondent no. 1; and Ms. M. Mahanta, learned Junior Government Advocate, Assam for the respondent nos. 2 & 3.

2. The writ petition under Article 226 of the Constitution of India is instituted seeking setting aside and quashing of an order bearing Memo no. CAC.37/2010/PT-I dated 17.10.2011 passed by the respondent no. 3. By the order dated 17.10.2011, the respondent no. 3 had cancelled a Legal Heir Certificate issued in favour of the petitioner vide an office order no. CAC.37/2007/76 dated 26.09.2011 by his office earlier.

3. The case projected by the petitioner, in brief, is that one Late Deben Dutta was a permanent resident of Village – No. 2, Kathiakhunda, Sapekhati, presently in the district of Charaideo. Projecting himself to be the son of said Late Deben Dutta, the petitioner has stated that Late Deben Dutta had two wives. The first wife of Late Deben Dutta resided at Sapekhati and the second wife of Late Deben Dutta resided at Jorhat. It is stated that the petitioner was born to Late Deben Dutta and his second wife. Both the first wife and the second wife of Deben Dutta expired. Late Deben Dutta who expired on 16.08.1998, left behind the landed properties at Village – Kathiakhunda, Sapekhati and at Block no. 3, Jorhat at the time of his death.

4. After the death of Late Deben Dutta on 16.08.1998, the petitioner applied

for a Legal Heir Certificate by submitting an application before the Gaonbura of Village – 2 no. Kathiakhunda on 23.09.2011 regarding his relationship with Late Deben Dutta. On the basis of the application dated 23.09.2011, the Gaonbura by the name of Prafulla Gogoi, Attal Pathar Village, P.O. – Ghurajan, P.S. – Sapekhati, District – Sibsagar issued a certificate stating that the petitioner was the legal heir of Late Deben Dutta. The office of the Sapekhati Gaon Panchayat had also issued a Permanent Residence Certificate in favour of the petitioner on 17.12.2011 stating that the petitioner being the son of Late Deben Dutta, was an inhabitant of Village – Kathiakhunda, Sapekhati and was living at Sapekhati for 20 years.

5. It is canvassed that on basis of the afore-mentioned two documents, the respondent no. 3 i.e. the Sub-Divisional Officer [Civil], Charaideo, Sonari issued a Legal Heir Certificate bearing Memo no. CAC-37/2007/76 dated 26.09.2011 stating that the petitioner was the only legal heir of Late Deben Dutta and an inhabitant of Village - No. 2 Kathiakhunda, Mouza – Sapekhati. The said Legal Heir Certificate dated 26.09.2011 was issued on the basis of a report submitted by the then Circle Officer, Sonari Revenue Circle on 26.09.2011. After few days of issuance of the Legal Heir Certificate dated 26.09.2011 by the respondent no. 3, the respondent no. 3 passed the impugned order on 17.10.2011 whereby the Legal Heir Certificate issued earlier on 26.09.2011 by the said authority himself came to be cancelled. Aggrieved by the impugned order dated 17.10.2011, the petitioner approached the respondent no. 3 by filing a representation before him on 21.12.2011 with a prayer for recalling the impugned order. When the said representation was not disposed of for a substantial period of time, the petitioner stated to have approached the respondent no. 2 i.e. the Deputy Commissioner, Charaideo by filing another representation on 06.11.2017. When

no discernible steps to consider the matter of Legal Heir Certificate were found to have been taken by either the respondent no. 2 or the respondent no. 3, the instant writ petition has been preferred seeking the relief, mentioned above.

6. It is the case of the petitioner that after issuance of the Legal Heir Certificate on 26.09.2011, the same came to be cancelled by the impugned order dated 17.10.2011 behind the back of the petitioner. It is contended that the impugned order dated 17.10.2011 was passed without affording any kind of opportunity of hearing to the petitioner. As the order reflects that the same was passed pursuant to receipt of a public complaint dated 10.10.2011, the respondent no. 3 ought to have put the petitioner on notice to represent his case before him, before cancelling the Legal Heir Certificate issued earlier to him on 26.09.2011.

7. The respondent no. 2 in its counter affidavit, filed on 20.01.2021, has averred that the Legal Heir Certificate dated 26.09.2011 was issued by the respondent no. 3 on the basis of a report submitted by the then Circle Officer, Sonari Revenue Circle whereby the report of the Government Gaonburha of Village - No. 2, Kathiakhunda dated 24.09.2011 and a report of the Lot Mandal dated 26.09.2011 were forwarded. As the said two documents mentioned that the petitioner was the only son of Late Deben Dutta of Village - No. 2, Kathiakhunda, the Legal Heir Certificate was issued though no death certificate was found with the report. It is further averred that the Legal Heir Certificate issued by the respondent no. 3 on 26.09.2011 was cancelled on receipt of a public complaint from the local residents of the area and after finding anomalies in the report submitted by the then Circle Officer, Sonari Revenue Circle along with the report of the Government Gaonburha and Lot Mandal earlier. It is also

stated that a report has been submitted by the Circle Officer, Sapekhati Revenue Circle, Charaideo vide no. SPK/2013-14/132 dated 05.03.2018 with a finding that there was no person by name of Sri Pradip Dutta residing at Village - No. 2, Kathiakhunda, Sapekhati as per the report of the concerned Lot Mondal and Government Gaonburha.

8. In the writ petition, it is mentioned that two crime cases were registered against the petitioner on the basis of two First Information Reports [FIRs] lodged at Sapekhati Police Station and Jorhat Police Station respectively. The case at Sapekhati Police Station came to be registered pursuant to an FIR lodged by Sri Profulla Gogoi, Gaonburha of Attal Pathar Gaon, P.S. – Sapekhati on 26.12.2011 alleging inter alia that the petitioner by deception, obtained the certificate about his residential status from him. On the basis of the said FIR, Sapekhati Police Station registered a case being Sapekhati Police Station Case no. 42/2011, under Sections 419/420, Indian Penal Code. After completion of the investigation, a charge sheet against the petitioner came to be submitted finding a prima facie case under Section 419, IPC. In the trial of G.R. Case no. 723/2011, arising out of Sapekhati Police Station Case no. 42/2011, the certificate allegedly issued by Sri Profulla Gogoi was not produced before the learned trial court. Holding that the prosecution side failed to discharge the burden of proof, the petitioner came to be acquitted by a judgment and order dated 27.11.2019 passed by the Court of learned Judicial Magistrate, First Class, Sonari in G.R. Case no. 723/2011. It is also stated that apart from his arrest in connection with Sapekhati Police Station Case no. 42/2011, the petitioner was also arrested in connection with Jorhat Police Station Case no. 941/2011, registered under Sections 120B/167/420/447/468/506/34, IPC. The petitioner was allowed to be released on bail in the said two cases on 01.02.2012 and

14.02.2012 respectively.

9. From the case papers and the documents submitted by the learned counsel for the petitioner, it has emerged that on the basis of the Legal Heir Certificate dated 26.09.2011, the name of the petitioner stood mutated vide an order of mutation dated 24.10.2011 passed in Mutation Case no. 70/2011-2012 in respect of a plot of land, covered by Patta no. 68 [New] at Block no. 13, Lat – 3, Jorhat Town in place of Late Deben Dutta. The said order of mutation also came to be cancelled by an order dated 18.01.2012 passed by the Additional Deputy Commissioner, Jorhat. The order dated 18.01.2012 was challenged by the petitioner before the Assam Board of Revenue by preferring an appeal, which came to be registered as RA Case no. 80[J]/2015 along with an application for seeking condonation of delay vide MC no. 70/2011-2012. The Assam Board of Revenue after condoning a period of delay of about 1700 days in preferring the appeal vide MC no. 70/2011-2012, allowed the connected appeal, RA Case no. 80[J]/2011-2012 by an order dated 15.10.2020. Challenging the order dated 15.10.2020 passed in the appeal, RA Case no. 80[J]/2011-2012 by the Assam Board of Revenue, four persons viz. Robini Dutta, Bitul Dutta, Bijoy Dutta and Dipak Dutta preferred a writ petition, W.P.[C] no. 2337/2021. By an order dated 03.11.2022 passed in the writ petition, W.P.[C] no. 2337/2021, the order dated 01.12.2020 passed by the Assam Board of Revenue in RA Case no. 80[J]/2015 was set aside and the matter was remanded back for appropriate consideration of the appeal on its own merits.

10. Be that as it may, a perusal of the impugned order dated 17.10.2011 goes to indicate that the respondent no. 3 proceeded to cancel the Legal Heir Certificate earlier issued by him on 26.09.2011 after receipt of a public complaint dated

10.10.2011. As the petitioner was not afforded an opportunity to represent his case against public complaint dated 10.10.2011 by the respondent no. 3 before cancelling the Legal Heir Certificate issued in his favour by the said authority earlier on 26.09.2011, it appears that the principle of natural justice was violated. It is trite law that if a person is likely to be visited with adverse consequence with the passing of an order, such a person must be afforded prior and reasonable opportunity of being heard.

11. In the above fact situation obtaining in the case in hand, this Court is of the considered view that the petitioner should be afforded an adequate and reasonable opportunity to represent his case by the respondent no. 3. Accordingly, this writ petition is disposed of with a direction to the respondent no. 3 to afford adequate and reasonable opportunity to the petitioner to represent his case against the public complaint dated 10.10.2011 submitted in connection with the Legal Heir Certificate dated 26.09.2011. The petitioner is directed to appear before the respondent no. 3 within 15 [fifteen] days from the date of receipt of a certified copy of this order. On his such appearance before the respondent no. 3, the petitioner is to be provided a copy of the public complaint dated 10.10.2011, other documents and the reports, if any, submitted in that connection and the respondent no. 3 shall proceed with the matter thereafter, by giving opportunities to the petitioner to represent his case and by affording personal hearing to him as regards the allegation in the public complaint dated 10.10.2011 as well as to the complainants who had submitted the public complaint. After affording such opportunities and due consideration, the respondent no. 3 shall re-visit his earlier order dated 17.10.2011 and pass a speaking order on the matter of Legal Heir Certificate dated 26.09.2011. The entire exercise should be completed as expeditiously as possible, preferably

within a period of 45 days from the date of appearance of the petitioner before the respondent no. 3. It is observed that the impugned order dated 17.10.2011 will abide by the speaking order to be passed after such exercise.

12. This order disposes of the writ petition. No cost.

JUDGE

Comparing Assistant