

GAHC010062832022



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

Case No. : CRP(IO)/62/2022

SASHI BHUSHAN TIWARI
S/O SRI BACHAN DEO TIWARI, R/O KALI MANDIR ROAD, JYOTIKUCHI,
OPP. GYAN SCHOOL, GUWAHATI-781034, P.S.-FATASHIL AMBARI, DIST-
KAMRUP(M), ASSAM

VERSUS

DILIP KUMAR NANDY AND ANR.
S/O LATE GOPAL KRISHNA NANDY, R/O PANDU LOCO COLONY,
GUWAHATI-12, P.S.-JALUKABRI, DIST-KAMRUP(M), ASSAM

2:PRADIP MOHARY
S/O LATE MONINDRA LAL MOHARY
R/O HOROLONG PAR COLONY
PIN-782447
P.S.-LUMDING
DIST-HOJAI
ASSA

Advocate for the Petitioner : MR. N N JHA

Advocate for the Respondent : MR. P C DEY

**BEFORE
HONOURABLE MR. JUSTICE ARUN DEV CHOUDHURY**

ORDER

01.02.2023

Heard Mr. N. N. Jha, learned counsel for the petitioner. Also heard Mr. P. C. Dey, learned counsel for the respondents.

2. The present petitioner is the sole respondent in the Special Land Grabbing Case No. 8/2014, which was pending before the learned Special Tribunal (Additional District & Sessions Judge No. 1), Kamrup (M), Guwahati and was filed by the respondents of the present revision petition.

3. The petitioner/respondent filed a petition being petition No. 1169/21, in the aforesaid proceeding praying before the learned Special Tribunal to call the entire case record of Title Suit No. 37/2008, (which was disposed of on 03.05.2010) from the learned Court of Civil Judge No. 2, Kamrup (M), Guwahati.

4. It was pleaded in the said petition that the learned Tribunal at the initial stage called for the entire case record of Title Suit No. 37/2008 from the learned Court of Civil Judge No. 2, Kamrup (M) Guwahati considering requirement of the said case and the said case was sent back to its original court. It was also contended that the respondents has taken defence based on the Title Suit No. 37/2008. It was further pleaded that the original of all the documents relied upon by the respondent is lying in the said suit. It was also pleaded that the petitioner in the land Grabbing Case has also referred various aspect of the said Title Suit No. 37/2008. At paragraph 6 of the said petition, the respondents contended that the said suit was disposed of without going through the trial and the documents were not exhibited and inspite of effort, certified copy of the

same could not be obtained. Therefore, for cross-examination of PWs, the record of Title Suit No. 37/2008 is necessary. Such petition was verified by the engaged counsel for the petitioner.

5. The respondent herein filed an objection in the aforesaid petition No. 1169/2021 and pleaded that none of the parties to the Land Grabbing Case were parties in the Title Suit No. 37/2008. Therefore, record of said suit is not necessary. It was also pleaded that the Title Suit No. 37/2008 was filed by one Navamilan Group of Housing Cooperative Society Ltd on behalf of the members of the said Society against one Biren Boro & Ors., but the said suit was subsequently withdrawn by the society on 03.05.2010. The respondent in the Land Grabbing process was not in anyway connected with Title Suit No. 37/2008 and therefore, calling of such record of Title Suit No. 37/2008 was not necessary and calling of same will delay the proceeding. It was also contended that the petitioner in Land Grabbing case exhibited the original sale deed in their favour, mutation certificate, land revenue receipt, holding certificate issued by GMC, Circle Officer's report to prove that they are the owner of the land grabbed. It is also contended that the respondents has not submitted any document in support of their case to prove better claim that his father is the owner of the said disputed land and no documents in name of the father of the respondent namely Bachan Deo Tiwari was annexed and it is not the claim of the respondent that such document is lying with the record of Title Suit No. 37/2008.

6. The learned Special Tribunal below after hearing the parties, by the impugned order dated 11.02.2022, rejected the prayer made in the aforesaid petition being petition No. 1169/21 on the ground that though through the

petition in question, the entire case record of Title Suit No. 37/2008 was sought to be called for, however, it was not specified anything in particular which document lying in the case record is required. The learned Special Tribunal below also considered that in Title Suit No. 37/2008, neither the applicant nor the respondent were parties to the suit and bringing the records of Title Suit No. 37/2008 will be frivolous exercise and will be abuse of the process of the Court.

7. It was the considered opinion of the learned Special Tribunal that as the Title Suit No. 37/2008 was withdrawn by the parties to the suit and calling of the records does not arise as the party concerned can bring the un-exhibited documents by filing petition to the concerned Court, where the case record is lying. The learned Special Tribunal also held that it appears to the learned Special Tribunal that the respondent/petitioner is resorting to dilatory practice.

8. Mr. N. N. Jha, learned counsel for the petitioner argues in the similar line as pleaded in the petition No. 1169/21. His further argument is that the learned Special Tribunal below had initially called for the record of Title Suit No. 37/2008 and returned the same to its original Court without knowledge of the petitioner and without any application from any party and therefore, the petitioner was surprised to see during cross examination that documents of Title Suit No. 37/2008 was not available. Such action of return on the part of the learned Special Tribunal below is liable to be interfered.

9. This Court under its order dated 16.06.2022, called the record of Title Suit No. 37/2008 and also scanned copy of Memo No. 379 dated 21.03.2016.

10. The memo No. 379 dated 21.03.2016, was produced in this Court in terms of the aforesaid order dated 21.03.2016. Perusal of the same reflects that the

learned Civil Judge No. 1, Kamrup (M) at Guwahati under Memo No. 379 dated 21.03.2016 requested the Special Tribunal to sent back the record of Title Suit No. 37/2008 as same was required by the Court of Civil Judge No. 1, Kamrup (M) at Guwahati in connection with another suit being Title Suit No. 133/2021. The said memo was issued on 21.03.2016. Thereafter, the learned Tribunal under its order dated 10.05.2016 on the basis of such memo, directed to return the original case record of Title Suit No. 37/2008 to the Court of Civil Judge No. 1, Kamrup (M). The scanned copy of the order sheet the learned Special Tribunal below also reflects that the record was returned by the office of the Special Tribunal on 16.06.2016. Thus from the aforesaid, it is clear that the records were sent back after being called for by a competent Court for adjudication of another suit and therefore, the contention of Mr. Jha, learned counsel for the petitioner that the Tribunal below committed error in returning the record on its own without any application from any party, is not only fallacious but against record. Accordingly, the same is rejected.

11. Coming to the impugned order, it is seen that the application filed by the respondent calling the record is absolutely vague. How the record of Title Suit No. 37/2008 is material to the Land Grabbing proceeding is not discernible. The petition with a prayer to call such record has also failed to disclose that production of such original record is necessary for the purpose of justice.

The record reveals and as held by the learned Special Tribunal below that the suit was filed by one Navamilan Group of Housing Cooperative Society Ltd. against one Biren Boro and 8 (eight) others for declaration, cancellation of an instrument and recovery of possession and injunction. Neither of the parties herein are parties to the said suit and nothing has been disclosed, why the

record of such suit is necessary for determination of the claim of the respondent. The record further reveals that after framing of issues and before leading evidence, the said suit was withdrawn by the plaintiff through an application filed by the plaintiff and defendant jointly disclosing that the parties had settled their dispute in an out of court settlement. Therefore, the contention that original document relied on by the petitioner is lying with the record is also having no legs to stand.

Be that as it may, the present petitioner has failed to show any reason before the learned Special Tribunal below how the record of Title Suit No. 37/2008 was necessary.

Further the application was filed and verified by the counsel of the petitioner and there were no affidavit as mandated under Order 13 Rule 10 of CPC.

12. The petitioner had also failed to show that without unreasonable delay and expense, they are not in a position to obtain duly authenticated copy of the record of Title Suit No. 37/2008 inasmuch as the Land Grabbing petition was pending before the learned Special Tribunal below since the year 2014. Even if it is assumed that the applicant in Land Grabbing case had made certain reference to the proceeding of Title Suit No. 37/2008, the present petitioner could have made application and obtain authenticated copies from the competent Court of the copies of the record of Title Suit No. 37/2008 inasmuch as the proceeding is pending before the Special Tribunal below since 2014. However, the present petitioner conveniently awaited to file such application till 30.09.2021.

13. In the aforesaid view of the matter, this Court is of the considered opinion that this is not a fit case where this Court should exercise its power of

superintendence under Article 227 of the Constitution of India. Accordingly, the present petition stands dismissed.

14. Interim order passed earlier also stands vacated.

15. The records be send back to the learned Court concerned forthwith.

JUDGE

Comparing Assistant