

GAHC010075552021



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

Case No. : WP(C)/4444/2021

ASHOK KUMAR CHOUHAN AND 3 ORS
S/O RAM BACHAN CHOUHAN
RESIDENT OF VILLAGE AM PUKHURI, PO LANKA, DIST HOJAI, 782435

2: SRI RAJ KR. CHOUHAN
S/O RAM BACHAN CHOUHAN
RESIDENT OF VILLAGE AM PUKHURI
PO LANKA
DIST HOJAI
782435

3: SRI DINA NATH CHOUHAN
S/O LATE RAMBALI CHOUHAN
RESIDENT OF VILLAGE AM PUKHURI
PO LANKA
DIST HOJAI
782435

4: SRI HARI PRASAD CHOUHAN
S/O LATE RAMBALI CHOUHAN
RESIDENT OF VILLAGE AM PUKHURI
PO LANKA
DIST HOJAI
78243

VERSUS

THE STATE OF ASSAM AND ANR
REPRESENTED BY THE SECRETARY TO THE GOVT. OF ASSAM,
DEPARTMENT OF LAND REVENUE, DISPUR GUWAHATI 06

2:THE DEPUTY COMMISSIONER

HOJAI

SANKARDEV NAGAR
DIST HOJAI
ASSAM 78243

Advocate for the Petitioner : MR. A ROSHID

Advocate for the Respondent : GA, ASSAM

BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH

JUDGMENT AND ORDER(ORAL)

Date : 22-05-2023

Heard Mr. A. Roshid, the learned counsel appearing on behalf of the petitioners. Mr. R. Borpujari, the learned counsel appears on behalf of the respondent No. 1 and Mrs. S. Baruah, the learned counsel appears for the respondent No. 2.

2. The instant writ petition has been filed challenging the notice dated 31/7/2017 issued by the Deputy Commissioner, Hojai, Sankardev Nagar as well as the order dated 5/11/2020 passed by the learned Assam Board of Revenue.

3. Taking into account that there had been various orders passed and pursuant thereto an affidavit being filed by the Deputy Commissioner, Hojai, this matter is taken up for disposal at the motion stage itself.

4. The case of the petitioners are that the petitioner Nos. 1 and 2 are the sons of one Ram Bachan Chouhan(since deceased) and the petitioner Nos. 3 and 4 are the sons of Rambali Chouhan (since deceased). Late Ram Bachan Chouhan purchased 15 bighas 2 kathas 19 lechas of land on 20/4/1959 by a registered Deed of Sale in respect to Annual Patta No. 48 of Dag No. 154(New Dag No. 165) from (1) Ram Sumer Chouhan and (2) Biswa Nath Chouhan. At that relevant point of time when the land was purchased, it is the case of the

petitioners that the land did not fall in the tribal belt inasmuch as per the petitioners, the tribal belt was created in the year 1975-1976 by the State Government. To the said writ petition the Deed of Sale dated 20/4/1959 was enclosed as Annexure-1 as well as the land revenue paying receipts were enclosed as Annexure-2 series.

5. Thereupon one Nani Gopal Das through his attorney Ram Awadh Chouhan filed a suit being Title Suit No. 77/2011 before the Court of the Munsiff, Hojai, Sankardev Nagar for declaration, confirmation of possession and permanent injunction as well as the precept. A perusal of the plaint reveals that one Biswanath Chouhan had sold the land measuring 6 bighas covered by Dag No.207 by executing a Deed of Sale bearing No. 7949 on 8/12/1971 and another plot of land measuring 8 bighas covered by Dag No. 207 vide Deed of Sale No. 3849 on 21/3/1975 to the plaintiff in Title Suit No. 77/2011. The case of the plaintiff therein was against the petitioner Nos. 3 & 4 herein and two others. The plaintiff claimed ownership and confirmation of possession. The said suit however is still pending and the next date is fixed on 12/7/2023 for hearing as submitted by the learned counsel for the petitioners.

6. It further appears from the records that the petitioners herein had also filed a suit against the said Nani Gopal Das (Plaintiff in Title Suit No. 77/2011 pending before the Munsiff, Hojai) and others before the Court of the Civil Judge, Nagaon. The said suit was registered and numbered as Title Suit No. 22/2012. The said suit was filed claiming right, title, interest and confirmation of possession over the land sold to the father of the petitioner Nos. 1 and 2 vide the registered Deed of Sale bearing Deed No. 2071/1959 dated 20/4/1959. It appears from the Annexure 11 to the writ petition that the said suit being T.S. No.22/2012 was dismissed by a judgment and decree dated 1/11/2016. It

further appears that an Appeal was filed by the petitioner Nos. 1 & 2 before the Court of the District Judge, Nagaon which was registered and numbered as Title Appeal No. 30/2016. From the e-court services, it appears that the Appeal so filed was transferred to the Court of the District Judge, Hojai vide an order dated 4/3/2021 by the learned District Judge, Nagaon in view of the Notification No.HC.VII-05/2021/1426/A. It further appears that the said Appeal was renumbered as Title Appeal No.14/2021 in the Court of the District Judge, Hojai and the next date is 24/7/2023.

7. Therefore, it appears that the Civil Courts are adjudicating the disputes between the parties to the suit in Title Suit No. 77/2011 as well as in Title Appeal No. 14/2021 (TS No.30/2016). In the backdrop of the above, let this Court further take into consideration the facts involved and as to whether the Deputy Commissioner, Hojai was justified in taking action in the capacity of a Revenue Authority.

8. It appears from the record that after the filing of the Appeal being T.A. No. 30/2012 before the Court of the District Judge, Nagaon, the Deputy Commissioner, Hojai issued a notice in connection with Misc. Case No. 2/2017. A perusal of the said notice dated 31/7/2017 which had been enclosed as Annexure-6 to the writ petition reveals that the ground on which the said notice was issued by the Deputy Commissioner, Hojai was that the petitioners have occupied tribal belt land without order and thereby directing the petitioners to vacate the land within one month with crops/home etc otherwise necessary action would be taken. The petitioners on receipt of the said notice filed a petition dated 21/2/2018 before the Deputy Commissioner, Hojai in Misc. Case No. 2/2017 stating the facts and prayed to recall the eviction notice. There was no action on the part of the Deputy Commissioner, Hojai pursuant to the said

reply being submitted by the petitioners thereby taking into consideration the case of the petitioners.

9. The petitioners challenged the said notice so issued by the Deputy Commissioner, Hojai in Misc. Case No. 2/2017 before the learned Assam Board of Revenue which was registered and numbered as Case No.17(HO)/2018. The learned Member of the Assam Board of Revenue vide an order dated 5/11/2020 held that as the petitioners' case did not have any merit, the appeal was dismissed. This Court finds it relevant to quote the order dated 5/11/2020 passed by the learned Member of the Assam Board of Revenue as the same has relevance to the issue involved :-

“DATE ORDER

5.11.2020 The counsel for the respondent present and Govt. advocate present. The respondent advocate pleaded that the land in question has been purchased before the Tribal Belt was constituted and the appellant was in continuous possession.

Govt. advocate pleaded that appellant did not possess the land before the Tribal Belt. The land in question remains in the name of original owner, Biswanath Chouhan. The records from the D.C. Hojai in written statement was perused and it states that the Dag No. 155 is in the possession of revenue authority. For Dag No. 154 a title case had ruled that the appellant has no right over the land in question.

The counsel of the respondent also said that Title Suit 77/2011 pending in the Civil Court in Nagaon. The Govt. records says that the title case is not related to the land in question.

The counsel for the Govt. pointing out to the records in the case from D.C. Hojai said that there was an eviction of Dag No. 155 which was subsequently made 207 and 294.

After hearing both the parties this Court is of the view that this appeal before the Assam Board of Revenue do not have merit. The earlier status quo vide order dated 3.4.18 hereby vacated.

The case is dismissed and the parties move to appropriate courts if they have any question of title over the land.

Inform all concerned.”

10. The learned counsel for the petitioners further submitted that in the meantime after the order being passed by the learned Assam Board of Revenue,

the petitioners had already been evicted although the appeal being Title Appeal No. 30/2016 as well as Title Suit No. 77/2011 are still pending. It is under that premise that the instant writ petition was filed challenging the impugned notice dated 31/7/2017 issued in Misc. Case No. 2/2017 as well as the order dated 5/11/2020 passed by the learned Assam Board of Revenue.

11. The instant writ petition was filed on 19th of April, 2021. It appears from the records that there were certain directions being passed by this Court for filing of the affidavit by the Deputy Commissioner, Hojai.

12. It further reveals that on 26th of October, 2021, the Deputy Commissioner, Hojai had filed an affidavit. Paragraph Nos. 3 and 3(A) of the said affidavit being relevant are reproduced herein under :-

“3. That the brief case of the petitioner in this writ petition is that the petitioners are possessing and enjoying the land in question (15B 2K 19L) by the right of purchase through registered Sale Deed No. 2096 dated 20.04.1959 was covered by Annual Patta land covered by Dag No. 155 before creation of tribal belt in 1975-1976 by the State Government. The petitioners filed a title suit being T.S. No. 22/2012 before the Civil Judge, Nagaon which has been dismissed on 01.11.2016. The petitioners filed an appeal being T.A. No. 30/2016 before the District Judge, Nagaon which is still pending. The subject matter of the TA No. 30/2016 is a plot of land measuring 13B 4K 5L covered by Dag No. 207 and another plot of land measuring 1K 8L covered by Dag No. 294, both are under Patta No. 77, Kissam, Pub Kandura, Mouza Kaki, Dist – Hojai. The Dag No. 155 was bifurcated to two Dags i.e. 207 and 294 and Patta No. 77 land reduced to 14B 13L from 17B 4K 17L. During the pendency of the said T.A. No. 30/2016, the impugned notices in the Eviction Case No. 2/2017 was issued by the Deputy Commissioner for land measuring 13B 0K 5L covered by Dag No. 207 and land measuring 1K 8L part Dag No. 294. The petitioner contend that the said impugned notices were issued in illegal and arbitrary manner. It is contended that the Deputy Commissioner has taken possession of the land without any execution case. Though the petitioners filed Revenue Appeal No. 17(HO)/2018 the same was dismissed on 05.11.2020 and against the same, the present petition is preferred.

3(A) That the said matter came up before the Hon’ble Court on 09/09/2021 and after hearing the parties, the Hon’ble Court directed to list the matter again on 01.01.2021 and direction was issued for placing the relevant instructions for further adjudication of the matter. Pursuant to the said direction of the Hon’ble Court, a report has been sent on 29.09.2021 wherein inter alia it is mentioned that the petitioner forcefully occupied

the land standing in the name of Sri Biswanath Chouhan, S/o Ram Kumar (Periodic Patta No. 77, Dag No.207 and 294) (Old Periodic Patta No. 3 and Dag No.115) without having any legal right over the land. It is further mentioned that the eviction was carried out under the light of Section 165, Chapter-X of the Assam Land Revenue Regulation, 1886."

13. I have heard the learned counsel for the parties.

14. From a perusal of the materials on record, it transpires that it is the specific case of the petitioners that the predecessors-in-interest of the petitioners vide a registered Deed of Sale dated 20/4/1959 had purchased the land in question. It is also the specific case of the petitioners that at that relevant point of time the land in question was not within the tribal belt. Neither the Deputy Commissioner nor the learned Assam Board of Revenue took into account the same nor any decision being given to that effect that at the time of purchase, the land was a tribal land falling within the tribal belt. On the other hand, in the instructions to the Standing Counsel by the Deputy Commissioner, Hojai dated 29/9/2021 clearly shows the reasons behind the steps taken by the Deputy Commissioner, Hojai i.e. the petitioners forcefully occupied the land standing in the name of Shri Biswanath Chouhan i.e. Periodic Patta No. 77, Dag No. 207 & 294 (Old Periodic Patta No. 38 Dag No. 155) without having legal right over the land. Accordingly, exercised the powers under Regulation 165. Chapter X of the Assam Land and Revenue Regulation, 1886.

15. This Court further finds it relevant to take note of Annexure-1 to the Affidavit filed by the Deputy Commissioner, Hojai wherein the instructions to the counsel for the Deputy Commissioner, Hojai was enclosed. The said instructions gives a more detailed and vivid picture behind the actions taken by the Deputy Commissioner, Hojai. Paragraph 1, 2, 3, 4 & 5 of the said instructions are quoted herein below :

"1. The land from where the petitioner of WP(C) No.4444/2021 was evicted, is under

Dag No. 155(Old) under Annual Patta No. 48(Old) which was converted to Periodic Patta No. 3, dag No. 155 in the year 1960. The said patta was again changed to Periodic Patta 77 and earlier dag No. 155 was bifurcated into two dags, namely 207 (13B-4K-5L) and dag No. 294 (1K-8L), the total area of the old dag No. 155 and new dags remaining the same. The Original Pattadar of the said land was Sri Ram Kumar, S/O Ram Bharas, whose name appears in the draft Chitha of the year 1957-58. After his death the land was mutated in the name of his son Sri Biswanath Chouhan S/O Ram Kumar on 03/10/1958 whose name still continued as the Pattadar.

2. On examination of the Sale Deed executed on 20/04/1959, it is seen that Sri Ram Boli Chouhan S/O Sri Joysri Chouhan purchased an area of land 15 Bigha 02 Katha 19 Lecha in dag No. 154 under Annual Patta No. 48. In the Sale Deed it is mentioned that the original dag No. 154 was converted to 155.

3. No record of the conversion of dag No. 154 to dag No. 155 has been found as mentioned in the Sale Deed.

4. The Petitioner forcefully occupied the land standing in the name of Sri Biswanath Chouhan S/O Ram Kumar (Periodic Patta 77 dag No. 207 & 294 (Old Periodic Patta No. 3 & dag No. 155) without having any legal right over the land.

5. The Eviction was carried out under the light of Sec. 165 CHAPTER-X of the Assam Land Revenue Regulation, 1886."

16. It would further be relevant to mention herein that nothing could be discerned that the Deputy Commissioner had taken into consideration whether the land was in tribal belt at the time of purchase in the year 1959 and also that disputes are pending as regards the entitlement of the land in Title Suit No. 77/2011 and Title Appeal No. 30/2016. Under such circumstances, this Court is of the opinion that the action taken by the Deputy Commissioner, Hojai to exercise the power under Regulation 165 of the Assam Land & Revenue Regulation, 1886 appears to be for collateral and extraneous purposes and amounts to abuse of the powers conferred upon the authority under law.

17. Be that as it may, the respondent authorities more particularly the Deputy Commissioner, Hojai was well aware that there were inter party civil proceedings pending wherein the rights of the parties are yet to be adjudicated. In the affidavit filed by the Deputy Commissioner, Hojai and more particularly at paragraph No. 3 (A), it was mentioned that the eviction was carried out under

the Regulation 165, Chapter-X of the Assam Land and Revenue Regulation,1886. Regulation 165 is quoted herein below :-

“165. Ejectment and eviction.--” (1) In the case of unsettled land, any person who without valid authority has encroached upon or occupied it shall be liable to ejectment forthwith.

(2) In the case of an annually settled land, persons other than settlement-holders, member of their families and hired servants, if found in occupation thereof, shall be liable to ejectment forthwith. The settlement with the settlement-holder shall, unless terminated earlier for infringement of the conditions of the lease or for any action contrary to or inconsistent with the rights conferred on him by the lease, automatically terminate at the end of the period covered by the lease.

(3) (a) In the case of periodically settled land, persons who have entered into occupation without valid authority from the land-holder, or whose entry or occupation is or has come about in a manner, inconsistent with the provisions of this chapter, shall be liable to eviction.

(b) Such eviction shall be preceded by service of notice requiring the occupants to vacate the land, and to remove all buildings and other constructions erected and crops raised, within a period not exceeding one month from the date of receipt of the notice.

(c) The Deputy Commissioner may, after the persons concerned have vacated or have been evicted from the land, take the land under his own management, or may let it in farm, for such period as he thinks fit, but shall give the land-holders a reasonable opportunity of undertaking in writing that he will do everything in his power to prevent unauthorised occupation by other persons in future, and of agreeing in writing that, on his failure to do so, he will forfeit his rights and status of a land-holder in respect of the land. If satisfied with an undertaking and agreement as aforesaid, the Deputy Commissioner shall accept them, and they shall be deemed to govern the land-holder's future rights and status in respect of the land, and the land shall then be restored to the land-holder. If the land-holder subsequently contravenes the undertaking as aforesaid, or any of the provisions of Section 9, he shall be liable to forfeiture of his rights and status in respect of the land, which will then be available for settlement a fresh, subject to any lawful encumbrances subsisting upon it.”

18. A reading of the provisions of Regulation 165 of the Assam Land and Revenue Regulation,1886 would show Sub- Regulation (1), (2) and (3) (a) stipulates the conditions when the power under Regulation 165 can be exercised. Sub-Regulation (1) of Regulation 165 is in respect to cases of unsettled land, where any person without authority have encroached upon or

occupied it. The facts narrated and the admitted stand of the Respondents clearly show Sub Regulation (1) of Regulation 165 was not applicable.

Sub-Regulation (2) of Regulation 165 is in reference to the case of an annually settled land, wherein persons other than the settlement-holders, member of their families and hired servants, are found in occupation thereof, shall be liable to ejectment forthwith. It is also the mandate of the Sub-Regulation (2) of Regulation 165 that if there is a violation to the terms of the settlement of the annual lease, the said annual lease shall terminate at the end of the period covered by the lease. It is no longer *res integra* that land held in annual patta is transferable (**See Govindra Chandra Das Vs. Bala Ram Bora** reported in **(2001) 1 GLR 27**). Under such circumstances till the Sale Deed dated 20/4/1959 is holding the field, the question of exercise of jurisdiction under Sub-Regulation (2) does not arise.

Sub-Regulation 3(a) of Regulation 165 is in relation to cases of periodically settled land where persons who have entered into occupation without valid authority from the land-holder, or whose entry or occupation is or has come about in a manner, inconsistent with the provisions of Chapter X, shall be liable to eviction. The same analogy as stated while dealing with Sub Regulation (2) of Regulation 165 would apply in respect to Sub regulation (3a) also. Therefore, this Court is of the opinion that Regulation 165 of the Assam Land and Revenue Regulation, 1886 could not have been exercised by the Deputy Commissioner, Hojai in the facts of the instant case that too knowing fully well that inter party civil disputes are pending adjudication.

19. It is also the trite principle of law when the Civil Court is adjudicating the dispute inter se between the parties, the Deputy Commissioner, Hojai who is the Revenue Authority would have no authority to indulge and interfere therein,

more so when it was a categorical stand of the Deputy Commissioner, Hojai as could be seen from the order passed by the learned Assam Board of Revenue as well as the instructions quoted hereinabove that the land in question still continue in the name of Biswa Nath Chouhan.

20. Under such circumstances, this Court is of the unhesitant opinion that the action of the respondents more particularly the Deputy Commissioner, Hojai to issue the notice and to evict thereupon is nothing but amounts to abuse of the powers conferred upon the authority. Accordingly, this Court therefore sets aside the notice dated 31/7/2017 in Misc. Case No. 2/2017 as well as the order of the learned Assam Board of Revenue in Case No.17(HO)/2018 dated 5/11/2020 Taking into consideration that it is the admitted stand of the Deputy Commissioner, Hojai that the petitioners were evicted, this Court therefore directs the Deputy Commissioner, Hojai to restore the possession of the land to the petitioners. The same shall be done forthwith upon a certified copy of the instant judgment being served upon the Deputy Commissioner, Hojai and not later than 30 days therefrom.

21. The instant judgment is in respect to the actions being taken by the Deputy Commissioner, Hojai. However, the above observations shall not effect the adjudication of the appeal being Title Appeal No.14/2021 as well as Title Suit No.77/2011 pending before the respective Civil Courts.

22. With the above observations and directions, the instant writ petition stands disposed off.

JUDGE

Comparing Assistant