

GAHC010172642021



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

Case No. : CRP(IO)/113/2021

PABITRA BORO AND 2 ORS
S/O LT. GARI BORO, R/O MAIDAMGAON, PATARKUCHI, MOUZA BELTOLA,
P.O. BASISTHA, PIN-781029, KAMRUP (M), ASSAM

2: RATNESWAR BORO
S/O LT. GARI BORO
R/O MAIDAMGAON
PATARKUCHI
MOUZA BELTOLA
P.O. BASISTHA
PIN-781029
KAMRUP (M)
ASSAM

3: CHITRA GOGOI
W/O PARAKHMONI GOGOI
R/O MAIDAMGAON
PATARKUCHI
MOUZA BELTOLA
P.O. BASISTHA
PIN-781029
KAMRUP (M)
ASSA

VERSUS

SABITRI NATH
W/O LT. BHUBAN NATH, R/O HOUSE NO. 14, RAJDHANI MASJID, ANANDA
PATH, BEHING DIVINE WEDDING, GUWAHATI-781006, P.O. ASSAM
SACHIVALAY, P.S. DISPUR, DIST. KAMRUP (M), ASSAM

Advocate for the Petitioner : MR. B D DEKA

Advocate for the Respondent : FOR CAVEATOR

Advocate for the Petitioners : Mr. B. D. Deka

Advocate for the Respondent : Mr. M. Talukdar

BEFORE
HON'BLE MR. JUSTICE DEVASHIS BARUAH

Date of hearing : 02.08.2022

Date of Judgment : 25.01.2023

JUDGEMENT AND ORDER (CAV)

Heard Mr. B. D. Deka, the learned counsel appearing on behalf of the petitioners and Mr. M. Talukdar, the learned counsel appearing on behalf of the respondent.

2. This is an application filed under Article 227 of the Constitution of India assailing the judgment dated 07.09.2021 passed by the learned Presiding Officer, Special Tribunal, Kamrup (M) under Assam Land Grabbing (Prohibition) Act, 2010 (for short the "Act of 2010") in L.G. Case No.17/2015.

3. At the outset, it is relevant to take note of that against the judgment and decree passed in a proceedings under the Act of 2010, an appeal lies before a Special Court on any question of law or fact under Section 13 of the Act of 2010. Section 13(2) of the Act of 2010 provides, separate appeal against the respective judgment and order of the Special Tribunal passed in respect of the civil proceedings as well as in criminal proceedings respectively and the period

of limitation is 60 days from the respective date of judgment and order passed in each of the said proceedings. However as on date, as admitted in bar, there is no Special Court constituted in terms with Section 14 of the Act of 2010 and under such circumstances the instant application has been filed under Article 227 of the Constitution of India.

4. Taking into account that as there is no appellate forum constituted and the instant application has been filed under Article 227 of the Constitution thereby invoking the Superintending Powers of this Court, this Court vide an order dated 15.11.2021 admitted the instant application on the following question:

“Whether in the facts of the instant case, the provisions of Assam Land Grabbing (Prohibition) Act, 2010 is applicable taking into consideration the fact that the petitioners were in settled position of the land ?”

5. To appreciate the question so framed, it would be relevant to take note of the brief facts of the instant case. For the purpose of convenience, the parties herein are referred to as in the same status as they stood before the Tribunal below. The respondent herein as applicant had filed an application under Section 8(2) of the Act of 2010 against four respondents out of which the respondent Nos. 2, 3 and 4 are the petitioners before this Court.

6. The case of the applicant is that the husband of the applicant purchased from one Kanailal Sikaria through registered Sale Deed No.7089 dated 06.10.1972 a plot of land measuring 33 Bighas 17 Lechas and the same was mutated in the name of her husband late Bhuban Nath. It is the further case of the applicant that after acquiring the ownership, the applicant's husband took over the possession of the land in the year 1972 itself. During the lifetime of her

husband in the month of February, 2009, the respondents tried to occupy the plot of land but could not succeed to do so. Thereafter, upon the expiry of her husband on 25.06.2013, the applicant being a widow and helpless woman, the respondents encroached upon the land of the applicant and started constructing temporary houses and thereafter permanent structures etc. upon the disputed land. The applicant tried her best to persuade the respondents not to do so but the respondents refused to vacate the possession or stop construction over the disputed plots of land. Under such circumstances, the applicant filed the application under Section 8(2) of the Act of 2010. The said application so filed was registered and numbered as L.G. Case No.17/2015.

7. The Court of the Additional District and Sessions Judge No.1 which have been designated as Special Tribunal, Kamrup (M) at Guwahati vide an order dated 10.09.2015 issued notice upon the Circle Officer, Dispur Revenue Circle for inspection and verification of a plot of land measuring 2 Bigha 1 Katha covered by Dag No. 1484, 1485, 1487 and 1486 of Patta No.712, Village No.2, Maidam under Beltola Mouza in the District of Kamrup (M), Assam and to submit a full and complete report within 3 (three) weeks from the date of the receipt of the said order on the various aspects mentioned in the said order. By the said order, the Circle Officer, Dispur Revenue Circle, was directed to furnish copies of the extracts of the Government records, including Chitha and/or Jamabandi; showing the village Mouza, Dag Number, Patta Number; Trace Map along with a report before the Tribunal on or before the next date. It reveals from the records that the Circle Officer of the Dispur Revenue Circle had submitted a report and pursuant thereto on 04.05.2016, the Special Tribunal issued summons to the respondent Nos. 1, 2, 3 and 4. It reveals from the records that the respondent Nos. 1, 2, 3 and 4 had duly appeared before the

Tribunal on 04.10.2016. The respondent Nos. 1, 2, 3 and 4 again appeared on 30.11.2016 praying for some time for filing the written objection/written statement.

8. It reveals from the records that the respondent Nos. 2, 3 and 4 had filed their joint written objection. In the said written objection, the respondent Nos. 2, 3 and 4 have assailed the proceedings to be not maintainable on various preliminary objections. On merits, it was contended that the father of the said respondents Late Powaram Boro purchased the possessory rights of the disputed land measuring 4 Kathas 10 Lechas described in Schedule-A on an assumption to be Government land covered by Dag No.866(old)/1485(new) and Dag No.1331(old) / 1483(new) of village No.2, Maidam, Mouza Beltola from one Faguna Ram Doloi vide a Deed of Sale dated 15.03.1982. However, the said Deed of Sale was not registered. It was further mentioned that later on it came to the knowledge of the said respondents that Dag No.866 (old)/1485(new) is a private land measuring 2 Kathas and falls within K.P. Patta No.712. However, the Dag No. 1331(old)/1483(new) is a Government land measuring 2 Kathas 10 Lechas. Thereafter, in the year 1992, the said respondents after the death of their father demolished the house constructed by their father on the Eastern-Western side of the Schedule-C land and constructed an Assam Type house consisting of four rooms with tin roof pucca wall and they also dug a ring well on the Southern side of the Schedule-B land for which the mother of the respondent Nos. 2, 3 and 4 took subsidy of Rs.1,000/- and Rs.3,000/- as a loan under the scheme of Nehru Rozgar Yozana. At this stage, it may be relevant herein to mention that the land measuring 2 Kathas covered by Dag No.866 (old)/1485(new) of K.P. Patta No.712 have been described in Schedule B land and the plot of land measuring 2 Kathas 10 Lechas

which is the Government land covered by Dag No.1331(old)/1483(new) have been described in Schedule C land.

9. It is the further case of the respondents that their father during his lifetime took electricity connection from Assam State Electricity Board. It has also been mentioned that in the year 2005, the respondents constructed an Assam Type house with brick walls and CIC roof on the Southern side of the Schedule C land and also constructed a pucca latrine on the Southern side of Schedule B land as well as boundary wall on the Northern and Southern part of the Schedule C land. It is the case of the respondents that the entire Dag No.1485 comprised of land measuring 3 Kathas 11 Lechas out of which 2 Kathas of land was purchased by one Mahadev Kirtania but the purchase was only on papers as he never got possession of the same as the respondents were in the possession of the said land. The respondents further contended that they have been in lawful possession of the Schedule A land since 1982 and stated that they were not land grabbers and hence prayed for rejecting the application of the applicant. On the basis of the pleadings, the Special Tribunal framed as many as 5 issues which were:

1. Whether the petitioner has right, title and interest with possession over the schedule land?
2. Whether the schedule land of the petitioner is illegally grabbed by the respondents?
3. Whether the petitioner is entitled to get restoration of the possession of his land?
4. Whether the petitioner is entitled to get relief, as prayed for?

5. Whether the respondents committed the offence punishable under Assam Land Grabbing (Prohibition) Act?

10. On behalf of the applicant, there were 4 witnesses who were examined and on behalf of the respondents side, there were 3 witnesses who were examined.

11. The Special Tribunal after taking into account the evidence on record came to a finding that the respondents have failed to show that they had any title over the land either by way of acquisition or by way of allotment by the Government of Assam or by way of extinguishment of title by their long possession. It was further observed that the respondents were the trespassers in the disputed land. It is also relevant to take note of that while coming to the said finding, the learned Special Tribunal also came to a finding on the basis of the evidence that the said land measuring 2 Kathas which was the disputed land in Dag No.1485 was transferred to Late Mahadev Kirtania but the possession could not be delivered in respect to the said land to the said Mahadev Kirtania as the respondent Nos. 2, 3 and 4 were in possession for which the applicant had to adjust by giving the said Mahadev Kirtania land in Dag No.1486. Under such circumstances, the Special Tribunal held that the said would not affect the rights of the applicant to seek right and interest in the said land measuring 2 Kathas in Dag No.1485.

12. During the said proceedings, a contention was however raised by the respondent Nos. 2, 3 and 4 to the effect that as they were in long physical possession of the disputed land as such they cannot be termed to be land grabber in terms with the definition of Section 2(d) of the Act of 2010 or their action can be termed to be land grabbing in terms with the definition in Section

2(e) of the Act of 2010. The learned Special Tribunal however observed that mere possession whatsoever the nature or however long it may be, cannot save the respondents from coming under the purview of the definition of "land grabber" and "land grabbing". It was observed that the term "without any lawful entitlement" after the words "physical possession" means physical possession must be coupled with lawful entitlement. On the basis of the above, the Special Tribunal held that the applicant was successful in proving her right, title and interest in respect to the disputed land and declared that the respondents were land grabbers. It was further directed by the Special Tribunal that the applicant being the original owner having right, title and interest over the disputed land was entitled to be put in possession and accordingly ordered the respondents to deliver vacant/clear possession of the disputed land to the applicant within two months from the said order. It was however observed that if the respondents fail to carry out the order within the stipulated time, the applicant shall be entitled to possession through the process of the Court. Being aggrieved by the said order dated 07.09.2021 passed by the learned Special Tribunal, the present application has been filed under Article 227 of the Constitution of India.

13. This Court has heard the learned counsel for the petitioners as well as the respondent. Upon hearing the learned counsels for the petitioners as well as the respondent, it transpires that the fact that the respondent's husband was issued the K.P. Patta No.712 which included amongst others land in Dag No.1485 is not in dispute. It is also not in dispute that 2 kathas of land of Dag No.1485 included in K.P. Patta No.712 was transferred vide a registered Deed of Sale in favour of Late Mahadev Kirtania but the possession in respect of the said land could not be handed over to the said Mahadev Kirtania in view of the possession of the respondent Nos. 2, 3 and 4. It is also not in dispute that the

respondent Nos. 2, 3 and 4 does not have any document of title in their favour in respect to the disputed land i.e. land measuring 2 Kathas covered by Dag No.1485 included in K.P. Patta No.712. At this stage, this Court may also take into consideration as to whether there has been an extinguishment of the title of the applicant by operation of law thereby creating a title in favour of the respondent Nos. 2, 3 and 4.

14. Section 27 of the Limitation Act, 1963 (for short the "Act of 1963") provides that upon the lapse of limitation fixed to institute a suit for possession of any property, the right to such property shall stand extinguished. The period of limitation prescribed in the Act of 1963 would be Article 65 which mandates that a suit can be filed based on title for recovery of possession within 12 years of the start of adverse possession, if any, set up by the defendant. Therefore, it is as and when a possession of the possessor is adverse, the owner has to file a suit within 12 years else by operation of Section 27 of the Act of 1963, there would be an extinguishment of the right of the owner over the property. Therefore, by virtue of the concept of adverse possession as evolved, it is on completion of the period and the extinguishment of the rights of the original owner, the same rights accrues upon the possessor which have been extinguished and not more than that.

15. At this juncture, this Court would also like to touch upon the concept of adverse possession. The statute does not define adverse possession. It is a common law concept which requires that all the three classic requirements to co-exist at the same time namely *nec vi* i.e. adequate in continuity, *nec clam* i.e. adequate in publicity and *nec precario* i.e. adverse to a competitor, in denial of the title and his knowledge meaning thereby there has to be visible, notorious

and peaceful possession so that if the owner does not take care to know, knowledge would be attributed to him on the basis of that but for due diligence, he would have known it. It is also well established that there has to be pleadings as regards adverse possession and the claim of adverse possession has to be against true owner and not against any bystander. Therefore, when if there is an extinguishment of the right by operation of Section 27 of the Act of 1963, there is a conferment of right by way of prescription upon the possessor but to do so, the possessor's interest should be adverse to the interest of the true owner.

16. In the backdrop of the above, let this Court therefore take into consideration as to whether there is any case made out of adverse possession by the respondent Nos. 2, 3 and 4 in their pleadings as well as also in their evidence inasmuch as without there being any adverse possession that too for the prescriptive period of 12 years from the date when the possession becomes adverse to the true owner, no right can flow upon the respondent Nos. 2, 3 and 4 in respect to the land in question however long their possession may be.

17. From a perusal of the written objection, there is no mention whatsoever that the respondent Nos. 2, 3 and 4 have pleaded the aspect of adverse possession. The pleadings contained in the written objection to the effect that since 1982, they have been in possession of the disputed land covered by Dag No.1485 included in K.P. Patta No.712 and thereupon have constructed some structures. The pleadings therefore is silent on the plea of adverse possession.

18. Now, coming to the evidence of DW-1 who during his cross-examination have clearly stated that he did not know whether the disputed land belonged to the husband of the applicant and also did not know that after the death of the

husband of the applicant, the name of the applicant was mutated. Therefore, when the respondent Nos. 2, 3 and 4 is not aware who is the true owner, the question of claiming adverse possession against the true owner does not arise. Under such circumstances, the question of extinguishment of the rights of the applicant and thereby devolving upon the respondent Nos. 2, 3 and 4 by the law of prescription would not apply to the facts of the instant case. The above conclusion is based upon a reading of Paragraphs 58, 59, 60 and 62 of the judgment of the Supreme Court rendered in the case of ***Ravinder Kaur Grewal and Others Vs. Manjit Kaur and Others*** reported in ***(2019) 8 SCC 729*** which quoted hereinbelow:

58. We are not inclined to accept the submission that there is no conferral of right by adverse possession. Section 27 of the Limitation Act, 1963 provides for extinguishment of right on the lapse of limitation fixed to institute a suit for possession of any property, the right to such property shall stand extinguished. The concept of adverse possession as evolved goes beyond it on completion of period and extinguishment of right confers the same right on the possessor, which has been extinguished and not more than that. For a person to sue for possession would indicate that right has accrued to him in praesenti to obtain it, not in futuro. Any property in Section 27 would include corporeal or incorporeal property. Article 65 deals with immovable property.

59. Possession is the root of title and is right like the property. As ownership is also of different kinds of viz. sole ownership, contingent ownership, corporeal ownership, and legal equitable ownership. Limited ownership or limited right to property may be enjoyed by a holder. What can be prescribable against is limited to the rights of the holder. Possession confers enforceable right under Section 6 of the Specific Relief Act. It has to be looked into what kind of possession is enjoyed viz. de facto i.e. actual, "de jure possession", constructive possession, concurrent possession over a small portion of the property. In case the owner is in symbolic possession, there is no dispossession, there can be formal, exclusive or joint possession. The joint possessor/co-owner possession is not

presumed to be adverse. Personal law also plays a role to construe nature of possession.

60. *The adverse possession requires all the three classic requirements to co-exist at the same time, namely, nec vi i.e. adequate in continuity, nec clam i.e. adequate in publicity and nec precario i.e. adverse to a competitor, in denial of title and his knowledge. Visible, notorious and peaceful so that if the owner does not take care to know notorious facts, knowledge is attributed to him on the basis that but for due diligence he would have known it. Adverse possession cannot be decreed on a title which is not pleaded. Animus possidendi under hostile colour of title is required. Trespasser's long possession is not synonymous with adverse possession. Trespasser's possession is construed to be on behalf of the owner, the casual user does not constitute adverse possession. The owner can take possession from a trespasser at any point in time. Possessor looks after the property, protects it and in case of agricultural property by and large the concept is that actual tiller should own the land who works by dint of his hard labour and makes the land cultivable. The legislature in various States confers rights based on possession.*

62. *We hold that a person in possession cannot be ousted by another person except by due procedure of law and once 12 years' period of adverse possession is over, even owner's right to eject him is lost and the possessory owner acquires right, title and interest possessed by the outgoing person/owner as the case may be against whom he has prescribed. In our opinion, consequence is that once the right, title or interest is acquired it can be used as a sword by the plaintiff as well as a shield by the defendant within ken of Article 65 of the Act and any person who has perfected title by way of adverse possession, can file a suit for restoration of possession in case of dispossession. In case of dispossession by another person by taking law in his hand a possessory suit can be maintained under Article 64, even before the ripening of title by way of adverse possession. By perfection of title on extinguishment of the owner's title, a person cannot be remediless. In case he has been dispossessed by the owner after having lost the right by adverse possession, he can be evicted by the plaintiff by taking the plea of adverse possession. Similarly, any other person who might have dispossessed the plaintiff having perfected title by way of adverse possession can also be evicted until and unless such other person has perfected title against such a plaintiff by adverse possession. Similarly,*

under other articles also in case of infringement of any of his rights, a plaintiff who has perfected the title by adverse possession, can sue and maintain a suit.

19. In the backdrop of the above, this Court therefore would like to deal with the question which was framed by this Court in its order dated 15.11.2021 as already quoted hereinabove. A perusal of the said question so framed would be as to whether the provisions of the Act of 2010 be initiated against a person who has been in settled possession? To answer the said question, it would be relevant to take note of some of the provisions of the Act of 2010.

20. Section 2(d) and Section 2(e) defines the term "land grabber" and the term "land grabbing". The same are reproduced hereinbelow:

"2(d) "Land grabber" means a person or a group of person who occupy or attempt to occupy with or without the use of force, threat, intimidation and deceit, land over which he or they have no ownership, title or physical possession and includes any person who gives financial aid to any person or group of persons for taking up illegal possession of land over which he or they have no ownership or title and for construction of unauthorized structures thereon, or who abets the doing of any of the above mentioned acts, and also includes the successors-in-interests;

2(e) "Land Grabbing" means every activity of land grabber to occupy or attempting to occupy with or without the use of force, threat, intimidation and deceit, any land (whether belonging to the Government, a Public Sector undertaking, a local authority, a religious and charitable institution or endowment, including a wakf or any other private person) over which he or they have no ownership, title or physical possession, without any lawful entitlement and with a view to illegally taking possession of such land or creating illegal tenancies or lease or licence, agreements or by constructing unauthorized structures thereon for sale or hire or use or occupation of such unauthorized structures and the term "grabbed land" shall be construed accordingly;"

21. Section 3 of the Act of 2010 stipulates that the land grabbing in any form is declared to be unlawful and any act connected with or arising out of land grabbing shall be a cognizable offence under the Code of Criminal Procedure, 1973 and punishable under the Act of 2010. Section 4 prohibits land grabbing as well as imposes penalty if a person contravenes Sub-Section (1) or Sub-Section (2) of Section 4 of the Act of 2010. Section 5 stipulates that whoever with a view to grab the land contravenes the provisions of the Act or in connection with any such land grabbing as mentioned in Sub-Clauses (a), (b), (c) and (d) shall be punished with imprisonment for a term of not less than 2 years which may extend to 5 years and with a fine which may extend to twenty five thousand rupees. Section 6 relates to offences by the companies. Section 7 stipulates that there shall be a Special Tribunal for the purpose of enquiry into any alleged act of land grabbing and trial of cases in respect of ownership and title to or lawful possession of the land grabbed and the Court of the District and Sessions Judge having jurisdiction over the area shall be the Special Tribunal for the purpose of this Act and shall include the Additional District and Sessions Judge having jurisdiction over the area. Section 7 being relevant is quoted hereinbelow:

“7. There shall be a Special Tribunal for the purpose of enquiry into any alleged act of land grabbing and trial of cases in respect of the ownership and title to or lawful possession of the land grabbed and the court of District and Sessions Judge having jurisdiction over the area shall be the Special Tribunal for the purposes of this Act and shall include Additional District and Sessions Judge having jurisdiction over the area.”

22. Section 8 deals with the powers and functions of the Special Tribunals. As the same has relevance taking into account the question involved herein, Section 8 of the Act of 2010 is quoted hereinbelow:

“8. Special Tribunals and their powers and functions-

(1) Every Special Tribunal shall have power to try all cases arising out of any alleged act of land grabbing, or with respect to the ownership and title to, or lawful possession of the land grabbed whether before or after the commencement of this Act.

(2) The Special Tribunal may, either suo-moto, or on application made by any aggrieved person or any officer or authority, take cognizance of and try every case arising out of any alleged act of land grabbing, or with respect to the ownership and title to or lawful possession of, the land grabbed, whether before or after the commencement of this Act and pass such orders (including orders by way of interim directions) as it deems fit.

(3) The Special Tribunal, for the purpose of taking cognizance of the case, consider the location, or extent or value of the land alleged to have been grabbed or of the substantial nature of the evil involved in the interest of justice required and any other relevant matter involved in the case:

Provided that the Special Tribunal shall not take cognizance of any such case without hearing the petitioner or the aggrieved person, as the case may be.

(4) Notwithstanding anything contained in the Code of Civil Procedure, 1908 and the Code of Criminal Procedure, 1973 any case in respect of an alleged act of land grabbing or the determination of questions of title and ownership to or lawful possession of, any land grabbed, under this Act, shall, subject to the provisions of this Act, be triable in the Special Tribunal:

Provided that if in the opinion of the Special Tribunal, any application filed before it is prima facie frivolous or vexatious, it shall reject such application without any further enquiry.

(5) The Special Tribunal shall, by notification to be affixed in the office premises of the Special Tribunal, office notice Boards of the Deputy Commissioner's office and the office of the concerned Circle Office under whose jurisdiction the land alleged to have

been grabbed is situated, specify the fact of taking cognizance of the case under this Act. Such notification shall state that any objection which may be received by the Special Tribunal from any person including the custodian of evacuee property within the period specified therein will be considered by it:

Provided that where the custodian of the evacuee property objects to the Special Tribunal taking cognizance of the case, the Special Tribunal shall not proceed further with the case in regard to such property:

Provided also that the Special Tribunal shall cause a notice of taking cognizance of the case under this Act served on any person known or believed to be interested in the land, after a preliminary enquiry to satisfy itself about the person likely to be interested in the land. Any objection received by the Special Tribunal from any person within the period specified will be considered by it.

(6) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, it shall also be lawful for the Special Tribunal to frame charge and try all offences punishable under this Act, if in the opinion of the Special Tribunal it is so necessary after delivery of its decision and order in the Civil liability where prima facie it appears to the Special Tribunal that a particular person or a group of persons are responsible for commission of an offence of land grabbing punishable under this Act.

(7) Every finding of the Special Tribunal in a trial under this Section with regard to any alleged act of land grabbing, ownership and title to, or possession of the land grabbed shall be conclusive proof of the fact and land grabbing, and of the persons who committed such land grabbing, and every Judgment of the Special Tribunal with regard to the determination of title and ownership to or lawful possession of any grabbed land shall be binding on all persons having interest in such land.

(8) Every case under sub-section (1) shall be disposed of by the Special Tribunal as far as possible within a period of twelve months from the date of institution of the case before it and a proceeding under sub-section (6) shall be disposed of as far as possible within a period of six months from the date of framing of the charges against

the person or persons responsible for alleged commission or abetment of the offence punishable under this Act.

(9) It shall be lawful for the Special Tribunal to pass such order as it may deem fit in the interest of justice. It may award compensation in terms of money for wrongful possession of the grabbed land which shall not be less than an amount equivalent to the market value of the land so grabbed as on the date of the order and the profits accrued from the land, payable by the land grabber to the owner of the grabbed land and may direct redelivery of possession of such land to its rightful owner. The amount of compensation and profits, so awarded and cost of redelivery, if any, shall be recovered as an arrear of land revenue in case the Government is the owner, or as a decree of a Civil Court in any other cases. It may also impose such punishment to a land grabber for Commission of any offence punishable under this Act."

23. In terms with Section 9, the Special Tribunal is deemed to be a Civil Court and Court of Session and shall have all the powers of a Civil Court and the Court of Session and the provisions of the Code of Civil Procedure, 1908 and the Code of Criminal Procedure, 1973 insofar as the same are not inconsistent with the provisions of the Act of 2010, shall apply to the said proceedings before the Special Tribunal mutatis mutandis. Section 10 relates to procedure to be followed by the Special Tribunal. The said Section being relevant is quoted hereinbelow:

"10. Procedure to be followed by Special Tribunal.- *(1) Save as otherwise provided in this Act, a Special Tribunal shall, in the trial of case relating to any alleged act of land grabbing, or with respect to the ownership and title to, or lawful possession of the land grabbed, whether before or after the commencement of this Act, which involves civil liability, follow the procedure prescribed in the Code of Civil Procedure, 1908 (Act 5 of 1908) and in the trial of cases relating to alleged offence of land grabbing involving punishment prescribed under this Act, follow the procedure of the Code of Criminal Procedure, 1973 (Act 2 of 1974).*

(2) After taking cognizance of a case under sub-section (2) of Section 8, the Special Tribunal shall try and dispose of the civil liability at first and decide and pass order as to the title, ownership and lawful possession of the grabbed land whether before or after the commencement of this Act as it deems fit. After completion of the civil proceeding, if the Special Tribunal decides and pass order that the land in question has been grabbed, the Special Tribunal may order that the possession of the land be restored to the person whose land has been grabbed after evicting the land grabber or any other person who may be in possession of the land, if necessary by use of such force as may be required for the purpose:

Provided that execution of the order for restoration of the possession of the grabbed land shall not be made till expiration of the period of appeal provided under Section 13 of the Act. If within a reasonable time after the expiry of the appeal period no order of stay of execution has been received from the Special Court or produced before the Special Tribunal by any of the parties to the case, the Special Tribunal shall proceed for execution of its order and simultaneously frame charge against the land grabber to prosecute him for the alleged act of land grabbing:

Provided further that in the event of preferring an appeal from the order of the Special Tribunal before the Special Court where stay of execution of the order has been made by the Special Court, the Special Tribunal shall not further proceed in the proceeding to prosecute the land grabber till final disposal of the appeal by the Special Court:

Provided also that after hearing the appeal, if the Special Court decides the appeal against the alleged land grabber, in that event charge for prosecution against the land grabber shall be framed by the Special Tribunal and proceed with the criminal proceeding for prosecution of the land grabber."

24. Section 11 is very pertinent inasmuch as the burden of proof under the Act lies upon the land grabber who is alleged to have grabbed the land that the land has not been grabbed by him. Section 11 being relevant is quoted hereinbelow:

“11. Where in any proceeding under this Act, a land is alleged to have been grabbed, and such land is prima facie proved to be the land owned by the Government or by a private person, the Special Tribunal shall presume that the person who is alleged to have grabbed the land is a land grabber and the burden of proving that the land has not been grabbed by him shall be on such person.”

25. Section 12 of the Act of 2010 mandates that any case pending before any Court or other authority immediately before coming into force of the Act of 2010 which involves any act of land grabbing shall stand transferred to the Special Tribunal within whose jurisdiction the alleged grabbed land is situated. The said Section being relevant is quoted hereinbelow:

“12. Any case pending before any Court or other authority immediately before coming into force of this Act which involves any act of land grabbing, shall stand transferred to the Special Tribunal within whose jurisdiction the alleged grabbed land is situated.”

26. In the backdrop of the above what is discernible is that the main object of the Act of 2010 is to protect the owner and the possessor of the land from unlawful land grabbing and to punish the criminal land grabbers. The Act of 2010 therefore seeks to prohibit and punish land grabbing which has now become a menace in the State. Therefore, the said Act has all the colours of a remedial statute. It is also seen that if the alleged land grabber claims or puts up a defence of proprietary right or ownership or possessory right over the land in question, then the civil liability would be adjudicated first and if he/she fails to establish any such right, then criminal proceedings for prosecution of the land grabber would re-commence. Therefore, as per the scheme of the Act of 2010, upon cognizance being taken of the criminal offence of land grabbing, the Special Tribunal would proceed with the prosecution of the land grabber not only for the purpose of punishing him but also to recover the grabbed land from

the land grabber and for restoration of possession of the grabbed land to the person from whom the land was grabbed. Section 8(9) of the Act of 2010 further empowers the Special Tribunal to award compensation in terms of money for wrongful possession of the grabbed land which shall not be less than an amount equivalent to the market value of the land so grabbed as on the date of the order and the profits accrued from the land, payable by the land grabber to the owner of the grabbed land as well as the cost of redelivery of possession of such land to the rightful owner.

27. In the judgment of the Division Bench of this Court rendered in the case of ***State of Assam, In re. reported in (2018) 2 GLR 313***, the Division Bench of this Court held that if in a proceedings initiated under the Act of 2010, the alleged land grabber takes up the defence of ownership, possession or better title over the land in question, the Special Tribunal shall first determine the question and keep the criminal trial in abeyance till such determination. It was observed that the principal object of the Act of 2010 is not to adjudicate right, title or possession over the land in question and as such by very nature, such determination of civil liability has to be by a summary nature and cannot partake the character of a full fledged civil suit which is ordinarily a long drawn affair thereby frustrating the very purpose and object of the Act of 2010. It was also observed that the reason being that the alleged land grabber had not approached the Civil Court for declaration of his right, title or interest or possession over the land in question and it is only when he is prosecuted as a land grabber that he/she takes up the plea of better claim over the land in question as his defence. Further to that, it was also observed that it is for facilitating a smooth criminal trial that the above defence, if taken, would be taken up and determine first in the summary manner having regard to the

mandate of the Act of 2010. The Legislature, as per the Division Bench of this Court, did not intend to prohibit the proceedings of the criminal trial of a person alleged to have committed an offence of land grabbing, rather it postpones the criminal trial till adjudication of civil liability of the alleged land grabber in a summary manner.

28. At this stage, this Court would also like to take note of that in the said judgment i.e. ***State of Assam, In re. (supra)***, the Division Bench of this Court held that the Act of 2010 is not unconstitutional thereby holding that the Act of 2010 is not violative of Article 14, 20(2) and 21 of the Constitution of India. It would also be seen that vide this special Legislation i.e. the Act of 2010, the person against whom the allegation of land grabbing have been instituted is given a chance to prove a better claim to title or possession over the land in his defence. If such defence is being taken, the Special Tribunal would first determine the civil liability in a summary manner having regard to Section 11 of the Act of 2010, as per which, burden is on the accused to prove that he is not the land grabber or that no act of land grabbing have taken place and thereafter the criminal culpability of the accused would be adjudicated. Therefore, when a proceeding is initiated under the Act of 2010, it cannot be said that the due process has not been followed inasmuch the person against whom the proceedings are initiated is not being condemned unheard but rather an opportunity is given to him to prove a better claim to title or possession over the land in his defence. At this stage, this Court would also like to take note of Section 12 of the Act of 2010 which have already quoted hereinabove wherein it has been mandated that any case pending before any Court or other authority immediately before coming into force of the Act of 2010 which involves any act of land grabbing shall stand transferred to the Special Tribunal within whose

jurisdiction the alleged grabbed land is situated. In other words, by virtue of Section 12 of the Act of 2010, the jurisdiction of other Courts or authority which involves any act of land grabbing have been impliedly barred and vested upon the Special Tribunal.

29. In the backdrop of the above, this Court finds its appropriate to deal with the concept of settled possession as well as what are the rights of a person who is in settled possession. The Supreme Court in the case of ***Rame Gowda (dead) by Irs. Vs. M. Varadappa Naidu (dead) by Irs. and Another*** reported in **(2004) 1 SCC 769** had the occasion to deal with the concept of settled possession. Paragraph Nos. 8, 9 and 10 being relevant are quoted hereinbelow:

“8. It is thus clear that so far as the Indian law is concerned, the person in peaceful possession is entitled to retain his possession and in order to protect such possession he may even use reasonable force to keep out a trespasser. A rightful owner who has been wrongfully dispossessed of land may retake possession if he can do so peacefully and without the use of unreasonable force. If the trespasser is in settled possession of the property belonging to the rightful owner, the rightful owner shall have to take recourse to law; he cannot take the law in his own hands and evict the trespasser or interfere with his possession. The law will come to the aid of a person in peaceful and settled possession by injuncting even a rightful owner from using force or taking the law in his own hands, and also by restoring him in possession even from the rightful owner (of course subject to the law of limitation), if the latter has dispossessed the prior possessor by use of force. In the absence of proof of better title, possession or prior peaceful settled possession is itself evidence of title. Law presumes the possession to go with the title unless rebutted. The owner of any property may prevent even by using reasonable force a trespasser from an attempted trespass, when it is in the process of being committed, or is of a flimsy character, or recurring, intermittent, stray or casual in nature, or has just been committed, while the rightful owner did not have enough time to have recourse to law. In the last of the cases, the possession of the trespasser, just entered into would not be called as one

acquiesced to by the true owner.

9. *It is the settled possession or effective possession of a person without title which would entitle him to protect his possession even as against the true owner. The concept of settled possession and the right of the possessor to protect his possession against the owner has come to be settled by a catena of decisions. Illustratively, we may refer to Munshi Ram v. Delhi Admn., Puran Singh v. State of Punjab and Ram Rattan v. State of U.P. The authorities need not be multiplied. In Munshi Ram case it was held that no one, including the true owner, has a right to dispossess the trespasser by force if the trespasser is in settled possession of the land and in such a case unless he is evicted in the due course of law, he is entitled to defend his possession even against the rightful owner. But merely stray or even intermittent acts of trespass do not give such a right against the true owner. The possession which a trespasser is entitled to defend against the rightful owner must be settled possession, extending over a sufficiently long period of time and acquiesced to by the true owner. A casual act of possession would not have the effect of interrupting the possession of the rightful owner. The rightful owner may re-enter and reinstate himself provided he does not use more force than is necessary. Such entry will be viewed only as resistance to an intrusion upon his possession which has never been lost. A stray act of trespass, or a possession which has not matured into settled possession, can be obstructed or removed by the true owner even by using necessary force. In Puran Singh case the Court clarified that it is difficult to lay down any hard-and-fast rule as to when the possession of a trespasser can mature into settled possession. The "settled possession" must be (i) effective, (ii) undisturbed, and (iii) to the knowledge of the owner or without any attempt at concealment by the trespasser. The phrase "settled possession" does not carry any special charm or magic in it; nor is it a ritualistic formula which can be confined in a straitjacket. An occupation of the property by a person as an agent or a servant acting at the instance of the owner will not amount to actual physical possession. The Court laid down the following tests which may be adopted as a working rule for determining the attributes of "settled possession"*

- (i) *that the trespasser must be in actual physical possession of the*

property over a sufficiently long period;

(ii) that the possession must be to the knowledge (either express or implied) of the owner or without any attempt at concealment by the trespasser and which contains an element of animus possidendi. The nature of possession of the trespasser would, however, be a matter to be decided on the facts and circumstances of each case;

(iii) the process of dispossession of the true owner by the trespasser must be complete and final and must be acquiesced to by the true owner; and

(iv) that one of the usual tests to determine the quality of settled possession, in the case of culturable land, would be whether or not the trespasser, after having taken possession, had grown any crop. If the crop had been grown by the trespasser, then even the true owner, has no right to destroy the crop grown by the trespasser and take forcible possession.

10. *In the cases of Munshi Ram and Puran Singh the Court has approved the statement of law made in Horem v. R. wherein a distinction was drawn between the trespasser in the process of acquiring possession and the trespasser who had already accomplished or completed his possession wherein the true owner may be treated to have acquiesced in; while the former can be obstructed and turned out by the true owner even by using reasonable force, the latter may be dispossessed by the true owner only by having recourse to the due process of law for reacquiring possession over his property."*

30. From a perusal of the above quoted paragraphs, it would be seen that the person in settled possession would be entitled to protect his possession even against the true owner in a sense that the true owner cannot dispossess a person in settled possession unless he/she is evicted by having recourse to the due process of law for re-acquiring possession over his/her property.

31. At this stage, this Court finds it relevant to take note of the expression

“due process of law”. The Supreme Court in the case of ***Maria Margarida Sequeira Fernandes and Others Vs. Erasmo Jack De Sequeira*** reported in **(2012) 5 SCC 370** observed that due process of law means that nobody ought to be condemned unheard. The findings and observations in the judgment of the Delhi High Court in the case of ***Thomas Cook (India) Ltd. Vs. Hotel Imperial*** reported in **(2006) 88 DRJ 545** was approved. Paragraph 79 and 80 of the judgment in the case of ***Maria Margarida Sequeira Fernandes and Others (supra)*** being relevant are quoted hereinbelow.

“79. Due process of law means that nobody ought to be condemned unheard. The due process of law means a person in settled possession will not be dispossessed except by due process of law. Due process means an opportunity to the defendant to file pleadings including written statement and documents before the court of law. It does not mean the whole trial. Due process of law is satisfied the moment rights of the parties are adjudicated upon by a competent court.

80. *The High Court of Delhi in Thomas Cook (India) Ltd. v. Hotel Imperial held as under:*

“28. The expressions ‘due process of law’, ‘due course of law’ and ‘recourse to law’ have been interchangeably used in the decisions referred to above which say that the settled possession of even a person in unlawful possession cannot be disturbed ‘forcibly’ by the true owner taking law in his own hands. All these expressions, however, mean the same thing—ejectment from settled possession can only be had by recourse to a court of law. Clearly, ‘due process of law’ or ‘due course of law’, here, simply mean that a person in settled possession cannot be ejected without a court of law having adjudicated upon his rights qua the true owner.

Now, this ‘due process’ or ‘due course’ condition is satisfied the moment the rights of the parties are adjudicated upon by a court of competent jurisdiction. It does not matter who brought the action to court. It could be the owner in an action for enforcement of his right

to eject the person in unlawful possession. It could be the person who is sought to be ejected, in an action preventing the owner from ejecting him. Whether the action is for enforcement of a right (recovery of possession) or protection of a right (injunction against dispossession), is not of much consequence. What is important is that in either event it is an action before the court and the court adjudicates upon it. If that is done then, the 'bare minimum' requirement of 'due process' or 'due course' of law would stand satisfied as recourse to law would have been taken. In this context, when a party approaches a court seeking a protective remedy such as an injunction and it fails in setting up a good case, can it then say that the other party must now institute an action in a court of law for enforcing his rights i.e. for taking back something from the first party who holds it unlawfully, and, till such time, the court hearing the injunction action must grant an injunction anyway? I would think not. In any event, the 'recourse to law' stipulation stands satisfied when a judicial determination is made with regard to the first party's protective action. Thus, in the present case, the plaintiff's failure to make out a case for an injunction does not mean that its consequent cessation of user of the said two rooms would have been brought about without recourse to law."

We approve the findings of the High Court of Delhi on this issue in the aforesaid case."

Thus, from the above, it would be seen that due process of law means in the context of the present case that a person in settled possession will not be dispossessed without giving him/her an opportunity to defend and due process of law is satisfied the moment rights of the parties are adjudicated upon by a competent Court.

32. In the backdrop of the above, let this Court consider as to whether the proceedings under the Act of 2010 can be said to be a proceedings coming within the ambit of the due process of law. Section 8 (2) of the Act of 2010 specifically stipulates that the Special Tribunal may either suo moto, or on application made by the aggrieved person or any officer or authority, take

cognizance of and try every case arising out of any alleged act of land grabbing or with respect to ownership and title to or lawful possession of, the land grabbed whether before or after the commencement of the Act of 2010. In terms with Section 10 (1) of the Act of 2010, the Special Tribunal has to follow the procedure prescribed in the Code of Civil Procedure, 1908 as well as while deciding the criminal liability the provisions of Code of Criminal Procedure, 1973 in so far as the said enactments are not inconsistent under the Act of 2010. It would further be seen from a perusal of the Assam Land Grabbing (Prohibition) Rules, 2013 that in terms of Rule 9, the Special Tribunal shall after taking cognizance of the case, give notice to the land grabber in Form IV. If this Court peruses the Form IV, it would be seen that the alleged land grabber is given an opportunity to appear and submit written representation/objection to the case. Further, in terms with Section 8 & 10 of the Act of 2010, the alleged land grabber is entitled to give evidence to show that he/she has title or ownership to or physical possession on the basis of lawful entitlement. It is on the basis of such pleadings and evidence that the Special Tribunal would first decide the civil liability with respect to ownership and title to or lawful possession. It is also appropriate to refer to Section 10 (5) of the Act of 2010 which have been quoted herein above where it has been clearly mentioned that the Special Tribunal, before passing an order under the Act of 2010, shall give to the land grabber an opportunity of making representation or of adducing evidence, if any, in that regard and consider every such representation and evidence.

33. Therefore, it is clear that the alleged land grabber is given due opportunity of being heard before deciding the question whether the alleged land grabber has ownership, title to or lawful possession of, the land grabbed. It has to be borne in mind that Act of 2010 as already stated is special remedial

statue to arrest and curb the unlawful activities of land grabbing. This special legislation in the opinion of this Court can also be attracted against a person in settled possession who has no title or ownership to or lawful possession of the land grabbed. This therefore answers the question so framed in as much as the petitioners merely on the basis of being in long settled possession cannot claim that the proceedings under the Act of 2010 cannot be initiated against them.

34. The next question therefore arises as to whether the acts of the petitioners herein can be said to come within the mischief of land grabbing as defined in Section 2(e) of the Act of 2010. The provision of Section 2(e) has already been quoted hereinabove. From a reading of the said Section, it would transpire that land grabbing would be every activity of a land grabber to occupy or attempting to occupy with or without the use of force, threat, intimidation and deceit, any land including a land of a private person over which he or they have no ownership, title or physical possession, without any lawful entitlement and with a view to illegally taking possession of such land or creating illegal tenancies or lease or licence agreements or by constructing unauthorized structures thereon for sale or hire or use or occupation of such unauthorized structures and the term "grabbed land" shall be construed accordingly. Therefore, in order that the activity be construed to be a land grabbing, the person concerned against whom the proceedings have been initiated, in view of Section 11 has to show that either he has ownership or title to or physical possession with lawful entitlement of, the land grabbed.

35. For the purpose of the instant case, it is clear that the petitioners herein have no title or ownership either on the basis of documents of title or by

extinguishment of the title of the owner by operation of law. The question of physical possession has also to be construed to be on the basis of lawful entitlement. This aspect of the matter would be further clear from a reading of Sections 7, 8 and 10 wherein it has been stipulated that possession would mean lawful possession or in other words physical possession with a lawful entitlement.

36. In the instant case, the learned Tribunal below on the basis of the facts have correctly come to a finding that physical possession must be coupled with lawful entitlement and as the petitioners herein have failed to show any lawful entitlement to their physical possession of the land grabbed as it would be apparent from a perusal of the pleadings as well as the evidence on record, this Court is of the opinion that no interference is called for under Article 227 of the Constitution of India. In that view of the matter, the instant revision application stands dismissed.

37. The Registry is directed to return the LCR to the learned Tribunal below.

J U D G E

Comparing Assistant