

GAHC010173842012



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

Case No. : WRIT PETITION (C) No. 4145/2012

1. On the death of Smt. Indu Prava Bordoloi, Represented By [1] Sri Dibya Bordoloi, S/o Late Saranan Bordoloi, S/o Late Indu Prava Bordoloi, R/o Girls Higher Secondary School Road, P.O. & P.S. - North Lakhimpur, District - Lakhimpur, Assam-787001.

1[a] Sri Lakhya Jyoti Bordoloi, S/o Late Sarana Bordoloi, S/o Late Indu Prava Bordoloi, R/o Girls Higher Secondary School Road, P.O & P.S. - North Lakhimpur, District – Lakhimpur, Assam, Pin Code-787001.

1[b] Sri Nirab Jyoti Bordoloi, S/o Late Sarana Bordoloi, S/o Late Indu Prava Bordoloi, R/o Girls Higher Secondary School Road, P.O. & P.S. – North Lakhimpur, District – Lakhimpur, Assam, Pin – 787001.

1 [c] Sri Tapan Jyoti Bordoloi, S/o Late Saranan Bordoloi, S/o Late Indu Prava Bordoloi, R/o Girls

Higher Secondary School Road, P.O. & P.S - North Lakhimpur, District – Lakhimpur, Assam, Pin Code-787001.

.....Petitioners

-Versus-

1. The State of Assam, Represented by the Commissioner & Secretary to the Government of Assam, Department of Revenue, Dispur, Guwahati-6, District - Kamrup [M], Assam.
2. The Deputy Commissioner [Revenue Branch] North Lakhimpur, Lakhimpur, Assam-787001.
3. The Circle Officer, North Lakhimpur Circle, North Lakhimpur, Lakhimpur, Assam-787001.
4. On the death of Sri Jibon Dutta, S/o Late Mina Ram Dutta, R/o Hindu Gaon, P.O./P.S. - North Lakhimpur, Lakhimpur, Assam-787001, Represented by [4.1.] Smti. Bhabani Bhuyan Dutta, W/o Late Jibon Dutta, R/o Hindu Gaon P.O. & P.S. - North Lakhimpur, Lakhimpur, Assam, Pin-787001.
 - 4.2. Smti. Shanati Priya Dutta, W/o Late Jibon Dutta, R/o Hindu Gaon, P.O. & P.S. North Lakhimpur, Lakhimpur, Assam, Pin-787001.
 - 4.3. Shri Kuldip Narayan Dutta, S/o Late Jibon Dutta, R/o Hindu Gaon, P.O. & P.S. North Lakhimpur, Lakhimpur, Assam, Pin-787001.

4.4. Shri Hsari Narayan Dutta, S/o Late Jibon Dutta,
R/o Hindu Gaon, P.O. & P.S. North Lakhimpur,
Lakhimpur, Assam, Pin-787001.

4.5. Shri Birinchi Narayan Dutta, S/o Late Jibon Dutta,
R/o Hindu Gaon, P.O. & P.S. - North Lakhimpur,
Lakhimpur, Assam, Pin-787001.

4.6. Smti. Sikhamoni Dutta, D/o Late Jibon Dutta, R/o
Hindu Gaon, P.O. & P.S. - North Lakhimpur,
Lakhimpur, Assam, Pin-787001.

.....**Respondents**

Advocates :

Petitioner	: Mr. N.N. Upadhyay, Advocate.
Respondent no. 1	: Ms. N. Bordoloi, Standing Counsel. Revenue Department
Respondent nos. 2 & 3	: Mr. C.K.S. Baruah, Junior Government Advocate
Respondent no. 4	: Mr. A. Sattar, Advocate
Date of Judgment & Order	: 08.06.2023

BEFORE
HON'BLE MR. JUSTICE MANISH CHOUDHURY
JUDGMENT & ORDER [ORAL]

The original writ petitioner who instituted the instant writ petition under Article 226 of the Constitution of India, was one Indu Prava Bordoloi, wife of one Late Saranan Bordoloi. The name of the original writ petitioner, Indu Prava

Bordoloi was substituted by her 4 [four] legal representatives pursuant to an order dated 20.07.2018 passed in an interlocutory application, I.A.[Civil] no. 372/2018 filed for substitution. In the writ petition, the original party-respondent no. 4 was one Jibon Dutta, who had been substituted by his 6 [six] legal representatives pursuant to an order dated 15.03.2019 passed in the interlocutory application, I.A.[Civil] no. 812/2019, filed for substitution.

2. An order dated 13.02.2012 passed by the Additional Deputy Commissioner [Revenue], Lakhimpur in N.R. Case no. 35/2002 has been challenged in the writ petition.

3. From the case records and the averments made in the pleadings, it has emerged that Late Ananta Bordoloi had four sons viz. [i] Upen Bordoloi; [ii] Suraj Bordoloi; [iii] Amulya Bordoloi; and [iv] Saranan Bordoloi. Saranan Bordoloi was the husband of the original writ petitioner, Indu Prava Bordoloi. Late Lilabati Bordoloi, who expired in the year 1968, was the wife of Ananta Bordoloi. Ananta Bordoloi pre-deceased his wife in the year 1963. It is stated that Ananta Bordoloi was owner and possessor of a few parcels of land including one plot of land measuring 16 Lessas, covered by Annual Patta no. 1 & Dag no. 183, located at North Lakhimpur Town Part-I, Mouza – Lakhimpur, District – Lakhimpur [hereinafter referred to as 'the subject-plot', at places, for easy reference].

4. I have heard Mr. N.N. Upadhyay, learned counsel for the petitioners; Ms. N. Bordoloi, learned Standing Counsel, Revenue Department for the respondent no. 1; Mr. C.K.S. Baruah, learned Junior Government Advocate, Assam for the

respondent nos. 2 & 3; and Mr. A. Sattar, learned counsel for the substituted legal representatives of the respondent no. 4.

5. From the impugned order dated 13.02.2012, it is revealed that the Additional Deputy Commissioner [Revenue], Lakhimpur had ordered cancellation of the annual patta being Annual Patta no. 1, pertaining to an area of 4 [four] Lessas falling within Dag no. 183, located at North Lakhimpur Town Part – I, Mouza – Lakhimpur, Assam on the premise that the provisions contained in Rule 1[2][c] of the Settlement Rules framed under the provisions of the Assam Land and Revenue Regulation, 1886 [‘the Regulation, 1886’, for short] had been violated in respect of the said 4 [four] Lessas out of the subject-plot and it was further ordered to convert the said 4 [four] Lessas falling within the subject-plot into Government land. The respondent no. 3 was directed to make necessary corrections accordingly in the revenue records. It is further evident from the impugned order dated 13.02.2012 that the said order was passed on the basis of the documents furnished in a Report submitted by the then Circle Officer, North Lakhimpur Revenue Circle [the respondent no. 3].

6. As the impugned order dated 13.02.2012 was passed entirely on the basis of a Report of the respondent no. 3, it is necessary to look into the contents of the said Report, which was in the form of an Order dated 09.06.2003. From the Report/Order dated 09.06.2003, it transpires that Suraj Bordoloi, son of Late Ananta Bordoloi claiming himself to be a co-pattadar of the subject-plot, filed a petition stating that 4 [four] Lessas of land out of the subject-plot had been transferred by him by way of sale to Jibon Dutta i.e. the original party-respondent no. 4. Notices were thereafter served upon the parties including

Saranan Bordoloi. After service of notice, Saranan Bordoloi i.e. the husband of the original writ petitioner appeared before the respondent no. 3 and objected the petition filed by Suraj Bordoloi by stating that he did not transfer the possession of the subject-plot to anyone. The respondent no. 3 upon perusal of the document of the case records, found that the subject-plot under the Annual Lease was not transferred by pattadar, Saranan Bordoloi but it was co-pattadar, Suraj Bordoloi who had transferred 4 [four] Lessas out of the subject-plot to the original party-respondent no. 4 i.e. Jibon Dutta. The Report/Order dated 09.06.2003 made mention of submission of a Report by the concerned Lot Mandal. The respondent no. 3 had also reported after looking at the Report of the concerned Lot Mandal to the effect that there was deletion of all other co-pattadars from the Annual Lease and in the concerned Annual Lease, the name of only Saranan Bordoloi, son of Late Ananta Bordoloi was recorded in respect of the subject-plot. It was further reported that before correction in the revenue records in respect of the Annual Lease in favour of Saranan Bordoloi, the land was transferred to the original party-respondent no. 4. Observing so, the respondent no. 3 had opined that from such background fact situation, it could be concluded that there was violation of the provisions contained in Rule 1[2][c] of the Settlement Rules framed under the Regulation, 1886 in respect of the 4 [four] Lessas of land falling within the subject-plot as the same was transferred illegally. A suggestion was made to cancel the Annual Patta issued in respect of the subject-plot. With such observations, the respondent no. 3 referred the matter along with the case records to the office of the Deputy Commissioner, Lakhimpur seeking approval to cancel the Annual Lease issued in respect of the subject-plot and for conversion of the subject-plot into Government land.

7. The Settlement Rules have been framed under the Assam Land and Revenue Regulation, 1886. The definition of 'Annual Lease' is provided in Rule 1[2][c] of the Settlement Rules. As per Rule 1[2][c] of the Settlement Rules, an 'Annual Lease' means a lease granted for one year only and confers no right in the soil beyond a right of user for the year for which it is given. It confers no right of inheritance beyond the year of issue. It confers no right of transfer or of sub-letting and shall be liable to cancellation for any transfer or sub-letting even during the year of issue. The proviso to Rule 1[2][c] states that the State Government may waive their right to cancel an annual lease and may allow its renewal automatically till such time as the State Government may direct in those cases in which the land is mortgaged to the Government or to a State-sponsored Co-operative Society.

8. The petitioners' side has brought a Judgment dated 12.03.1996 passed by the Court of learned Munsiff No. 2, North Lakhimpur in Title Suit no. 41/1991 on record. In Title Suit no. 41/1991, Saranan Bordoloi was the plaintiff and Suraj Bordoloi was one of the defendants. It is canvassed on behalf of the petitioners that the subject-plot was the suit land in Title Suit no. 41/1991. From the Judgment, it is noticed that the title suit was filed by Saranan Bordoloi for permanent injunction to restrain the defendants from interfering with peaceful possession of the plaintiff over the suit land which included the land under Dag no. 183 of the Annual Lease. The said title suit was decreed in favour of the plaintiff i.e. Saranan Bordoloi with a finding that he was in possession over the suit land since 1965. The petitioners' side has also drawn attention to a copy of the Jamabandi [Records of Rights], annexed to the writ petition, pertaining to the subject-plot which has reflected that pursuant to the judgment and decree

passed in Title Suit no. 41/1991, the Additional Deputy Commissioner passed an order on 30.11.1999 whereby he ordered deletion of names of other seven pattadars including the name of Suraj Bordoloi, from Annual Patta no. 1 pertaining to Dag no. 183. The Additional Deputy Commissioner vide his order dated 30.11.1999 had further ordered that in Annual Patta no. 1 pertaining to Dag no. 183, that is, the subject-plot measuring 16 Lessas, only the name of Saranan Bordoloi was to be retained and he directed correction of the land records accordingly. It is, thus, the case of the petitioners' side that on and from 30.11.1999, it was only Saranan Bordoloi whose name was retained as the pattadar in the Annual Patta no. 1 pertaining to Dag no. 183 i.e. the subject-plot and from the judgment and decree dated 12.03.1996, it was established that it was only Saranan Bordoloi who was in possession of the subject-plot since 1965.

9. On the other hand, it is the case of the original party-respondent no. 4 that he took over possession of the subject-plot from Suraj Bordoloi prior to correction of the name in Annual Patta no. 1 in the land records in favour of Saranan Bordoloi. It is the contention of the original party-respondent no. 4 that he took over possession of the subject-plot from Suraj Bordoloi for the purpose of ingress and egress to an adjacent plot of Periodic Patta land measuring 1 Katha & 1 Lessa, which was purchased by him from Suraj Bordoloi by way of a registered sale deed.

10. From a reading of Rule 1[2][c] of the Settlement Rules, it is clearly evident that there is no right vested in a person holding annual lease to transfer or sublet to any other person and it would entail cancellation if any such transfer is

made by the lessee of the annual lease. The order dated 09.06.2003 of the respondent no. 3 did not disclose as to when Suraj Bordoloi transferred the possession of 4 [four] Lessas out of the subject-plot to the original party-respondent no. 4 while observing, at the same time, Saranan Bordoloi did not transfer the possession of the subject-plot in which the said 4 [four] Lessas is a part, to the original party-respondent no. 4. Though it was observed therein that it was before correction of the name in the annual lease in favour of Saranan Bordoloi the subject-plot was transferred by Suraj Bordoloi to the original party-respondent no. 4, the exact date when transfer of possession occurred was not recorded in the impugned order. In the considered view of the Court, the relevant date was 30.11.1999. Neither the Order/Report dated 09.06.2003 of the respondent no. 3 nor the Order dated 13.02.2012 of the Additional Deputy Commissioner, Lakhimpur which was based on the Report/Order dated 09.06.2003, had made any finding with regard to the relevant date vis-à-vis the date of handing over of possession of 4 [four] Lessas of land out of the subject-plot, measuring 16 Lessas, purportedly by Suraj Bordoloi to the original party-respondent no. 4. Though the orders mentioned that the same were passed on the basis of relevant documents, it was silent on the crucial aspect whether the said authorities took into consideration the Judgment and Decree dated 12.03.1996 passed in Title Suit no. 41/1991 and the Order dated 30.11.1999 passed by the Additional Deputy Commissioner, Lakhimpur, as reflected in the Jamabandi, ordering deletion of the name of Suraj Bordoloi and 6 others and retention of the name of Saranan Bordoloi only in Annual Patta no. 1 pertaining to Dag no. 183.

11. An order of cancellation of annual lease is permissible only when the annual

lease holder transfers the same in violation of the conditions of the annual lease. This Court has observed that the limited right of user or the possessory right conferred by the annual lease can be transferred and such transfers are considered to be valid between the parties. It is, however, be subject to the paramount title of the State. It is also settled that the rights of the State Government in the annual patta land is not affected by any transfer when the transferor is an annual lease holder [Ref : Mahim Ali [Md.] and others vs. Legal heirs of Ramakanta Barman, 2015 [5] GLT 463]. Thus, any decision like the one ordered by the impugned order dated 13.02.2012 for cancellation of annual patta ought to have been based on a finding that on the date of transfer of possession of 4 [four] Lessas of land out of the subject-plot, the transferor was an annual lease holder.

12. An error apparent on the face of the proceedings, when it is based on disregard to the provisions of Law, is amenable to the writ jurisdiction under Article 226 of the Constitution of India. A tribunal or an authority may be competent to enter upon an enquiry but in making an enquiry it may act in disregard of the provision of law and in such situation, the power of judicial review is exercisable to correct such error apparent on the face of the record. To reach a finding about any violation of the provision of law contained in Rule 2[1] [c] of the Settlement Rules, the authority had to reach a definite finding on the foundational fact regarding the date of handing over of the possession of the land measuring 4 [four] Lessas out of the subject-plot pertaining to Dag no. 183.

13. Since the Order dated 13.02.2012 of the Additional Deputy Commissioner

[Revenue], Lakhimpur which was based on the Report/Order dated 09.06.2003 of the Circle Officer, did not reflect any finding about the date of actual transfer of possession of 4 [four] Lessas out of the subject-plot to the party-respondent no. 4, by Suraj Bordoloi who was not a co-pattadar in Annual Patta no. 1 on and after 30.11.1999, this Court is of the unhesitant view that the foundational fact, that is, the date of actual transfer of possession, which was condition precedent for rendering such a view, was absent. If the transfer of possession took place after 30.11.1999, then Suraj Bordoloi might prima facie be not in a position to transfer possession of 4 [four] Lessas of land since after 30.11.1999, he was no longer a co-pattadar in Annual Lease no. 1 pertaining to Dag no. 183 and vice versa. Therefore, the authorities should have reached a definite finding on the foundational fact about the actual date of transfer of possession before ordering cancellation of the Annual Lease. It is apparent on the face of the record, the order dated 13.02.2012 passed by the Additional Deputy Commissioner [Revenue], Lakhimpur has suffered from an infirmity qua Rule 1[2][c] of the Settlement Rules, framed under the Regulation, 1886. In such view of the matter, the same is found not sustainable and is liable to be set aside. It is accordingly set aside.

14. With the setting aside of the order dated 13.02.2012, the matter stands remanded to the office of the Deputy Commissioner, Lakhimpur which authority shall re-visit the matter after giving adequate opportunities of hearing to the parties including opportunity to submit supporting documents in support of their respective claims. It is directed that the authority after affording such opportunities to the parties and upon due consideration to the merits of their respective claims and the provisions contained in Rule 1[2][c] of the Settlement

Rules, shall pass a speaking order in the matter afresh, within a reasonable time period, preferably within a period of 3 [three] months, from the date of appearance of the parties. In order to facilitate an expeditious consideration, the parties are directed to appear before the Deputy Commissioner, Lakhimpur on 30.06.2023. Upon such appearance of the parties on 30.06.2023, the Deputy Commissioner, Lakhimpur will fix a date of hearing of the parties and proceed with the matter thereafter, accordingly.

15. With the observations made and directions given above, the writ petition is allowed to the extent indicated above. It is made clear that none of the observations in the present order shall be construed to be an expression of any opinion of this Court with regard to possessory right of any of the contesting parties or any other right or entitlement with regard to transfer of possession pertaining to the plot of land under reference, which are to be substantiated by the parties on the basis of cogent materials. Therefore, it is left open for the competent authority, that is, the Deputy Commissioner, Lakhimpur to decide the matter on its own merits and in accordance with law. There shall be no order as to cost.

JUDGE

Comparing Assistant