

GAHC010185532021



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

Case No. : WP(C)/5932/2021

BASANTI BALA DEVI
W/O LATE PARESH CH. NATH
RESIDENT OF DATALPARA, NATUNBASTI, PO DHIRENPARA, PS FATASHIL
AMBARI, GUWAHATI 781025, DIST KAMRUP M ASSAM

VERSUS

BASANTA KUMAR BAISHYA AND 4 ORS
S/O TARUN CH. BAISHYA, RESIDENT OF CHANDMARI MILANPUR, PS
CHANDMARI, GUWAHATI 781021, DIST KAMRUP M ASSAM

2:ASSAM BOARD OF REVENUE
GUWAHATI 781001

3:THE DEPUTY COMMISSIONER

KAMRUP M GUWAHATI 781001

4:SUB DIVISIONAL DEPUTY COMMISSIONER

KAMRUP (M) ASSAM

5:CIRCLE OFFICER
AZARA REVENUE CIRCLE
AZARA
DIST KAMRUP (M) ASSA

Linked Case : WP(C)/6406/2021

PINAK MALAKAR
S/O LATE PRAMTHESH CH. MALAKAR

RESIDENT OF PROTECH VIEW
HENGARBARI
FLAT NO. 7A
PO AND PS DISPUR GUWAHATI 781006
DIST KAMRUP M ASSAM

VERSUS

BASANTA KUMAR BAISHYA AND 4 ORS.
SON OF TARUN CH. BAISHYA
RESIDENT OF CHANDMARI
MILANPUR
PS CHANDMARI
GUWAHATI 781021
KAMRUP (M) ASSAM

2:ASSAM BOARD OF REVENUE
GUWAHATI
781001
3:THE DEPUTY COMMISSIONER

KAMRUP(M) GUWAHATI 781001
4:SUB DIVISIONAL DEPUTY COMMISSIONER

KAMRUP (M) ASSAM
5:CIRCLE OFFICER

AZARA REVENUE CIRCLE
AZARA
KAMRUP (M) ASSAM

Linked Case : WP(C)/6404/2021

SUBASH CHANDRA SAHA
S/O LATE SURESH CHANDRA SAHA

RESIDENT OF ODALBAKRA
NEAR MODERN ENGLISH SCHOOL
PO LALGANESH

PS DISPUR
KAMRUP(M) ASSAM
781034

VERSUS

BASANTA KUMAR BAISHYA AND 4 ORS.
SON OF TARUN CH. BAISHYA
RESIDENT OF CHANDMARI
MILANPUR
PS CHANDMARI
GUWAHATI 781021
KAMRUP (M) ASSAM

2:ASSAM BOARD OF REVENUE
GUWAHATI
781001
3:THE DEPUTY COMMISSIONER

KAMRUP(M) GUWAHATI 781001
4:SUB DIVISIONAL DEPUTY COMMISSIONER

KAMRUP (M) ASSAM
5:CIRCLE OFFICER

AZARA REVENUE CIRCLE
AZARA
KAMRUP (M) ASSAM

For the Petitioner (s) : Mr. S.K. Ghosh, Advocate.

For the Respondent (s) : Mr. B.D. Goswami, Advocate.
Mr. B.J. Talukdar, Advocate.

Date of Hearing & Judgment : **13.10.2023**

BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH

JUDGMENT AND ORDER (ORAL)

Taking into account the similarity of facts and the issues being parametria, the three writ petitions are taken up for disposal by this common judgment.

2. The three writ petitions have been filed by the Petitioners challenging the common judgment and order dated 09.09.2021 passed in Revenue Appeal No. 73RA (K)/2017, Revenue Appeal No. 74RA (K)/2017 & Revenue Appeal No. 75RA (K)/2017. From a perusal of the materials on record, it reveals that the writ petitioner in W.P.(C) No. 6404/2021 claims that he purchased a plot of land measuring 1 katha 5 lechas from Kiran Chandra Bhattacharyya, Arun Ch. Bhattacharyya, Jharna Bhattacharyya and Naren Bhattancharyya vide a registered Sale Deed bearing Deed No. 2913 dated 18.5.1991. The writ petitioner in W.P.(C) No. 6406/2021 had purchased a plot of land measuring 3 kathas from Shri Dhaneswar Boro vide a registered Deed of Sale bearing Deed No. 11192/2005 dated 20.09.2005 and the writ petitioner in W.P.(C) No.

5932/2021 purchased a plot of land measuring 1 katha 12 lechas from Nagendra Narayan Mitra vide registered Sale Deed bearing Deed No. 9282/2004 dated 22.9.2004 and thereafter purchased another plot of land measuring 1 katha 10 lechas from Jyotirmoy Choudhury vide a registered Deed of Sale bearing Deed No. 4228/2005 dated 27.4.2005. The writ petitioners thereafter pursuant to the purchase, got their names mutated and the revenue records were corrected and their names appeared in the record of rights.

3. It further reveals from the records that the Respondent No. 1 herein in all the writ petitions claiming rights over a plot of land measuring 3 bighas 2 kathas 11 which he had purchased from Kiran Ch. Bhattacharyya, Biren Ch. Bhattacharyya and Naren Ch. Bhattacharyya in the year 1972, filed an application on 27.11.2012 before the Circle Officer, Azara for cancellation of the mutation order of the petitioners. The said application which was filed by the Respondent No. 1 herein which was registered as Misc. Case No. 68/2012-13 was dismissed by the Circle Officer, Azara vide an order dated 18.01.2014. Thereupon the Respondent No. 1 preferred a Revenue Appeal before the Deputy Commissioner, Kamrup(Metro) challenging the order dated 18.01.2014 passed by the Circle Officer, Azara in Misc. Appeal No. 68/2012-13. The said Revenue Appeal was registered and numbered as RA No. 23/2015-16. The said Revenue Appeal was disposed of by the Additional Deputy Commissioner, Kamrup(Metro) vide an order dated 08.06.2015 directing

the Circle Officer, Azara for rehearing of the case or in other words the matter was remanded back to the Circle Officer, Azara to decide afresh. When the matter was remanded back to the Circle Officer, Azara for rehearing, the Circle Officer reregistered the said Misc. Case as Misc. Case No. 70/2014-15 and took up for hearing on 07.09.2015. The Circle Officer passed an order on 07.09.2015 cancelling the mutation of the Petitioners herein vide a common order and mutated the name of the Respondent No. 1. Being aggrieved, the Petitioners herein preferred separate Appeals before the Deputy Commissioner, Kamrup(Metro) which was registered and numbered as RA(M) 13/2016-17, RA(M) 14/2016-17 and RA (M) 15/2016-17. The said three Appeals were disposed of vide an order dated 03.10.2017 whereby all the Appeals filed by the Petitioners were dismissed on the ground that the Respondent No. 1 had purchased the said plot of land prior to the Petitioners. Being aggrieved against the order dated 03.10.2017, three Revenue Appeals were filed before the learned Assam Board of Revenue by the Petitioners herein which were registered and numbered as Revenue Appeal No. 73RA(K)/2017, Revenue Appeal No. 74RA (K)/2017 & Revenue Appeal No. 75RA (K)/2017. The learned Assam Board of Revenue vide the common judgment and order dated 09.09.2021 dismissed all the three Revenue Appeals holding interalia that as the Respondent No. 1 herein had purchased the plot of land prior to the Appellants/the Petitioners herein and as such the Respondent No. 1 had a better title over the land than the Appellants. It was also mentioned

that the said view is based upon the fact that the Appellants had not pleaded in their Appeals or provided in the said Appeals any Deed of Conveyance in favour of their vendors which were prior dated to the Deed of Conveyance of the Respondent No.1. Being aggrieved, the three writ petitions were filed before this Court.

4. The records further reveals that only notice have been issued by this Court and the records of the Revenue Appeals were called for.

5. I have heard the learned counsels for the parties and perused the materials on record including the records in respect to the three Revenue Appeals.

6. Mr. S.K. Ghosh, the learned counsel appearing on behalf of the Petitioners submitted that the predecessors in interest of the Petitioners herein had purchased the said lands which have been conveyed to the Petitioners from all the five legal heirs of Late Ananda Bhattacharyya and as such the Petitioners herein had a better title over the land than the Respondent No. 1 inasmuch as the Respondent No. 1 had purchased the said land from the three legal heirs of Late Ananda Bhattacharyya. He further submitted that the Assam Revenue Board ought not to have gone into the question of title as to who had a better title over the plot of land in question as it is exclusively within the domain of the civil court. The learned counsel further submitted that the said observations made by the learned Assam Board of Revenue would affect the rights of the Petitioners if the Petitioners approach the civil court.

7. Mr. B.D. Goswami, the learned counsel appearing on behalf the Respondent No. 1 on the other hand submitted that the Respondent No. 1 had purchased the entire area of the land covered by Dag No.14 of Patta No. 34 from Kiran Ch. Bhattacharyya Biren, Ch. Bhattacharyya and Naren Ch. Bhattacharyya. He submitted that Arun Ch. Bhattacharyya was a minor at that time and he even after attaining majority did not challenge the said sale made by his three brothers. He submitted that as the title of the Respondent No. 1 which flows on the basis of the registered Sale Deed No. 7756 dated 27.10.1972 which was much prior to the Deeds of Sale executed in favour of the predecessors on interest of the Petitioners, the Respondent No. 1 had a better title by virtue of Section 48 of the Transfer of Property Act, 1882. The learned counsel further submitted that the learned Assam Board of Assam as well as the other Authorities had decided the mutation proceedings over the land in favour of the Respondent No. 1 on the basis of Section 48 of the Transfer of Property Act, 1882, taking into account that the Respondent No. 1 had purchased the plot of land measuring 3 bighas 2 kathas 11 lechas in the year 1972 much prior to the creation of interest of the predecessors in interest of the Petitioners and as such as the same has been done on the basis of a statue, no interference is required to the judgment passed by the learned Assam Board of Revenue. The learned counsel for the Respondent No. 1 further submitted that the Petitioners herein by filing the instant writ petitions have sought for a writ of certiorari for setting aside the impugned judgment and order passed by

the learned Assam Board of Revenue. Under such circumstances, this Court in exercise of the powers under Article 226 of the Constitution is not exercising the powers as an Appellate Court but rather the exercise of the jurisdiction of this Court is limited to interference when the judgment passed by the authority is without jurisdiction or there is palpable error causing manifest injustice. In that regard, the learned counsel has referred to the recent judgment of the Supreme Court in the case of **Central Council for Research in Ayurvedic Sciences and Anr. Vs. Bikartan Das and Ors.** reported **2023 SCC Online SC 996**, wherein the Supreme Court in paragraph Nos. 50,51 and 52 had observed that there are two cardinal principles to be followed by the High Court in exercise of the jurisdiction under Article 226 of the Constitution for issuance of a Writ in the nature of Certiorari.

8. This Court upon hearing the learned counsels for the parties is of the opinion that two points for determination arises for consideration ---

(1) Whether this Court under Article 226 of the Constitution can determine as to who had a better right over the land in question in view of the respective submissions made by the learned counsels for the parties ?

(2) Whether the observations so made by the Assam Board of Revenue in the impugned judgment calls for any interference in exercise of the jurisdiction under Article 226 of the Constitution ?

9. Let this Court take up for consideration the first point of

determination. From the facts narrated hereinabove, it would show that the Petitioners herein claim right over the land on the basis of a registered Deeds of Sale executed either by the predecessors in interest who purchased the said land from the legal representatives of Late Ananda Kumar Bhattacharyya or the Petitioners themselves purchasing the lands from the legal representatives of Late Ananda Kumar Bhattacharyya. The Respondent No. 1 also claims rights on the basis of the Registered Deed of Sale of the year 1972 whereby the legal representatives of Late Ananda Kumar Bhattacharyya had conveyed the land admeasuring 3 bighas 2 kathas 11 lechas in favour in favour of the Respondent No.1. It is the submission of Mr. S.K. Ghosh, the learned counsel for the Petitioners that the predecessors of interest of the Petitioners or the Petitioners themselves had purchased the land from five legal representatives of Late Ananda Kumar Bhattacharrya whereas the Respondent No. 1 had only the land purchased from three of the legal representatives and as such, the Petitioners have rights over the portion of the land which were not sold by the two legal representatives of Late Ananda Kumar Bhattacharyya. It is the opinion of this Court that the said aspect is a question which would require a consideration but the said consideration cannot be made either by the Revenue Authorities including the learned Assam Board of Revenue or even by this Court under Article 226 of the Constitution. Such claims of the Petitioners

have to be made before the competent civil court.

10. Be that as it may, from the materials on record, it is clear that the entire Dag No. 14 of Patta No. 34 which contain 3 bighas 2 kathas 11 lechas of land was sold to the Respondent No. 1 and vide a Deed of Sale No. 7756 dated 27.10.1972 which is prior in point of time to the deeds executed in favour of the predecessors of interest of the Petitioners or the Petitioners by the legal representatives. Unless the said Deed of Sale bearing Deed No. 7756 dated 27.10.1972 is not interfered with or cancelled or appropriate declaration is not obtained that the said Deed of Sale would not effect the rights of the Petitioners, this Court is of the opinion that the Revenue Authorities were within their jurisdiction to cancel the mutation in favour of the Petitioners.

11. The next point of determination which arises is as to whether this Court can exercise the Writ in the nature of Certiorari in the present facts of the case. This Court at this stage, this Court finds it relevant to reproduce paragraph Nos. 50, 51 and 52 of the judgment in the case of **Central Council for Research in Ayurvedic Sciences and Anr.** (supra) as hereinbelow :

“50. Before we close this matter, we would like to observe something important in the aforesaid context: Two cardinal principles of law governing exercise of extraordinary jurisdiction under Article 226 of the Constitution more particularly when it comes to issue of writ of certiorari.

51. The first cardinal principle of law that governs the exercise of extraordinary jurisdiction under Article 226 of the Constitution, more particularly when it comes to the issue of a writ of certiorari is that in granting such a writ, the High Court does not exercise the powers of Appellate Tribunal. It does not review or reweigh the evidence upon which the determination of the inferior tribunal purports to be based. It demolishes the order which it considers to be without jurisdiction or palpably erroneous but does not substitute its own views for those of the inferior tribunal. The writ of certiorari can be issued if an error of law is apparent on the face of the record. A writ of certiorari, being a high prerogative writ, should not be issued on mere asking.

52. The second cardinal principle of exercise of extraordinary jurisdiction under Article 226 of the Constitution is that in a given case, even if some action or order challenged in the writ petition is found to be illegal and invalid, the High Court while exercising its extraordinary jurisdiction thereunder can refuse to upset it with a view to doing substantial justice between the parties. Article 226 of the Constitution grants an extraordinary remedy, which is essentially discretionary, although founded on legal injury. It is perfectly open for the writ court, exercising this flexible power to pass such orders as public interest dictates & equity projects. The legal formulations cannot be enforced divorced from the realities of the fact situation of the case. While administering law, it is to be tempered with equity and if the equitable situation demands after setting right the legal formulations, not to take it to the logical end, the High Court would be failing in its duty if it does not notice equitable consideration and mould the final order in exercise of its extraordinary jurisdiction. Any other approach would render the High Court a normal court of appeal which it is not."

12. From a perusal of the above quoted paragraphs, it reveals that there are two cardinal principles to be followed for exercising the jurisdiction under Article 226 of the Constitution for issuance of a writ of Certiorari – (1) The first cardinal principle is that the High Court while exercising the jurisdiction under Article 226 of the Constitution does not

sit as an appellate authority over the authority which passed the order. The High Court does not review or reweigh the evidence upon which the determination of the inferior tribunal purports to be based. The High Court only demolishes the order which it considers to be without jurisdiction or palpably erroneous but does not substitute its own views for those of the inferior tribunal. It was categorically observed by the Supreme Court that the writ of certiorari can be issued if an error of law is apparent on the face of the record and a writ of certiorari, being a high prerogative writ, should not be issued on a mere asking. (2) The second cardinal principle for issuance of a writ of certiorari is that in a given case, even if some action or order challenged in the writ petition is found to be illegal and invalid, the High Court while exercising its extraordinary jurisdiction thereunder can refuse to upset it with a view to doing substantial justice between the parties. It was observed that it was perfectly open for the writ court, exercising this flexible power to pass such orders as public interest dictates & equity projects. The legal formulations cannot be enforced divorced from the realities of the fact situation of the case. While administering law, it is to be tempered with equity and if the equitable situation demands after setting right the legal formulations, not to take it to the logical end. It was observed that the High Court would be failing in its duty if it does not notice equitable consideration and mould the final order in exercise of its extraordinary jurisdiction and any other approach would render the High Court a normal court of appeal which it is not.

13. In the backdrop of the above propositions, if this Court applies the ratio to the facts of the instant case, it could be seen that the learned Assam Board of Revenue had the authority to pass the impugned judgment. This Court further finds no palpable error in the exercise of the jurisdiction by the learned Assam Board of Revenue. Under such circumstances, the question of interference under Article 226 of the Constitution is not warranted in the instant case. In that view of the matter, all the three writ petitions being devoid of any merit stands dismissed.

14. Before concluding, this Court however, finds it relevant to take note of that the observations made by the learned Assam Board of Revenue in the impugned judgment as well as the observations made by this Court herein shall not prejudice the Petitioners, if the Petitioners approach the competent Court of civil jurisdiction.

15. The Registry shall forthwith return the records.

JUDGE

Comparing Assistant