

GAHC010203392017



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

Case No. : WP(C)/6725/2017

HARIGOPAL BISWAS
S/O LATE HAREN BISWAS, R/O VILLAGE NO. 2, ORANG BASTI, PO- DEJOO
TEA ESTATE, DIST. LAKHIMPUR, ASSAM

VERSUS

THE STATE OF ASSAM AND 9 ORS
REP. BY THE COMMISSIONER and SECRETARY, GOVT. OF ASSAM, DISPUR,
GUWAHATI-781006

2:THE BOARD OF REVENUE
ASSAM AT PANBAZAR
GUWAHATI-781001

3:ISMAIL ALI
RESPONDENT-3

4:MD. ISAHAQUE ALI

5:ISOB ALI
NO.3 TO NO. 5 ARE THE SONS OF LATE FAZAR ALI
R/O NO 1
RAMPUR VILLAGE
MOUZA NOWBOICHA
PO- DEJOO TEA ESTATE
PS- NORTH LAKHIMPUR
DIST. LAKHIMPUR
ASSAM
PIN-787031

6:MUSSTT JAMILA KHATUN

W/O MD. SAYEDA RAHMAN
R/O VILLAG NO. 2
ORANG BASTI
MOUZA- NOWBOICHA
PO- DEJOO TEA ESTATE
PS- NORTH LAKHIMPUR
DIST. LAKHIMPUR
ASSAM
PIN- 787031

7:MUSSTT SULEMA KHATOON
W/O LATE ZUBBAR ALI
R/O NO.1 RAMPUR VILLAGE
MOUZA- NOWBOICHA
PO- DEJOO TEA ESTATE
PS- NORTH LAKHIMPUR
DIST. LAKHIMPUR
ASSAM
PIN-787031

8:MUSSTT. SUFIA KHATOON
W/O SAFIKUL ISLAM
R/O NO.1 RAMPUR VILLAGE
MOUZA- NOWBOICHA
PO- DEJOO TEA ESTATE
PS- NORTH LAKHIMPUR
ASSAM
PIN-787031

9:MUSSTT. JOHURA KHATOON
W/O MD. SAMSUL HOQUE
R/O SABOTI
PO- SABOTI
PS- NORTH LAKHIMPUR
ASSAM
PIN-787031

10:MUSSTT. ASMA KHATOON
W/O MD. JALAL ALI
R/O DIGHPUKHURI GAON
MOUZA- NOWBOICHA
PS- LALUK
DIST. LAKHIMPUR
ASSAM
PIN-78703

For the Petitioner (s) : Ms. B. Choudhury, Advocate.
For the Respondent (s) : Mr. A. Ganguly, Advocate.

Date of Hearing & Judgment : **14.08.2023**

BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH
JUDGMENT AND ORDER(ORAL)

The instant writ petition has been filed challenging the judgment order dated 30.5.2017 passed by the learned Assam Board of Revenue in Revenue Appeal (L) No. 2/2015 thereby affirming the order dated 04.08.2014 passed by the learned Additional Deputy Commissioner(Rev), Lakhimpur at North Lakhimpur in Revenue Appeal No. 5/2013.

2. A perusal of the materials on record show that the predecessor in interest of the Respondent Nos. 3 to 10 was the owner of a plot of land measuring 1 bigha 2 kathas 18 lechas covered by Dag No.266 of Periodic Patta No. 5 under Mouza Nowboicha of No.2 Orangbasti village revenue map in the district of Lakhimpur, Assam. The said land for the sake of convenience is hereinafter referred to as 'the land in question'. The predecessor in interest of the Respondent Nos. 3 to 10 expired on 4.10.1989. The Respondent Nos. 3 to 10 were minors at that relevant point of time. Upon attaining the majority and making enquiry they could find that the land in question had been mutated in

the name of one Haren Biswas, the predecessor-in-interest of the Petitioner. Under such circumstances, an appeal was filed before the Additional learned Deputy Commissioner, Revenue, Lakhimpur, North Lakhimpur (RKG Branch) which was registered and numbered as Revenue Appeal No.5/2013. The learned Additional Deputy Commissioner, Lakhimpur vide an order dated 04.08.2014 taking into account that the said Haren Biswas (since deceased) had no right over the land in question had set aside the mutation and directed the Circle Officer, Nowboicha Revenue Circle to correct the land records in the name of the original pattadar i.e. the predecessor-in-interest of Respondent Nos. 3 to 10 by restoring his name.

3. The Petitioner herein being aggrieved had preferred an appeal before the learned Assam Board of Revenue which was registered and numbered as RA(L) No.2/2015. The learned Assam Board of Revenue vide the judgment and order dated 30.5.2017 had dismissed the said appeal. In the said judgment dated 30.5.2017, the learned Assam Board of Revenue had observed that the records revealed that the Petitioner's father Late Haren Biswas had mutated his name in place of Late Fazar Ali from whom Late Haren Biswas never purchased the land in question. The learned Assam Board of Revenue have also taken into consideration that the Petitioner's father purchased the land in question from one Taibuddin Ali Sheikh and on the basis of that had obtained the mutation. It was also observed that Late Haren

Biswas i.e. the father of the Petitioner had purchased the land from the said Taibuddin Ali Sheikh on the basis of an affidavit dated 16.08.1998 that too for a consideration of Rs. 24,000/-. It was duly taken note of that as the land in question being an immovable property of a value more than Rs.100/-, the same can only be done by way of a registered Deed of Sale. Under such circumstances, it was observed that Late Haren Biswas did not acquire any title on the basis of the affidavit dated 16.8.1998 executed by one Taibuddin Ali Sheikh and as such found no infirmity with the order dated 4.8.2014 passed in Revenue Appeal No. 5/2013 by the Additional Deputy Commissioner, Revenue, Lakhimpur, North Lakhimpur. On the basis thereof, the appeal was dismissed. It is under such circumstances that the Petitioner herein had approached this Court assailing the orders passed by both the learned Assam Board of Revenue as well as by the Additional Deputy Commissioner, Revenue, Lakhimpur.

4. Ms. B.Choudhury, the learned counsel appearing on behalf of the Petitioner duly admits to the fact that there was no Registered Deed of Sale on the basis of which the father of the Petitioner had acquired right over the land in question. She however submits that as the land in question is a land falling within Chapter X of the Assam Land and Revenue Regulations, 1886, the registering authority cannot register the land in favour of a non tribal and it is under such circumstances, the affidavit was the document by which one Taibuddin Ali Sheikh

transferred the land in favour of the father of the Petitioner. She further submitted that as the Petitioner as well as his father were in possession of the land in question, the mutation ought not to have been cancelled.

5. On the other hand Mr. A. Ganguly appearing on behalf of the Respondent Nos. 3 to 10 submitted that taking into account Section 17(1) of the Registration Act, 1908 read with Section 54 of the Transfer of Property Act, 1882, no legal right can accrue in respect to an immovable property of a value more than Rs.100/- without a registered instrument in favour of the father of the Petitioner. It is therefore the submission of the learned counsel that on the basis of an affidavit executed by one Taibuddin Ali Sheikh on 16.08.1998, the mutation could not have been granted taking into account that no right stood devolved upon the father of the Petitioner on the basis of the said affidavit. The learned counsel further submits that there is nothing on record to show how Taibuddin Ali Sheikh acquired title over the land without a Deed of Sale being executed by the predecessor-in-interest of the Respondent Nos. 3 to 10. He therefore submitted that the learned Additional Deputy Commissioner, Revenue, Lakhimpur as well as the learned Assam Board of Revenue were justified in cancelling the mutation made in favour of the father of the Petitioner.

6. This Court have duly heard the learned counsels for the parties

and perused the materials on record. Nothing could be shown that any title had devolved upon the father of the Petitioner on the basis of a document recognized by law. This Court finds relevance to take note of the provisions of Section 54 of the Transfer of Property Act, 1882 as well as the provisions of Section 17(1) of the Registration Act, 1908 which mandates that for creation of any right over an immovable property of a value more than Rs. 100/-, the same has to be effected by way of a registered instrument. As there is no registered instrument in favour of the father of the Petitioner or in favour of the Petitioner, this Court finds no reason to interfere with the order passed by the learned Additional Deputy Commissioner, Revenue, Lakhimpur as well as by the learned Assam Board of Revenue and accordingly the instant writ petition being devoid of any merits stands dismissed.

7. Ms. B. Choudhury, the learned counsel appearing on behalf of the Petitioner submits that a suit has been filed by Respondent No. 3 to 5 being Title Suit No. 10/2016 which is pending before the Court of the learned Civil Judge, Junior Division No. 1 at Lakhimpur. She submits that the above observations should not affect the Petitioner's right in respect to the said suit.

8. On the other hand Mr. A. Ganguly, the learned counsel appearing on behalf of the Respondents submitted that the said suit is in relation to right, title and interest and the present proceedings pertains to

mutation.

9. This Court upon giving an anxious consideration to the contentions observes that the above observations so made hereinabove shall not affect the Petitioner's right in respect to the said suit. The trial Court shall decide the said suit independently without being influenced by the observations made hereinabove.

JUDGE

Comparing Assistant