

GAHC010247302019



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

Case No. : WP(C)/7716/2019

SWARUP KHERSA

S/O- LATE SURESH KHERSA, R/O- NEAR GOVT BOYS HIGH SCHOOL,
GADAIN RAZEE, HAFLONG, P.S- HAFLONG, DIST- DIMA HASAO,
HAFLONG, PIN- 788819

VERSUS

THE CHIEF EXECUTIVE MEMBER, N.C. HILLS AUTONOMOUS COUNCIL
AND 5 ORS
DIST- DIMA HASAO, HAFLONG, PIN- 788819

2:THE DEPUTY COMMISSIONER
DIMA HASAO
HAFLONG
DIST- DIMA HASAO
HAFLONG
PIN- 788819

3:THE LAND REVENUE AND SETTLEMENT OFFICER
NORTH CACHAR HILLS AUTONOMOUS COUNCIL
HAFLONG
DIST- DIMA HASAO
HAFLONG
PIN- 788819

4:THE REVENUE OFFICER (W)
N C HILLS AUTONOMOUS COUNCIL
HAFLONG
DIST- DIMA HASAO
HAFLONG

5:LOT PATWARI

I/C HAFLONG N C HILLS AUTONOMOUS COUNCIL
DIST- DIMA HASAO
HAFLONG
PIN- 788819

6:BONANI KEMPRAI
W/O- LATE POBITRO KEMPRAI
R/O- VILL- GADAIN RAZEE
NEAR TOURIST LODGE
HAFLONG
DIST- DIMA HASAO
PIN- 78881

For the Petitioner(s) : Mr. B. Baruah, Advocate

For the Respondent(s) : Mr. A. Roshid, Advocate

**BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH**

JUDGMENT AND ORDER (ORAL)

Date : 22-09-2023

1. The instant writ petition has been filed by the Petitioner challenging the illegal entry in the record of rights in favour of the Respondent No.6 in respect of a plot of land measuring 2 Kathas 5 Chataks under Patta No.517 and Dag No.118 GHT (Old) of village Haflong Town-I thereby depriving the Petitioner from his ownership rights over the said land.

2. From a perusal of the writ petition, it reveals that the father of the Petitioner Late Suresh Khersa was the original land owner of a plot of land measuring 2 Kathas 5 Chataks covered by Dag No.118 GHT (Old) included in Patta No.517 and of village Haflong Town in the District of Dima Hasao (hereinafter referred to as "the said land"). During the lifetime of the father of the Petitioner, he was in peaceful possession of the said land. After the death of

the father of the Petitioner, by right of inheritance, the said land devolved upon the Petitioner and in that regard, the Revenue Officer, Dima Hasao Autonomous Council, Haflong had issued a periodic lease for the period from 01.04.2010 to 31.03.2040. It further reveals that the said periodic lease was issued in favour of the Petitioner vide a rectification order bearing Memo No.REV/S/90/2010-11/1 dated 05.05.2010. Further to that, on the basis of the Mutation Case bearing Case No. 28(H)2011-12 dated 02.11.2012, the said land was allowed in favour of the Petitioner. The record further reveals that the Petitioner's name was also included in the record of rights.

3. The Petitioner being in need of a loan applied for a bank loan in the month of July, 2019. The Petitioner was also issued a No Objection Certificate dated 04.10.2018 by the Revenue Officer of the NC Hills Autonomous Council, Haflong. Likewise, the NC Hills Autonomous Council, Haflong, Settlement and Revenue Department also issued a Land Value Certificate dated 04.10.2018 as well as also issued Non Encumbrance Certificate dated 04.10.2018. To his utter surprise, it came to light that the name of the Respondent No.6 was shown in the land records maintained by the Land Settlement and Revenue Department of NC Hills Autonomous Council for the year 2019. The Petitioner accordingly filed a representation on 27.08.2019 before the Chief Executive Member, NC Hills Autonomous Council, the Deputy Commissioner, Dima Hasao, Haflong as well as also to the Land Revenue and Settlement Officer ventilating his grievances as regards the name of the Respondent No.6 being shown in the land records. It was the clear and categorical case of the Petitioner that the Petitioner had never sold the land to the Respondent No.6 and as such the question of the Respondent No.6's name being inserted in the land records of the said land did not arise. The petitioner thereupon met the authorities of the

Land Revenue and Settlement Department, Haflong seeking justification for incorporating the name of the Respondent No.6 in the patta land of the Petitioner and the Petitioner was informed by the said authorities that some error had occurred in the record of rights and so erroneously the patta land of the Petitioner has been shown in the name of the Respondent No.6 in place of the Petitioner. However, no fresh certified copy of the Jamabandi was issued to the Petitioner in respect to the said land despite the Petitioner applied for a fresh certified copy of the Jamabandi of the Petitioner's land on 27.08.2019. It is under such circumstances, the Petitioner has approached this Court seeking the relief(s) as aforementioned.

4. It reveals from the records that this Court vide an order dated 23.10.2019 issued notice. The records reveals that the Respondent No.6 had filed an affidavit-in-opposition on 21.09.2021. In the affidavit-in-opposition, a preliminary objection was taken as regards the maintainability of the writ petition on the ground that the matter relating to transfer of ownership of land by the competent authority revenue appeal is maintainable. Under such circumstances, the question of exercising the extraordinary jurisdiction of this Court did not arise. It was further mentioned that the father of the writ Petitioner who was the owner of the said land had transferred to the Respondent No.6 on 15.09.1999 by execution of an affidavit agreement. On the basis of the said affidavit agreement, periodic lease has been issued in favour of the Respondent No.6 by the Revenue Officer, NC Hills Autonomous Council, Haflong from 01.04.2010 to 31.03.2040. It was further mentioned that the name of the Petitioner was mutated without hearing the Respondent No.6 and on the petition filed by the Respondent No.6, the land was re-transferred to the Respondent No.6 on 01.07.2019 by cancelling the name of the Petitioner. It was

therefore the specific case of the Respondent No.6 that the Petitioner had no right, title and interest over the said land as his father has executed an affidavit agreement on 15.09.1999 and the Respondent No.6 was enjoying land by constructing houses etc. The mutation made in favour of the Petitioner was stated to be illegal and arbitrary as no notice was issued to the Respondent No.6. It was further mentioned that the Respondent No.6 was enjoying and possessing the land w.e.f. 15.09.1999 till date without any interruption. It is also the case of the Respondent No.6 that she had constructed a house/building over the said land and leased out to one Shri Nitish Nath for commercial purpose w.e.f 02.09.2016. The affidavit agreement on the basis of which the Respondent No.6 claimed that the father of the Petitioner had transferred the land to the Respondent No.6 was enclosed as Annexure-R1. The said document consists of two pages. The first page however does not contain any signature of the father of the Petitioner but in the second page, there is a purported signature of one Shri Suresh Khersa. It is further seen that the periodic lease issued in favour of the Respondent No.6 was enclosed as Annexure-R2. It reveals that the said periodic lease was issued on 14.09.2015 for the period from 01.04.2010 to 31.03.2040. It is further seen that vide an order dated 24.07.2019, the said land in respect to the periodic patta issued to the Petitioner was cancelled and was re-transferred in favour of the Respondent No.6 on the basis of the agreement dated 15.09.1999 vide Misc Case No.32(Haf) 2018-19 dated 01.07.2019. Further to that, the order dated 01.07.2019 issued by the Secretary and Revenue Officer, NC Hills Autonomous Council was enclosed as Annexure-R3.

5. The Petitioner had filed the reply to the affidavit-in-opposition filed by the Respondent No.6 denying the contents thereof. In the said affidavit-in-reply, it

was mentioned that the Respondent No.6 in collusion with the Respondent Authorities have illegally inserted the name of the Respondent No.6 in respect to the land records of the said land. It is further seen that the writ petitioner filed an additional affidavit on 27.09.2022. In the said additional affidavit, the Petitioner has stated the illegalities so committed by the Respondent Authorities while issuing the order dated 01.07.2019.

6. On 16.03.2023, the Respondent No.3 had filed an affidavit-in-opposition. It is relevant to mention that the Respondent No.3 is the Secretary Revenue, NC Hills Autonomous Council. In the said affidavit-in-opposition, it was mentioned that the said land was originally owned by the father of the Petitioner. It was further mentioned that the said land was inadvertently transferred in the name of his son i.e. the Petitioner as per Mutation Case No.28(H) of 2011-12 dated 02.11.2012. It was further mentioned that during the lifetime, the father of the Petitioner had executed an affidavit before the Magistrate at Haflong vide No. Nil dated 15.09.1999 wherein the father of the Petitioner had voluntarily handed over the aforesaid land to the Respondent No.6. Further to that, it was mentioned that in the said affidavit, the father of the Petitioner had also given the right to transfer as well as the right to obtain loan as mortgage. Under such circumstances, taking into account the affidavit of the father of the Petitioner as well as the prayer made by the Respondent No.6, the Revenue Department had transferred/re-transferred the aforesaid land to the Respondent No.6 as per the order dated 01.07.2019 passed in Misc Case No.32(Haf) of 2018-19. To the said affidavit filed by the Respondent No.3, the affidavit of the father of the Petitioner was enclosed as Annexure-1.

7. I have heard the learned counsels for the parties and have perused the materials on record. From the materials on record, there is no quarrel that the

father of the Petitioner was the owner of the said land. From the records, it is also apparent that on 04.11.2010, the periodic lease in respect to the said land was issued in favour of the Petitioner for a period of 30 years commencing from 01.04.2010 to 31.03.2040. Subsequent thereto, the land was also mutated in the name of the Petitioner on the basis of the Mutation Case No.28(M)/2011-12 dated 02.11.2012. The record further reveals that in the Jamabandi also, the name of the Petitioner was duly reflected. Not only that, in the year 2018, the No Objection for mortgaging of the said land, the Land Value Certificate as well as the Non-Encumbrance Certificate was also issued by the Secretary and Revenue Officer, NC Hills indicating clearly that the said land belong to the Petitioner. Now, the question therefore arises as to whether the Respondent Authorities could have transferred the said land in favour of the Respondent No.6 on the basis of the affidavit dated 15.09.1999 purportedly of the father of the Petitioner.

8. As already stated hereinabove, a perusal of the said affidavit dated 15.09.1999 shows that the said affidavit consists of two pages. The first page does not bear any signature of the deponent of the said affidavit. However, there is a signature in the second page. Now the question arises as to whether the said affidavit by any stretch of imagination be said to any legal force in respect to the contents of the first page. In the opinion of this Court, without there being any signature in the first page of the affidavit, the contents of the first page of the affidavit cannot be binding upon the deponent of the said affidavit or to his successor in interest.

9. Let this Court further consider the transfer made on the basis of the affidavit from another angle. This Court enquired with the learned counsel appearing on behalf of the Respondent No.3 as to whether in the Dima Hasao

District wherein the NC Hills Autonomous Council exercises control over the land matters, the Transfer of Property Act, 1882 applies. The learned counsel appearing on behalf of the Respondent No.3 duly submitted that the Transfer of Property Act, 1882 duly applies. If the Transfer of Property Act, 1882 applies and taking into account the contents of the said affidavit dated 15.09.1999 which appears to be a gift, it has to be done in terms with Section 123 of the Transfer of Property Act, 1882 failing which there can be no gift in the eyes of law.

10. Apart from the above, there is another very pertinent aspect of the matter. As already stated hereinabove, on 04.11.2010, the periodic lease was issued in favour of the Petitioner in respect to the said land. The land was mutated thereafter on the basis of the order dated 02.11.2012 in favour of the Petitioner. Under such circumstances, it is not known as to how in respect to the said land, another periodic lease could have been issued in favour of the Respondent No.6 that too without cancelling the periodic lease in favour of the Petitioner by giving due notice. It is also not known as to how the Respondent Authorities could have cancelled the mutation made in favour of the Petitioner without issuing any notice thereby mutating the name of the Respondent No.6 on the basis of an order dated 01.07.2019. These actions of the Respondent Authorities are not only in violation to the provisions of the Assam Land and Revenue Regulation, 1886 read with NC Hills (Adoption of Land and Revenue Regulation and Rules) Act, 1953 but also in complete violation to the principles of natural justice which renders the impugned actions of the Respondent Authorities violative of Article 14 of the Constitution.

11. In that view of the matter, this Court therefore sets aside the periodic lease issued in the favour of the Respondent No.6 in respect to the said land; the

order dated 01.07.2019 issued by the Secretary and Revenue Officer, NC Hills Autonomous Council as well as the order dated 24.07.2019 whereby the Petitioner's periodic lease was cancelled and re-transferred to the Respondent No.6 without serving any notice whatsoever.

12. The Respondent Authorities are therefore directed to make necessary correction of the records on the basis of the instant order and issue a certified copy of the record of rights to the Petitioner upon the submission of a certified copy of the instant judgment.

13. With the above observations and directions therefore, the petition stands allowed.

14. Before concluding, this Court however observes and clarifies that the observations made in the instant judgment and the directions passed herein shall not preclude the Respondent No.6 from initiating appropriate civil proceedings before the competent Court claiming right, title and interest over the said land, if otherwise permissible under law and the observations made hereinabove shall not affect such adjudication, if so initiated.

JUDGE

Comparing Assistant