

GAHC010258552013



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

Case No. : WP(C)/4172/2013

ON THE DEATH OF PULEN PHANGCHO, HIS LEGAL HEIRS SHRI BABURAM PHANGCHO AND ANR
S/O LATE PULEN PHANGCHO, R/O UPPER HENGRABARI, GUWAHATI 36,
P.S. DISPUR, DIST. KAMRUP (M)

2: SHRI SEMSON PHANGCHO
S/O LATE PULEN PHANGCHO
R/O UPPER HENGRABARI
GUWAHATI-36
P.S. DISPUR
DIST. KARMUP (M)

VERSUS

ASSAM BOARD OF REVENUE and 2 ORS
PANBAZAR, GHY-01

2:HENGRABARI PRATHAMIK TRIBEL MAHILA SAMITTEE
HAVING ITS REGD. OFFICE AT DISPUR-NARENGI ROAD
HENGRABARI
P.S. DISPUR
GHY-6
DIST- KARMUP METRO
ASSAM
REPRESENTED BY ITS SECRETARY BULU RAHANG
D/O LT. MONI RAM RAHANG
R/O HENGRABARI
P.S. DISPUR
GHY-6
DIST- KAMRUP METRO
ASSAM

3:THE STATE OF ASSAM
REPRESENTED BY THE COMMISSIONER and SECRETARY

REVENUE DEPARTMENT
DISPUR
GHY-

Advocate for the Petitioner : MR. P BHOWMICK

Advocate for the Respondent : MR. P BORGOHAIN

BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA

O R D E R

06.06.2023

Heard Mr. B.D. Das, learned senior counsel, assisted by Ms. R. Deka, learned counsel for the substituted petitioners. Also heard Mr. M. Chetia, learned Govt. advocate appearing for respondent no.1, Mr. K. Bhattacharjee, learned counsel for the respondent no.2 and Ms. N. Bordoloi, learned standing counsel for the Revenue Department, respondent no.3.

2. By filing this writ petition under Article 226 of the Constitution of India, the petitioner has assailed the order dated 17.05.2013 passed by the Assam Board of Revenue, Guwahati in Revenue Appeal No. 135/ RA(K)/2012.

3. In brief, the case of the petitioner is that by an order dated 16.02.2006, the Deputy Secretary to the Govt. of Assam Revenue (Settlement) Department had directed settlement of the land with predecessor of the substituted petitioner, namely, Sri Pulen Phangcho. The respondent no.2 by claiming that

the petitioner had encroached and entered into 13 lechas out of his allotted 4k-16L of land, filed a suit being TS No. 101/2012 for declaration of right, title and interest, recovery of khas possession and permanent injunction as well as cancellation of patta with ancillary prayers. Along with the suit, the respondent no.2 had also filed an injunction application being Misc.(J) Case No.190/2012 and the Court of learned Munsiff No.4, Kamrup, Guwahati by an order dated 04.09.2012, restrained the predecessors of the petitioner from entering into the Schedule-A land, but excluding the land of Schedule-B till the disposal of the suit. Schedule-B land is the 13 lechas of land settled in favour of the petitioner. On or about 23.08.2012, the respondent no.2 filed an application under Section 147 of the Assam Land and Revenue Regulation, 1886 read with Section 151 of the said Regulation before the Assam Board of Revenue where it was registered as Revenue Appeal No. 135/RA(K)/2012 along with an application for condonation of delay. The Assam Board of Revenue heard the matter and by order 17.05.2013, while condoning the delay, held that the patta issued in favour of the respondent no.2 over 13 lechas of disputed land was illegal and was cancelled. It was also held that the letter dated 16.02.2006 issued by the government to settle the land in favour of the respondent no.2 be treated as infructuous, having been issued beyond jurisdiction and as a part of a fraud which deserved prosecution.

4. Assailing the said order, the learned senior counsel for the substituted petitioner has submitted that when a suit regarding right, title and interest is pending for adjudication before the jurisdictional court, i.e. the Court of Munsiff No. 4, Kamrup Guwahati, an appeal before the Assam Board of Revenue could not have been simultaneously filed by the respondent no.2, who is the plaintiff in the said suit. It is also submitted that against the order of settlement,

appellate jurisdiction is not available to the Assam Board of Revenue, as the said Board is not vested with power to entertain such appeal. It is also submitted that the civil Court did not grant an injunction with regard to Schedule-B land i.e. the 13 lechas of land settled in favour of the petitioner, thereafter, the respondent no.2 had approached the Assam Board of Revenue.

5. Per contra, while opposing the prayer made in this writ petition, by referring to the case of *Tuniram Katoni and Ors. Vs. Golap Chandra Katoni, (2004) 3 GLR 641*, it is submitted that notwithstanding his stand that the appeal before the Assam Board of Revenue was maintainable, even the civil Court jurisdiction was not barred to decide title involved in respect of the suit property. It is also submitted that as the Assam Board of Revenue had passed an order in interlocutory application filed under section 147 of the Assam Land and Revenue Regulation, 1886, the Assam Board of Revenue would be vested with the power and authority to admit an appeal.

6. Under the Assam Land and Revenue Regulation, 1886, the power of the Board to entertain an appeal can be culled out from the provisions of Section 147 of the said Regulation, which provides that appeal shall lie to the Board from orders, original appellate passed by the Deputy Commissioner, Settlement Officer/ Survey Officer. In this case, as per Annexure-1 to the writ petition, the orders of settlement was passed by the Government through the Deputy Secretary, Govt. of Assam (Revenue) Settlement Department.

7. As per the provisions of Section 4 of the Assam Board of Revenue Act, 1962, the Board is vested with power and jurisdiction to entertain appeals and petitions and revise decision in revenue cases arising under the provisions of

enactments specified in Schedule-A to the said Act. As per copy of the said Act of 1962, which is available with the Court, Schedule-A thereto enumerates the following Acts, viz., (1) The Opium Act 1878, (Appeals or Revision Against an Order Passed Under Sections 23, 24 And 25), (2) The Assam Local Rates Regulation, 1879, (3) The Assam Forest Regulation, 1891 (Appeals In Matters of Sections 11, 12, 13 and 14) (Revision Under Section 20 of Arrangements Made Under Section 13 or 16), (4) The Assam Motor Vehicle Taxation Act, 1936 (Revision of Orders Under Section 17) and (5) The Motor Vehicles Act, 1939 (Appeals Against the Order of State Transport Authority in matter falling Under Clauses (a), (b), (c), (d), (e), (f), (g), (h) and (i) of Section 64).

8. Be that as it may, as detailed argument has not been heard on the power of the Board to entertain an appeal, no conclusive finding of the Court is returned in this regard.

9. Insofar as the decision of this Court in the case of *Tuliram Katoni (supra)* is concerned, the Court finds that there is a reference to Full Bench of this Court in the case of *Daulatram Lakhani Vs. State of Assam & Ors., (1989) 1 GLR 131*, where after discussing several case laws on the point, the Full Bench of this Court had held that the civil Courts' jurisdiction would not be barred, amongst others, when the respondent no.2 herein is seeking declaration of his title over the land from which he is sought to be evicted or where complicated questions relating to title and possession are involved. The ratio was followed in the case of *Tuliram (supra)*. In the present case in hand, the respondent no.2 had approached the civil Court by filing TS No. 101/2012, which is stated to be still pending for adjudication before the court of Munisff No. 4, Kamrup, Guwahati and, amongst others, one of the prayers of the respondent no.2 is to declare

right of the respondent no. 2 Samitee to hold and possess entire Schedule-A land as lawful allottee of the Government of Assam. Therefore, when the issue of title is being adjudicated before a court having jurisdiction conferred to decide the title, the impugned decision of the Assam Board of Revenue dated 17.05.2013 in Revenue Appeal No. 135/RA(K)/ 2012 cannot be allowed to prevail.

10. It is also noted that in the objection filed by the petitioner before the Assam Board of Revenue, a statement has been made to the effect that the petitioner had appeared before the court in TS 101/2012 and that injunction was refused by order dated 04.09.2012 in Misc.(J) Case No. 190/2012 and it was specifically mentioned in the petitioner's objection that the appellant i.e. the respondent no.2 herein cannot claim same relief before two forum and also prayed that the appeal was liable to be dismissed on principle of *res sub-judice*. The said aspect of the matter is found to have not been considered by the Assam Board of Revenue in the impugned order. Therefore, the Court has no hesitation to set aside the impugned order dated 17.05.2013 passed by the Assam Board of Revenue in Revenue Appeal No. 135/RA(K)/ 2012.

11. It is made clear that noting observed in this order would not prejudice both sides i.e. the petitioner and respondent no.2 when the suit i.e. TS 101/2012 is decided on its own merit.

12. The LCR be sent back to the Assam Board of Revenue, Guwahati for hearing the matter afresh.

13. Both parties i.e. the petitioner and the respondent no.2 shall appear

before the Assam Board of Revenue on 30.06.2023 and by producing the certified copy of this order, await for further instructions from the said learned Board.

14. This writ petition stands allowed to the extent as indicated above.

JUDGE

Comparing Assistant