

GAHC010263122022



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

Case No. : WP(C)/20/2023

NURE ALIMUN NESSA AND ANR
W/O LT. MAZIMUDDIN AHMED, D/O LATE MOHSEN AHMED, R/O PURANI
BAKUL PARA, P.O.-GOALPARA, P.S.-GOALPARA, DIST-GOALPARA, ASSAM

2: MUSTT GULNEHAR BEGUM
D/O LT RAHEN ALI
R/O NATUN BAKURPARA
P.O. AND P.S.-GOALPARA
DIST-GOALPARA
ASSA

VERSUS

THE STATE OF ASSAM AND 9 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE GOVT.
OF ASSAM, REVENUE DEPARTMENT, DISPUR, GUWAHATI-781006, ASSAM

2:THE DEPUTY COMMISSIONER
GOALPARA
DIST-GOALPARA
ASSAM

3:THE ADDL. DEPUTY COMMISSIONER
GOALPARA
DIST-GOALPARA
ASSAM

4:THE S.D.O. (SADAR)
GOALPARA
DIST-GOALPARA
ASSAM

5:THE ASSISTANT SETTLEMENT OFFICER
BALIJANA REVENUE CIRCLE

DIST-GOALPARA
ASSAM

6:MUKTAZA ALI
S/O LT MONOWAR ALI
R/O WARD NO. 3
GOALPARA TOWN
P.O. AND P.S.-GOALPARA
DIST-GOALPARA
ASSAM

7:NAZIMA ZANNAT
D/O LT MONOWAR ALI
R/O WARD NO. 3
GOALPARA TOWN
P.O. AND P.S.-GOALPARA
DIST-GOALPARA
ASSAM

8:JAHEED ALI
S/O LT MONOWAR ALI
R/O WARD NO. 3
GOALPARA TOWN
P.O. AND P.S.-GOALPARA
DIST-GOALPARA
ASSAM

9:SHAJEED ALI
S/O LT MONOWAR ALI
R/O WARD NO. 3
GOALPARA TOWN
P.O. AND P.S.-GOALPARA
DIST-GOALPARA
ASSAM

10:NAYARA ZANNAT
D/O LT MONOWAR ALI
R/O WARD NO. 3
GOALPARA TOWN
P.O. AND P.S.-GOALPARA
DIST-GOALPARA
ASSA

Advocate for the Petitioner : MR H R A CHOUDHURY

Advocate for the Respondent : SC, REVENUE

**BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA**

ORDER

Date : 20.01.2023

Heard Mr. R. Choudhury, learned counsel for the petitioner. Also heard Ms. G. Hazarika, learned standing counsel for the Revenue Department, representing respondent no.1, Mr. M. Chetia, learned Govt. advocate appearing for respondent nos. 2 to 5 and Mr. R. Ghatak, learned counsel for respondent nos. 6 to 10.

2. By filing this writ petition under Article 226 of the Constitution of India, the petitioner has assailed the legality of the judgment and order dated 28.10.2022 passed by the learned Assam Board of Revenue, Guwahati in case No. 64 RA(G)/2018 and for further consequential reliefs.

3. In the present case in hand, the petitioners herein had filed a petition under Section 32 of the Assam Land & Revenue Regulation, 1886 (1886 Regulation for short) for correction of the mutation of the disputed land by deleting the name of the respondent nos. 6 to 10. The private respondents contested the case. As nothing happened in the said proceeding, the petitioners had submitted a petition under Section 151 of the 1886 Regulation before the Deputy Commissioner, Goalpara and prayer was made to pass an order for correction of mutation. The said matter was also contested by the private respondents. The application was filed under Section 151 of the 1886 Regulation was preferred as Misc. Appeal No.2/2017, which was disposed of by order dated 07.08.2018.

4. The learned counsel for the petitioners has submitted that after filing of the said petition under Section 151 of 1886 Regulation, the petitioners came to know about an order dated 27.11.2017 passed by the Assistant Settlement Officer, Balijan (ASO for short) in Misc. Case No. 102/2015-16 whereby both the authorities had cancelled the mutation in the name of the respondent nos. 6 to 10, the private respondents filed an appeal before the Assam Board of Revenue, Guwahati.

5. The learned counsel for the petitioners has referred to the impugned order dated 28.10.2022 passed by the Assam Board of Revenue, Guwahati in Case No. 64 RA (G)/2018 has submitted that on perusal of the lower Court's record, the Assam Board of Revenue, Guwahati found out that the impugned order was not passed by the Addl. Deputy Commissioner, Goalpara, but it was passed by the Sub-Division Officer (Sadar), Goalpara (SDO in short) to whom the matter was made over by the Deputy Commissioner, Goalpara for disposal. Accordingly, in the proceedings before the Assam Board of Revenue, Guwahati, the petitioners took a plea that as the orders were passed by the SDO, the appeal would lie before the Deputy Commissioner and not before the Assam Board of Revenue, Guwahati, which is seen to be in consonance with the provisions of clause (b) of Section 147 of the 1886 Regulation whereby it is provided that appeal shall lie under this Regulation to the Deputy Commissioner from the orders passed by a SDO and Asstt. Commissioner or Extra Asstt. Commissioner.

6. Nonetheless, the Assam Board of Revenue, Guwahati by the impugned judgment dated 28.10.2022 entered into the merit of the appeal and concluded with the order dated 07.08.2018 passed by the SDO, Goalpara suffers from

series deficiencies in appreciation of the facts and evidences as well as legal procedure and principles of natural justice and therefore, by setting aside the said order, the case was remanded back to the Deputy Commissioner, Goalpara for a fresh disposal after giving all the interested parties an opportunity to be heard.

7. The learned counsel for both sides have been heard.

8. The learned counsel for the private respondents has submitted that the order was set aside and the matter was remanded back to the Deputy Commissioner, Goalpara for a fresh disposal, the petitioners would not suffer any prejudice as the inadvertent error, if any, has been corrected by the appellate order.

9. In the considered opinion of the Court, under scheme of the 1886 Regulation, we do not find that the Deputy Commissioner, Goalpara before whom the appeal is filed within the meaning and ambit of Section 147(b) of the 1886 Regulation, the Deputy Commissioner has any authority to delegate the appeal to a subordinate officer of the rank of SDO. In the said context, the learned counsel for the petitioners has referred to the provision of Section 130 of the 1886 Regulation. In the considered opinion of this Court, the said power merely permits the Deputy Commissioner or the Assam Board of Revenue, Guwahati to transfer the matters which are pending for adjudication before the subordinate authorities. Therefore, the said provision would not entitle the Deputy Commissioner to delegate the power of adjudication of appeal within his cognizance to be taken-up by any authority subordinate to him. Therefore, the said contention of the learned counsel for the petitioners is rejected. The Court is of the considered opinion that the order dated 07.08.2018 passed by the

SDO, Goalpara in connection with Misc. Appeal No. 2/2017 suffered from the vice of exercise of jurisdiction not vested on the said authority by the law.

10. The Court also finds force in the submissions made by the learned counsel for the petitioners that the application filed under Section 151 of the 1886 Regulation by the petitioners was only filed as according to them no orders were passed by the ASO, Goalpara in their mutation application. Nonetheless, the Deputy Commissioner, Goalpara treated the said application filed under Section 151 to be an appeal and it was the appeal which was delegated to a subordinate Court for disposal. The said procedure makes the order dated 07.08.2018 non est in the eyes of law, having been passed without jurisdiction.

11. At this stage, the learned counsel for the petitioners has questioned the order dated 27.01.2017 passed by the ASO, Balijan Revenue Circle in case no. 102/2015-16 by submitting that the said order came to light only in course of the proceeding before the Assam Board of Revenue, Guwahati. In order to emphasize that the said order had not come to light earlier, the learned counsel for the petitioners has also referred to the affidavit-in-opposition filed by the private respondents in the proceeding before the Assam Board of Revenue, Guwahati to project that in the objection, no reference was made by the private respondents to the said order dated 27.01.2017. Accordingly, it was submitted that the said order dated 27.01.2017, was passed by the SDO behind the back of the parties.

12. Be that as it may, in the considered opinion of this Court, even the order dated 27.01.2017, which later on came to notice, having been passed by the ASO, Balijan would be appealable within the scope and ambit of Section 147

of the 1886 Regulation. Under such circumstances, while the Court is inclined to interfere with the impugned order dated 28.10.2022 passed by the Assam Board of Revenue, Guwahati in Case No. 64 RA(G)/2018 on the ground that if the Assam Board of Revenue, Guwahati did not have jurisdiction to entertain an appeal as per the provisions of Section 147(b) of the 1886 Regulation, the said authority ought not to have gone into the merit of the case of the parties.

13. As the Assam Board of Revenue, Guwahati, by the said order has remanded back the matter before the Deputy Commissioner, Goalpara for a fresh disposal, insofar as the said observation is concerned, this Court concurs with the said order of remand.

14. Having noted that the case projected by the petitioners is that the order dated 27.01.2017 passed by the ASO, Balijan came to light only in course of proceedings of Assam Board of Revenue, Guwahati, the Court is of the considered opinion that in the event the petitioners prefer any appeal within a period of 1(one) month from the date of this order against the said order dated 27.01.2017, the period spent in the proceedings before Assam Board of Revenue, Guwahati as well as in preferring this writ petition would be a ground available to the petitioners for exclusion of time spent in proceedings bona fide before the Court without jurisdiction.

15. The effect of the order would be that the proceeding is remanded back to the Deputy Commissioner, Goalpara, who shall not be influenced by the finding as recorded by the Assam Board of Revenue, Guwahati, when the parties are heard on merit.

16. In view of the jurisdictional issue involved, the Court is inclined to

dispose of this writ petition at the motion stage without issuance of notice on the respondents.

JUDGE

Comparing Assistant