

GAHC010266432013



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

Case No. : WP(C)/4701/2013

ON THE DEATH OF SAYED MOINUDDIN AHMED HIS LEGAL HEIRS AND
ORS

1(a) SYED ABU SAYEED

S/O LATE SYED MOINUDDIN AHMED R/O KISMATPUR, BALADMARI P.O.
BALADMARI P.S. GOALPARA DISTRICT GOALPARA ASSAM PIN 783121.

1(b) SYED ABU TALHA

S/O LATE SYED MOINUDDIN AHMED R/O KISMATPUR, BALADMARI P.O.
BALADMARI P.S. GOALPARA DISTRICT GOALPARA ASSAM PIN 783121.

2: SYED MOHIBULLA

3: SYED ATA MOHAMMAD JAN

S/O LT. SYED MAHIUDDIN @ BABU

R/O CHANDARIA

AGIA ROAD

P.O. BALADMARI

P.S. GOALPARA

DIST- GOALPARA

ASSA

VERSUS

THE STATE OF ASSAM AND 3 ORS

REPRESENTED BY THE COMMISSIONER AND SECRETARY, REVENUE
DEPARTMENT, DISPUR, GHY-6

2:THE DY. COMMISSIONER

GOALPARA DISTRICT AT GOALPARA

3:THE SETTLEMENT OFFICER

BALIJANA REVENUE CIRCLE

GOALPARA

4:ANJUMAN E KHANDEMUL ISLAM
A SOCIETY REPRESENTED BY ITS GENERAL SECRETARY MD. ISMILE
HUSSAIN
GOALPARA TOWN
P.O. and P.S. GOALPAR

For the Petitioner(s)	: Mr. B. B. Narzari, Sr. Advocate : Mr. S. Chouhan, Advocate
For the Respondent(s)	: Ms. U. Das, Addl. Sr. Government Advocate : Mrs. R. Choudhury, Advocate

BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH

JUDGMENT AND ORDER (ORAL)

Date : 07-11-2023

1. The instant writ petition has been filed by the Petitioners challenging the judgment dated 20.06.2013 passed by the learned Assam Board of Revenue in Case No.151 RA(G)/1991.

2. The case of the Petitioners as could be discerned from the pleadings as well as the materials on record is that one Hasarat Abul Quasim Khorasani was the disciple of Sayed Md. Ata Jan who came to India from Iran in 18th Century and thereafter he reached Goalpara and started living there. The said Hasarat Abul Quasim Khorasani was regarded as the powerful Pir and he had many disciples and devotees in Goalpara. In the year 1896, the said Pir commonly known as Pir Saheb expired and his disciples, devotees and his son namely Bahauddin decided to burry him and buried him in the top of the hillock. The said Bahauddin also died leaving his son and legal heir one Syed Mahiuddin.

On 11.11.2004, the said Syed Mahiuddin also expired leaving his three sons namely (i) Syed Moinuddin Ahmed, (ii) Syed Mahibulla and (iii) Syed Ata Mohammad Jan. The said three persons who were the grandsons of the popular Pir Saheb were taking care of the Kabarsthan as well as the Majar. In the year 1978, some persons of the Goalpara Town started disturbing the Petitioners' father and wanted to include the graveyard of Pir Saheb within the Muslim graveyard. However the father of the Petitioners' resisted such efforts.

3. It has also been mentioned in the writ petition that the Respondent No.4 herein had filed a suit being Title Suit No.35/1978 in the Court of the Munsiff No.2, Goalpara praying for declaration that the graveyard of Pir Saheb is a public graveyard and further for a declaration that the Respondent No.4 who was the plaintiff was entitled to get the income of graveyard and for permanent injunction restraining the Petitioners' father. The Petitioners' father duly contested the said suit by filing written statement denying the claim of the Respondent No.4. The said suit being Title Suit No.35/1978 was dismissed by the Court of the Munsiff No.2, Goalpara vide a judgment and decree dated 27.07.1987.

4. It is the further case of the Petitioners that even after the dismissal of Title Suit No.35/1978, the Private Respondent No.4 started disturbing the Petitioners' father for which the Petitioners' father was compelled to file a suit being Title Suit No.176/1978 before the Court of the Munsiff, Goalpara praying for declaration that the graveyard of the Pir Saheb is a private Dargah of Petitioners' father's family and also for confirmation of possession and permanent injunction.

5. At this stage, this Court finds it relevant to mention that the said suit

being Title Suit No.176/1978 was filed only against the State of Assam and not against the Private Respondent No.4. Be that as it may, the said suit being Title Suit No.176/1978 was decreed vide a judgment and decree dated 31.03.1981 holding inter alia that the suit land was declared as the property of the Dargah and the Plaintiff's right, title and possession over the suit land was also declared. The defendant who was the State of Assam was permanently restrained from interfering in the plaintiff's possession over the Dargah land. It was further mentioned that the record of rights be accordingly corrected.

6. From the records and more particularly the decree so passed in Title Suit No.176/1978 reveals that the land upon which the decree was passed in favour of the Petitioners' predecessor in interest was a plot of land measuring $\frac{1}{2}$ Bigha i.e. 2 Kathas 10 Lechas which is a part of Dag No.116 of Goalpara Town and was bounded on the North, South and West by the Muslim graveyard and on the East by the Agia Road. Pursuant to the said judgment and decree passed by the learned Civil Court, the Settlement Officer passed an order on 13.09.1991 thereby issuing a Khatian bearing No.127 in respect to a plot of land measuring 2 Kathas 10 Lechas as the graveyard of Pir Saheb (Dargah) and in the name of Syed Mahiuddin Khadem for the purpose of looking after the ancestral Shrine. On the basis of the said order, the records were duly corrected and a new Dag number was created being Dag No.227 out of Dag No.116.

7. It further reveals that the Assam Board of Wakf had filed a suit against the predecessor in interest of the Petitioners challenging the judgment and decree passed in Title Suit No.176/1978. The said suit was registered and numbered as Title Suit No.31/1992. Vide a judgment and decree dated

13.08.1998, the said suit was dismissed. Contemporarily, the Respondent No.4 had also filed a proceedings before the Assam Board of Revenue under Sections 147/151 of the Assam Land and Revenue Regulations, 1886 challenging the order dated 13.09.1991 issued by the Settlement Officer, Goalpara whereby the Khatian was issued in favour of the predecessor in interest of the Petitioners as well as also creation of a new Dag being Dag No.227 by partitioning from Dag No.116. The record further reveals that the said appeal was dismissed by the learned Assam Board of Revenue vide an order dated 26.12.2000. It is however relevant to take note of that the said judgment was pronounced by a single Member of the learned Assam Board of Revenue. Being aggrieved, the Respondent No.4 approached this Court under Article 226 of the Constitution challenging the judgment and order dated 26.12.2000 which was registered and numbered as WP(C) No.2048/2001.

8. This Court vide an order dated 29.01.2013 set aside the judgment dated 26.12.2000 and remanded the matter back to the learned Assam Board of Revenue with a direction that the appeal be heard by a Division Bench of the Board and the parties were therefore directed to appear before the learned Board on 25.03.2013 for further orders. Subsequent thereto, the Division Bench of the learned Board heard the matter and vide the impugned judgment and order dated 20.06.2013 allowed the appeal filed by the Respondent No.4 thereby cancelling the Khatian No.127 by creation of the Dag No. 277 (new) (sic 227) issued by the Settlement Officer in the name of Pir Saheb Dargah on the basis of the Civil Court's order as well as the order passed by the Settlement Officer on 13.09.1991. At the same time, the learned Assam Board of Revenue directed the Settlement Officer/Deputy Commissioner, Goalpara to pass appropriate order for allotment of 2 Kathas 10 Lechas of land in the name

of Pir Saheb Dargah as per the schedule mentioned and the appellant i.e. the Respondent No.4 herein was given the liberty to apply for allotment of the land under Dag No.113, 116, 127 in the name of public Kabarsthan as per the Wakf Act, if it desired so. Being aggrieved, the Petitioners have approached this Court challenging the impugned order dated 20.06.2013.

9. I have heard Mr. B. B. Narzari, the learned Senior counsel and Mr. S. Chouhan, the learned counsel appearing on behalf of the Petitioners. I have also heard Ms. U. Das, the learned Additional Senior Government Advocate appearing on behalf of the State of Assam and Mrs. R. Choudhury, the learned counsel appearing on behalf of the Respondent No.4.

10. From a perusal of the materials on record, it appears that the land covered by Dag No.116 is a Government land. The dispute in question is in reference to a plot of land measuring 2 Kathas 10 Lechas in Dag No.116. The competent Civil Court had in the judgment and decree dated 31.03.1981 in Title Suit No.176/1978 held that the predecessor in interest of the Petitioners who was the plaintiff in the said suit had right, title, interest and possession over the land specifically described in Schedule-A to the decree and the said land has also been declared to be a property of Dargah. The State of Assam was also permanently restrained from interfering into the plaintiff's possession over the Dargah land. The said judgment and decree had attained finality in view of no challenge being made by the State of Assam or being set aside in any other proceedings collateral.

11. It is also seen that on the basis of the said judgment and decree, the Deputy Commissioner acted upon it and thereupon the Settlement Officer vide an order dated 13.09.1991 created a new Dag being Dag No.227 out of Dag

No.116 and issued the Khatian No.127 in favour of the predecessor in interest of the Petitioners of the land measuring 2 Kathas 10 Lechas. Under such circumstances, the learned Assam Board of Revenue was bound by the declaration of the right, title and interest along with the possession in favour of the predecessor in interest of the Petitioners. However, a perusal of the impugned judgment reveals that the learned Assam Board of Revenue holding inter alia that the Civil Court's judgment and decree was not binding, cancelled the Khatian issued in favour of the predecessor in interest of the Petitioners and passed appropriate directions for allotment of the said land in favour of the predecessor in interest of the Petitioners vide the impugned judgment. In the opinion of this Court, the impugned judgment is contrary to the well settled principles of law that the Civil Court's decree is binding upon the Revenue Courts.

12. Under such circumstances, this Court sets aside the impugned judgment dated 20.06.2013 passed in Case No.151 RA(G)/1991 and restores the Khatian bearing No.127 in the name of the predecessor in interest of the Petitioners as well as the order of the Settlement Officer dated 13.09.1991.

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

14. The Registry is directed to forthwith return the LCR to the Court below.

JUDGE

Comparing Assistant