

GAHC010013862013



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

Case No. : WP(C)/7261/2013

PAKHINDRA DEKA
S/O LT. DEBENDRA NATH DEKA, R/O BARKURIHA, P.O. and P.S. NALBARI,
DIST- NALBARI, ASSAM, PIN-781335

VERSUS

ASSAM BORAD OF REVENUE and 3 ORS
PANBAZAR, GHY-1

2:THE DY. COMMISSIONER
NALBARI DISTRICT
P.O.
P.S. and DIST- NALBARI
ASSAM
PIN-781335

3:THE SUB DY. COLLECTOR
NALBARI REVENUE CIRCLE
P.O.
P.S. and DIST- NALBARI
ASSAM
PIN-781335

4:GADADHAR BHUYAN
S/O LT. SISHU BHUYAN
R/O KAZIPARA
NALBARI TOWN
P.O.
P.S. and DIST- NALBARI
ASSA

Advocate for the Petitioner : MRG P BHOWMIK

Advocate for the Respondent : MRS.V L SINGH

BEFORE

HON'BLE MR JUSTICE ARUN DEV CHOUDHURY

For the Petitioners : Mr. SK Goswami, Advocate.
For the Respondents : Mr. H Sarma, Sr. GA.
Date of Hearing : 19.03.2024
Date of Order : 19.03.2024

JUDGMENT AND ORDER(ORAL)

1. Heard Mr. SK Goswami, learned counsel for the petitioner. Also heard Mr. H Sarma, learned Additional Senior Government Advocate from the State of Assam. None appears for the private respondent.
2. The present writ petition is filed assailing judgment dated 02.04.2007 passed by the Assam Board of Revenue in case No. 98 RA (NL)/06. The aforesaid Revenue Appeal was preferred by the private respondent against an order passed by the Deputy Commissioner, Nalbari in Sale Case No. 508/1970-71 affecting a revenue sale dated 12.01.1972. Such sale was interfered with by the Board.
3. The basic ground of challenge is that the Assam Board of Revenue has exceeded in its jurisdiction while entertaining the aforesaid appeal preferred after 32 years of the sale, more particularly in a given fact that a challenge earlier made to such sale by the State respondent was negated by the same Board of Revenue by order dated 02.02.1983 passed in Case No. 129 RA (K)/1982.

4. The background fact of the litigation, which are discernible from the record as well as from the order passed earlier by this court in Civil Rule No. 843/1983 and Civil Rule No. 842/1983 preferred by the State of Assam against the earlier order of the Board of Revenue dated 02.02.1983. The following facts can be summarized:

- I. In a revenue auction sale case No. 508/1970-71, the predecessor-in-interest of the present petitioner purchased the land in question.
- II. The sale certificate was issued on 08.04.1972.
- III. Such auction sale was challenged by the Government of Assam by filing an appeal before the Board of Revenue, which was numbered as 129 RA(K)/1982 and 130 RA (K)/1982, basically on the ground that land was acquired for PWD prior to the sale and therefore the land could not have been sold for default of the earlier owner
- IV. The Board of Revenue by common judgment dated 02.02.1983 dismissed the both appeals.
- V. Being aggrieved, the State of Assam approached this court by filing Civil Rule No. 842/1983 and Civil Rule No. 843/1983. This court remanded the matters back to the Board of Revenue by setting aside the dismissal order dated 02.02.1983. Thereafter, on being remanded, the Board of Revenue once again dismissed both the appeals under its order dated 17.11.2003. The State of Assam did not make any challenge to such decision of the Board of Revenue. Thus the sale in question attained finality.
- VI. The fact remains that in the meantime, the State acquired the

land again in question by paying compensation to the persons who purchased the land under the sale, which was challenged by the State in LA case No. 09/2005.

5. Subsequently, the respondent No. 4 preferred RA 98 RA (NL)/06 with a petition for condonation of delay of 32 years. Such delay was condoned by the Board of Revenue and the appeal was allowed by setting aside the sale.
6. The Board of Revenue has condoned the delay of 32 years and allowed the appeal by way of the impugned judgment on the ground that no notice was served to the respondent No. 4. However, from the judgment passed by this court in Civil Rule No. 842/1983, it is seen that the said respondent No. 4 himself received compensation on 13.11.1995 from the land acquisition officer.
7. That apart the issue as regards the validity of the sale was determined by the Board of Revenue, after remand by this court and such sale was not interfered with and such fact was also brought to the notice of the Assam Board of Revenue, however, the Board of Revenue conveniently brushed it aside.
8. Mr. H Sarma, learned counsel for the State submits that the State has already acquired the land and the PWD Building, Quarters have already been constructed over the land .Accordingly, in totality of the matter, this court is of the unhesitant view that the Board of Revenue exceeded in its jurisdiction by setting aside the sale in question more particularly by ignoring the determination made by the same Board of Revenue in the earlier proceeding and challenge made to the same sale process. In the

aforesaid backdrop the delay in preferring the appeal before the Board can't also be termed as sufficient cause, which the Board failed to appreciate. Further, the fact also remains that the land has already been acquired by the State and compensation has already been paid to the co-pattadars and the private respondent. However, payment of land acquisition compensation to the present petitioner has not been released for the pendency of the writ petition.

9. Accordingly, the present writ petition is allowed by setting aside the impugned order dated 02.04.2007 passed by the Assam Board of Revenue in case No. 98 RA (NL)/06. Interim order, if any, stands vacated.

JUDGE

Comparing Assistant