

GAHC010152632019



2024:GAU-AS:9222

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

Case No. : WP(C)/4787/2019

JOSHAN ALI SARKAR @ AHMED
S/O LT. BASIR UDDIN AHMED, R/O KEDAR PART III, CIRCLE AND P.S.
GOLAKGANJ, DIST. DHUBRI, ASSAM, PIN-783334

VERSUS

THE STATE OF ASSAM AND 3 ORS.
REP.BY THE COMMISSIONER AND SECRETARY, GOVT. OF ASSAM, DEPTT.
OF REVENUE, DISPUR, GUWAHATI-781006

2:THE ASSAM BOARD OF REVENUE
AT PALTANBAZAR
GUWAHATI-781001

3:AMULYA BAISHNAB
S/O LT. KAILASH BAISHNAB
R/O VILL. KEDAR PART-III
CIRCLE AND P.S. GOLOKGANJ
DIST. DHUBRI
ASSAM
PIN-783334

4:AMAL BAISHNAB
S/O LT. KAILASH BAISHNAB
R/O VILL. KEDAR PART-III
CIRCLE AND P.S. GOLOKGANJ
DIST. DHUBRI
ASSAM
PIN-78333

Advocate for the Petitioner : MR D KALITA, MR A K SHARMA

Advocate for the Respondent : SC, REVENUE, MR. S K GHOSH (R-3&4),MS F AHMED (R-3,4),MS M KALITA,MR G P BHOWMIK

BEFORE

HON'BLE MR JUSTICE ARUN DEV CHOUDHURY

For the Petitioner : Mr. D Kalita, Advocate
For the Respondents : Mr. SK Ghosh, Advocate
Date of Hearing : 17.09.2024
Date of Judgment : 17.09.2024

JUDGMENT AND ORDER(ORAL)

Heard Mr. D Kalita, learned counsel for the petitioner. Also heard Mr. SK Ghosh, learned standing counsel for the respondent Nos. 3 and 4.

2. The present writ petition is directed against the judgment and order dated 29.03.2019 passed by the Assam Board of Revenue, Guwahati in case No. 72RA(DBR)/2016. By the said order the challenge made to an order dated 24.08.2015 passed by the Settlement Officer, Dhubri in Misc. Appeal No. 01/2015 was negated and the order dated 30.10.2014 of the Assistant Settlement Officer, Golokganj Revenue Circle passed in Miscellaneous case No. 122/2014 was interfered with.
3. The brief fact of the case is that the petitioner herein applied for correction of Ryot record. In the said Ryoti record one Helmechu Roy was registered as Ryot under landlord, namely, Baikantha Ch. Barman, Bhubon Ch. Barman, both sons of Bishnu Barman and Pran Hari Barman son of Pushpa Barman in respect of a plot of land measuring 15 Lechas in Dag No. 319/170 of K.P. Patta No. 71/177 of village Kedar Part-III and in respect of a plot of land measuring 3 Kathas 10 Lechas bearing Dag No. 321/271 of K.P. Patta No. 71/117 of village Kedar Part-III. The petitioner sought for correction of said Ryoti record in his favour on the basis of possession, sukani patra and on the basis of paying land revenue to the Jotders from last 20 to 25 years. The said application was registered as Misc. case No. 122/2014.
4. The Assistant Settlement Officer, Golokganj Revenue Circle by order dated 30.10.2014 allowed such application. Accordingly, records were directed to be corrected as Ryot under the original pattadar on the basis of actual possession, sukani patra and revenue pay record to the Jotders.

Being aggrieved by the aforesaid order, the respondent Nos. 3 and 4 claiming to be the legal heirs of original Ryot preferred an appeal before the Settlement Officer and the Settlement Officer also dismissed the appeal on the ground that the Assistant Settlement Officer had concluded that the applicant in Misc. Case. No. 122/2014 has been possessing the land since 20-25 years and that the applicant possessed the required record for recording his name as tenant as per provision of Assam (Temporarily Settled Areas) Tenancy Act, 1971. However, what are those material to come into such a conclusion is neither dealt with nor any discussion has been made.

5. Being aggrieved the respondents approached the Assam Board of Revenue, who in turn interfered with the decision of both the revenue authorities i.e. Assistant Settlement Officer and Settlement Officer on the basis of the record. The Board of Revenue came to a conclusion that the present petitioner or his predecessor was not tenant of the land in question prior to passing of the impugned order and one Helmechu Roy, the predecessor-in-interest of the respondent was the recorded tenant of the land in question. It was also concluded that the order has been passed without giving any opportunity of hearing to the respondent for furnishing authentic document to prove that they are the legal heirs of the deceased recorded Ryot and accordingly the orders were set aside.
6. In the aforesaid backdrop, the learned counsel for the petitioner submits that the Board of Revenue would not have passed such an order holding the respondent to be the legal heir of the original recorded Ryot inasmuch as such determination can only be made by a competent Civil Court. Therefore, the respondents ought to have been relegated to Civil Court for ascertaining their right, title and interest.
7. This court has perused the material available on record.
8. Admittedly, the order dated 30.10.2014 passed by the Assistant Settlement Officer by which the petitioner has acquired status of an occupancy tenant discloses that one Helmechu Roy is already recorded as Ryot over the said land. Therefore, in the considered opinion of this court, firstly a notice ought to have been issued to the said Ryot or his legal heirs as the case may be. It is an admitted position that prior to passing of order dated 30.10.2014, neither the name of the petitioner or his predecessor-in-interest was recorded as occupancy tenant in respect of the land in question. It is also an admitted position that the petitioner claimed for mutation of his name as Ryot on the basis of his possession. However, order reflects no reason and consideration on

the basis of which such order was passed. Even there was no discussion as regards the nature of the alleged sukani patra and proof of payment of land revenue. The order also reflects that the original land owners are made 2nd parties in the proceeding and no notices were issued to the Ryot, though, admittedly the order dated 30.10.2014 itself reflects that the name of the Ryot is registered. Though the Settlement Officer has passed such an order, however nothing is discernible the reason/ consideration on the basis of which it came to a conclusion that the petitioner is an occupancy tenant. That being the position, the determination made by the Board of Revenue cannot be held to be perverse decision or a decision without jurisdiction and therefore, this court in exercise of its certiorari jurisdiction under Article 226 of the Constitution of India is not inclined to interfere with the decision of Assam Board of Revenue.

9. Accordingly, the present petition stands dismissed. Registry to send back the record to Assam Board of Revenue.
10. While parting with this record, it is made clear that if the petitioner is having any claim over the disputed land, he may approach appropriate Civil Court for seeking such relief and in the event such relief is sought same may be decided as per law.

JUDGE

Comparing Assistant