

GAHC010208472021



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

Case No. : WP(C)/6779/2021

NEENA JHURIA AND ANR.
W/O SRI ASHOK KR JHURIA, R/O GARIMA PALACE, H.B ROAD
KAMARPATTY, GUWAHATI-781001 P.S. PANBAZAR, DIST. KAMRUP (M)
ASSAM

2: ASHOK KUMAR JHURIA
S/O. LT. GOBARDHAN DAS JHURIA
R/O GARIMA PALACE
H.B ROAD KAMARPATTY
GUWAHATI-781001 P.S. PANBAZAR
DIST. KAMRUP (M) ASSA

VERSUS

THE STATE ASSAM AND ORS.
REP. BY ITS COMMISSIONER AND SECRETARY, GOVT. OF ASSAM
REVENUE AND DISASTER MANAGEMENT DEPTT. SACHIBALAYA,
DISPUR, GUWAHATI-781006 DIST. KAMRUP(M) ASSAM

2: THE ASSAM BOARD OF REVENUE
REP. BY ITS CHAIRMAN
PAN BAZAR
GUWAHATI-1

3: THE DEPUTY COMMISSIONER
KAMRUP (M)
PANBAZAR
GUWAHATI-781001

4: THE CIRCLE OFFICER
GUWAHATI REVENUE CIRCLE
PANBAZAR
GUWAHATI-781001
DIST. KAMRUP (M) ASSAM

5:CHANDANA KALITA
W/O LT. DINESH CH. KALITA
R/O GARIMA GOLD TOWER
M.S. ROAD
FANCY BAZAR
GUWAHATI-781001
P.S. PANBAZAR
DIST. KAMRUP (M) ASSAM

6:BISWAJIT KALITA
S/O LT. DINESH CH. KALITA
R/O GARIMA GOLD TOWER
M.S. ROAD
FANCY BAZAR
GUWAHATI-781001
P.S. PANBAZAR
DIST. KAMRUP (M) ASSAM

7:HENA KALITA
D/O LT. DINESH CH. KALITA
R/O GARIMA GOLD TOWER
M.S. ROAD
FANCY BAZAR
GUWAHATI-781001
P.S. PANBAZAR
DIST. KAMRUP (M) ASSA

For the petitioner (s) : Mr. K. K. Mahanta, Advocate

Mr. S. Gautam, Advocate

For the respondent (s) : Mr. N. Goswami, Govt. Advocate
Mr. A. Biswas, Advocate

BEFORE
HON'BLE MR. JUSTICE DEVASHIS BARUAH
ORDER

08.02.2024

The instant writ petition has been filed by the petitioners challenging the judgment and order dated 10.09.2021 passed by the learned Assam

Board of Revenue in Revenue Appeal No.83RA(K)/2018.

2. The facts involved in the instant case as could be discerned from the pleadings as well as the documents on record are that the private respondent Nos.5, 6 & 7 were the owners of a plot of land measuring 2.58 Are in Dag No.187 of K.P. Patta No.241 of Sahar Guwahati Part-3 under Mouza-Guwahati. The said respondents entered into an agreement for development of land with the petitioner No.2. The said deed was registered and numbered as Deed No.1039/05. Vide an Irrevocable General Power of Attorney, the respondent No.5 on behalf of herself and for and on behalf of the respondent Nos.6 & 7, who were the minors at that point of time, empowered and nominated the petitioner No.2 as a Power of Attorney in respect to the said land measuring 2.58 Are. In the said Power of Attorney amongst others, the Attorney holder was empowered to sign and execute the transfer deed and in respect of the share of the Attorney in the proportionate schedule of land and the RCC building and get the same registered before the Sub-Registrar, Kamrup at Guwahati and put in possession thereof. Subsequent thereto, another deed of agreement was entered into by the respondent Nos.5, 6 & 7 with the petitioner No.2 whereby fresh terms and conditions were incorporated and the earlier registered agreement for development was cancelled.

3. The record further reveals that the petitioner No.2 executed a deed of sale in favour of the petitioner No.1 thereby transferring the unfinished commercial space measuring 130.61 sq. m on the ground floor and 173.20 sq. m in the first floor (in total 3269 sq. feet) together with 1.70 Are land and the entire parking space on the ground floor which is situated by the side of the H.B. Road, Kamarpatti and standing on a plot of land

measuring 19 lechas covered by Dag No.187 of K.P. Patta No.214 of Sahar Guwahati (Part-III) under Mouza Guwahati in the district of Kamrup (Metro) to the petitioner No.1 vide registered Sale Deed dated 13.02.2012 bearing Deed No.1226/2012. On the basis of the said deed of sale, the petitioner No.1 applied for mutation before the Circle Officer. On the basis of the said application, Mutation Case No.1379/2012-13 was registered and vide an order dated 11.03.2013, the name of the petitioner No.1 was inserted along with the pattadar in respect to the plot of land measuring 1.70 Are covered by Dag No.187 of KP Patta No.214 of Sahar Guwahati (Part-III) under Mouza Guwahati.

4. The record further reveals that a registered deed of rectification was executed by the private respondent Nos.5, 6 & 7 dated 25.05.2015 bearing Deed No.6008 through the petitioner No.2 thereby making a rectification to the deed of sale bearing Deed No.1226/2012 dated 13.02.2012. Thereupon, it reveals that the private respondent Nos.5, 6 & 7 had filed an appeal before the Deputy Commissioner, Kamrup (M) challenging the order of mutation dated 11.03.2013 passed in Mutation Case No.1379/2012-13. The said appeal which was registered as Revenue Appeal No.RA(N)9/2015-16 was however dismissed vide an order dated 27.09.2018 thereby confirming the mutation order passed by the Circle Officer in favour of the petitioner No.1. Being aggrieved, the private respondent Nos.5, 6 & 7 challenged the said order dated 27.09.2018 passed in RA(N)9/2015-16 before the learned Assam Board of Revenue and the said Appeal was registered and numbered as Revenue Appeal No.83RA(K)/2018. Vide the impugned judgment dated 10.09.2021, the said appeal filed by the private respondent Nos.5, 6 & 7 herein was

allowed thereby setting aside the order dated 27.09.2018 passed by the Additional Deputy Commissioner as well as the mutation order dated 11.03.2013. It is against the judgment dated 10.09.2021, the petitioners have approached this Court by filing the instant writ petition.

5. This Court has also perused the records which were called for by this Court vide the order dated 17.10.2021 and heard the learned counsels for the parties. During the course of hearing, this Court has put a specific query upon Mr. A. Biswas, the learned counsel appearing on behalf of the private respondent Nos.5, 6 & 7 as to whether the deed of sale on the basis of which the mutation order was passed on 11.03.2013 has been challenged in any proceedings before the competent Civil Court. This Court had also enquired with the learned counsels appearing on behalf of the parties as to who is presently in occupation of the said land and building.

6. The learned counsel appearing on behalf of the private respondent Nos.5, 6 & 7, with all fairness, submitted that the deed of sale bearing deed No.1226/2012 dated 13.02.2012 as well as the rectification deed dated 25.05.2015 bearing Deed No.6008/2015 have not yet been challenged before the competent Civil Court of jurisdiction. As regards the question of possession, it has been admitted that the petitioner No.1 is partly in possession of the property in question to the extent the property has been sold to the said petitioner vide the deed of sale dated 13.02.2012.

7. The above two aspects therefore makes it clear that vide the registered deed of sale, the property in question including the proportionate share of the land, i.e. 1.70 Are has been sold to the

petitioner No.1 and the petitioner No.1 is the owner of the property as conveyed vide the said deed of sale dated 13.02.2012. Further to that, as the petitioner No.1 is in possession of the property which has been sold vide the deed of sale dated 13.02.2012 and the requirement for mutation is to have title as well as possession which the petitioner No.1 duly has, it is the opinion of this Court that the learned Board of Revenue had committed an error of law apparent on the record in passing the impugned judgment dated 10.09.2021.

8. Accordingly, this Court therefore sets aside the impugned judgment and order dated 10.09.2021 and restores the order of mutation dated 11.03.2023 as well as the order dated 27.09.2018 passed by the Additional Deputy Commissioner.

9. The Registry is directed to return the records of Revenue Appeal No.83RA(K)/2018 to the learned Assam Board of Revenue.

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

JUDGE

Comparing Assistant