

GAHC010219472022



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

**Case No. : WP(C)/6964/2022**

SUBRATA GHOSH  
S/O- LATE SANTOSH KR GHOSH @ SANTOSH KR GOPE,  
R/O- SORBHOG TOWN, WARD NO. 3,  
MOUZA- DAMAKA CHAKABOSHI,  
P.O.- SORBHOG, P.S.- SORBHOG,  
DIST- BARPETA, ASSAM,  
PIN- 781317.

VERSUS

THE STATE OF ASSAM AND 3 ORS  
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE GOVT.  
OF ASSAM,  
LAND REVENUE DEPARTMENT,  
DISPUR, GUWAHATI-6.

2:THE COMMISSIONER  
LOWER ASSAM DIVISION  
PANBAZAR  
GUWAHATI-1.

3:THE DEPUTY COMMISSIONER  
BARPETA  
DIST.- BARPETA  
ASSAM

PIN- 781301.

4:THE CIRCLE OFFICER  
BARNAGAR REVENUE CIRCLE  
SORBHOG  
P.O. AND P.S.- SORBHOG

DIST.- BARPETA  
ASSAM  
PIN- 781317

**Advocate for the Petitioner** : MR. K R PATGIRI

**Advocate for the Respondent** : SC, REVENUE

**BEFORE**  
**HONOURABLE MR. JUSTICE MANISH CHOUDHURY**

**ORDER**

**Date : 04-01-2024**

Heard Mr. K.R. Patgiri, learned counsel for the petitioner; Ms. N. Bordoloi, learned counsel for the respondent no. 1; and Ms. S. Baruah, learned Junior Government Advocate, Assam for the respondent nos. 3 & 4. It is submitted by the learned counsel for the parties that the office of the Commissioner, Lower Assam Division, Panbazar, Guwahati [the respondent no. 2] has since been abolished by the State Government.

2. The petitioner has filed the instant writ petition under Article 226 of the Constitution of India, seeking **inter alia** a direction to the respondent authorities, more particularly, the respondent no. 3 and the respondent no. 4 to take necessary steps for cancellation of a Mutation Order dated 01.11.2021 passed by the respondent no. 4, whereby, the name of the petitioner's father viz. Sontosh Kumar Ghosh @ Santosh Gope had been deleted in respect of a plot of land, measuring 1 Katha 12 Lessas.

3. The case projected in the writ petition can be stated, in brief, as follows :-

3.1. The petitioner's father viz. Sontosh Kumar Ghosh @ Santosh Gope along with his two brothers namely [i] Ratan Kumar Ghosh @ Gope and [ii] Subhash Kumar Ghosh @ Gope had purchased a plot of land measuring 1 Katha 12 Lessas, covered by Dag no. 977/978 & Patta no. 9, situate at Sorbhog Town, Mouza – Damaka Chakaboushi, Barnagar Revenue Circle, Sorbhug [‘the subject-plot’, for short]

from one Santi Bala Puri @ Santa Bala Puri and 8 others vide a registered Sale Deed no. 1230 dated 19.09.1981.

3.2. On an application being made for registration [mutation] subsequent to the purchase, the respondent no. 4 i.e. the Circle Officer, Barnagar Revenue Circle, Sorbhog passed an Order on 17.05.2005 mutating the names of [i] Sontosh Kumar Ghosh @ Santosh Kumar Gope, [ii] Ratan Kumar Ghosh @ Gope and [iii] Subhash Kumar Ghosh @ Gope, all sons of Swarnada Charan Ghosh @ Gope in respect of the subject-plot.

3.3. It is the case of the petitioner that the father of the petitioner were and the family are in continuous possession of the subject-plot subsequent to purchase and the Mutation Order dated 17.05.2005. On 22.02.2020, the petitioner's father expired leaving behind the petitioner and 1 [one] daughter. Another son of Sontosh Kumar Ghosh @ Santosh Kumar Gope viz. Sudipt Kumar Ghosh @ Sudipt Kumar Gope had also expired in the meantime.

3.4. It is the further case of the petitioner that after the death of the petitioner's father, one of the uncles of the petitioner viz. Mantosh Kumar Ghosh @ Gope had made attempts to dispossess the petitioner's family from the subject-plot. In view of such attempts, the petitioner made an enquiry in the concerned office. During such enquiry, it came to the knowledge of the petitioner that the petitioner's uncle, Mantosh Kumar Ghosh @ Gope had surreptitiously inserted his name in the revenue records in respect of the subject-plot. On further enquiry, it came to the knowledge of the petitioner that the name of the petitioner's uncle, Mantosh Kumar Ghosh @ Gope stood inserted in the revenue records in respect of the subject-plot, by deleting the name of the petitioner's father, by an Order dated 01.11.2021 passed by the respondent no. 4.

4. Having got the knowledge about insertion of the name of Mantosh Kumar Ghosh @ Gope in place of his father, that is, Sontosh Kumar Ghosh @ Santosh Kumar Gope, the petitioner made an application before the respondent no. 4 on 10.06.2022 seeking correction in the revenue records for the subject-plot by way of deletion of the name of Mantosh Kumar Ghosh @ Gope and re-insertion of his father's name in respect of the subject-plot. By the said application, the petitioner sought for restoration

of the original Mutation Order dated 17.05.2005. On receipt of the said application, the respondent no. 4 registered the same as Petition no. 77/2021-2022.

5. From the case records as well as from the affidavit-in-opposition filed by the respondent no. 4, it has emerged that after registration of Petition no. 77/2021-2022, the respondent no. 4 issued notices to the petitioner as well as to the other three stakeholders, that is, [i] Subhash Kumar Ghosh @ Gope; [ii] Ratan Kumar Ghosh @ Gope; and [iii] Mantosh Kumar Ghosh @ Gope for a hearing. As Ratan Kumar Ghosh @ Gope had expired in the meantime, he was represented by his son, Sri Ajay Ghosh @ Gope in the proceedings initiated by the respondent no. 4 vide Petition no. 77/2021-2022. It has further emerged that the respondent no. 4 conducted hearings on two occasions, that is, on 13.01.2022 & on 12.05.2023. The respondent no. 4 during the said hearings heard the parties including the petitioner and the representative of Mantosh Kumar Ghosh. In the course of the said hearings, the original registered Sale Deed no. 1230 dated 19.09.1981 was produced before the respondent no. 4. After holding the hearings, the respondent no. 4 in his Order dated 12.05.2023 had observed that on the basis of the original registered sale deed and after hearing the parties, he could not come to a conclusion as regards the rightful owner of the subject-plot. As he could not come to a conclusion as to whether Sontosh Kumar Ghosh @ Santosh Kumar Gope or Mantosh Kumar Ghosh @ Gope was the rightful owner of the subject-plot, the respondent no. 4 decided to advise the parties to approach the competent court/authority for redressal of the dispute as regards the rightful owner of the subject-plot. By the Order dated 12.05.2023, the respondent no. 4 had further observed that till any decision as regards the rightful owner of the subject-plot, the Order dated 01.11.2021 whereby the name of Sontosh Kumar Ghosh @ Santosh Kumar Gope was deleted and the name of Mantosh Kumar Ghosh @ Gope was inserted would be kept in abeyance.

6. Thus, in view of the afore-mentioned sequence of events, the Mutation Order dated 01.11.2021 has been kept in abeyance.

7. From a perusal of the Mutation Order dated 17.05.2005, it transpires that the said Order was passed by the respondent no. 4, that is, the Circle Officer, Barnagar Revenue Circle in connection with Mutation Case no. 95/2003-2004. By the said Order, the names of [i] Ratan Kumar Ghosh @ Gope, [ii]

Subhash Kumar Ghosh @ Gope and [iii] Sontosh Kumar Ghosh @ Santosh Kumar Gope [i.e. the petitioner's father], all sons of Late Swarnada Charan Ghosh, were mutated in place of its erstwhile owners on the basis of purchase and possession.

8. The respondent no. 4 in the affidavit-in-opposition has stated that an application, registered as Application no. 173 was submitted by Mantosh Kumar Ghosh @ Gope on 27.09.2021 at his office along with a certified copy dated 22.09.2021 of the registered Sale Deed dated 19.09.1981. By the said application, Mantosh Kumar Ghosh @ Gope sought correction in the Mutation Order dated 17.05.2005 with insertion of his name in place of Sontosh Kumar Ghosh @ Santosh Kumar Gope. The respondent no. 4 has further stated that in the said certified copy of the registered sale deed, the names of Ratan Kumar Ghosh @ Gope and Subhash Kumar Ghosh @ Gope were also found mentioned but, he did not issue any notice to those persons prior to passing of the Order dated 01.11.2021. The respondent no. 4 has further stated that the insertion of the name of Mantosh Kumar Ghosh @ Gope and deletion of the name of Sontosh Kumar Ghosh @ Santosh Kumar Gope were given effect to on the basis of the said certified copy of the registered sale deed, submitted on behalf of Mantosh Kumar Ghosh @ Gope.

9. It is noticed that alleging about the irregular manner by which the Order dated 01.11.2021 was passed by the respondent no. 4, the petitioner submitted an application for cancellation of the said Order also before the Deputy Commissioner, Barpeta [the respondent no. 3] and the receipt of the said application was duly acknowledged by the Office of the respondent no. 3 on 30.08.2022 under seal and signature.

10. Part B of Chapter IV on the subject : 'Registration' of the Assam Land and Revenue Regulation, 1886 has provided for the procedure for effecting registration [mutation]. It has been provided **inter alia** in Section 50 to the effect that every proprietor or land holder succeeding to any estate or share in an estate, whether by transfer or inheritance, and obtaining possession of the same, shall have to apply to the jurisdictional Deputy Commissioner on the general registers of which the estate is borne for registration of his name as such proprietor or land holder by indicating about the nature and of the extent of the interest in respect of which the application is made. Section 52 has laid down the procedure for registration. It has **inter alia** been prescribed that on receiving an application for

registration, the Deputy Commissioner shall, if he considers that there are sufficient grounds for proceeding with the application, publish a notice requiring all persons who are likely to object to the registration of the name of the applicant, or who are likely to dispute about the nature or extent of interest in respect of which registration [mutation] is applied, to state their objections in a written statement by appearing on a day to be specified in the notice, not being less than 1 [one] month from the date thereof. It has been further provided that if the application mentions that the applicant has acquired possession of the estate, or share in an estate in respect of which he applies to be registered by transfer from any person, a copy of the notice shall be served on the alleged transferer and if he is dead, upon his heirs.

10.1. As per Section 53, on the day fixed in the notice issued under Section 52, or as soon thereafter as possible, the Deputy Commissioner shall consider any objection which may be advanced, and after such further enquiry [if any] as appears necessary to ascertain the truth of the succession, assumption of charge or possession alleged in the application, shall, if it appears to him that the succession accompanied by possession has taken place or that charge has been assumed or that the applicant is in possession, as the case may be, make an order directing registration [mutation].

11. From statements made by the respondent no. 4 in the affidavit-in-opposition filed by him it has clearly emerged that before passing the Order dated 01.11.2021, notices were not issued to any of the other persons, that is, [i] Sontosh Kumar Ghosh @ Santosh Kumar Gope, [ii] Ratan Kumar Ghosh @ Gope & [iii] Subhash Kumar Ghosh @ Gope, prior to passing of the Order dated 01.11.2021. As the names of [i] Sontosh Kumar Ghosh @ Santosh Kumar Gope, [ii] Ratan Kumar Ghosh @ Gope & [iii] Subhash Kumar Ghosh @ Gope were inserted in the revenue records in respect of the subject-plot by the Mutation Order dated 17.05.2005, they were clearly the persons who were likely to object to the registration [mutation] of the name of the applicant therein, that is, Mantosh Kumar Ghosh @ Gope.

12. In a writ petition, an order which is likely to be adverse to any person, cannot be passed in his absence. A person who is likely to be visited with adverse consequences is to be necessarily impleaded as a party-respondent in a writ petition. Since in the instant writ petition, the petitioner has not impleaded Mantosh Kumar Ghosh @ Gope as a party-respondent, this Court is of the considered view

that it would not be proper to pass any order as regards the legality and validity or otherwise of the Order dated 01.11.2021, passed by the respondent no. 4 in the absence of the applicant on the basis of whose application the Order dated 01.11.2021 came to be passed.

13. Section 151 of the Assam Land and Revenue Regulation Act, 1886 reads as under :-

151. Power to call for proceedings of subordinate officers - The Board, a Deputy Commissioner, a Settlement Officer and a Survey Officer may call for the proceedings held by any officer subordinate to it or him, and pass such orders thereon as it or he thinks fit.

Note – An order once passed in any case cannot be revised either by the officer who passed it or by his successor in office. But this order does not apply to summary registration orders.

14. By the provisions of Section 151, the Deputy Commissioner has been vested with the authority and jurisdiction to call for the proceedings held by any officer subordinate to him and to pass such orders thereon as he thinks fit.

15. As against the Order dated 01.11.2021, the petitioner has already submitted an application before the jurisdictional Deputy Commissioner, that is, the respondent no. 3 on 30.08.2022 the receipt of the said application was duly acknowledged by his office under seal and signature dated 30.08.2022; and it has been asserted by the petitioner that the said application has not yet been disposed of, this Court is of the considered view that the jurisdictional Deputy Commissioner [the respondent no. 3] shall take the said application on board to consider the legality and validity of the Order dated 01.11.2021 passed by the respondent no. 4 by taking into purview the provisions regarding registration [mutation] contained in the Assam Land and Revenue Regulation, 1886 for the purpose of passing a speaking order thereon. This Court is of the further view that before passing any such order on the said application, the respondent no. 3 should afford reasonable opportunities of hearing to all the persons who are likely to be affected either in the event of affirming or reversing the Order dated 01.11.2021 and for that purpose, those persons should be duly served with notices for such hearing.

16. For the purpose of facilitating the respondent no. 3 to proceed with the application and to dispose of the same, the petitioner shall submit a certified copy of this order at his office within a period of 3 [three] weeks from today. In addition, a copy of the order shall also be furnished to Ms. S. Baruah, learned Junior Government Advocate, Assam for the purpose of informing the respondent no. 3 from her end. It is expected that the respondent no. 3 shall make endeavour to complete the exercise as expeditiously as possible preferably, preferably within a period of 3 [three] months from the date of submission of the certified copy of the order by the petitioner at its office.

17. With the observations made and the direction given above, the writ petition is disposed of. No cost.

**JUDGE**

**Comparing Assistant**