

GAHC010241262018



2024:GAU-AS:12782

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

Case No. : WP(C)/7496/2018

M/S. MAUD TEA AND SEED COMPANY LTD.
A COMPANY INCORPORATED UNDER THE PROVISIONS OF THE INDIAN
COMPANIES ACT, 1931 HAVING ITS REGISTERED OFFICE AT 2, NC DUTTA
SARANI, UNIT-1, 5TH FLOOR, KOLKATA- 700001 AND ALSO HAVING ITS
CENTRAL OFFICE AT BARAGOLA, A.T. ROAD, P.O., P.S. AND DIST.
TINSUKIA, ASSAM,
REP. BY ITS AUTHORIZED REPRESENTATIVE, NAMELY SRI SUDHIR
LOHIA,
SON OF LATE RAM GOPAL LOHIA, AGED ABOUT 67 YEARS, R/O
BARAGOLA, AT ROAD, P.O., P.S. AND DIST. TINSUKIA, ASSAM, PIN - 786125.

VERSUS

THE STATE OF ASSAM AND 4 ORS.
REP. BY ITS COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM,
DEPARTMENT OF LAND REVENUE (REFORMS), DISPUR, GUWAATI-
781006.

2:THE DEPUTY COMMISSIONER

TINSUKIA
DIST. TINSUKIA
ASSAM.

3:THE ADDITIONAL DEPUTY COMMISSIONER (REVENUE)

TINSUKIA
DIST. TINSUKIA
ASSAM.

4:THE CIRCLE OFFICER

TINSUKIA REVENUE CIRCLE

DIST. TINSUKIA
ASSAM.

5:THE TINSUKIA MUNICIPAL BOARD

P.O.
P.S. AND DIST. TINSUKIA
ASSAM

PIN - 786125

REP. BY ITS CHAIRPERSON

Advocate for the petitioner(s): Mr. B Dutta, Senior Advocate
Mr. S Deka

Advocate for the respondent(s): Mr. SS Roy
Respondent No.5

**BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH**

Date : 16-12-2024

JUDGMENT & ORDER(ORAL)

Heard Mr. B. Dutta, the learned senior counsel assisted by Mr. S Deka, the learned counsel appearing on behalf of the petitioner and Mr. M. Chetia, the learned Government Advocate, Assam appearing on behalf of the respondent Nos.2, 3 and 4. I have also heard Mr. SS Roy, the learned counsel appearing on

behalf of the respondent No.5.

2. The petitioner herein has assailed the order dated 01.10.2018 passed by the Deputy Commissioner, Tinsukia i.e. respondent No.2 whereby in exercise of Rule 116 of the Settlement Rules framed under the Assam Land and Revenue Regulations, 1886 (for short, 'the Regulation') had struck off the name of the petitioner from the Register of Records in respect to land measuring 5 bighas 0 katha 13 lechas and 9 bighas 4 kathas 10 lechas totalling to 15 bighas 0 katha 3 lechas contained in Dag Nos. 12 and 13 of Patta No.2 of No.2 Patia Pathar village under Mouza-Tinsukia in the District of Tinsukia, Assam (for the sake of convenience referred to as 'the land in question') and reverted the land back to the State Government.

3. The issue which has been raised in the instant proceedings is as to whether merely because of the fact that the petitioner is not in possession of the land in question, the Deputy Commissioner can resort to the powers conferred under Rule 116 of the Settlement Rules.

4. The materials on record categorically show that the petitioner is a company which owns a tea estate in the name and style of *Sewpur Tea Estate*. The record further reveals that the petitioner had been duly making payment of the land revenue from time to time as is evidenced from Annexure-2 series. Be that as it may, a show cause notice was issued on 27.08.2018 informing the petitioner that the land in question have been used by the respondent No.5 as a dumping ground for last many years and as such, asking the petitioner to show cause as to why the powers under Rule 116 of the Settlement Rules should not

be exercised.

5. The petitioner thereupon submitted a reply dated 20.09.2018 stating *inter alia* that the powers under Rule 116 of the Settlement Rules cannot be invoked in the facts and circumstances of the case and, accordingly, requested the respondent No.2 to withdraw the said notice. Be that as it may, the impugned order was passed on 01.10.2018, thereby the petitioner's name was struck off in respect to the land, in question. It is under such circumstances, the instant writ petition was filed challenging the order dated 01.10.2018 (for the sake of convenience to be referred to as 'the impugned order'). In addition to that, the petitioner had also sought for a mandamus directing the respondent No.5 to remove the dumping garbage from the land in question.

6. It is seen that pursuant to various orders being passed by this Court, an affidavit-in-opposition was filed by the respondent No.2 whereby at paragraph 6 of the said affidavit-in-opposition, it is mentioned that as the petitioner is not in possession of the land in question since 24 years, the power under Rule 116 of the Settlement Rules was exercised. In addition to that, it has also been mentioned that the said land in question has been kept vacant for ancillary purpose and there is a reference also being made to the provisions of the *Assam Fixation of Ceiling on Land Holdings Act, 1956* (for short, the Act of 1956).

7. At this stage, this Court finds it relevant to take note of that the Act of 1956 is an enactment to impose limits on the amount of land that may be held by a person. It is also apposite to mention that in terms with the Act of 1956,

the land held and utilised for special cultivation is outside the purview of the Act of 1956. Additionally, it is pertinent also to observe that land reserved upon proceedings initiated under the Act of 1956 for ancillary purpose is outside the scope of the Act of 1956.

8. This Court had duly heard the learned counsel appearing on behalf of the petitioner as well as the learned counsel for the respondents and has given an anxious consideration to the submissions made.

9. Before dealing with the impugned order, this Court first would like to take note of Rule 116 of the Settlement Rules which is reproduced herein under:

“116. Power of Deputy Commissioner to order the name of a proprietor, of etc., be struck out of register.

Whenever it comes to the notice of the Deputy Commissioner that any person whose name is recorded in the General Registers as proprietor, settlement-holder or manager of an estate is no longer in possession of any such interest in the estate, the Deputy Commissioner may order the name of such person to be struck out from the register:

Provided that the Deputy Commissioner shall not strike out the name of any recorded proprietor or landholder, or manager on behalf of a proprietor or land-holder, without giving him due notice and hearing any objections he may prefer against his name being struck out.”

10. A perusal of the above-quoted Rule would show that whenever it comes to the notice of the Deputy Commissioner that any person whose name is recorded in the general Register as a proprietor, settlement holder or Manager

of an estate *is no longer in possession of any such interest in the estate*, the Deputy Commissioner may order the name of such person to be struck off from the Register. The expression 'no longer in possession of any interest in the estate' is of vital importance, *inasmuch as*, it is only when a person does not have any interest in the estate, the power can be exercised. The said expression under no circumstance can be equated with a fact situation where the person is not in possession of the land in question. It is further observed that if an interpretation is given that a person who loses possession to another, the person's name is required to be struck off, it would result in a chaotic situation and further the rights constitutionally and statutorily guaranteed would be otiose.

11. This Court had also taken note of the judgment of the Co-ordinate Bench of this in the case of *Bhabani Shankar Bagaria Vs. State of Assam and Others* reported in (2008) 4 GLR 134. Paragraph 5 of the said judgment being relevant is reproduced herein under:

“5. A cursory glance at the provisions of Rule 116 reflects as if a Deputy Commissioner can strike out the name of any recorded proprietor, settlement-holder or land-holder or manager of an estate from the revenue records if it comes to the notice of the Deputy Commissioner that the person, whose name has been recorded in the General Register as proprietor, settlement-holder or manager of an estate is no longer in possession of any such interest in the estate. What is, however, of utmost importance to note is that the expression 'such interest in the estate' has been consciously used by the rule-makers in Rule 116. It is a settled principle of law that every word used in any statute, rules or regulations must be given its ordinary meaning unless the context indicates otherwise. The expression 'such interest in the estate', if construed properly, would obviously mean that the mere fact that a person, who is the proprietor, settlement-holder or manager of an estate, is no longer in possession of such estate, the power, under Rule 116, to strike out the name of such a person from the revenue records cannot be resorted to. What is also necessary for the purpose of enabling a Deputy Commissioner to take recourse to Rule 116 and issue notice under the proviso to Rule 116 to the recorded proprietor, settlement-holder or manager is that such person, who is the proprietor, settlement-holder or manager of the estate, must be

shown to have ceased too have interest in the land, which is no longer in possession of the estate. If Rule 116 is interpreted to mean that a lawful owner will lose his right over the land merely by an act of trespass by an encroacher, it would mean that if a person can manage, illegally and by dint of sheer muscle power, to trespass into a land, such a trespasser would be entitled to settlement of the land merely because of the fact that the recorded proprietor, settlement-holder or manager of the estate is not in possession of the estate or part thereof. Such an interpretation would lead to chaos and lawlessness. An interpretation of a provision, contained in an enactment or rule, which can lead to chaos and disorder in the society, must be eschewed by the Courts and the Courts shall favour that the interpretation, which would help maintain orderliness in the society, for, it is orderliness in the society, which the public interest demands and needs and not chaos and disorderliness. Viewed thus, it is clear that Rule 116 would be applicable only when a person, who is the proprietor, settlement-holder or manager of an estate, abandons his interest, as the proprietor, settlement-holder or manager, over such an estate or any part thereof."

12. In the backdrop of the above, if this Court duly takes note of the impugned order, it would be seen that the emphasis so given by the learned Deputy Commissioner i.e. the respondent No.2 is on the fact that the petitioner is not in possession of the land for the last 24 years, without, however, taking into consideration that the petitioner continues to hold such interest in the estate in question and had also been duly paying the land revenue. In addition to that, the said land has also been permitted to be retained as per the Act of 1956 for ancillary purposes as would be seen from the affidavit so filed by the respondent No.2. Under such circumstances, it is the opinion of this Court that the basis on which the impugned order has been passed is totally misconceived and erroneous and accordingly, it is a fit case for interference.

13. This Court has also duly taken note of the submission of Mr. B. Dutta, the learned senior counsel for the petitioner to the effect that there should be a direction issued to the respondent No.5 to remove the garbage. This Court, however, finds it relevant to observe that there is no materials placed before this

Court that the petitioner had approached the respondent No.5 which is also a State within the meaning of Article 12 of the Constitution, asking them to vacate.

14. It is an established principle of law that the mandamus can only be issued when in a case a justice is demanded and upon its refusal. Under such circumstances, this Court in the present set of facts would not like to issue any mandamus for reasons that the petitioners have not placed any material to show that they had approached the respondent No.5 to vacate the area.

15. Accordingly, the instant writ petition, therefore, stands disposed of with the following direction(s) and observation(s):

- (i) The impugned order dated 01.10.2018 passed by the respondent No.2 i.e. the Deputy Commissioner, Tinsukia whereby the name of the petitioner in respect to the land in question i.e. land measuring 5 bighas 0 katha 13 lechas and 9 bighas 10 lechas totalling to 15 bighas 0 katha 3 lechas contained in Dag Nos. 12 and 13 of Patta No.2 of No.2 Patia Pathar village under Mouza-Tinsukia in the District of Tinsukia, Assam was struck off and was reverted to the Government of Assam is held to be bad in law and accordingly, is set aside and quashed.
- (ii) The respondents and more particularly, the respondent No.2 is directed forthwith and not later than 15(fifteen) days from the date a certified copy of this judgment is submitted to correct the records thereby re-entering the name of the petitioner against the land in question.

- (iii) This Court as observed earlier is not inclined to issue a mandamus on the ground that the petitioner had not placed any materials showing that it approached the respondent No.5. Be that as it may, if the petitioner duly represents before the respondent No.5 and the respondent No.5 thereupon does not take any action, the petitioner would always be at liberty to take such permissible action as envisaged under law for enforcing its rights under Article 300A of the Constitution.

JUDGE

Comparing Assistant