

GAHC010261192023



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

Case No. : WP(C)/6717/2023

ALINA SOHORIA
W/O- BABUL SOHORIA, R/O- VILL. AND P.O.- ABHAYAPURI, DISTRICT-
BONGAIGAON, ASSAM

VERSUS

THE STATE OF ASSAM AND 6 ORS
THROUGH THE SECRETARY TO THE GOVERNMENT OF ASSAM, REVENUE
DEPARTMENT, DISPUR, GUWAHATI- 781006

2:THE COMMISSIONER AND SECRETARY TO THE GOVERNMENT OF
ASSAM
REVENUE DEPARTMENT
DISPUR
GUWAHATI- 781006

3:THE SETTLEMENT OFFICER
GOALPARA
P.O. GOALPARA
DISTRICT- GOALPARA
ASSAM

4:THE DEPUTY COMMISSIONER
BONGAIGAON
P.O. BONGAIGAON
DISTRICT- BONGAIGAON
ASSAM

5:THE ADDITIONAL DEPUTY COMMISSIONER
BONGAIGAON
P.O. BONGAIGAON
DISTRICT- BONGAIGAON

ASSAM

6:THE SUB DIVISIONAL OFFICER
NORTH SALMARA
DISTRICT- BONGAIGAON
ASSAM

7:THE ASSISTANT SETTLEMENT OFFICER
SRIJANGRAM CIRCLE
ABHAYAPURI
DISTRICT- BONGAIGAON
ASSA

Advocate for the Petitioner : MR H DAS

Advocate for the Respondent : GA, ASSAM

BEFORE
HONOURABLE MR. JUSTICE MANISH CHOUDHURY

JUDGMENT & ORDER

Date : 01.02.2024

Heard Mr. H. Das, learned counsel for the petitioner; Ms. G. Hazarika, learned Standing Counsel, Revenue Department for the respondent nos. 1 & 2; and Mr. N. Goswami, learned Junior Government Advocate, Assam for the respondent nos. 3 – 7.

2. It is the case of the petitioner that the petitioner purchased a parcel of land, measuring 2 Kathas 5 Lessas, covered by Dag no. 186/2182 & Patta no. 1216, situate at Village – Abhayapuri, Bongaigaon [‘the subject-plot’, for short] from one Bireswar Seal by way of a registered sale deed dated 17.09.1998. The petitioner stated that for the purpose of the said sale/purchase transaction, Bireswar Seal obtained sale permission from the office of the Sub-Divisional Officer, Abhayapuri vide Memo no. 210/1998 [Annexure-3] on 14.09.1998. As per the contents of the said sale permission dated 14.09.1998, Bireswar Seal proposed to sell three parcels of land, measuring 3 Bighas 1 Katha 4 Lessas [03B-01K-04L] in total. By the said sale permission dated 14.09.1998, the sale permission was accorded to Bireswar Seal to sell the parcels of land measuring 03B-01K-04L to eight persons viz. [i] *Sri Brindaban Choudhury*, [ii] *Smti. Alina Saharia* [the present petitioner], [iii] Sorojini Ray, [iv] Bhanumati Choudhury, [v] Dulumoni Mahato, [vi] Goyabati Ray, [vii] *Ajit Chandra Ray*, and [viii] Tulsi Charan Das. It is the further case of the petitioner that after

registration of the sale deed, the seller, Bireswar Seal handed over the possession of the subject-plot to the petitioner with proper demarcation of boundaries and since then, the petitioner has been in continuous occupation of the subject-plot. The subject-plot stood mutated in favour of the petitioner by a Mutation Order dated 15.10.1998 passed in Mutation Case no. 226/1997-1998. The petitioner has further stated that in the *Jamabandi* [Records-of-Right] of Village – Abhayapuri Town [Annexure-4], the name of the petitioner was recorded along with Bireswar Seal for the subject-plot after 06.10.1998, which was covered by Dag no. 186/2182 & Patta no. 1216.

3. When after purchasing the subject-plot in the afore-stated manner the petitioner started occupying the subject-plot along with other purchasers including *Brindaban Choudhury* and *Ajit Ray @ Ajit Chandra Ray*, the Commissioner & Secretary to the Government of Assam, Revenue Department issued a letter to the Settlement Officer, Goalpara & Bongaigaon, District – Goalpara vide Memo no. RLR.49/99/70 on 16.07.1999 on the subject-matter :- ‘Correction of land records’. It was thereby conveyed that it came to the notice of the Government that the Assistant Settlement Officer, Srijangram Circle had corrected the land records in Abhayapuri Town on the basis of some letters/orders sent by different Additional Deputy Commissioners of Bongaigaon District by-passing the Settlement Officers. It was further conveyed that all such corrections were ab-initio void and therefore, were liable to be cancelled. By forwarding 38 nos. of such letters, the Settlement Officer, Goalpara & Bongaigaon was directed to take immediate steps for cancellation of the corrections of record on the strength of those 38 nos. of letters and to correct the land records bringing the lands to *Khas* status.

4. It is the further case of the petitioner that the direction made by the Commissioner & Secretary to the Government of Assam, Revenue Department vide the letter dated 16.07.1999 was not in the knowledge of the petitioner for a long time. As the petitioner had constructed her residential house on the subject-plot after purchasing the same from Bireswar Seal by way of a registered sale deed and after getting her name mutated in the revenue records, the petitioner apprehended that due to such direction passed by the Commissioner & Secretary to the Government of Assam, Revenue Department vide the letter dated 16.07.1999 the petitioner would lose her landholding rights in respect of the subject-plot. Apprehending so, the petitioner along with *Brindaban Choudhury* and *Ajit Roy* approached this Court by way of a writ petition, W.P.[C] no. 2393/2015. In the said writ petition, W.P.[C] no. 2393/2015, *Brindaban Choudhury* was the petitioner no. 1, the present petitioner was the petitioner no. 2 and *Ajit Roy* was the petitioner no. 3. Like the present petitioner, *Brindaban Choudhury* purchased a plot of land, measuring 2 Kathas 4 Lessas and *Ajit Roy* purchased 2 Kathas 10 Lessas from the same vendor, that is, Bireswar Seal pursuant to the

same sale permission dated 14.09.1998. The grievances made in the writ petition by the petitioners therein was *inter alia* that though the petitioners had been possessing their respective plot of land they had purchased from Bireswar Seal long back but their names were not included in *Chithas*. The petitioners therein had further projected that the status of the parcels of land purchased by them were changed, in the meantime, to Government *Khas* lands pursuant to the letter dated 16.07.1999 of the Commissioner & Secretary to the Government of Assam, Revenue Department. Prayer was made for setting aside of the letter dated 16.07.1999 of the Commissioner & Secretary to the Government of Assam, Revenue Department on many grounds including the ground that the same was issued in violation of the principles of natural justice. In the proceedings of the writ petition, W.P.[C] no. 2393/2015, an affidavit-in-opposition was filed on behalf of the Deputy Commissioner, Bongaigaon who was impleaded as the party-respondent no. 4 therein. In the said affidavit-in-opposition, it was averred in paragraph-13 to the effect that the plot of land measuring 2 Kathas 5 Lessas [‘the subject-plot’] out of the parcels of land measuring 3 Bighas 1 Katha 4 Lessas, covered by Dag no. 186 & Patta no. 1216, had been mutated in the name of the present petitioner, that is, the petitioner no. 2 in W.P.[C] no. 2393/2015. As regards the petitioner no. 1 and the petitioner no. 3 therein, the respondent no. 4 in the said affidavit-in-opposition had stated that it could not be ascertained as to whether the petitioner no. 1 and the petitioner no. 3 had purchased the plots of land, as claimed by them. The Court after hearing the parties, disposed of the writ petition, W.P.[C] no. 2393/2015 by an Order dated 29.03.2017. The operative parts of the Order dated 29.03.2017 reads as under :-

In view of the submissions and consent of the parties, this writ petition is disposed of with a direction to the respondent no. 7 to make an enquiry about the claim of the petitioner nos. 1 and 3 with respect to their plot of land purchased from one Bireswar Seal by way of sale deed dated 17.09.1998 and if upon enquiry, the petitioners are found to be entitled to any benefits with regard to issuance of any mutation order in their favour, the respondent no. 7 shall do the same.

The entire exercise shall be completed by the respondent no. 7 within a period of 6 [six] weeks from the date of receipt of a certified copy of this order.

Writ petition stands disposed of.

5. Subsequent to the disposal of the writ petition, W.P.[C] no. 2393/2015 on 29.03.2017, the Circle Officer, Sijangram Revenue Circle, Abhayapuri wrote to the Deputy Commissioner, Bongaigaon on 19.05.2017 stating that the subject-plot was mutated in the name of the petitioner along with Bireswar Seal on the strength of the registered sale deed. The letter further conveyed that the said Mutation Order was cancelled after issuance of the letter dated 16.07.1999 of the Commissioner & Secretary to the Government of Assam, Revenue Department and thereafter, it was merged with Dag no. 186[old]. From the said letter, it

transpires that the status of the entire parcels of land mentioned in the sale permission letter dated 14.09.1998 stood converted to Government land. The letter dated 19.05.2017 had, however, mentioned that the three petitioners in the writ petition, W.P.[C] no. 2393/2015 were in possession of their respective plots of land. It was reported by the Circle Officer, Srinjangram Revenue Circle that the petitioner no. 1 therein [*Brindaban Choudhury*] had constructed a dwelling house and a pond whereas the petitioner no. 2 therein [the present petitioner] had bamboo fencing all over her land and had a pond. As regards the respondent no. 3 [*Ajit Roy*] therein, it was stated that he was occupying his plot of land by constructing a house made of tin and bamboo fencing. After disposal of the writ petition, W.P.[C] no. 2393/2015 by the Order dated 29.03.2017, the matter was taken up by the Deputy Commissioner, Bongaigaon for consideration. By taking note of the previous events, more particularly, the direction contained in the letter dated 16.07.1999 of the Commissioner & Secretary to the Government of Assam, Revenue Department, the Deputy Commissioner, Bongaigaon did not proceed to grant any benefit in terms of the Order dated 29.03.2017 [supra]. It is pertinent to mention that the direction in the Order dated 29.03.2017 to cause an enquiry was only in respect of the petitioner no. 1 and the petitioner no. 3 therein as the State respondents through the affidavit of the respondent no. 4, had averred that the subject-plot was already mutated in favour of the petitioner no. 2 therein [the present petitioner].

6. As it came to the knowledge of the petitioner, in the meantime, that her name was also removed from the revenue records in respect of the subject-plot and the direction in the Order dated 29.03.2017 passed in W.P.[C] no. 2393/2015 was made specifically in respect of the petitioner no. 1 and the petitioner no. 3 therein, the present petitioner had preferred a review petition, Review Petition no. 179/2019. By an Order dated 22.01.2020 passed in the Review Petition no. 179/2019, the writ petition, W.P.[C] no. 2393/2015 was restored to file. After restoration of the writ petition, W.P.[C] no. 2393/2015 to file, the same was disposed of by an Order dated 19.02.2020 with the following direction :-

3. From the submission made by the learned counsels for the parties, there is no dispute to the fact that a similar order in respect of the petitioner No. 2 can be passed as the earlier order dated 29.3.2017. Accordingly, this writ petition is disposed of with direction to the respondent No. 7 to make an enquiry on the claim of the petitioner No. 2 in respect of the plot of land purchased by her from one Bireswar Seal by way of sale deed dated 17.09.1998 and upon enquiry, if the petitioner is found to be entitled to any benefit with regard to the issuance of mutation order, the respondent No. 7 shall do the same.

4. The entire exercise shall be completed within a period of six (6) weeks from the date of receipt

of a certified copy of this order alongwith a copy of the writ petition and order dated 22.01.2020, passed in Review Petition No. 179/2019. The respondent No. 7 shall carry out the aforesaid direction in consultation with the other respondents, if so required and the other respondents shall extend all co-operation.

5. With the above observations and directions, the writ petition is disposed of.

6. Thereafter, the Circle Officer, Sijangram Revenue Circle, Abhayapuri registered a case, Misc. Case no. 56/2023 [Alina Sohoria vs. Bireswar Seal] for the purpose of considering the case of the present petitioner. Though the proceedings of Misc. Case no. 56/2023 had been continued with but no final outcome was arrived at. From the communications exchanged between the respondent authorities, it is noticed that the proceedings of Misc. Case no. 56/2023 have not been brought to any conclusion in view of the fact that the subject-plot has been recorded as Government *Khas* land in the records pursuant to the direction made in the letter dated 16.07.1999 of the Commissioner & Secretary to the Government of Assam, Revenue Department.

7. The petitioner no. 1 [Brindaban Choudhury] and the petitioner no. 3 [Ajit Roy] in the writ petition, W.P.[C] no. 2393/2015 had, in the meantime, approached this Court again by preferring a writ petition, W.P.[C] no. 4594/2020 seeking mutation of their names in the respective plots of land on the basis of the sale deeds executed on 17.09.1998. It is relevant to mention that the present petitioner had also purchased the subject-plot from the same vendor by executing a sale deed on 17.09.1998.

8. It is relevant to mention that by an Office Memorandum dated 16.07.1988 issued by the Government of Assam, Revenue Department, the revenue authorities of the erstwhile Goalpara District were asked to correct the records in respect of the lands enjoyed from the Zamindari days and converted to land *khas* Government land by giving separate Dag nos. in place of original Dag nos. Such corrections were directed to be made after an enquiry and after verifying the documents to be produced by the applicants in support of their respective claims. The petitioner's vendor, Bireswar Seal had claimed that he enjoyed Zamindari patta since prior to abolition of the Zamindari system. After consideration of the entire sequence of events preceding the Office Memorandum dated 16.07.1988 which was a subject-matter of the writ petition, W.P.[C] no. 5063/1999 and the letter dated 16.07.1999 of the Government of Assam, Revenue Department, a co-ordinate Bench of this court has set aside the letter dated 16.07.1999 of the Commissioner & Secretary to the Government of Assam, Revenue Department in the writ petition, W.P.[C] no. 4594/2020 by an Order dated 09.02.2022. The Order dated 09.02.2022 had further observed as under :-

7. The record reveals that it was only on account of the communication dated 16.7.1999 such benefit has not been restored to the petitioners herein. In view of setting aside and quashing of the communication dated 16.7.1999 by this court, the Respondent Authorities shall proceed purely on the entitlement on the basis of the Office Memorandum dated 16.7.1988 and the directions contained in the said communication dated 16.9.1999 should be treated as non est.

8. In view of the above, the petitioners may approach the concerned Respondent No.4 seeking mutation of their names on the basis of the Deed of Sale executed on 17.09.1998 and the Respondent No. 4 shall deal with such application in terms with the observations made herein above.

9. The learned counsel for the parties are not in dispute that the present petitioner is similarly situated with the two petitioners in the writ petition, W.P.[C] no. 4594/2020. The learned counsel for the parties are also in agreement that a similar direction can be issued in case of the present petitioner also as has been passed in the writ petition, W.P.[C] no. 4594/2020 in respect of the two petitioners therein, that is, *Brindaban Choudhury* and *Ajit Roy*. The learned counsel for the petitioner has submitted that pursuant to the Order dated 09.02.2022, the petitioners therein have already been granted the benefit. By the Order dated 09.02.2022, the Office Memorandum dated 16.07.1988 and the Letter dated 16.07.1999 have already been set aside. As the present petitioner is similarly situated with the two petitioners in W.P.[C] no. 4594/2020, this Court is of the considered view that a similar order necessitated in the case of the present petitioner also. In such view of the matter, the petitioner is directed to approach the respondent no. 4 seeking mutation of her name in respect of the subject-plot on the basis of the sale deed executed on 17.09.1998 and the respondent no. 4 shall deal with such application in similar terms as have been directed in the Order dated 09.02.2020 passed in the writ petition, W.P.[C] no. 4594/2020.

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

JUDGE

Comparing Assistant