

GAHC010035212019



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

Case No. : WA/220/2019

OM PRAKASH PANDIT AND 3 ORS.
S/O- LATE PANCHAM PANDIT, R/O- ULUBARI, GUWAHATI-07, DIST.-
KAMRUP(M), ASSAM.

2: JAI PRAKASH PANDIT
S/O- LATE PANCHAM PANDIT
R/O- ULUBARI
GUWAHATI-07
DIST.- KAMRUP(M)
ASSAM.

3: SRI JAYNARAYAN PANDIT
S/O- LATE MUKHRAM BHAGAT
R/O- ULUBARI
GUWAHATI
DIST.- KAMRUP
ASSAM.

4: SRI SATYANARAYAN PANDIT
S/O- LATE MUKHRAM BHAGAT
R/O- ULUBARI
GUWAHATI
DIST.- KAMRUP
ASSAM

VERSUS

SMTI. SANTI BHUYAN BARMAN AND 3 ORS
W/O- DR. N.N. BARMAN, R/O- PANBAZAR, GUWAHATI, PIN- 781001.

2: THE CHAIRMAN
ASSAM BOARD OF REVENUE
GUWAHATI
PIN- 781001.

3:THE ADDITIONAL DEPUTY COMMISSIONER
KAMRUP(M)

GUWAHATI-781001.

4:THE CIRCLE OFFICER
GUWAHATI REVENUE CIRCLE
GUWAHATI- 781001

Advocate for the Petitioner : G UDDIN

Advocate for the Respondent : GA, ASSAM

**BEFORE
HONOURABLE THE CHIEF JUSTICE
HONOURABLE MR. JUSTICE SUMAN SHYAM**

ORDER

22.02.2024

(Suman Shyam, J)

This intra-Court appeal has been preferred against the judgment and order dated 07.01.2019 passed by the learned Single Judge in WP(C) No.5549/2008 setting aside the judgment and order dated 26.08.2008 passed by the Assam Board of Revenue in Case No.183 RA(K)/2005 thus allowing the appeal filed by the present appellants. By the order dated 26.08.2008 the learned Board had quashed the order passed by the Additional Deputy Commissioner, Kamrup(M), Guwahati dated 18.07.2005 and remanded the matter back for conducting de-novo hearing of the case by the Additional Deputy Commissioner i.e. the respondent No.3.

2. The facts of the case, as apparent from the materials available on record, briefly stated, are that the predecessor-in-interest of the appellants viz., Mukhram Bhakat was in possession in respect of a plot of land measuring 1

Katha (approx) covered by Dag No.328 (Old)/1023 (New) of Annual Patta No.31(Old)/85(New) of village Sahar Ulubari Part-II under Ulubari Mouza. The said Annual Patta land was transferred by Mukhram Bhakat in favour of the predecessor-in-interest of the respondent No.1 based on an unregistered deed of sale whereafter, the purchaser was also put in possession of the land. The predecessor-in-interest of the respondent No.1 continued to possess and occupy the said plot of land by constructing dwelling houses thereupon by paying land revenue, municipal taxes and electricity dues. It appears that pursuant to the aforesaid transfer of the land, the predecessor-in-interest of the respondent No.1 had made an application before the Circle Officer, Guwahati for cancellation of the Annual Patta standing in the name of the original pattadar and to grant settlement of the land in her favour. On the basis of the said application, Guwahati Revenue Circle Case No.NRI/2001-2002 was registered before the Circle Officer, Guwahati. After hearing the parties, the Circle Officer had passed order dated 10.01.2003 forwarding the case records to the Additional Deputy Commissioner, Kamrup i.e. the respondent No.3, recommending cancellation of the Annual Patta and also for granting settlement of the land in favour of the applicant (i.e. the respondent No.1 in the present proceeding). By the order dated 18.07.2005, the respondent No.3 had approved and confirmed the order of the Circle Officer passed on 10.01.2003. Being aggrieved thereby, the appellants had approached the Assam Board of Revenue by preferring an appeal under section 147 of the Assam Land & Revenue Regulation, 1886 contending *inter-alia* that the order dated 18.07.2005 was not based on proper consideration of the case. The appeal was disposed of by the learned Board of Revenue by the judgment and order

dated 26.08.2008 setting aside the order dated 18.07.2005 and, remanding the matter back to the respondent No.3 for de-novo hearing. Aggrieved thereby, the respondent No.1, as writ petitioner, had preferred WP(C) No.5549/2008 before this Court which was allowed by the order dated 07.01.2019. The learned Single Judge was of the view that the predecessor-in-interest of the writ appellants did not have any right over the land since it was an Annual Patta land. It was further held that holder of such annual lease would not have any right to transfer the land or for sub-letting the same and there is also no right of inheritance over the plot of land. Observing that the impugned order passed by the respondent No.3 was merely an order affirming and approving the order of the Circle Officer issued on 10.01.2003, the learned Single Judge had allowed the writ petition by setting aside the judgment and order dated 26.08.2008 passed by the learned Board of Revenue.

3. During the course of hearing of this appeal, learned counsel for both the parties have argued that the plot of land in question has since been made "sarkari land". It is also submitted that the sarkari land has not yet been settled in favour of the respondent No.1.

4. After hearing the submissions of learned counsel for both the sides, it is apparent that the claim of the appellants with regard to the land in question is in the nature of a civil right which cannot be adjudicated by the respondent No.3 in exercise of powers conferred under the Assam Land & Revenue Regulation, 1886. Rather, the claim of the appellants, raises a dispute that would lie purely within the domain of the Civil Court. Since the plot of land in question has already been made "sarkari land", neither party can claim any title over the land. Until such time, an order of settlement of the land is formally

issued by the State allotting the plot of land would continue to be treated as a Government land. If that be so, we are of the opinion that no interference with the impugned order dated 07.01.2019 is called for by this Court. As such, by granting liberty to the contesting parties to this proceeding to agitate their grievance, if any, before the competent Court as and when a proper cause of action arises, this Writ Appeal stands disposed of by maintaining the order dated 07.01.2019 passed by the learned Single Judge.

There would be no order as to cost.

JUDGE

CHIEF JUSTICE

Comparing Assistant