

GAHC010009112024



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

**Case No. : WP(C)/286/2024**

M/S BORAH TRIAKHYA PRIVATE LIMITED (PREVIOUSLY BORAH AND COMPANY) AND ANR

A PRIVATE LIMITED COMPANY, INCORPORATED UNDER THE COMPANIES ACT, 2103, HAVING ITS REGISTERED OFFICE AT DAG NO. 295-P, PATTA NO. -1, MANCOTTA ROAD, CHOWKIDINGHEE, DIBRUGARH, ASSAM, PIN-786001 TO BE REPRESENTED BY ONE OF ITS AUTHORIZED DIRECTORS VIZ. SRI RAJUMONI BORAH

2: RAJUMONI BORAH  
S/O LATE TARUN CHANDRA BORAH  
R/O JIBAN PHUKAN NAGAR  
P.O.-C.R. BUILDING  
DIBRUGARH  
DIST-DIBRUGARH  
ASSAM  
PIN-78600

VERSUS

THE STATE OF ASSAM AND 6 ORS  
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE GOVERNMENT OF ASSAM, REVENUE AND DISASTER MANAGEMENT DEPARTMENT, DISPUR, GUWAHATI-781006

2:THE DIRECTOR OF LAND RECORDS AND SURVEYS  
ASSAM  
RUPNAGAR  
GUWAHATI-781032  
ASSAM

3:DEPUTY COMMISSIONER  
DIST-DIBRUGARH  
DIBRUGARH-786001  
ASSAM

4:CIRCLE OFFICER  
DIBRUGARH EAST REVENUE CIRCLE  
DIBRUGARH-786001

5:THE RECOVERY OFFICER  
DEBTS RECOVERY TRIBUNAL  
GUWAHATI-781007

6:DIBRUGARH MUNICIPAL BOARD  
REPRESENTED BY THE CHAIRPERSON  
DIBRUGARH MUNICIPAL BOARD  
DIBRUGARH-786001

7:SENIOR SUB-REGISTRAR  
DIBRUGARH  
OFFICE OF THE DISTRICT REGISTRAR  
DIBRUGARH-78600

**Advocate for the Petitioner : MR. B GOGOI**

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

**BEFORE**  
**HONOURABLE MR. JUSTICE MICHAEL ZOTHANKHUMA**

**ORDER**

**05.04.2024**

1. Heard Mr. P. Nayak, learned counsel for the petitioners. Also heard Mr. S. Dutta, learned counsel for the respondent nos. 1 & 2. Mr. M. Chetia, learned counsel appears for the respondent nos.3, 4 & 6. No one appears for the respondent no.6.

2. The petitioners' case is that pursuant to an Advertisement dated 01.07.2011 issued by the Recovery Officer, Debts Recovery Tribunal, the petitioner no.1 company purchased a plot of land belonging to the Dibrugarh

Development Authority, measuring 2 Bighas in the district of Dibrugarh which housed a building. The petitioners thereafter demolished the said building and after taking building permission from the Dibrugarh Municipal Board, the petitioner no.2 constructed a new G+8 storied building on the said plot of land. Jamabandi was also issued by the Revenue Authority in the name of the petitioners, showing the land as Class-I residential land.

3. The petitioners thereafter entered into a Lease Agreement with Reliance Corporate IT Park Limited. However, the Lease Agreement was not being processed for registration by the respondents, despite deposit of the necessary amount by two treasury challans by the petitioners, totalling to Rs.22,59,035/- . The petitioners thus pray that a direction should be issued to the respondents, to register the two lease agreements made by the petitioners with the Reliance Corporate IT Park Limited on 01.04.2019 and which were notarized on 05.04.2019. The petitioners' counsel further submits that the title of the land in question is not in dispute and as the same has been bought under the Recovery of Debts and Bankruptcy Act, 1993 (hereinafter referred to as the 'DRT Act'), there was no justification for not registering the 2 lease agreements in terms of the Registration Act, 1908. In support of his submission, the learned counsel has relied upon the judgment of the Supreme Court in the case of **UCO Bank & Anr. Vs. Dipak Debbarma & Ors.**, reported in **(2017) 2 SCC 585** and **B. Arvind Kumar Vs. Govt. of India & Ors.**, reported in **(2007) 5 SCC 745**.

4. Mr. S. Dutta, learned counsel appearing for the respondent nos.1 & 2 submits that the petitioners' application for registration of the lease deeds has been received by the District Commissioner, Dibrugarh and is under examination of the Revenue & Disaster Management Department. He submits that in a

similar kind of case, the Judicial Department, Government of Assam had given its opinion that there was no statutory provision for grant of Periodic Patta on Tea Garden land as per the Assam Fixation of Ceiling on Land Holdings Act, 1956. He submits that various circulars have also been issued by the Government of Assam regarding alienation of Tea Garden land without following the Rules and as such, the State Government has issued guidelines to be followed, while considering cases for allowing re-classification of tea garden land. The learned counsel for the respondent Nos. 1 & 2 submits that mutation records do not prove title over the land and is only meant for the purpose of payment of revenue tax. In this regard, he has relied upon the judgment of the Supreme Court in the case of ***Smt. Bhimabai Mahadeo Kambekar (Dead) Through Legal Representative Vs. Arthur Import and Export Company & Ors.***, reported in **(2019) 3 SCC 191**. The counsel for the respondent Nos. 1 & 2 further submits that the petitioners' prayer for registration of documents has been sent to the Revenue Department, seeking its views on the matter. However, the Revenue Department has till date not taken a decision on the petitioners' representation. Consequently, the Registrar/Sub Registrar of documents has also not taken a decision on the petitioners' application for registration of documents, which was made in July, 2022.

5. As can be seen from the pleadings and the submissions of the counsels, the petitioner had purchased the plot of land with a building, on the basis of the auction sale notice dated 01.07.2011 issued by the DRT, Guwahati. It was stated in the auction sale notice that the particulars of the property to be sold by way of public auction included the Business Centre-cum-Market Complex standing on the said plot of land measuring 3 Bighas, under Dag No.295, first class basti land covered by Tea Periodic Patta No. 1, situated at Jalan Nagar, South of

Extended Khalihamari Gaon Ward, Mouza Dibrugarh Town, P/S Sub-Registry Office, District Dibrugarh. The petitioners purchased 2 Bighas of land out of the 3 Bighas of land that was auctioned, in pursuance to the auction sale notice, as can be seen from the order of confirmation of sale of immovable property dated 20.09.2011 issued by the Recovery Officer, DRT, Guwahati. Subsequent to the purchase of part of the auctioned land by the petitioner, the Jamabandi had been made in favour of petitioner No.1 by the Revenue Department, showing that the petitioner had bought the 2 Bighas of land. The revenue records were also corrected accordingly.

6. The existing building standing on the land was thereafter demolished by the petitioners and the Dibrugarh Municipality issued building permission to the petitioners on 15.09.2014, for construction of a new G+8 storied building. Subsequently, the said construction has been completed. Thereafter, 2 agreements were executed for leasing out the said building, vide Agreements dated 01.04.2019, which were notarized on 05.04.2019.

7. For registration of the 2 lease agreements, the petitioners submitted 2 challans dated 27.07.2022 and 29.07.2022 amounting to Rs.12,31,725/- and Rs.10,27,310/- respectively in the Treasury.

8. In the case of ***B. Arvind Kumar vs. Govt. of India and others***, reported in **(2007) 5 SCC 745**, the Supreme Court has held that when a property is sold by public auction in pursuance of an order of the Court and the bid is accepted and the sale is confirmed by the Court in favour of the purchaser, the sale becomes absolute and the title vests in the purchaser. A sale certificate is issued to the purchaser only when the sale becomes absolute. The

sale certificate is merely the evidence of such title.

In the present case, the property has been sold by the DRT, in terms of the Recovery of Debts and Bankruptcy Act, 1993 and the same has also been confirmed in favour of the petitioners.

9. In the case of ***UCO Bank and another vs. Dipak Debarma and others***, reported in **(2017) 2 SCC 385**, the Supreme Court has held that the provision of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereinafter referred to as the "2002 Act") enables the bank to take possession of any property, where a security interest has been created in its favour. Specifically, Section 13 of the 2002 Act enables the bank to take possession of and sell such property to any person to realize its dues. The purchaser of such property acquires a clear title to the property sold.

10. In the case of ***Bhimabai Mahadeo Kambekar vs. Arthur Import and Export Company and others***, reported in **(2019) 3SCC 191**, the Supreme Court has held that mutation of land in the revenue records does not create or extinguish the title over such land nor has a presumptive value on the title. It only enables the person in whose favour mutation is ordered to pay the land revenue in question.

11. In the present case, there is no dispute with regard to the fact that the petitioners are the title holders of the land in question, inasmuch as, they had brought the land under the DRT Act through an auction sale notice. The only issue is with regard to the non-registration of the lease agreement by the concerned authority.

12. As can be seen from the above facts, the petitioners had bought the land in question and there is nothing to show that the said land was alienated from tea garden land. There is nothing to show that just because the word 'Tea Periodic Patta' has been used, the land has been used for tea garden purposes earlier or that it continues to be tea garden land. The land was mortgaged earlier by Dibrugarh Development Authority and due to the default in payment of loan, the petitioners thereafter had bought a part of the land by way of auction sale notice dated 01.07.2011.

13. There appears to be nothing to show that the provision of Section 4(2) of the Assam Fixation of Ceiling on Land Holdings Act, 1956 is applicable to the facts of this case. The above being said, Section 71 of the Registration Act, 1908 provides that every Sub Registrar while refusing to register a document, should endorse the words "registration refused" and a copy of the reasons should be provided to the person, who seeks registration of the document. In the event of registration being refused, Section 72 provides for the aggrieved person to file an appeal. However, in the present case, the Sub Registrar of documents has not taken any decision as to whether the registration prayer should be allowed or refused.

14. Section 71 of the Registration Act, 1908 is reproduced hereinbelow as follows:-

**“71. Reasons for refusal to register to be recorded.-**(1) Every Sub-Registrar refusing to register a document, except on the ground that the property to which it relates is not situate within his sub-district, shall make an order of refusal and record his reasons for such order in his Book No. 2, and endorse the words "registration refused" on the document; and, on application made by any person executing or claiming under the

*document, shall, without payment and unnecessary delay, give him a copy of the reasons so recorded.*

*(2) No registering officer shall accept for registration a document so endorsed unless and until, under the provisions hereinafter contained, the document is directed to be registered."*

15. This Court is aware that the District Commissioner's office has forwarded the petitioners' prayer for registration of documents to the Revenue Department, vide letter dated 30.09.2022, for its consideration and views/decision. As no views/decision has been forthcoming till date, the Sub Registrar would have to take a decision on the said issue, even in the absence of any views/decision being taken by the Revenue Department. In the event of rejection of the petitioner's application for registration, the same should be done by way of a speaking order and communicated to the petitioners. Accordingly, on considering the above Section 71 of the Registration Act, 1908, the Sub Registrar is directed to take a decision on the petitioners' prayer for registering the lease agreements, within a period of 3(three) weeks from the date of receipt of a certified copy of this order, keeping in view the fact that prayer for registration had been made in July, 2022.

16. The writ petition is accordingly disposed of.

**JUDGE**

**Comparing Assistant**