

GAHC010007592021



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

Case No. : WP(C)/388/2021

MD. JAKIR HUSSAIN ALIAS JAKIR ALI
S/O- LT. ANJUM ALI, R/O- MOIDAMIYA NAKARI, DIST.- LAKHIMPUR,
ASSAM, PIN- 787032

VERSUS

THE STATE OF ASSAM AND 7 ORS
REP. BY THE COMM. AND SECY. TO THE GOVT. OF ASSAM, REVENUE AND
D.M.DEPTT., DISPUR, GHY-6

2:THE SECRETARY TO THE GOVT. OF ASSAM
REVENUE AND D.M. DEPTT.
DISPUR
GHY-6

3:THE DY. COMMISSIONER
LAKHIMPUR
NORTH LAKHIMPUR
DIST.- LAKHIMPUR
ASSAM
PIN- 787001

4:THE ADDL. DY. COMMISSIONER (REVENUE)
LAKHIMPUR
NORTH LAKHIMPUR
DIST.- LAKHIMPUR
ASSAM
PIN- 787001

5:THE CIRCLE OFFICER
NORTH LAKHIMPUR REVENUE CIRCLE
NORTH LAKHIMPUR

DIST.- LAKHIMPUR
ASSAM
PIN- 787001

6:THE LAT MANDAL
BORBOSA LAT
NORTH LAKHIMPUR REVENUE CIRCLE
LAKHIMPUR
DIST.- LAKHIMPUR
ASSAM
PIN- 787001

7:MD. ASHRAF ALI
S/O- MD. AMZED ALI
R/O- MOIDAMIYA
NAKARI
DIST.- LAKHIMPUR
ASSAM
PIN- 787032

8:MD. IYANUDDIN AHMED
LAT GAONBURAH
MOIDAMIYA GAON
NAKARI
DIST.- LAKHIMPUR
ASSAM
PIN- 78703

Advocate for the Petitioner : MR. R SARMA, MS. P BARMAN

Advocate for the Respondent : MR. A J DAS (r-7), MR P DEKA (R-8),MR G RENGMA (r-7),MS. M BHATTACHARJEE (GA, ASSAM, R - 3 TO 6),MR. R BORPUJARI (SC, REVENUE, DEPT., ASSAM, R - 1,2)

BEFORE
HONOURABLE MR. JUSTICE N. UNNI KRISHNAN NAIR

JUDGMENT & ORDER (ORAL)

Date : 12-08-2024

Heard Mr. R. Sarma, learned counsel for the petitioner. Also heard Mr. A. Bhattacharjee, learned Standing Counsel for the Revenue and Disaster Management Department appearing for the respondents No. 1 & 2 and Ms. U.

Das, learned Addl. Senior Government Advocate appearing for the respondents no. 3 to 6 as well as Ms. A. J. Das, learned counsel appearing for the respondent no. 7.

2. The challenge made in the present proceeding is to an order dated 06.10.2020, passed by the Assam Board of Revenue in Revenue Appeal No. 84R. A. (L)/2019. The petitioner had also presented a challenge to an order dated 19.03.2018, passed by the Addl. Deputy Commissioner (Revenue), Lakhimpur in N. R. Case No. 32/2018 and an order dated 08.03.2018, passed by the Circle Officer, North Lakhimpur Revenue Circle, Lakhimpur in Case No. 18/2018.

3. The petitioner, herein, is the legal heir of Late Anjum Ali. Late Anjum Ali, on 06.02.1980, was issued with a Annual Khiraj Patta No. 7 by the Settlement Officer, Lakhimpur and thereby settling with him a plot of land measuring 01 Bigha, 02 Kathas, 18 Lechas; covered by Dag No. 397 and another plot of land measuring 01 Bigha, 03 Kathas, 04 Lechas; covered by Dag No. 64 situated at village Borbosa under Nakari Mouza in the district of Lakhimpur. The total area of land so settled with late Anjum Ali was 03 Bighas, 01 Katha and 02 Lechas. The father of the petitioner, late Anjum Ali had died in the year 2006. The petitioner contends that after the death of Anjum Ali, his legal heirs, including the petitioner, herein; had arrived at an amicable settlement amongst themselves as regards the immovable properties, left behind by his father late Anjum Ali and the land measuring 01 Bigha, 02 Kathas and 18 Lechas; covered by Dag No. 397 of Annual Patta No. 7, fell within the share of the petitioner. It is the contention of the petitioner that he has been enjoying the possession of the said land and carrying out cultivation thereon, along with rearing of cattle without any objection or disturbance from any corner.

4. It is contended that the respondent no. 7 had preferred an application before the Circle Officer, North Lakhimpur Revenue Circle, Lakhimpur on

07.06.2016; claiming that the land in question was purchased from the family of the petitioner by him and has been possessing the same and accordingly, it was prayed that the land so purchased by the respondent no. 7 be mutated in his name by deleting the name of the opposite parties. It is to be noted that the father of the petitioner along with his brothers and the petitioner himself, were named as the opposite parties in the said application. The prayer so made by the respondent no. 7 was to the extent of the plot of land measuring 01 Bigha, 10 Lechas; covered by Dag No. 397 under Annual Patta No. 7. It is seen that in pursuance to the said application, the jurisdictional Lat Mandal had submitted a report on 11.12.2017, and therein, in view of the transfer of the land in the name of the respondent no. 7, it was proposed to cancel the Annual Patta of the said land by initiating a violation case and to declare the land as Government land.

5. On receipt of the said report from the jurisdictional Lat Mandal, the Circle Officer, North Lakhimpur Revenue Circle; instituted a case being Re-Settlement Case No. 18/2018 and apprehending possibility of transfer of land, illegally in violation of Rule 1(2) (C) of the Settlement Rules framed under the Assam Land and Revenue Regulation, 1886, proceeded to direct issuance of notice to the parties to show cause as to why the land covered by Annual Patta No. 7 should not be converted to Government land by instituting a cancellation case. It is the specific contention of the petitioner that no notice in this connection was received by him or his family members from the office of the Circle Officer, North Lakhimpur Revenue Circle. The Circle Officer, North Revenue Circle, thereafter, in the Re-settlement Case No. 18/2018, proceeded to hold that the plot of land measuring 01 Bigha, 10 Lechas out of the total land measuring 01 Bigha, 02 Kathas and 18 Lechas; covered by Dag No. 397 of the Annual Patta No. 7, was under the possession of the respondent no. 7, herein, and accordingly, holding that the transfer of land to be in violation of the settlement Rules holding the field, cancelled the Annual Patta No. 7 to the extent of the land so covered by

Dag No. 397, therein, and declared to same to be a Government land. The matter was thereafter, forwarded to the jurisdictional District Commissioner for approval.

6. The jurisdictional District Commissioner, on receipt of the said order of the Circle Officer, North Lakhimpur Revenue Circle, proceeded to register N. R. Case No. 32/2018 and by order dated 19.03.2018, by recording a finding that the land in question covered by Dag No. 397 and Annual Patta No. 7, stood in the name of the father of the petitioner but, the same being under the peaceful possession of the respondent no. 7 for long period, the provisions of the Settlement Rules under the said Regulations of 1886 being violated by the settlement holder i.e., the father of the petitioner, proceeded to cancel the Annual Patta No. 7 and reverted the land so covered by it as Government land.

7. The petitioner, on coming to learn about passing of the order dated 08.03.2018 in Re-settlement Case No. 18/2018, issued by the Circle Officer, Lakhimpur Revenue Circle, proceeded to prefer a Revenue Appeal in the matter before the District Commissioner, Lakhimpur and inter-alia, making a categorical statement that the land in question was so being possessed by him and the other co-pattadars i.e., the heirs of late Anjum Ali, and there being no transfer of the land as alleged to the respondent no. 7, with a further contention that the notices purportedly issued by the Circle Officer, Lakhimpur Revenue Circle, in the matter, were never received by them, proceeded to pray for cancellation of the said order and restoration of the land in the name of the petitioner and other co-pattadars. It is to be noted that Addl. Deputy Commissioner (Revenue) in N.R. Case No. 32/2018, vide order dated 19.03.2018 had upheld the order of the Circle Officer and the Patta was cancelled and the land reverted as Government Khas Sarkari land.

8. It is seen that the Addl. Deputy Commissioner, North Lakhimpur, vide order dated 07.09.2019 in Revenue Appeal No. 13/2019, upheld the order dated

19.03.2018; passed in N. R. Case No. 32/2018 and by further observing that the land in question was under the possession of the respondent no. 7 with title, proceeded to uphold the conversion of the land covered by Annual Patta No. 7 under Dag No. 397 as Government land.

9. The petitioner being aggrieved, approached the Assam Board of Revenue by way of instituting Revenue Appeal No. 84 (L)/2020, assailing the order dated 08.03.2018, passed in Re-settlement Case No. 18/2018, order dated 19.03.2018, passed by the Addl. District Commissioner, North Lakhimpur in N. R. Case No. 32/2018 as well as the order dated 07.09.2019, passed by the Addl. District Commissioner (Revenue) in Revenue Appeal No. 13/2019.

10. The Assam Board of Revenue Department, on consideration of the said Revenue Appeal as instituted by the petitioner, proceeded to uphold the orders passed by the Circle Officer, North Lakhimpur, vide the order dated 08.03.2018, in Re-settlement Case No. 18/2018 and the order dated 19.03.2018, passed by the Addl. District Commissioner, North Lakhimpur in N. R. Case No. 32/2018. However, the order dated 07.09.2019; passed by the Addl. District Commissioner (Revenue), Lakhimpur in R. A. No. 13/2019, was held to be erroneous and presumptive and therefore, interfered with the same. Being aggrieved, the petitioner has instituted the present proceeding.

11. I have heard the learned counsels appearing for the parties and also perused the materials available on record.

12. The facts as narrated herein above would go to reveal that the father of the petitioner late Anjum Ali was settled with a plot of land measuring 01 Bigha, 02 Kathas and 18 Lechas; covered by Dag No. 397 and another plot of land measuring 01 Bigha, 03 Kathas and 04 Lechas; covered by Dag No. 64 by way of issuance of Annual Khiraj Patta No. 7. The father of the petitioner had died in the year 2006 and it is the contention of the petitioner that he and other co-pattadars

i.e., the legal heirs of Late Anjum Ali were peacefully possessing the land in question and were also paying the due revenue in respect of the land covered by Annual Patta No. 7.

13. The petitioner had also disputed the contention of the respondent no. 7, that the land in question was so transferred to him by either the father of the petitioner or any other member of his family. It is not in dispute that the right of an Annual Patta holder, during the currency of Annual Patta, subsists in the Pattadar and it has to be construed to be an existing right in such person at the time of his demise and though such right may be one contingent on the cancellation of the Annual Patta and is subject to the paramount title of the Government in the land, the same would devolve on his heirs and successors-in-interest by operation of law. The right may be limited, but it exists to be inherited by the heirs and successors-in-interest of the original Annual Patta holder [refer the decision of this Court in the case of **Haji Abdul Haque and Ors. Vs. Sujit Kumar Das and Ors.**, reported in **(2003) 1 GauLT 376**].

14. Having noticed the above position, the legal provisions involved is noticed from the decision of this Court, in the case of **Shanti Bhuyan Barma Vs. Chairman, Assam Board of Revenue & Ors.**, (reported in **2019 SCC Online Gau 3490**).

“23. Settlement Rules have been framed under the Assam Land and Revenue Regulations, 1886. Rule 1(2) (c) defines 'annual lease'. As per the definition clause, an 'annual lease' means a lease granted for one year only and confers no right in the soil beyond a right of user for the year for which it is given. It confers no right of inheritance beyond the year of issue. It confers no right of transfer or of subletting and shall be liable to cancellation for any transfer or subletting even during the year of issue. As per the proviso, State Government may waive their right to cancel the annual lease and may allow its automatic renewal till

such time the State Government may direct in cases where land is mortgaged to the Government or to a State sponsored Cooperative Society.

24. Thus, what 'annual lease' means is that firstly it is a lease granted for one year only. Secondly, it confers only right of user in the soil for the year of lease. Thirdly, it confers no right of inheritance beyond the year of issue. Fourthly, it confers no right of transfer or of sub-letting. Fifthly, if there is such transfer or sub-letting, the annual lease is liable to be cancelled.

25. The effect of transfer of an annual lease upon transferee and transferor was considered by a Division Bench of this court way back in the year 1951 in the case of Jamur All v. Chafina Bibi, AIR 1951 Assam 20. After referring to the definition of an 'annual lease' it was held that it did not prohibit transfer of annual pattas; rather it permitted transfers but such transfers are limited in their duration to the period covered by annual patta. Interpreting the said provision, it was held that when an annual patta-holder purports to transfer his ownership in such land for consideration, the transferee takes good title to the property subject only to the paramount title of the Government. In other words, if the Government so chooses, it may, at the expiry of the period of annual patta, refuse to grant an annual patta to the transferee. It was, however, clarified that this is a matter between the Government and the transferee and not a matter between the transferor and the transferee.

26. This Interpretation of the definition of annual lease and the consequences which may follow following transfer of ownership or possession thereof holds good till date even though more than half a century has gone by. In fact, later decisions of this court have reiterated the proposition of law propounded in Jamur All (supra) [please see Safatun Nessa v. Gitarani Kundu, (1987) 2 GLR 64 and Govinda Ch. Das v. Boloram Bozo, 2000 (2) GLT 669].

15. It is also to be noted that in the Settlement Rules framed under the Regulations of 1886, the proviso to Rule 116 mandates that the State Government may waive their right to cancel an annual lease and may allow its renewal automatically till such time as the State Government may direct in those cases in which the land is mortgaged to Government or to a State-sponsored Co-operative Society.

16. In support of the above conclusion, reliance is placed on a decision of this Court in the case of **Amrit Bahadur Chetry and Ors. Vs Deputy Commissioner, Nagaon and Ors.**, reported in **2016 SCC Online Gau 174**; of which, the relevant paragraphs are quoted herein below:-

"9. The Settlement Rules do not prohibit transfer of annual pattas but it is apparent from rule 1(2) (c) that the transferred rights are limited in their duration only for the period covered by the annual patta. Thus, when any transfer of right is affected by an annual patta holder for consideration, the transferors acquire good title to the annual patta land, subject only to the paramount title of the Government. In other words, "if the Government choose it may, at the expiry of the period of the annual patta, refuse to grant an annual patta to the transferee. That however, is a matter between the Government and the transferee and not a matter between the transferor and the transferee" - see Jainur All v. Chafna Bibi, AIR 1951 Assam 20.

10. In Jainur All (supra) while concurring with the above enunciation of the law authored by Justice Thadani, in his concurring judgment, Justice Ram Labhaya separately declared that the rights of the Government in the annual patta land is not affected by the transfer when the transferors is an

annual lease holder. The Government, however, has the right to not to renew the lease and to recover possession of the property. It may give the lease at the expiry of the year, to another person. The transferee will not acquire interest in the land as against the Government or any new lease holder but only against his own transferor, he is entitled to enforce the transaction. In other words, it was declared that the transfer of the annual patta land is not forbidden as it does not contravene any statutory prohibition but it merely violates the terms of the lease. Therefore, such transaction is not enforceable against the Government it can be enforced against the transferors.

11. Under rule 1(2) (c) of the Settlement Rules of the Land Revenue Regulation, limited right is conferred on the annual patta holder and during the subsistence of the lease that limited right can be enjoyed till such time, the annual lease is cancelled through due process. The name of a settlement holder can be struck off from the revenue register under rule 116 of the Settlement Rules, but the proviso to rule 116 requires that opportunity must be afforded to the settlement holder and his objection should be considered, before the name of the settlement holder is struck off.

12. In the present cases, the Circle Officer proceeded on the basis that the petitioners had transferred annual patta land in favour of the 4th respondent and on that basis cancellation of patta was ordered and the land was categorized as sarkari land. But the exercise of power under rule 116 of the Settlement Rules must be preceded by due notice and hearing of objection. But the order of the Addl. D.C. passed on 12.7.2010 do not disclose that any such notice was issued to the settlement holder or hearing was afforded before cancellation of patta was ordered. The denial of notice or hearing was specifically pleaded by the settlement holder in the appeals

filed before the Revenue Board, but both appeals were summarily dismissed on 24.2.2011 without any discussion on the arguments made by the appellants.

13. Therefore, in my considered opinion, the concerned decisions against the writ petitioners were rendered in violation of the principles of natural justice and the procedure prescribed by rule 116 of the Settlement Rules were Ignored. Accordingly the impugned decision of the Revenue Board, which upholds the decision of the Addl. D.C., are found to be vitiated and the same are quashed. But this verdict will not restrict the power of the Government to not to renew the annual patta or to cancel the right of the settlement holder, but such decision must be taken through due process as prescribed under the Land Revenue Regulation and the Settlement Rules. It is ordered accordingly."

17. In the present proceeding, it is seen that the petitioner has categorically contended, in all the proceedings involving the land covered by the Annual Patta No. 7, that the land forming part of the said patta was never transferred by the Pattadar late Anjum Ali and/or any of his legal heirs, including the petitioner, herein, to the respondent no. 7. It is also contended that the respondent no. 7, although had contended to have purchased the land in question, no documents in support thereof was so produced. The petitioner has further contended that the order dated 08.03.2018, passed by the Circle Officer, North Lakhimpur Revenue Circle, in Case No. 18/2018 and the order dated 19.03.2018, passed by the Addl. District Commissioner, Lakhimpur, in N. R. Case No. 32/2018; were so passed without hearing the petitioner and/or any of his family members and no notice, in this connection was also served upon them.

18. In view of the above discussions, the order passed by the Circle Officer, North Lakhimpur Revenue Circle, dated 08.03.2018 in Case No. 18/2018, being so

passed without providing an opportunity of hearing to the petitioner, herein, the same has to be construed to be so passed in clear violation of the principle of natural justice as well as the procedure as mandated under the provisions of Rule 116 of the said Settlement Rules. Accordingly, applying the decision of this Court in the case of **Amrit Bahadur Chetry (supra)**, to the facts of this case, this Court is of the considered view that the orders impugned in the present proceedings cannot be sustained. Accordingly, the order of the Assam Revenue Board, dated 06.10.2020; in Revenue Appeal No. 84(L)/2019 along with the order dated 08.03.2018, in Re-settlement Case No. 18/2018; issued by the Circle Officer, Lakhimpur Revenue Circle and the order dated 19.03.2018, passed by the Addl. District Commissioner, Lakhimpur, in N. R. Case No. 32/2018; as well as the order dated 07.09.2019, passed by the Addl. District Commissioner (Revenue), in Revenue Appeal No. 13/2019 are hereby set aside and quashed.

19. The impugned orders being interfered with, the Annual Patta No. 7 now stands restored to the position it so stood prior to passing of the orders impugned in the present proceedings. The status of the land being so restored to the position it so stood, prior to the passing of the said impugned orders; it is provided that the same would not restrict the power of the Government to not renew the Annual Patta or, to cancel the same but, such decision must be taken through a due process as prescribed under the provisions of the Regulations of 1886 and the Settlement Rules so framed there under.

20. It is also provided that the parties to the present proceeding would be at liberty to institute such proceedings as may be mandated for establishing their respective rights in the matter and the authorities, in the event of institution of such proceedings, shall consider and dispose of the same, strictly, in accordance with the procedure mandated under the provisions of the Settlement Rules framed under the said Regulations of 1886.

21. With the above observations and directions, the writ petition stands disposed of.

JUDGE

Comparing Assistant