

BEFORE

HON'BLE MR JUSTICE ACHINTYA MALLA BUJOR BARUA

None appears for the petitioner when the matter is called upon. Heard Mr. K.K. Upadhyay, learned counsel appearing on behalf of the respondents.

[2] It is the case of the petitioner that the predecessors in interest of the petitioners were the pattadars of Khiraj periodic patta No.82/48 and 103/195 of village Japarkuchi under Khata Mouza in the district of Nalbari. It is stated that the petitioners are poor village people and cultivation is the source of their livelihood. An area of 1 bigha covered by Dag No.776 under patta No.103/195 were in possession of the petitioner and his four brothers. Similarly, an area of 1 bigha 16 lechas have been in possession of the petitioner Nos.2 and 3 under Dag No.775 of patta No.82/48 of village Japarkuchi. Accordingly, total area of land under possession of the petitioner is 2 bigha and 16 lechas of land, which comprises of their homestead as well as basti land.

[3] It is the case of the petitioners that they are financially very weak and during the lifetime of their predecessors in interest there were some failure in the payment of land revenue. However, on 22.03.2008 when the lat mandal of the area had visited the adjoining plot of land in respect of some boundary dispute, the petitioner came to know that their land had been recorded as sarkari in the land records. Accordingly, the petitioners immediately applied for certified copy of the sale notice and filed appeal before the learned Board of Revenue for setting-aside the sale with petition for condonation of delay. Although there had been a petition for condonation of delay, the learned Board of Revenue merely recorded that the counsel for the appellant had stated that the petitioners came to know of the sale only when the lat mandal came to demarcate the adjoining plot of land. This was considered by the learned board of revenue to be obviously a very odd excuse.

[4] No reason has been given by the learned Board of Revenue as to why the explanation given by the petitioners were not acceptable, except for expressing their view that the same is 'obviously a very odd excuse'. Such expression of a view that 'obviously a very odd excuse' cannot be considered to be a reason for arriving at a conclusion that the stand taken by the petitioners for condonation of the delay in preferring the application before the learned Board of Revenue, had been rejected by a reasoned order. In order to reject the contention of the petitioners that the petitioners were not aware of any sale prior to the lat Mondal coming to the adjacent plot of land for demarcation, there must be categorical finding from the learned Board of Revenue that either the said statement of the petitioners that they had prior knowledge of the sale notice is incorrect, or the petitioners could not prove their own case. The learned Board of Revenue upon exercising its quasi judicial jurisdiction is bound to give a reasoned order as to why the application for condonation of delay has been rejected.

[6] It has also been noticed that the proceedings initiated before the learned Board of Revenue was against the sale of the land of the petitioners for non payment of land revenue. Therefore, the said petition of the petitioners before the learned Board of Revenue cannot be construed to be an appeal under section 147 of the Assam Land and Revenue Regulation Act, 1886. Section 147 of the Assam Land and Revenue Regulation Act is quoted below:

- a. To the Board from orders, original or appellate passed by a Deputy Commissioner, Settlement-Officer or Survey Officer.
- b. To the Deputy Commissioner, from orders passed by a sub-divisional Officer an Assistant Commissioner or Extra Assistant Commissioner;
- c. To the Settlement Officer, from orders passed by an Assistant Settlement-Officer;
- d. To a Survey Officer, from orders passed by an Assistant Survey Officer;

[7] From the aforesaid provisions of Section 147 it can be said that appeal would lie before the Board from orders, original or appellate passed by the Deputy Commissioner, Settlement Officer or Survey Officer.

[8] In the instant case, the challenge to the said sale is neither a challenge to any order, original or appellate, passed by the Deputy Commissioner, Settlement Officer or Survey Officer. In such view of the matter, any challenge to sale cannot be construed to be an appeal under section 147 of the Assam Land and Revenue Regulation Act, 1886.

[9] On the other hand, Section 81 of the Assam Land and Revenue provides for challenge to a sale on the same becoming final on the ground of hardship or injustice. Section 81 of the Assam Land and Revenue Regulation Act, 1886 is reproduced below:

The Board may, on application made to them at any time within one year of a sale becoming final under section 80, set the sale aside on the ground of hardship or injustice.

[10] In the instant case, the challenge of the petitioners before the Learned Board of Revenue is against the sale of their patta land due to non payment of land regulation, the application would have to be construed to be an application under section 81 of the Assam Land and Revenue Regulation Act, 1886.

[9] An application under section 81 of the Assam Land and Revenue Regulation Act, 1886 being an original application for setting-aside the sale on the ground of hardship or injustice, is the matter to be decided by the learned Board of Revenue by allowing the parties to place relevant materials, and also if necessary, by taking evidence. The learned Board of Revenue, unlike it does in an appeal under Section 147, cannot form a subjective opinion merely upon considering the statements made in the petition and conclude that the statements made there in amounts to an 'obviously a very odd excuse'.

[10] In such view of the matter, the order dated 17.11.2009 passed by the learned Board of Revenue in Appeal Case No.47 RA(NL)/08 is hereby set aside and the matter is remanded back to the learned Board of Revenue for a fresh consideration of the application filed by the petitioner for setting-aside the sale, if necessary, by requiring the parties to adduce evidence. Further the learned Board of Revenue is to proceed in the matter by considering the application to be an application under Section 81 of the Assam Land and Revenue Regulation Act, 1886 and not as an appeal under section 147 of the Assam Land and Revenue Regulation Act.

[11] While considering the matter as an application under section 81 of the Assam Land Revenue Act, the learned Board of Revenue shall also consider the element of hardship or injustice that the petitioners may have faced by the sale notice dated 1094-64/65. The learned Board of Revenue shall also consider as to whether the specific procedure prescribed under sections 72 to 79 of the Assam Land and Revenue Regulation, providing for the procedure as to how the sale is to be executed, had been followed in the instant case or not.

[12] In terms of the above, the writ petition stands disposed of.

[13] The learned Assam Board of Revenue would issue notice and inform the petitioner as to the next date of hearing.