

IN THE COURT OF THE SPECIAL JUDGE, MORIGAON

Special (Land Grabbing) Case No. 02/2017

Present : **Mr. P Das,**
 Special Judge (Land Grabbing),
 Morigaon, Assam

Md. Abdur Rahman **Petitioner**

-Vs-

Md. Nurul Islam & Ors.

..... **Respondents**

Date of Argument : 12.07.2019 & 23.09.2019.

Date of Judgment : 14.11.2019.

Appearance for the Parties

Advocate for the Petitioner : Mr. N.K. Borah, Ld. Advocate.

Advocate for the respondents : Nil.

J U D G M E N T

1. The instant petition has been filed by the petitioner Md. Abdur Rahman U/s 8(2) of the Assam Land Grabbing (Prohibition) Act, 2010 (herein after the Act) with the grievance that the two respondents namely, Md. Nazrul Islam and Md. Babul Hussain have committed the grabbing of his land described in Schedule A to the petition in violation of the provisions of the Act. The concerned land as described in Schedule A is a plot of land measuring 2 Kathas 14.62 lessas out of 3 kathas 9 lessas covered by Dag No. 51 of P.P. No. 39 of Japori Gaon Kissam in Mouza Bukoni under Laharighat PS in the district of Morigaon. The same is described in Schedule A of the petition as mentioned above.

2. The case of the petitioner in brief is that he is the owner and the possessor of the aforesaid land having right, title and interest over the same, but on 04.04.2008, the respondents dispossessed him whereupon, he was

compelled to file a Title suit in the court of learned Munsiff No.1, Morigaon, which was registered as TS Case No. 33/2009, which thereafter proceeded ex-parte against the respondents and the suit was decreed in favour of the petitioner vide judgment and order dated 17.12.2009. That, subsequently, the same was put in execution vide T Ex. No. 02/2010 before the Court of Ld. Munsiff No.1 and in execution of the decree, the petitioner was put in Khas possession of the land by evicting the respondents. It is further stated by the petitioner that on 28.04.2016, the respondents forcibly entered into the land illegally grabbing the same and dispossessed the petitioner from the said suit land whereupon, he also filed a complaint before the learned CJM, Morigaon which was send to the police for investigation. It is stated that in the aforesaid facts and circumstances, the petitioner has filed the instant petition seeking relief under provision of the Act.

3. Service upon the respondents was returned with process server report dated 08.01.2018 wherein, it is stated that the notice was delivered to the wife of respondent No.2 Babul Hussain, who is the son of respondent No.1 Nazrul Islam and it is indicated in the process server report that they stay in the same house.

4. In the context of the aforesaid report, vide order dated 12.06.2018 passed by my learned Predecessor, the case was directed to proceed ex-parte against the respondents. Even thereafter, none appeared on behalf of the respondents on the subsequent dates as well.

5. I have heard Sri N.K. Borah, the learned counsel for the petitioner. On the prayer of the learned counsel for the petitioner, the case records of TS Case No. 33/09 and T. Ex. 02/2010 were procured from the learned court below. I have perused the evidence on record carefully and other relevant materials on record.

6. On the basis of the pleadings of the petitioner side, the following points for determination were farmed:-

- i) Whether the petitioner got decree of Schedule-A land of the petitioner vide Title Suit No. 33/2009?
- ii) Whether the petitioner was put into possession of the Schedule-A land vide Title Execution No. 02/2010 vide order dated 06.10.2010?
- (iii) Whether the petitioner was subsequently dispossessed of the suit land in violation of conditions of the Assam Land Grabbing Act?
- (iv) Whether the petitioner is entitled to get the relief as prayed in the petition?

7. In this context, it may be mentioned herein that as per the provision of Section 9 (2) of the Act, the Special Tribunal has to first determine the civil liability with regard to the grievance of land grabbing in the case.

8. DISCUSSION, DECISION AND REASONS THERE OF

In the instant case in the civil trial, the petitioner adduced evidence on affidavit as PW-1 and exhibited several documents. Another person Monsur Ali adduced evidence on affidavit as PW-2. Since the respondent did not appear, there was no cross-examination of these two witnesses and their evidence remained uncontroverted.

9. In his evidence on affidavit, the petitioner as PW-1 reiterated the contentions of his petition and stated that he is the owner and possessor of the land measuring 2 Kathas 14.62 lessas out of 3 kathas 9 lessas covered by Dag No. 51 of P.P. No. 39 of Japori Gaon Kissam in Mouza Bukoni under Laharighat PS in the district of Morigaon, having right, title and interest over the same, but on 04.04.2008, the respondents dispossessed him whereupon, he was compelled to file a Title suit in the court of learned Munsiff No.1, Morigaon, which was registered as TS Case No. 33/2009, which thereafter proceeded ex-parte against the respondents and the suit was decreed in favour of him vide judgment and order dated 17.12.2009. That, subsequently, the same was put in execution vide T Ex. No. 02/2010 before the Court of Ld. Munsiff No.1 and in execution of the decree, he was put in Khas possession of the land by evicting the respondents. It is further stated by the PW-1 that on 28.04.2016, the respondents forcibly entered into the land illegally grabbing the same and

dispossessed him from the said suit land whereupon, he also filed a complaint before the learned CJM, Morigaon. As part of his evidence, he exhibited as Ext. 4(2) Jamabandi Copy; Ext. 4(3) Draft Chitha and Ext. 4(4) Trace Map of the suit land.

10. Before going further, I refer to Section 2(e) of the Act, which defines Land Grabbing as follows:

"Land Grabbing" means every activity of land grabber to occupy or attempting to occupy with or without the use of force, threat, intimidation and deceit, any land (whether belonging to the Government, a public Sector undertaking, a local authority, a religious or charitable institutions or endowment, including a wakf or any other private person) over which he or they have no ownership, title or physical possession, without any lawful entitlement and with a view to illegally taking possession of such land or creating illegal tenancies or lease or license, agreements or by constructing unauthorized structures thereon for sale or hire or use or occupation of such unauthorized structures and the term "grabbed land" shall be construed accordingly.

11. PW-2 Monsur Ali has also testified on similar lines and corroborated the evidence of PW-1.

12. Perusal of the judgment and order dated 17.12.2009 passed by the learned Munsiff No.1 in TS Case No. 33/09, reveals that the suit of the petitioner as plaintiff was decreed ex-parte against the respondent No.1 with a declaration of Khas possession to the petitioner. The description of the property has been narrated in the para 2 of the judgment and land has been described as follows:

A plot of land measuring 2 Kathas 14.62 lessas out of 3 kathas 9 lessas covered by Dag No. 51 of P.P. No. 39 of Japori Gaon Kissam in Mouza Bukoni under Laharighat PS in the district of Morigaon.

Thus, I find that the land which was subject matter of the Title Suit and the land in question in the instant proceeding are the same.

13. The point No.1: I have perused the relevant portion of the case record of TS Case No. 33/09 exhibited as Ext.1 and the certified copy of the impugned judgment exhibited as Ext.2 mentioned above. Therefore, it is clear that the petitioner as plaintiff was granted decree of right, title and interest over the Schedule A land vide judgment and order dated 17.12.2009 in TS Case No. 33/09. Accordingly, point No.1 is decided.

14. Point No.2:- I have also perused the relevant portions of the case record of T. Ex. Case No. 02/2010. The order dated 03.02.2011 passed by the learned Munsiff No.1, Morigaon in T. Ex. 02/2010 has been exhibited as Ext.3(1), perusal of which reveals that upon perusing the report of Civil Nazir and Lat Mandal the decree has been stated to be executed to full satisfaction. The report of Civil Nazir dated 01.02.11 of the said execution has been exhibited as Ext. 3(5) wherein, the said Nazir has stated that in execution of the decree, the land has been identified, measured and Khas possession delivered to the decree holder by demolishing a house thereon enclosing a receipt of decree holder and Lat Mandal report. PW-1 has exhibited Ext. 3(6), the receipt of the petitioner Abdur Rahman that he was handed over the land on 01.02.2011 with the help of police and Nazir.

15. On the basis of the aforesaid evidence and materials, it is proved that the petitioner was put in possession of Schedule A land by way of execution in T.Ex. Case No. 02/2010 wherein, as stated above the learned Munsiff No.1, Morigaon recorded the full satisfaction of the decree vide order dated 03.02.2011. Point No.2 is decided accordingly.

16. Point No.3 Apart from contending in the petition, the petitioner as PW-1 and PW-2 have stated in their evidence that on 28.04.2016, the petitioner was forcefully dispossessed from his Schedule A land by the respondents who illegally grabbed the same. The aforesaid testimony of the petitioner regarding his dispossession from the said land has remained uncontroverted from the respondent side and therefore, it is proved that on the said date he was dispossessed from the concerned land by the respondents and keeping in mind the definition of land grabbing enunciated in Section 2(e) of the Act, as narrated

above, it can be said that such dispossession is in violation of provision of the Act. Point No.3 is decided accordingly.

17. In the context of the aforesaid discussion, the point No. 1,2 & 3 are discussed in favour of the petitioner and he is entitled to get reliefs under the provision of the Act. Therefore, on the basis of the evidence and other materials on record, I hold that the petitioner has right, title and interest over the Schedule A land described as land measuring *2 Kathas 14.62 lessas out of 3 kathas 9 lessas covered by Dag No. 51 of P.P. No. 39 of Japori Gaon Kissam in Mouza Bukoni under Laharighat PS* in the district of Morigaon.

18. On the basis of the evidence and other materials on record, I also come to the considered finding that the respondents have committed grabbing of the Schedule-A land described above in violation of provisions of the Act.

Section 9 (2) of the Act provides that - after taking cognizance of a case under sub-section (2) of section 8, the Special Tribunal shall try and dispose of the civil liability at first and decide on pass order as to the title, ownership and lawful possession of the grabbed land whether before or after the commencement of this Act as it deems fit. After completion of the civil proceeding, if the Special Tribunal decides and pass order that the land in question has been grabbed, the special Tribunal may order that the possession of the land be restored to the person whose land has been grabbed after evicting the land grabber or any other person who may be in possession of the land, if necessary by use up such force as may be required for the purpose.

19. In the context of the above, the petitioner is entitled to get back the possession of the Schedule A land and the respondents may restore to the petitioner possession of the said Schedule A land. Point No.4 is decided accordingly.

20. In this regard, I refer to the Section 9(2) proviso which provides as follows:

Proviso to Section 9 (2) provides that - provided that execution of the order for restoration of possession of the grabbed land shall not be made till

expiration of the period of the appeal provided under section 13 of the act. If within a reasonable time after expiry of the appeal period, no order of stay of execution has been received from the Special Court or produced before the Special Tribunal by any of the parties to the case, the Special Tribunal shall proceed for execution of this order and simultaneously frame charge against the land grabber to prosecute him for the alleged act of land grabbing.

21. I also refer to the Section 13(1) of the Act under which an appeal under this Section has to be preferred within a period of sixty days to the appellate court from the date of passing of judgment and order of the Special Tribunal.

22. Therefore, in view of the aforesaid provisions as noticed, if the relief of getting back the possession of the concerned land in this case, has to be executed through the process of this court, the same would have to be done so within a reasonable time after the expiry of a period of 60 days provided for appeal against the said judgment and order, if in the meantime, no order of stay of this judgment and order passed by the appellate court is produced before this court.

23. Consequently, the instant petition filed by the petitioner is allowed and the case is disposed of on the aforesaid terms.

24. Judgment is delivered in the open court on this 14th day of November, 2019 under my hand and seal.

(P Das)

Special Judge, Morigaon

Dictated and corrected by me

(P Das)

Special Judge

APPENDIX

A. Prosecution witness

1. PW-1 : Md. Abdur Rahman
2. PW-2 : Md. Monsur Ali.

B. Defence witness :

Nil.

C. Prosecution Exhibits:

1. Ext. 1 : Case record of TS Case No. 33/09.
2. Ext. 2 : Copy of the Judgment, order and decree dated 17.12.2009 of TS Case No. 33/09
3. Ext. 3 : Case record of T. Ex. 2/10
4. Ext. 3(1) : Order dated 03.02.2011 of T. Ex. 2/10
5. Ext. 3(2) : Bayliff submitted by the decree holder in T.Ex. Case No. 02/2010
6. Ext. 3(3) : Reports of Civil Nazir dated 08.10.10 and 22.11.10.
7. Ext. 3(4) : Report of Lat Mandal dated 21.12.2010.
8. Ext. 3(5) : Report of Civil Nazir regarding delivery of possession to the decree holder dated 01.10.2011.
9. Ext. 3(6) : Receipt of decree holder regarding taking possession of the suit land dated 01.02.2011.
10. Ext. 3(7) : Report of Lat Mandal regarding delivery of the Schedule of the Suit land dated 01.02.2011 to the Nazir.
11. Ext. 4 : Report of Circle Officer of Bhuragaon Circle dated 29.05.2018 regarding seeking report by the Special court with regard to Sessions Special Case No. 02/2010
12. Ext.4 (1) : Report of Lat Mandal dated 29.05.2018 of Bhuragaon Revenue Circle.
13. Ext.4 (2) : Jamabandi Copy of the suit land.
14. Ext.4 (3) : Draft Chitha of the suit land.
15. Ext.4 (4) : Trace Map of the suit land.

D. Defence exhibits :

Nil.

(P Das)
Special Judge, Morigaon

Special Case No. 02/2017 (Land Grabbing)

14.11.2019

Petitioner is represented by learned counsel Mr. N.K. Borah.

None appeared on behalf of the respondents.

Judgment is ready in separate sheet and pronounced in the open court.

In the result, the petition filed by the petitioner is allowed.

The instant case is disposed of on the aforesaid terms.

(P Das)

Special Judge, Morigaon