GAHC010009752015

2026:GAU-AS:10825

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

Case No. : WP(C)/1178/2015

SOFIUR RAHMAN and 5 ORS,

2: MD. SAIFUL HOQUE

3: MD. RAFIQUL HOQUE
NOS.1-3 ARE SONS OF FAZLUL KARIM

4: MD. RAUSHAN ALI SHEIKH
S/O LT. OMAR ALI SHEIKH

5: MD. JOMIRUDDIN AHMED

6: MD. JOHIRUL HOQUE
BOTH NOS.5and6 ARE SONS OF RAUSHAN ALI SHEIKH
ALL ARE R/O KATLAMARI
P.O. PADMERALGA
P.O. SOUTH SALMARA
DIST- DHUBRI
ASSAM
BEING REP. BY CONSTITUTED ATTORNEY
ABDUS SALAM MULLA
S/O LT. HASEN ALI MOLLA
R/O SHYAMCHARANER KUTI PT-III
P.O. ALOMGONJ
P.S. GAURIPUR
DIST- DHUBRI
ASSA

VERSUS

THE STATE OF ASSAM and 7 ORS,

REP. BY THE COMMISSIONER AND SECY. TO THE GOVT. OF REVENUE DEPTT., DISPUR, GHY-6

2:THE ASSAM BOARD OF REVENUE
GHY-1

3:THE DY. COMMISSIONER
DHUBRI
ASSAM

4:THE ADDL. DY. COMMISSIONER REVENUE
DHUBRI
ASSAM

5:THE TAHSILDAR
DHUBRI TAHSIL
DHUBRI
ASSAM

6:THE SETTLEMENT OFFICER
DHUBRI and KOKRAJHAR
DIST- DHUBRI
ASSAM

7:THE ASSTT. SETTLEMENT OFFICER
DHUBRI
DIST- DHUBRI
ASSAM

8:(III) ORSONA MISRA
W/O LT. HAIDAR ALI TALUKDAR
R/O VILL AND P.O ALOMGANJ
P.S GAURIPUR
DIST. DHUBRI
ASSAM
PIN 783339.

8:(VIII) HAZERA KHATUN
D/O LATE HAIDAR ALI TALUKDAR
R/O VILL. BORBHITA
P.O DEBITOLA
P.S KAZIGAON
DIST. KOKRAJHAR
BTAD
ASSAM
PIN 783339.

8:(VII) MUSHARRAF TALUKDAR

S/O LT. HAIDAR ALI TALUKDAR
R/O VILL AND P.O ALOMGANJ
P.S GAURIPUR
DIST. DHUBRI
ASSAM
PIN 783339.

8:ON THE DEATH OF LATE HAIDAR ALI
HIS LEGAL HEIRS
(I)MRS. REHENA BIBI

W/O LT. HAIDAR ALI TALUKDAR
R/O VILL. KHOTABAK
P.O DEBITOLA
P.S KAZIGAON
DIST. KOKRAJHAR
BTAD
ASSAM
PIN 783339.

8:(IV) SANOWAR TALUKDAR
ALIAS BAPPI
S/O LT. HAIDAR ALI TALUKDAR
R/O VILL AND P.O ALOMGANJ
P.S GAURIPUR
DIST. DHUBRI
ASSAM
PIN 783339.

8:(V) MOSIDA KHATUN
D/O LT. HAIDAR ALI TALUKDAR
R/O VILL AND P.O ALOMGANJ
P.S GAURIPUR
DIST. DHUBRI
ASSAM
PIN 783339.

8:(II) AHAZUDDIN TALUKDAR
S/O LT. HAIDAR ALI TALUKDAR
R/O VILL. KHOTABOK
P.O DEBITOLA
P.S KAZIGAON
DIST. KOKRAJHAR
BTAD
ASSAM
PIN 783339.

8:(VI) RAHUL TALUKDAR

S/O LT. HAIDAR ALI TALUKDAR
R/O VILL AND P.O ALOMGANJ
P.S GAURIPUR
DIST. DHUBRI
ASSAM
PIN 783339

BEFORE

HON'BLE MR. JUSTICE DEVASHIS BARUAH

For the Petitioner(s) : Mr. A. U. Choudhury, Advocate

For the Respondent(s) : Mr. T. H. Hazarika, Advocate

- Date on which Judgment was reserved : N/A
- Date of Pronouncement of Judgment : **04.08.2026**
- Whether the pronouncement is of the Operative Part of the Judgment : Yes
- Whether the full Judgment has been Pronounced : N/A

JUDGMENT AND ORDER (ORAL)

Heard Mr. A. U. Choudhury, the learned counsel appearing on behalf of the Petitioners and Mr. T. H. Hazarika, the learned counsel appearing on behalf of the Respondent Nos. 8(i) to 8(viii). None appears on behalf of the other parties.

2. The present writ petition has been filed by the Petitioners challenging the order dated 06.02.2014 passed by the Chairman of the learned Assam Board of Revenue whereby the condonation application of delay was rejected on the ground that the Petitioners

could not have approached the learned Assam Board of Revenue after 16 years from the date of the auction sale and more particularly when the Petitioners who were the appellants have filed an application before the Additional Deputy Commissioner, Dhubri for annulment of the sale which was rejected vide order dated 23.03.1994.

BRIEF FACTS OF THE CASE:

3. Gulapdi Sheikh and Amrit Ali Sheikh who were the sons of Late Jahad Sheikh were the owners of a plot of land admeasuring 17 Bighas 1 Katha 15 Lechas under Khatian No.56 situated at Parbat Juar Pargana under Dhubri Tohsil in the District of Dhubri. The said land was included in the Revenue Survey No.D737 of village Barbhita Tauzi No.6 Parbat Juar acquired estate. The Government of Assam acquired the said land and thereafter the land was included in Khatian No.56 and vide an order passed by the Assistant Settlement Officer dated 19.01.1965, the lands were settled with Gulapdi Sheikh son of Jahad Sheikh under the provisions of the Goalpara Tenancy Act, 1929 and new Dag No.204 was created.

4. It is also the case of the Petitioners that the old Patta No.18 was renumbered as Patta No.49 and similarly, old Dag No.201/204

was newly numbered as 213 in pursuance to an order dated 24.01.1985 of the Assistant Settlement Officer.

5. It is the further case of the Petitioners that the said Gulapdi Sheikh and Md. Amrit Ali Sheikh sold the land vide registered Sale Deed No.4232/1983 dated 18.04.1983 to Md. Wahidur Rahman, Md. Alam Sheikh and Md. Rubul Amin. The said land thereupon was sold to the Petitioners by the Registered Deed of Sale bearing Deed No.5394 dated 09.09.1985. By this Deed dated 09.09.1985, out of 17 Bighas 1 Katha 15 Lechas, 11 Bighas 2 Kathas 17 Lechas were sold to the Petitioners. Subsequently, vide another registered Deed of Sale bearing Deed No.5489 dated 16.09.1985, the remaining 5 Bighas 3 Kathas 18 Lechas of land was sold to the Petitioners. The Petitioners thereupon after purchase did not mutate their names in the records of rights. It is however claimed by the Petitioners that they had been paying the land revenue.

6. Be that as it may, in the year 2007, when the Petitioners took steps for mutating their names, the Petitioners could come to learn that the entire land which was purchased by the Petitioners were sold in auction for realization of the arrear land revenue for the years 1393 B.C., 1394 B.C., 1395 B.C., 1396 B.C. and 1397 B.C. corresponding to English years 1986-87, 1987-88, 1988-89, 1989-

90 and 1990-91. Immediately thereupon, the Petitioners took certified copies of those documents and filed an application before the Settlement Officer, Dhubri and Kokrajhar District on 26.04.2007 praying for cancellation of the auction and deletion of the name of the auction purchaser and restoring the name of the original pattadars. However, the Settlement Officer, Dhubri and Kokrajhar did not take any action on the said application. The Petitioners thereupon approached the learned Assam Board of Revenue by filing an appeal on 03.10.2007 which was registered and numbered as Case No.160RA(DBR)/2007.

7. The records reveal that after hearing both the parties, the learned Assam Board of Revenue vide a judgment and order dated 18.04.2009 allowed the said appeal holding inter alia that there was no service of notice as is required under the provisions of the Assam Land and Revenue Regulation, 1886 (for short 'the Regulation') and the Rules framed therein under. Accordingly, the sale order dated 14.11.1991 and the sale confirmation order dated 04.04.1992 as well as other relevant orders relating to the sale were set aside and quashed.

8. The predecessor of the Private Respondents herein filed a writ petition challenging the judgment dated 18.04.2009 before this

Court. The said writ petition was registered and numbered as WP(C) No.2250/2009. The learned Coordinate Bench of this Court vide a judgment and order dated 07.03.2013 set aside the judgment dated 18.04.2009 passed by the learned Assam Board of Revenue and remanded the matter back to the learned Assam Board of Revenue for a decision afresh on merits after deciding the issue relating to the delay. Paragraph Nos.9, 10, 11, 12, 13 and 14 being relevant are reproduced herein under:

"***9.*** *Under Section 81, the Board may, on application made to it at any time within one year of a sale becoming final under Section 80, set aside the sale. Under Section 151, the Board may call for the proceeding held by any officer subordinate to it. While the limit prescribed under Section 81 is of one year, under Section 151 no limit has been prescribed. However, the same cannot mean that a party can approach the Board at any point of time irrespective of the time gape from the date of the impugned sale order. If this is allowed, there will be no finality to any proceeding and the Board will be at a position to reopen the sale order on the basis of the application filed after considerable delay. It is in view of the above, the provision for condonation of delay as good and sufficient has been made. Thus, it was incumbent on the part of the Board of Revenue to consider that aspect of the matter instead of straightway admitting the appeal keeping the delay condonation matter open.*

10. *On a perusal of the impugned order dated 18.4.2009, it appears that the delay was condoned only after the final decision was taken in the appeal.*

11. *For all the aforesaid reasons, I am of the considered opinion that the*

impugned order dated 18.4.2009 is not sustainable in law. The matter shall now go back to the Assam Board of Revenue for a fresh decision. Needless to say that fresh decision on merit will be dependent on the outcome of the issue relating to delay in respect to which the parties will be heard first.

12. *The writ petition is allowed to the extent indicated above.*

13. *Mr. Islam, learned counsel for the respondents No. 2 to 7 submits that a date may be fixed for appearance of the parties. As suggested by the learned counsel for the parties, the parties may appear before the Board of revenue on 29.4.2013 for further proceeding.*

14. *Needless to say that while considering the delay condonation petition, the Board of Revenue shall decide it on its own merit and shall not be guided by any of the observations made in this order."*

9. The records reveal that pursuant thereto, the learned Assam Board of Revenue took up the issue of delay for consideration and vide the impugned order dated 06.02.2014, dismissed the appeal. It is under such circumstances, the present writ petition has been filed.

10. This Court has heard the learned counsel appearing on behalf of the Petitioner as well as the learned counsel who appears on behalf of the Private Respondents and has also perused the materials on record including the records of the appeal which was

filed before the learned Assam Board of Revenue.

ANALYSIS AND DETERMINATION:

11. This Court finds it very pertinent to take note of the contents of the Memo of Appeal before the learned Assam Board of Revenue and more particularly Paragraph No.20 wherein it is specifically mentioned that some person in the name of Gunaruddin Sheikh has filed an application for annulment of sale and the said application was rejected vide an order dated 23.03.1994. It was further alleged in the said paragraph that despite the Petitioners' endeavour to get a copy of the said application, the said application was not provided. Be that as it may, the certified copy was obtained by the Petitioners on 06.07.2007 and was placed before the learned Assam Board of Revenue. For the purpose of adjudicating as to whether the learned Assam Board of Revenue have duly applied its mind while considering the condonation of the delay, this Court finds it relevant to reproduce Paragraph No.20 of the said Memo of Appeal.

> "***20.*** *That, the Additional Deputy Commissioner by an order dated 23-03-1994 after going through the record of the Tohsildar passed an order for correction of records and sent the record to the Assistant Settlement Officer. It appears from the order sheet that an application purportedly filed by the petitioners for annulment of sale but the aforesaid application*

was rejected by holding that there is no scope for annulment for sale after the land was sold in auction on 14-11-1991 and confirmation of the same on 04-04-1992. The attorney of the petitioners submitted the application for copy of the application for annulment of sale but the same was not furnished to the petitioners. After going through the record the attorney of the petitioners did not find any application alleged to have been filed for annulment of sale. Be it pertinent to mention here that if an application alleged to have been filed after 23-03-1994 by the petitioners but the order sheet does not reveal that the order was recorded in the order sheet of L.S. Case No. 103/1991 but no date was mentioned in the order sheet when the application for annulment of the sale was rejected. It is also evident from the order sheet that it was recorded that the application for annulment of the sale was rejected but there is no signature of the officer concerned who has/had rejected the application. The facts stated herein above clearly indicate that the entire exercise of auction sale and confirmation of sale were done without following the due procedure of law and the same was passed in connivance of the revenue officials, Tohsildar and the private respondent No. 6. The entire exercise of the auction sale and confirmation of sale was carried out at the behest of the private respondent No.6 as well as the revenue officials."

12. In the backdrop of the above, this Court now take note of the impugned order dated 06.02.2014. It is seen that the learned Assam Board of Revenue had come to a categorical opinion that the Petitioners had knowledge about the auction sale in the year 1994 on the basis of the proceedings and the order passed by the Additional Deputy Commissioner on 23.03.1994. There is no

adjudication by the learned Assam Board of Revenue as regards the veracity of the allegations so made at Paragraph No.20 of the Memo of Appeal which has been reproduced herein above.

13. It is also very pertinent to take note of that the appeal was filed by the Petitioners and not by Gunaruddin Sheikh. It is also very pertinent to mention that the record of rights do not show the name of Gunaruddin Sheikh in respect to the land in question. The records of rights on the other hand shows the name of Gulapdi Sheikh, Md. Amrit Ali Sheikh, Md. Wahidur Rahman, Md. Alam Sheikh and Md. Rubul Amin. This aspect was very much apparent from the records of rights which was enclosed to the Memo of Appeal and more particularly Annexures 1 and 2 to the Memo of Appeal.

14. It is, therefore, the opinion of this Court that the proceedings initiated by one Gunaruddin Sheikh, wherein the application was rejected vide order dated 23.03.1994 by the learned Additional Deputy Commissioner, could not have been taken into account by the learned Assam Board of Revenue while deciding the application for condonation of delay.

15. It is well settled that when a discretion has been granted to an

authority to exercise, the discretion has to be exercised in a reasonable and a pragmatic manner. The non-exercise of the discretion in a reasonable or a pragmatic manner renders exercise of discretion unreasonable. Additionally, it cannot also be said that the discretion was at all exercised.

16. Taking into account the above, it is therefore the opinion of this Court that the impugned order dated 06.02.2014 passed in Case No.160RA(DBR)/2007 which is impugned in the instant proceedings cannot be sustained in law.

CONCLUSION:

17. Accordingly, the instant writ petition stands disposed of with the following observations and directions:

(i) The impugned order dated 06.02.2014 passed in Case No.160RA(DBR)/2007 is set aside and quashed.

(ii) The learned Assam Board of Revenue is directed to afresh decide on the question of delay in approaching the learned Assam Board of Revenue in the year 2007 in respect to an auction sale which was conducted in the year 1991 and the sale being confirmed in the year 1992. In doing so, the learned Assam Board

of Revenue shall also take note of that the revisional jurisdiction conferred upon it by Section 151 of the Regulation is a power conferred not fettered by a limitation. In this regard, the judgment of the Full Bench of this Court in the case of ***Satyaranjan Paul Majumder Vs. Assam Board of Revenue, Guwahati*** *reported in* ***AIR 1977 Gau 83 (FB)*** and more particularly paragraph No.19 may be taken note of.

(iii) Both the parties being present before this Court, they are directed to appear before the learned Assam Board of Revenue on 14.09.2026.

(iv) The Registry shall forthwith return the records to the learned Assam Board of Revenue so that in compliance to the directions passed hereinabove, the learned Assam Board of Revenue shall consider the aspect pertaining to delay and thereupon if satisfied, the appeal be heard on merits.

(v) No costs.

Bijoy Saha

Digitally signed by Bijoy Saha
Date: 2026.08.07 15:08:07 +05'30'

JUDGE

Comparing Assistant