

GAHC010005812013



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

Case No. : WP(C)/1905/2013

UMESH ENGTI
S/O RAMSING ENGTI R/O LORULONGSO, P.O. and P.S. DIPHU DIPHU-
782460, KARBI ANGLONG, ASSAM.

VERSUS

THE STATE OF ASSAM AND 5 ORS
REP. BY THE SECRETARY TO THE GOVT. OF ASSAM, TRIBAL AREAS AND
DEVELOPMENT DEPARTMENT, DISPUR, GUWAHATI-6.

2:THE KARBI ANGLONG AUTONOMOUS COUNCIL

REP. BY ITS CHIEF EXECUTIVE MEMBER
KARBI ANGLONG AUTONOMOUS COUNCIL
DIPHU.

3:THE SECRETARY IN CHARGE

REVENUR
KARBI ANGLONG AUTONOMOUS COUNCIL
DIPHU.

4:THE JOINT SECRETARY
REVENUE
KARBI ANGLONG AUTONOMOUS COUNCIL DIPHU.

5:THE ASSISTANT SETTLEMENT OFFICER

DIPHU CIRCLE
KARBI ANGLONG AUTONOMOUS COUNCIL
DIPHU.

6:THE ASSISTANT REVENUE OFFICER

DIPHU CIRCLE
KARBI ANGLONG AUTONOMOUS COUNCIL
DIPHU

Advocate for the Petitioner : MSK KALITA

Advocate for the Respondent :

Linked Case : WP(C)/1009/2013

UMESH ENGTI
S/O- RAMSING ENGTI
R/O- LORULONGSO
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DIPHU- 782460
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DIPHU.

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REVENUE
KARBI ANGLONG AUTONOMOUS COUNCIL
DIPHU.

Advocate for : MR.G N SAHEWALLA
Advocate for : GA
ASSAM appearing for THE STATE OF ASSAM AND 5 ORS

BEFORE
HON'BLE MR. JUSTICE SUMAN SHYAM

ORDER

08.08.2023

Heard Mr. G. N. Sahewalla, learned senior counsel assisted by Mr. H. K. Sarma, learned counsel appearing for the writ petitioner in both these writ petitions. Also heard Mr. J. Chutia, learned Standing Counsel, Karbi Anglong Autonomous Council (KAAC) as well as Ms. S. Baruah, learned Govt. Advocate, Assam appearing for the official respondents.

2. By filing these writ petitions, the petitioner is basically assailing the decision of the Karbi Anglong Autonomous Council to withdraw the land settlement order issued in his favour, settling two plots of land, each measuring 1 Bigha 0 Katha 0 Lecha covered by Dag No.91 of Diphu Town Block No.4 on the ground that the said plots of land were originally reserved for the Fishery Department.

3. It appears that based on an application made by the petitioner, the Secretary in-Charge, Revenue Department, Karbi Anglong District Council had issued order dated 01.03.2011 settling a plot of land measuring 1 Bigha 0 Katha 0 Lecha covered by Dag No.91 of Diphu Town Block No.4, Jamunapar in favour of the petitioner. Thereafter, by order dated 06.01.2012 another adjacent plot of

land measuring 1 Bigha 0 Katha 0 Lecha covered by Dag No.91 was settled with the petitioner thus settling 2 Bighas 0 Katha 0 Lecha land in total, in favour of the writ petitioner. According to the petitioner, the orders of settlement were issued on the basis of recommendation made by the Land Advisory Committee of Karbi Anglong District and upon payment of revenue/premium applicable in respect of the said plots of land. Thereafter, Kheraj Pattas bearing Nos.2426 and 2515 were issued to the petitioner pertaining to the aforesaid two plots of land settled with him. In this manner, the petitioner came to occupy the two plots of land as patta holders and had also raised some permanent constructions over the said plots of land.

4. It was at that stage, the Joint Secretary, Revenue, KAAC, issued a communication dated 27.02.2013 addressed to the petitioner requesting him to stop the construction work over the plots of land settled with him on the ground that the land was reserved for the Fishery Department and the matter was under verification. Since the petitioner was holding patta with regard to the aforesaid plots of land, being aggrieved by the communication dated 27.02.2013 the petitioner had approached this Court by filing WP(C) No.1009/2013 assailing the aforesaid communication with a prayer to restrain the authorities from interfering with his peaceful possession over the land in question.

5. During the pendency of WP(C) No.1009/2013, the respondents have issued the impugned order dated 15.03.2013 withdrawing the land settlement issued in favour of the petitioner for the land measuring 1 Bigha 0 Katha 0 Lecha and 1 Bigha 0 Katha 0 Lecha covered by Dag No.91 of Diphu Town Block No.4, Jamunapar. Assailing the order dated 15.03.2013 WP(C) No.1905/2013 was

instituted.

6. The respondents have filed counter-affidavit in WP(C) No.1905/2013 *inter-alia* contending that there was some irregularity in the process of settlement of the land in favour of the petitioner which was detected at a subsequent stage, only on receipt of a complaint filed by the District Fishery Development Officer, Karbi Anglong, Diphu. As such, the impugned order was issued so as to rectify the anomaly in the land settlement process with a view to allot the land to the Fishery Department of the District Council.

7. Assailing the impugned orders, Mr. Sahewalla, learned senior counsel for the petitioner submits that once a patta is issued in favour of a settlement holder, the same creates title over the land and therefore, the respondents cannot cancel the same, that too without serving any prior notice or giving the petitioner a opportunity of being heard in the matter. In support of his above argument, Mr. Sahewalla has relied upon a decision of this Court rendered in the case of **Jenar Marak Vs. Garo Hills Autonomous District Council & others** reported in **2009 (4) GLT 611** to submit that once a patta is issued, the revenue authorities would not have the power to cancel the patta.

8. The said submission of the petitioner's counsel has, however, been strongly refuted by Mr. Chutia, learned Standing Counsel, KAAC by placing reliance on Rule 26 of the Rules framed under the Assam Land & Revenue Regulation, 1886 to contend that any patta issued to a settlement holder is required to be confirmed by the Executive Committee of the Council and cancellation of a patta can also be done by the Executive Member in-Charge, Revenue after giving an opportunity of being heard to the allottee. Therefore, it cannot be said that the patta, once issued, cannot be cancelled.

9. Be that as it may, even going by the requirement of Rule 26, it is apparent that no order of cancellation of patta can be issued by any authority without serving notice upon the allottee. However, in the present case, there is nothing to show that any prior notice was ever served upon the petitioner. Therefore, the stand of the petitioner's counsel that the impugned order was issued behind the back of the petitioner and without giving him an opportunity of being heard stands fully substantiated on the face of the record.

10. Consequently, the impugned orders dated 27.02.2013 and 15.03.2013 are held to be bad in law and are hereby set aside. The writ petitions stand allowed.

11. It is, however, made clear that in the event of any fresh proceeding being initiated in the matter against the writ petitioner, the same shall be done strictly in accordance with law and after serving prior notice upon the petitioner giving him ample opportunity to show cause. In the meantime, no action to dispossess the petitioner from the lands under his occupation shall be initiated unless a final order is passed by the competent authorities in accordance with law.

12. With the above observation, the writ petitions stand disposed of.

JUDGE

T U Choudhury/Sr. PS

Comparing Assistant