

GAHC010017982023



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

Case No. : WP(C)/464/2023

NABIN CHANDRA SARMA
S/O LT. RAMA KANTA SARMA,
A PERMANENT RESIDENT OF BORPATRA DOLE, KALGAON, SIVASAGAR,
ASSAM AND PRESENTLY RESIDING AT SAMANAY PATH, GATE HOSPITAL,
NO. 2 MATHGHORIA, NOONMATI, GUWAHATI IN THE DISTRICT OF
KAMRUP(M), ASSAM.

VERSUS

THE STATE OF ASSAM AND 5 ORS .
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM,
REVENUE AND DISASTER MANAGEMENT DEPTT., DISPUR, GUWAHATI-
781019, ASSAM.

2:THE SECRETARY TO THE GOVERNMENT OF ASSAM
REVENUE (L.R.) DM DEPTT.
DISPUR
GUWAHATI- 781006
ASSAM.

3:THE DEPUTY SECRETARY TO THE GOVERNMENT OF ASSAM
REVENUE AND DM (LR) DEPTT.
DISPUR
GUWAHATI- 781006
ASSAM.

4:THE DEPUTY COMMISSIONER
KAMRUP METROPOLITAN DISTRICT
OFFICE OF THE DEPUTY COMMISSIONER
HENGRABARI
GUWAHATI
ASSAM.

5:THE ADDL. DEPUTY COMMISSIONER
KAMRUP METROPOLITAN DISTRICT
LAND RECORD BRANCH
OFFICE OF THE DEPUTY COMMISSIONER
HENGRABARI
GUWAHATI
ASSAM.

6:THE CIRCLE OFFICER
DISPUR REVENUE CIRCLE
BASISTHA CHARIALI
GUWAHATI IN THE DISTRICT OF KAMRUP (M)
ASSAM

Advocate for the Petitioner : MR G N SAHEWALLA

Advocate for the Respondent : GA, ASSAM

BEFORE
HONOURABLE MR. JUSTICE MANISH CHOUDHURY

JUDGMENT

Date : 01-02-2023

Heard Mr. G.N. Sahewalla, learned senior counsel assisted by Ms. T.J. Sahewalla, learned counsel for the petitioner; Ms. P.R. Mahanta, learned Standing Counsel, Revenue & Disaster Management Department for the respondent nos. 1, 2 & 3; and Mr. M. Chetia, learned Junior Government Advocate, Assam for the respondent nos. 4, 5 & 6.

2. The petitioner has approached this Court by this writ petition under Article 226 of the Constitution of India seeking a direction to the respondent authorities to correct the revenue records in respect of a plot of land measuring 4 Bighas 10 Lessas, covered by Dag no. 1071[O]/280[N] and Patta no. 290, located at Revenue Village - Betkuchi, Mouza – Beltola, District – Kamrup [M] [‘the subject-plot’, for short].

3. The petitioner has projected that in the year 1961, the Assistant Settlement Officer, Kamrup, by an order dated 18.10.1961, granted allotment/settlement of the subject-plot in

favour of Late Rama Kanta Sarma i.e. the father of the petitioner. The father of the petitioner duly paid the premium amount, determined by the State respondents for the subject-plot, to the State respondents. Thereafter, in the draft chitha prepared for the year 1957-1964, the receipt of the premium amount in respect of the subject-plot was duly recorded. As per the draft chitha, the subject-plot was converted to Miyadi Patta land from Government land by creating a new Dag no. 280 and Khiraj Periodic Patta no. 280 out of the original Dag no. 1071. It is the case of the petitioner that the father of the petitioner was in continuous occupation of the subject-plot till his death and after his death, the same has been under occupation and possession of the family members of the petitioner. The petitioner was under the impression that as the premium for the subject-plot was duly paid as far back as in the year 1961, the revenue records would reflect the name of the petitioner. But when the petitioner checked the revenue records after the death of his father, it came to his knowledge that the status of the subject-plot in the revenue records has not yet been corrected by the respondent authorities. Having come to learn about the said position, the petitioner had preferred an application before the respondent no. 5 on 17.03.2022 seeking correction in respect of the subject-plot in the revenue records with insertion the petitioner's name in place of his deceased father's name. The respondent no. 5 though called for a report from the respondent no. 6, no progress seemed to have taken in respect of the petitioner's application seeking mutation in his name against the subject-plot in place of his deceased father's name.

3. The Assam Right to Public Services Act, 2012 [‘the Act’, for short] has been enacted by the Assam Legislative Assembly in order to provide for delivery of notified public services to the people of the State of Assam within the stipulated time limit and for matters connected therewith and incidental thereto. The Act received the assent of the Governor of Assam on 27.04.2012 and was notified by a notification dated 02.05.2012. The Act has been published in the Assam Gazette in its issue dated 02.05.2012. As per Section 2[h], “Right to Public Service” means right to obtain the notified service under the Act from time to time within the stipulated time limit as described under Section 5 and as per Section 2[i], “notified service” means any service notified by the State Government under Section 4. Section 5 of the Act has laid down that every eligible person shall have the right to obtain the services in accordance with the Act within the time bound period as notified under Section 4. It is liability of the

Government Servant to deliver services, under Section 6 of the Act, within the stipulated period. The stipulated time limit, as per Section 7[1], starts from the date when the application for obtaining a required notified service is submitted to the Designated Public Servant or to a person subordinate to him authorized to receive the application. Such application shall be duly acknowledged. As per Section 7[2], the Designated Public Servant on receipt of an application under sub-section [1] shall, within the stipulated time limit, provide the notified service or reject the application and in case of rejection of application, he shall record the reasons in writing and communicate to the person making the application,- [i] the reasons for such rejection; [ii] the period within which an appeal against such rejection may be preferred; and [iii] the particulars of the Appellate Authority. Section 8 of the Act has provided for an appeal before the Appellate Authority and also for a review before the Reviewing Authority.

4. The State Government by a notification no. AR.69/2011/Pt-II/98 dated 10.04.2013 has notified the Designated Public Servant, Appellate Authority, Reviewing Authority, stipulated time limit, user charge for delivery of notified services, which includes the Registration [Mutation] as a notified service, etc. as under :-

Serial No.	25
Notified public service	Office mutation [Registration] If no objection is filed.
Stipulated time limit for providing the service [Days]	60 days, if no objection from any person is filed during the proceeding.
Designation of Designated Public Servant	Circle Officer/ Circle Officer [Attached]
Designation of Appellate Authority	Deputy Commissioner or Additional Deputy Commissioner nominated by Deputy Commissioner [wherever applicable]
Time limit for disposal by Appellate Authority [Days]	30 days
Designation of Reviewing Authority	Commissioner of Divisions
Time limit for disposal by	30 days

Reviewing Authority [Days]	
Documents to be enclosed with the application	A. In case Mutation [Registration] is sought on the basis of transfer of land by way of purchase, gift, Mortgage or inheritance along with the specified form with required court fee:- 1. Photocopy the Original Registered Deed/ certified copy of the deed of transfer. 2. Photocopy of up to date land revenue receipt/land revenue clearance receipt of the land for which the Mutation [Registration] is sought. 3. A declaration stating that the Applicant does not possess land in excess of the limit laid down under the Assam Fixation of Ceiling on Land Holding Act, 1956. B. If mutation [Registration] is sought by way of inheritance. 1. Proof of death of the deceased Pattadar in whose place Mutation [Registration] is sought. 2. An affidavit [a] Swearing that the Applicant/applicants is/are the son/daughter/wife/legal heirs of the deceased pattadar. [b] Swearing that the Applicant/Applicants have not transferred the property to any one earlier nor mortgaged/nor created any charge over the property to be mutated. [c] Swearing that the person to whom the Applicants applied as successor had not transferred the property during his/her life time. 3. Copy of NOC obtained from D.C. in case of transfer of land. [Not applicable in case of prayer of mutation by inheritance].
User charge, if any [in Rupees]	Rs. 200/- in urban areas and Rs. 50/- in rural areas. [nil in case of mutation sought by way of inheritance in rural areas.]
Eligibility criteria to obtain service	Prior to land holder succeeding to any estate whether by transfer or inheritance and obtaining possession of the same, and every joint proprietor or joint land holder assuming charge of a estate or every person assuming charge of any estate of a proprietor or land holder or of any share herein as manager and every mortgagee obtaining

	possession of any estate of a proprietor or land holder or of any share therein shall within six months from the date of his taking possession or assumption of charge apply to the Deputy Commissioner of the district on the General Registers of which the estate is borne for registration of his name as such land-holder, proprietor, manager or mortgagee and of the nature and extend of the interest in respect of which the application is made.
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5. It is a settled position of law that when there is an alternative and equally efficacious statutory remedy available for relief the exercise of jurisdiction under Article 226 of the Constitution of India which jurisdiction is discretionary and extra-ordinary in nature, is ordinarily not to be exercised by bypassing the machinery created under the statute for the same remedy. In this connection, following observations made by the Constitution Bench of the Hon'ble Supreme Court of India in *Thansing Nathmal and others vs. Superintendent of Taxes, Dhubri and others*, reported in *AIR 1964 SC 1419* can be referred to : -

“7. The jurisdiction of the High Court under Article 226 of the Constitution is couched in wide terms and the exercise thereof is not subject to any restrictions except the territorial restrictions which are expressly provided in the Articles. But the exercise of the jurisdiction is discretionary : it is not exercised merely because it is lawful to do so. The very amplitude of the jurisdiction demands that it will ordinarily be exercised subject to certain self-imposed limitations. Resort to that jurisdiction is not intended as an alternative remedy for relief which may be obtained in a suit or other mode prescribed by statute. Ordinarily the Court will not entertain a petition for a writ under Article 226, where the petitioner has an alternative remedy, which without being unduly onerous, provides an equally efficacious remedy. Again the High Court does not generally enter upon a determination of questions which demand an elaborate examination of evidence to establish the right to enforce which the writ is claimed. The High Court does not therefore act as a court of appeal against the decision of a court or tribunal, to correct errors of fact, and does not by assuming jurisdiction under Article 226 trench upon an alternative remedy provided by statute

for obtaining relief. Where it is open to the aggrieved petitioner to move another tribunal, or even itself in another jurisdiction for obtaining redress in the manner provided by a statute, the High Court normally will not permit by entertaining a petition under Article 226 of the Constitution the machinery created under the statute to be bypassed, and will leave the party applying to it to seek resort to the machinery so set up.

6. The Hon'ble Supreme Court of India in *Baburam Prakash Chandra Maheshwari v. Antarim Zila Parish Ad Now Zila Parishad [three judges Bench]*, reported in *AIR 1969 SC 556*, has held it as a well-established proposition of law that when an alternative and equally efficacious remedy is open to a litigant he should be required to pursue that remedy and not to invoke the special jurisdiction of the High Court to issue a prerogative writ. It is true that the existence of a statutory remedy does not affect the jurisdiction of the High Court to issue a writ. But, it is observed by a five-Bench Judge decision of the Hon'ble Supreme Court of India in *Rashid Ahmed v. Municipal Board, Kairana, AIR 1950 SC 163*, that 'the existence of an adequate legal remedy is a thing to be taken into consideration in the matter of granting writs' and where such a remedy exists it will be a sound exercise of discretion to refuse to interfere in a writ petition unless there are good grounds therefor.

7. The Hon'ble Supreme Court of India in *Whirpool Corporation v. Registrar of Trade Marks, Mumbai and others*, reported in *[1998] 8 SCC 1*, has further observed as under :-

“14. The power to issue prerogative writs under Article 226 of the Constitution is plenary in nature and is not limited by any other provision of the Constitution. This power can be exercised by the High Court not only for issuing writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari for the enforcement of any of the Fundamental Rights contained in Part III of the Constitution but also for “any other purpose”.

15. Under Article 226 of the Constitution, the High Court, having regard to the facts of the case, has a discretion to entertain or not to entertain a writ petition. But the High Court has imposed upon itself certain restrictions one of which is that if an effective and efficacious remedy is available, the High Court would not normally exercise its jurisdiction. But the alternative remedy has been consistently held by this Court not to operate as a bar in at least

three contingencies, namely, where the writ petition has been filed for the enforcement of the Fundamental Rights or where there has been a violation of the principle of natural justice or where the order or proceedings are wholly without jurisdiction or the vires of an Act is challenged.”

8. In the light of the above discussion as regards exercise of the extra-ordinary and discretionary jurisdiction under Article 226 of the Constitution of India, this Court on analysis of the provisions of the alternative statutory remedy available to the petitioner, is of the considered view that such remedy is an efficacious and adequate one providing also for an appeal and a second appeal as well as imposition of penalty in the event the provisions provided in the statute and the rules framed thereunder, that is, the ARTPS Act and the ARTPS Rules are not followed in extending the notified public service. In such view of the matter, this Court finds that this writ petition is not to be entertained. As it is open to the petitioner to have recourse to the remedy under the ARTPS Act and the ARTPS Rules by filing an appropriate application under the provisions of the said Act and the said Rules to pursue the notified service, 'Mutation [Registration]' in accordance with the procedure laid down therein, the petitioner is at liberty to pursue the said alternative statutory remedy.

9. This order with the observations made and direction given above, disposes of the writ petition. No cost.

JUDGE

Comparing Assistant