

GAHC010029242017



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

Case No. : WP(C)/3993/2017

SMT. USHA BORAH and 10 ORS.
W/O. THANURAM BORAH,

2: SMT. BABITA SAIKIA

W/O. RANJIT SAIKIA

3: ANJAN CHOWDHURY

S/O. ARUN CHOWDHURY

4: SMTI. MINA DEKA

W/O. DIMBESWAR DEKA

5: BHUPEN BORAH

S/O. AJAY BARMAN

6: SMTI. SILA PURKAYASTHA DAS

W/O. RABI DAS

7: SMT. BALUMAI GODA

W/O. KASSAN GODA

8: SMT. PURNIMA THAKURIA

W/O.

9: DADHI RAM GOHAIN

S/O. BHABEN GOHAIN

10: SMT. RIMA BORAH

W/O. LT. BABUL BORAH

11: SMT. BINA DAS

W/O. DAYAL MANDAL. ALL ARE R/O. AMOLAPATTY
SHIVA NAGAR
DIST. NAGAON
ASSAM

VERSUS

THE STATE OF ASSAM and 4 ORS.
REP. BY THE CHIEF SECY. TO THE GOVT. OF ASSAM, DISPUR, GUWAHATI-
6.

2:THE SECY. TO THE GOVT. OF ASSAM

REVENUE DEPTT.
DISPUR
GUWAHATI-6.

3:THE DY. COMMISSIONER
NAGAON

DIST. NAGAON
ASSAM.

4:THE LAND ADVISORY COMMITTEE OF NAGAON SUB DIVISION

REPRESENTED BY THE CHAIRMAN
LAND ADVISORY COMMITTEE.

5:THE CIRCLE OFFICER

NAGAON SADAR CIRCLE
DIST. NAGAON
ASSAM

For the Petitioner (s) : Mrs. H.M. Phukan, Advocate.
For the Respondent (s) : Mr. S. Dutta, Advocate.

**BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH**

JUDGMENT AND ORDER (ORAL)

Date : 31-08-2023

Eleven Petitioners have joined together and have filed the instant writ petition seeking a direction upon the Respondents to consider the case of the Petitioners for settlement/allotment of the lands in their respective possession taking into consideration that the allotment/settlement of the land in the name of some other persons had been done in terms with the Circle Officer's report (Annexure-IV). The Petitioners have also sought for interim directions that the Respondent No. 3 should be restrained not to take any steps in pursuance to the Notice dated 13.6.2017.

2. The records reveals that it is the case of the Petitioners that they are in occupation of certain lands since 1980 and had applied for allotment and providing patta. It was alleged that the Land Advisory Committee time and again had taken steps for allotment of those lands with the people occupying these wet lands who are landless. It was also the claim of the Petitioners that annual pattas were distributed to some Petitioners who are in possession till now by paying revenue to Government and one of such

Petitioner is the Petitioner No. 4 who had paid her land revenue as Annual Patta Holder in the year 2002 in respect to Annual Patta No. 137. However, it is relevant to observe that from a perusal of the said Annexure-1 which the Petitioners claims to be a revenue paying receipt by the Petitioner No. 4 on her annual patta, it would show that it is a Touzi paid by the Petitioner No. 4 in respect to Annual Patta No. 137. It is relevant to observe that Touzi is actually a penalty fee paid for occupation of Government land. Be that as it may, the Petitioners further claim that the Land Advisory Committee of Nagaon Sub-Division on 29.12.2013 in presence of all members passed the resolution for allotment/settlement to private persons wherein the name of 8 persons were approved for allotment/settlement in respect to the land contained in the same Dag wherein the Petitioners are in occupation. It was alleged that the said lands which have been allotted/settled are in the same nature and are situated on the same road where the Petitioners are residing. The Petitioners had also approached the concerned Minister thereby filing a representation for allotment of the land as they are poor and landless persons occupying the land by paying Government revenue. It was also alleged that one person by the name of Shri Diganta Borah of Nagaon was granted settlement. It is further seen from the writ petition that on 13.6.2017, a notice was published by the Deputy Commissioner, Nagaon in the Assamese Daily "Niyamiya Barta" wherein it was mentioned that some people illegally occupied wetland of Kalong, Morikalong, Putakalong have violated the law and also had caused destruction of the natural beauty and

had also effected the free water flow. It was also mentioned that the administration had decided to evict them, if they did not vacate the land within 15 days from the date of receiving the notice. It is under such circumstances, the instant writ petition was filed seeking the reliefs as already mentioned hereinabove.

3. This Court vide an order dated 12.7.2017 issued notice and it was provided that till the returnable date, status-quo in respect to the land under the occupation of the Petitioners would be maintained.

4. The records further reveals that an affidavit-in-opposition was filed by the Respondent No. 2 i.e. the Revenue Department. In the said affidavit-in-opposition, it was mentioned that the Government of Assam presently has a Land Policy, 2019. Reference was made to Clause 14.6 of the Land Policy, 2019 wherein, it has been mentioned that allotment/settlement of land in notified water bodies/hills/ecological sites and vulnerable to land slide/erosion etc. shall not be considered. It was mentioned that the Petitioners are occupying the land adjacent to Kolong river flowing through Nagaon Town and as such the land occupied by the Petitioners cannot be settled/allotted in the name of the Petitioners. It was further mentioned that regarding settlement/allotment of land adjacent to water bodies the Revenue Department had issued Circulars on 07.08.1999 and 06.09.2012 to all Deputy Commissioners/Sub-Divisional Officers/Settlement Officers etc. with a request not to send any allotment proposal of such water bodies in the name of any individual/group or organization for any purpose and also requested to clear encroachment, if any from such water bodies.

5. This Court further finds it relevant to take note of an affidavit-in-opposition filed by the Respondent No. 3. In the said affidavit-in-opposition, it was mentioned that no allotment orders were issued by the Government in favour of the Petitioners. There was a specific mention as regards the Respondent No. 4 to the effect that no allotment and subsequent settlement have been made in her favour by the Government. Further to that, it was stated that it is a matter of record that the last Annual Patta under Town Mouza was Annual Patta No. 65 which was eventually converted to Periodic Patta and there is no Annual Patta No. 137 in the Norttom Kissam. In reference to the Resolution Nos. 64, 65 and 66 to which reference was being made in the writ petition, it was mentioned that the translated copies enclosed to the writ petition is not the actual translation of the Resolution Nos. 64, 65 and 66 enclosed as Annexure-II to the writ petition. It was further mentioned that there is no record of allotment made in favour of one Diganta Borah in Dag No. 300 of Town Norttom of Town Mouza. It was stated in paragraph No. 9 of the said affidavit-in-opposition that the report which have been enclosed by the Petitioner as Annexure-IV is not a report of the Circle Officer but is that of the Lat Mandal.

6. This Court further finds it relevant to take note of an additional affidavit filed by the Respondent No. 3 on 9th of August, 2023. The contents of Paragraph No. 3 of the said additional affidavit is pertinent for the disposal of the instant writ petition for which the same is reproduced hereinunder :-

3. *That in the above backdrop the deponent do hereby file this affidavit to bring on record that as per report of the Lat Mandal, the Dags number 300 is shown unclassified govt wetland and in the remarks column of the Chitha as shown "Kolong Nadi Balichat" . The Dag number 301 is shown as unclassified govt wetland and in the remarks column is mentioned as "Kolong Nadi". Also in Dag No. 303 is shown as the unclassified govt. Grazing reserve land, and in the remarks column of the chitha is shown as "Grazing reserved".*

The petitioner no 1. Smti Usha Bora, W/o Thanuram Bora, 2. Smti Bobita Saikia, W/o Ranjit Saikia, 3. Shri Anjan Choudhury, S/o Arun, 4. Shri Mina Deka, W/o Dimbeswar Deka are residing at Dag No. 9 which is Gorabad Govt. Land, But in the field report of the concerned Lot Mondal, they are living over the Kolong River by constructing concrete houses. Because the Kolong river changed its flow and now flowing in the above Dag No.300.

The petitioner no. 6. Smti Sheela Purakayastha Das, W/o Rabi Das, 7. Shri Tulumai (Bulumai), W/o Kishan (Kashan), 8. Smti Purnima Thakuria, 9. Shri Dadhiram Gohain, S/o Bhaben Gohain, 10. Shri Rima Bora, S/o Babul are residing at Dag No. 300 which is unclassified Govt. Wetland and in remarks column of the Chitha is shown as "Kolong River Balichat", As per field verification report of the Lat Mandal, the applicants are living next to the Kolong River by constructing houses.

Though the petitioner no.5 Shri Bhupen Bora, S/o Ajay Barman applied for settlement of land over the Dag Nos. 300, 301 and 303 covered under Norttam Kishamat under Town Mouza, as per the Lat Mondal Report Shri Bhupen Bora is residing at Dag 175 which is a Eksona Land. On the other hand the Petitioner no. 11 Smti Bina Das, W/o Dayal Mandal is not found at Kissamat Norttam under Town Mouza.

That as per Section 14.6 of Assam Land Policy, 2019, "Allotment of land in the notified water bodies/hills/ecological sites and vulnerable to land slide/erosion etc. shall not be considered." Hence, settlement cannot be given to the applicants as the dags are water body or related to water body"

7. From the above quoted Paragraph No. 3, it reveals that Dag No. 300 has been shown as unclassified Government wetland and in the remarks column of the Chitha, it has been shown as "Kolong Nadi Balichat". As regards Dag No. 301, it has been shown as unclassified Government wetland and in the remarks column of the Chitha, it has been shown as

“Kolong Nadi”. As regards Dag No. 303, it has been shown as unclassified Government Grazing Land and in the remarks column of the Chitha, it has been shown as Grazing Reserved”.

8. In the backdrop of the above pleadings, this Court also heard the learned counsels for the parties.

9. This Court further finds it relevant to observe that when the matter was listed on 09.08.2023, taking into account the affidavit-in-opposition filed by the Respondent No.3, instructions were sought for as to whether the Petitioners could be granted settlement/allotment in other lands for their rehabilitation.

10. Today when the matter was taken up, Mr. S. Dutta, the learned counsel appearing on behalf of the Revenue Department had produced an instructions issued by the Joint Secretary, Government of Assam, Revenue and Disaster Management (Settlement) Department wherein a Communication issued by the Additional District Commissioner, Revenue, Nagaon to the Joint Secretary to the Government of Assam, Revenue Disaster Management dated 25.08.2023 was enclosed. In the said Communication, it was mentioned that the Petitioners can be settled in other land, if applied for in the District of Nagaon, as per existing land policy and subject to the approval of the Sub-Divisional Land Advisory Committee, Nagaon Sub-Division. The said instructions is kept on record and marked with the letter “X”.

11. This Court have also finds it appropriate at this stage to take note of the Land Policy of 2019 of the Government of Assam. Clause 6.1 of the

Land Policy, 2019 stipulates that the Deputy Commissioners shall make necessary endeavours to preserve the existing V.G.Rs and P.G.Rs. for use by the members of the public for the purpose for which those were constituted and encroachment in V.G.Rs and P.G.Rs, if any will be removed. It was also mentioned that the land under V.G.Rs and P.G.Rs will not be further decreased by way of de-reservation and allotment etc. except for public purpose under special circumstances as defined by judicial pronouncements. In Clause 6.5 of the Land Policy of 2019, it is stipulated that the Deputy Commissioners shall ensure that the wetlands remain free from encroachment and the natural water channels which function as natural drainage are marked by the Land Record Staff in the village map and note to that effect shall be recorded in the remark column of field index register (Chitha). It was further mentioned in the said clause that the Deputy Commissioners shall not change the class of wetland in the land records without the prior approval from the Government.

12. Clause 14 of the Land Policy, 2019 stipulates as regards the settlement and reservations of lands in towns. In terms with Clause 14.6 allotment/settlement of land in notified water bodies/hills/ecological sites and vulnerable to land slide/erosion etc. shall not be considered.

13. Taking into account the prevalent Land Policy, 2019 as well as what has mentioned in Paragraph No. 3 of the said additional affidavit, the relevant contents of which have been quoted hereinabove, the lands presently in occupation of the Petitioners cannot be settled in their name. Under such circumstances, this Court is not inclined to issue any direction

to the Respondent Authorities to consider or grant settlement to the Petitioners in respect to the lands presently under their occupation.

14. Be that as it may, the Petitioners claim that they are in occupation of the lands since decades. This aspect of the matter however would be subject to necessary verification by the Respondent Authorities. This Court have also taken note of the instructions kept on record and marked with the letter "X", wherein the Additional District Commissioner (Revenue), Nagaon District have stated that the Petitioners can be settled in other lands, if applied for as per the existing land policy and subject to the approval of the Sub-Divisional Land Advisory Committee, Nagaon Sub-Division. Under such circumstances, this Court in the interest of justice grants liberty to the Petitioners to submit applications within 30 days from the date of the instant order before the District Commissioner, Nagaon seeking settlement of land. If such applications are filed within the time stipulated herein, the Respondent Authorities shall as per the provisions of the Assam Land and Revenue Regulations, 1886, the Settlement Rules framed thereunder as well as the present Land Policy of 2019, consider the case of the Petitioners for settlement in other available lands.

15. It is made clear that till such applications are disposed of by the Respondent Authorities, the Petitioners shall not be evicted from their present place of occupation. It is further clarified that if within the period of 30 days from today, no application is filed, the Respondent Authorities shall be at liberty to take such actions as deemed proper as per the provisions of law.

16. With the above observations and directions, the instant petition stands disposed.

JUDGE

Comparing Assistant