

GAHC010040982023



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

Case No. : WP(C)/1252/2023

DIPAK KUMAR SAHA
S/O- LT. SAILESH CH. SAHA, R/O- TRIVENI PATH, H/NO. 34, LOSKAR
NAGAR, GUWAHATI- 18, P.S. FATASIL AMBARI, DIST.- KAMRUP (M),
ASSAM

VERSUS

THE STATE OF ASSAM AND 3 ORS
REP. BY THE COMM. AND SECY. TO THE GOVT. OF ASSAM REVENUE AND
DISASTER MANAGEMENT DEPTT., DISPUR, GHY-6, K (M), ASSAM

2:THE DY. COMMISSIONER
GHY-01
K (M)
ASSAM

3:THE SETTLEMENT OFFICER
GUWAHATI-1
KAMRUP (M)
ASSAM

4:THE ASSISTANT SETTLEMENT OFFICER
BELTOLA
DISPUR REVENUE CIRCLE
GHY-06
K (M)
ASSA

Advocate for the Petitioner : MR. R C DAS

Advocate for the Respondent : GA, ASSAM

**BEFORE
HONOURABLE MR. JUSTICE MANISH CHOUDHURY**

ORDER

Date : 10-03-2023

Heard Mr. R.C. Das, learned counsel for the petitioner; Mr. P.R. Mahanta, learned Standing Counsel, Revenue Department for the respondent no. 1; and Ms. S. Sharma, learned Junior Government Advocate, Assam for the respondent nos. 2, 3 & 4.

2. The petitioner has approached this Court by instituting the instant writ petition under Article 226 of the Constitution of India aggrieved by the delay at the ends of the respondent authorities in bringing the proceedings of mutation/registration in respect of a plot of land measuring 11 Lessas, located at Village – Fatasil Gaon, Dispur Revenue Circle, Mouza – Beltola [‘the subject-plot’, for short] to its logical conclusion. It is the case of the petitioner that the petitioner purchased the subject-plot by executing a registered deed of sale in the year 2011.

3. Ms. Sharma, learned Junior Government Advocate, Assam has submitted that the mutation/registration is a notified public service under the Assam Right to Public Services Act, 2012 and, as such, the petitioner should be relegated to avail the statutory remedy provided under the Assam Right to Public Services Act, 2012. Ms. Sharma has further submitted that the State Government by a Notification dated 10.04.2013 has notified the Designated Public Servant, Appellate Authority, Reviewing Authority, etc. in respect of the notified service, mutation/registration.

4. The Assam Right to Public Services Act, 2012 [‘the Act, 2012’, 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. 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.

5. 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 Reviewing Authority [Days]	30 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.

6. 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.

7. 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 ARTPS Act

and the ARTPS 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.

8. This order with the observations made above, disposes of the writ petition. No cost.

JUDGE

Comparing Assistant