

GAHC010045992022



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

Case No. : WP(C)/1688/2022

RABI RUP SHARMA
S/O LATE MOHAN LAL SHARMA, VILL-BONDA, P.O.-BONDA, DIST-
KAMRUP(M), ASSAM-781026

VERSUS

THE STATE OF ASSAM AND 3 ORS
REPRESENTED BY THE SECRETARY TO THE GOVT. OF ASSAM, REVENUE
AND DISASTER MANAGEMENT DEPARTMENT, DISPUR, GUWAHATI-06

2:THE DEPUTY COMMISSIONER
KAMRUP METROPOLITAN DISTRICT
(LAND SETTLEMENT BRANCH)
GUWAHATI-01

3:THE CIRCLE OFFICER
CHANDRAPUR REVENUE CIRCLE
PANIKHAITY

4:THE GUWAHATI METROPOLITAN DEVELOPMENT AUTHORITY (GMDA)
REPRESENTED BY ITS CHAIRMAN
3RD FLOOR
STATEFED BUILDING
GMC HOSPITAL ROAD
BHANGAGARH
GUWAHATI-78100

For the Petitioner (s)	: Mr. S. Haque, Advocate.
For the Respondent (s)	: Mr. J. Handique, Advocate.
	Mr. S. Bora, Advocate.

Date of hearing & Judgment : **28.11.2023**

BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH
JUDGMENT AND ORDER(ORAL)

The instant writ petition has been filed by the Petitioner seeking a direction upon the Respondent Authorities to grant settlement to the Petitioner against the plot of land measuring 1 katha 10 lechas covered by Dag No. 383 at Revenue Village Bonda under Chandrapur (Panikhaity) Revenue Circle within the Kamrup Metropolitan District and further in the interim sought that the Petitioner should not be evicted from the land under possession.

2. The facts of the instant case as could be seen from the materials on record is that the Petitioner claims that his father one Mohanlal Sharma (since deceased) was in possession of a plot of land measuring 1 katha 10 lechas covered by Dag No. 383(new) at Revenue Village-Bonda under Chandrapur (Panikhaity) Revenue Circle under Mouza -Beltola within the Kamrup Metropolitan District. It was mentioned that the father of the Petitioner was enjoying the possession till 1970 till his death on 21.8.2021. It was also stated that the Petitioner's father was also paying revenue. Be that as it may, this Court upon perusal of Annexure-A to the writ petition observes that receipts are in relation to payment of Touzi Revenue which are in the nature of payment of penalty for unauthorised use of Govt. land.

3. It is the further case of the Petitioner that the Petitioners' father during his life time made an application for settlement of the said land. However, the Respondent Authorities did not take any steps. On the other hand the Petitioner was threatened that the Petitioner would be evicted from the said land for which the instant writ petition has been filed seeking the reliefs as aforestated.

4. This Court vide an order dated 10.03.2022 had issued notice and a direction was issued to the Deputy Commissioner, Kamrup (Metro), Land Settlement Branch as well the Circle Officer, Chandrapur Revenue Circle, Chandrapur Revenue Circle (Panikheti) to place the relevant status of the Government land involved in the present case and also apprise the Court as to whether the authority concerned considered the case for settlement of the said Government land in the name of the Petitioner or his father and if so, what is the outcome.

5. It reveals from the records that the Respondent No. 2 i.e. the Deputy Commissioner, Kamrup (Metro) had filed an affidavit-in-opposition. In the said affidavit-in-opposition, it was mentioned that on 5.3.2022 as per the direction of the authority, the Circle Officer, Chandrapur Revenue Circle cleared some encroachment in front of some leased commercial shed owned by the ASIDC i.e. encroachment over footpath alongwith some unauthorized construction, temporary bamboo construction and semi-permanent shop, motorcycle repairing shed, unused/under construction shed made with brick and tin sheet

at Sarkari Dag No. 383 at Village Bonda by the side of the State Highway No. 3. It was also mentioned that the illegal encroachers were also asked to evict themselves from the aforesaid Government land. Further to that, it was also mentioned that the Petitioner is not a landless person as per the records available. It was stated that the Petitioner is not living in any of the demolished temporary shed but using for illegal trading of Government land. It was also mentioned that the Petitioner had applied for allotment of the land at Dag No. 383 by submitting false documents stating that he has no other land in his name or any family member's name. It was also mentioned that the demolished structures were standing on Government land used for commercial purpose and some portion was not at all being used. It was a planned encroachment of the Government land. In paragraph No. 8 of the affidavit-in-opposition, it was mentioned that the Petitioner's family possesses recorded patta land covered by Dag No. 420 of K.P. Patta No. 53 adjacent to Dag No. 383 at Village Bonda.

6. This Court at this stage also finds it relevant to take note of the submission made by the learned counsel for the Petitioner that the Petitioner was also evicted from the land under his possession by the Respondent Authorities. This Court finds it pertinent to take note of that an affidavit-in-reply was filed by the Petitioner denying to the contents of the affidavit-in-opposition filed by the Respondent No. 2. The records further reveals that on 17.10.2023, this Court directed the

Government Advocate, Assam to produce the records on the basis of which the statement was made in paragraph No. 6 of the counter affidavit.

7. Today Mr. J. Handique, the learned Junior Government Advocate have placed before this Court the Jamabandi of Dag No. 420 of K.P. Patta No. 53 of Village – Bonda under Mouza-Beltola and drew the attention of this Court that a plot of land measuring 1 bigha 10 lecha is recorded in the name of the brother of the Petitioner.

8. In the backdrop of the above facts, this Court have also heard the learned counsels appearing on behalf of the parties.

9. The learned counsel for the Petitioner submitted that in the Land Policy of 2019, the explanation to Clause 2.2 defines the term “family” to consist of one or more of the following namely –

- (i) husband,
- (ii) wife,
- (iii) minor children and also includes a joint family.

10. The learned counsel for the Petitioner further submitted that the term “joint family” means a family of which the members are the descendants, common ancestor and have a common mess, but excludes married daughters, married sons and other children. The learned counsel therefore submitted that though the Petitioner and Sri Premjit Sharma may be sons of Late Mohanlal Sharma but they are

married sons and have a separate mess and as such they cannot be construed to be a family within the meaning of the Land Policy of 2019. The learned counsel therefore submitted that the Petitioner is entitled to settlement as per the Land Policy of 2019 and more particularly in view of Clause 14.

11. Mr. J. Handique, the learned counsel appearing on behalf the Respondent State submits that as to whether the Petitioner is a landless person as well as to whether the Petitioner would be entitled to settlement is a subject matter of consideration to be made by the Deputy Commissioner, Kamrup(Metro) provided the Petitioner files application seeking settlement. He submits that the Petitioner does not have a right to claim settlement in respect to the land covered by Dag No. 383 in view of Rule 15 of the Settlement Rules framed under the Assam Land and Revenue Regulations, 1886 as well as Clause 14.3 of the Land Policy of 2019.

12. This Court upon hearing the learned counsels for the parties and also having taken into consideration that the Petitioner had already been evicted from the land covered by Dag No. 383 is of the opinion that a direction cannot be issued by this Court for the purpose of granting settlement in favour of the Petitioner in respect to the land covered by Dag No.383. However, if the Petitioner files any application as per the Land Policy of 2019 and subject to fulfilling the criteria and the eligibility, an appropriate direction can be issued to

the Respondent Authorities to consider the application of the Petitioner within a time bound period. Accordingly, this Court therefore grants the liberty to the Petitioner to file a fresh application before the District Commissioner, Kamrup(Metro) seeking settlement of the land in terms with the Land Policy of 2019 and also submit a certified copy of the instant order. Upon such application being filed, the District Commissioner, Kamrup(Metro) shall duly take note of the provisions of Clause 14 of the Land Policy of 2019 and if the Petitioner is found eligible, the concerned authority shall duly consider the claim of the Petitioner for settlement. This Court however for the purpose of clarifications observes that the land being recorded in the name of Sri Premjit Sharma shall not affect the right of the Petitioner to claim settlement in terms with the Land Policy of 2019 and the Settlement Rules.

13. It is further observed that if such application is filed, the same shall be considered within a period of 1 year.

14. The records so produced is returned.

15. With the above observations and directions, the petition stands disposed.

JUDGE