

GAHC010048942023



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

Case No. : WP(C)/1226/2023

FULMATI NESSA AND 2 ORS.
W/O- LT. ABDUL HAMID,
R/O- CHANDARIA PATHAR, (KISMATPUR),
WARD NO. 14, GOALPARA TOWN,
P.O.- BALADMARI,
DISTRICT- GOALPARA, ASSAM.
PIN- 783101.

2: FORIDUL ISLAM
S/O- LT. ABDUL HAMID

R/O- CHANDARIA PATHAR
(KISMATPUR)

WARD NO. 14
GOALPARA TOWN

P.O.- BALADMARI

DISTRICT- GOALPARA
ASSAM.
PIN- 783101.

3: HANIF ISLAM
S/O- LT. ABDUL HAMID

R/O- CHANDARIA PATHAR
(KISMATPUR)

WARD NO. 14
GOALPARA TOWN

P.O.- BALADMARI

DISTRICT- GOALPARA
ASSAM.
PIN- 783101

VERSUS

THE STATE OF ASSAM AND 4 ORS.
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE GOVT.
OF ASSAM,
DEPARTMENT OF HOME, ASSAM,
GHY-06.

2:THE SECRETARY
GOVT. OF ASSAM
DM (LR) DEPARTMENT
ASSAM
DISPUR
GHY-06.

3:THE DEPUTY COMMISSIONER
GOALPARA
PIN- 783101.

4:THE ASSISTANT SETTLEMENT OFFICER
BALIJANA REVENUE CIRCLE
DIST.- GOALPARA

P.O- BALIJANA
PIN- 783129.

5:THE CHANDARIA PATHAR HIGH SCHOOL (VENTURE)
REPRESENTED BY ITS HEAD MASTER

GOALPARA TOWN
WARD NO. 14

P.O.- BALADMARI
PIN- 783101

Advocate for the Petitioner : MR J ISLAM

Advocate for the Respondent : GA, ASSAM

**BEFORE
HONOURABLE MR. JUSTICE SANJAY KUMAR MEDHI**

ORDER

09.03.2023

Heard Shri J. Islam, learned counsel for the petitioners.

The petitioners who are three in numbers claims to be landless persons and residing in a plot of land covered by Dag No. 351 under Balijana Revenue Circle of Chandaria Revenue Village in the district of Goalpara. Admittedly, the said plot of land is Government land.

The petitioners claim to have been residing on the said plot of land since 1980. The petitioners also claims that revenue has been paid over the said plot on where they are residing by constructing an Assam Type House and the name of the petitioner no. 1 has also appeared in the Chitha of Dag No. 351. The further case is that the petitioner no.1 has applied for settlement of the land which is pending consideration. However, suddenly, vide the impugned notice dated 28.02.2023, the petitioners have been asked to vacate the land within 7 days on the ground that the same would be settled in the name of a school being respondent no. 5.

The learned counsel has submitted that vide long possession, the petitioners have got a right for consideration for settlement, more so, when the application for such settlement is pending. The learned counsel further submits that revenue has been paid by the petitioners.

On the other hand, Shri S. Baruah, learned State Counsel appearing on behalf of the State Respondent submits that admittedly the land in question is Government Khas land over which no right can accrue to the petitioners. He further submits that the settlement is sought to be given to a School for a public purpose.

The aforesaid submission is also endorsed by Ms. G. Hazarika, learned Standing

Counsel, Revenue Department.

What transpires is that the land in question is admittedly Government Khas land. Though a statement has been made including annexing the receipts of revenue, the said receipts reveal that the payment is on account of Touzi.

The Hon'ble Supreme Court in the land mark case of ***State of Assam Vs. Radha Kanoo***, reported in **(1996) 8 SCC 692** has held that such payment is only in the nature of fine which does not vest an incumbent any right either for settlement or for possession. Possessing a Government land for a long period of time will not give any indefeasible interest for settlement of the said land in favour of an incumbent.

Under the aforesaid facts & circumstances, this writ petition is dismissed.

JUDGE

Comparing Assistant