

GAHC010136692022



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

Case No. : WP(C)/4684/2022

AJIT MALI AND 7 ORS.
SON OF LATE UMAKANTA MALI, R/O VILL. PARLLY DOWAPARA.

2: KUSHAL MALI
SON OF LATE UMAKANTA MALI
R/O VILL. PARLLY DOWAPARA.

3: PRAFULLA MALI
SON OF LATE NABIN CH. MEDHI @ MALI
R/O- VILL- PARLLI DOWPARA.

4: KISHOR MALI
SON OF LATE NABIN CH. MEDHI @ MALI
R/O- VILL- PARLLI DOWPARA.

5: BHABESH DAS
SON OF LATE RAMAKANTA DAS
R/O VILL. PALLI
MOUZA- CHAYANI
P.S. PALASHBARI
KAMRUP
ASSAM.

6: MUKUL DAS
SON OF LATE RAMAKANTA DAS
R/O VILL. PALLI
MOUZA- CHAYANI
P.S. PALASHBARI
KAMRUP
ASSAM.

7: NILIMA BAISHYA
W/O- LATE HEM MALI

8: PRANAB JYOTI MALI
S/O- LATE HEM MALI
R/O-VILL.- PARLLY THAKURIAPARA

ALL ARE P.S. PALASHBARI
DIST- KAMRUP
ASSAM

VERSUS

THE STATE OF ASSAM AND 12 ORS.
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE
GOVERNMENT OF ASSAM, REVENUE DEPARTMENT, DISPUR, GUWAHATI-
6.

2:THE DEPUTY COMMISSIONER
KAMRUP
KAMRUP

3:THE CIRCLE OFFICER
PALASHBARI REVENUE CIRCLE
PALASHBARI.

4:SUBHASH CHANDRA DAS
S/O- LATE TARUN CHANDRA DAS

5:KUSHAL CHANDRA DAS
S/O- LATE TARUN CHANDRA DAS

6:HITEN DAS
S/O. LATE BANSHIDHAR DAS

7:ANIL KUMAR DAS
S/O. LATE PADMARAM DAS

8:MANOJ KUMAR DAS
S/O. LATE MAHESWAR DAS

9:BHARAT KR DAS
S/O. LATE PUNARAM DAS

10:ASOM KUMAR DAS
S/O. LATE PUNARAM DAS

11:NILAMONI DAS
S/O. LATE PUNARAM DAS

12:PRAMOD CHANDRA DAS
S/O LAKHI RAM DAS

13:TRIDIP DAS
S/O- LATE BIREN DAS

RESPONDENT NO. 4 TO 13 ARE R/O- MIRZA
P.O.- MIRZA
MOUZA- CHAYANI
DIST- KAMRUP
ASSAM

Advocate for the Petitioner : MR. K KALITA

Advocate for the Respondent : SC, REVENUE

**BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA**

ORDER

Date : 06.06.2023

Heard Mr. K. Kalita, learned counsel for the petitioners, Ms. N. Bordoloi, learned standing counsel for respondent no. 1 and Mr. N. Goswami, learned Govt. advocate appearing for respondent nos. 2 and 3 and Mr. I. Bhuyan, learned counsel for private respondent nos. 4 to 13.

2. By filing this writ petition under article 226 of the Constitution of India, the petitioners have challenged the proceedings of Misc. Case No. 268/2021-22 pending before the Circle Officer, Palashbari Revenue Circle and has prayed for quashing the said application as well as notice dated 31.03.2022.

3. The case of the petitioners, in brief is that their predecessor-in-interest, namely, (1) Umakanta Mali (father of petitioner nos. 1 and 2), Ramakanta Das (father of petitioner nos. 5 and 6) and (3) Nabin Chandr Medhi (father of petitioner and 3 and 4), all sons of late Gunaram Mali, during their lifetime had purchased a plot of land measuring 6B-4K-17L covered by Dag No. 176/177 of KP Patta No. 580 of Village Palli, Chayani Mouza under Palashbari Revenue Circle vide registered sale deed no. 2854 dated 24.07.1989.

4. The learned counsel for the petitioners has submitted that the issuance of notice of Misc. Case No. 268/2021-22 is *ex facie* arbitrary and illegal. It is submitted that on appearance of the petitioner, the Circle Officer, Palashbari (respondent no.3) did not provide with the petitioners any documents on which the private respondents have relied upon. It is submitted that on appearance, the respondent no.3 had asked the petitioners to settle the matter with the private respondents. Accordingly, it is submitted that the petitioners apprehend that the respondent no.3 would arbitrarily decide the matter without giving a reasonable opportunity to the petitioners to represent their case. Hence, this writ petition.

5. The learned State and Departmental as well as counsel for the private respondents have submitted that they have not received any instructions. Therefore, they pray for some more time to obtain instruction in the matter, which is refused because notice of motion was issued by order dated 22.07.2022, but no affidavit-in-opposition has been filed till date.

6. Having regard to the nature of proceedings in form of Misc. Case No. 268/2021-22, the said application is merely filed for cancellation of mutation. It could not be demonstrated that the jurisdiction to register and adjudicate an

application for cancellation of mutation is not vested with the land revenue authorities which includes the Circle Officer, who acts as an Extra Assistant Commissioner within the meaning of clause (b) of Section 147 of the Assam Land and Revenue Regulation, 1886. Under the scheme of Assam Land and Revenue Regulation, 1886, as against any order that would be passed by the Settlement Officer/ Assistant Settlement Officer, Sub-Divisional Officer, Assistant Commissioner or Extra Assistant Commissioner and Deputy Commissioner/ Settlement Officer/ Survey Officer appeal lies to the authorities prescribed under the provisions of Section 147 of the Assam Land and Revenue Regulation, 1886. When a Circle Officer takes up the hearing on an application for cancellation of mutation, he would be exercising jurisdiction of an Extra Assistant Commissioner. Therefore, if the petitioner is aggrieved by any of the orders, which is passed by the authorities described in Section 147 of the Assam Land and Revenue Regulation, 1886, provisions for appeal has been provided for, which is an alternative and efficacious remedy.

7. The learned counsel for the petitioners expresses apprehension that the Circle Officer (respondent no.3) may also evict the petitioners without due process of law. In the considered opinion of the Court, without an adjudication, the land revenue authorities would not have power to evict the petitioners, and only if the matter is decided finally, eviction would depend on the jurisdiction which is sought to be invoked for evicting, if there be any. As the issue of eviction is not the subject matter of this writ petition, no final opinion is expressed thereon.

8. Insofar as the grievance of the petitioners is concerned that on appearance, the respondent no.3 did not provide them with any documents to

take an effective defence, the Court finds merit in the said submission. Hence, it is provided that if the petitioners makes an application before the respondent no.3 for providing them with copies on which the private respondents herein are relying upon, it would be incumbent on the respondent no. 3 to provide the petitioners with the relevant documents and give a reasonable time to the petitioners to take an effective defence. Therefore, it is provided that in the event the petitioners approach the respondent no.3 with a petition to provide them with documents on which the private respondents are relying upon, the respondent no.3 shall entertain the said petition by numbering it and pass appropriate orders thereon. In the event the private respondents have not filed any document in support of their application for cancellation of mutation, the Circle Officer (respondent no.3) shall record the same in the order sheet and allow the petitioners to have copies of the said order.

9. Only on the ground that alternative remedy is available to the petitioner, this Court has not entered into the merit of the respective claims of the petitioners and the private respondents, which is left open to be decided by the respondent no.3 in accordance with the provisions of Assam Land and Revenue Regulation, 1886 and rules framed thereunder. Accordingly, without rendering any opinion of the respective claims of the petitioners and the private respondents, the Court is inclined to relegate the petitioners and the private respondents to appear before the Circle Officer (respondent no.3) i.e. the Extra Assistant Commissioner on 21.07.2023 without any further notice of appearance. The petitioners are permitted to make an application before the respondent no.3 to provide them with documents on which the private respondents have relied upon as already indicated above and give reasonable opportunity to the petitioners to take their defence.

10. With the aforesaid observation, this writ petition stands closed.

JUDGE

Comparing Assistant