

GAHC010160722023



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

Case No. : Cont.Cas(C)/440/2023

PRABEEN KR. MASKARA AND 2 ORS
S/O LATE MAHABIR PRASAD MASKARA, R/O B.K. KAKATI ROAD,
ULUBARI, GUWAHATI-781007

2: PAWAN KUMAR GOEL
S/O SHER SINGH GOEL
R/O LAMB ROAD
AMBARI GUWAHATI-781001

3: M/S ACCENT REALCON PVT. LTD.
HAVING ITS REGISTERED OFFICE AND PRINCIPAL PLACE OF BUSINESS
AT B.K. KAKATI ROAD
ULUBARI GUWAHATI-781007
REPRESENTED BY ITS DIRECTO

VERSUS

AVINASH JOSHI AND 3 ORS.
PRINCIPAL SECY. TO THE GOVT. OF ASSAM, DEPTT. OF REVENUE AND
DISASTER MANAGEMENT, DISPUR, GUWAHATI-781006

2:PALLAV GOPAL JHA
THE DEPUTY COMMISSIONER
KAMRUP (M) GUWAHATI

3:RAJA BAISHYA
THE CIRCLE OFFICER
GUWAHATI REVENUE CIRCLE
KAMRUP (M)

4:GAURI SANKAR DAS
THE ADDITIONAL DEPUTY COMMISSIONER
REVENUE KAMRUP (M) GUWAHAT

Advocate for the Petitioner : MR. R HAZARIKA

Advocate for the Respondent :

BEFORE
HON'BLE MR. JUSTICE DEVASHIS BARUAH
ORDER

26.07.2023

This is an application filed for initiation of contempt proceedings against the respondent Nos.1 to 4 on the ground that the directions passed in the judgment and order dated 27.10.2022 in WP(C) No.6498/2003 have not been complied with.

2. This Court finds it relevant to take note of that WP(C) No.6498/2003 was initially filed by one Kamal Sarma and thereupon the said proceedings were continued through his legal representatives. The applicants herein were impleaded as the respondent Nos.65, 66 & 67.

3. The Coordinate Bench of this Court vide the judgment and order dated 27.10.2022 passed in WP(C) No.6498/2003 disposed of the said writ petition with the following directions as contained in paragraph No.12 which is reproduced herein below:-

“.....

12. Directions:

For the reasons and determinations made herinabove, this present writ petition is disposed of with the following directions:

- I. *The prayer for declaration that the resettlement operation carried out in Kamakhya Hills and Nilachal Hills on the basis of "Original Jamabandi" (a jamabandi of 2022:GAU-AS:15164 35/35*

Kamakhya village of the Nilachal Hill alleged to be prepared in the year 1973) and "Duplicate Register" is null and void, is rejected.

- II. The Deputy Commissioner, Kamrup (Metro) to verify the already determined retainable area belonging to the deity of Sri Sri Maa Kamakhya under the Act, 1959 and that if it is found that retainable areas earmarked are under encroachment, the Deputy Commissioner shall evict those encroachers from the retainable area by following due process of law and handover the such land to the petitioner No. 2.*
- III. There shall not be any bar by virtue of this judgment in grant of mutation and settlement etc., if otherwise permissible under law relating to the land beyond the retainable area.*
- IV. The aforesaid exercise shall be completed within a period of six months from today."*

4. The applicants herein, thereupon, filed two applications before the Deputy Commissioner, Kamrup (Metro) on 15.11.2022 and 24.003.2023 seeking mutation of the land on the basis of the observation made by the Coordinate Bench of this Court in paragraph No.12 (III) of the judgment and order dated 27.10.2022. On the ground that their land have not been mutated pursuant to the said representations dated 15.11.2022 and 24.03.2023 enclosed as Annexure-A8 and Annexure A9 to the instant Contempt Proceedings, the instant Contempt Proceedings have been initiated by way of the instant application.

5. In the backdrop of the above, let this Court examine as to whether the instant Contempt Proceedings is maintainable on the ground that the applicants herein have not been granted the mutation pursuant to their applications enclosed as Annexure-A8 and Annexure-A9 to the Deputy

Commissioner, Kamrup (M).

6. It is relevant to take note of that the applicants herein were not the petitioners in the said writ proceedings. The observation made in paragraph Nos.12 (III), as quoted herein above, only stipulates that the judgment so passed would not act as a bar to grant mutation and/or settlement etc., if otherwise permissible under law relating to the land beyond the retainable area. The words "if otherwise permissible under law" confers a discretion upon the respondent authorities to grant mutation and settlement within the limits of law. The non-granting of the mutation pursuant to the applications filed enclosed as Annexure-A8 and Annexure-A9 may give rise to a cause of action to the applicants for assailing inaction on the part of the respondent authorities for not granting their mutation in their favour, but would not certainly grant them a cause of action for the purpose of initiating contempt on the basis of the observations in paragraph No.12 (III) of the judgment and order dated 27.10.2022.

7. In that view of the matter, this Court is not inclined to issue notice in the instant proceedings for which the instant contempt proceedings stand dismissed.

8. The dismissal of the instant contempt proceedings shall not bar the applicants herein to challenge the action of the respondent authorities in not granting the mutation, if otherwise permissible under the law.

JUDGE

Comparing Assistant