

GAHC010184152021



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

Case No. : WP(C)/5856/2021

RAM KARAN LODHI AND 4 ORS.
S/O LT. MAHADEV LODHI, R/O BISHNUPUR, KASHINAGAR, P.S.
BHARAUMUKH, GHY-9

2: OM PRAKASH LODHI
S/O SRI RAM SHANKAR LODHI
R/O BISHNUPUR
KASHINAGAR
P.S. BHARAUMUKH
GHY-9

3: KAPIL DEV YADAV

S/O LT. RAM BIHARI YADAV
R/O BISHNUPUR
KASHINAGAR
P.S. BHARAUMUKH
GHY-9

4: NIRANJAN SAH
S/O LT. RAMAVTAR SAH
R/O BISHNUPUR
KASHINAGAR
P.S. BHARAUMUKH
GHY-9

5: BHAGIRATI BHARGAV
R/O BISHNUPUR
KASHINAGAR
P.S. BHARAUMUKH
GHY-

VERSUS

THE STATE OF ASSAM AND 2 ORS.
REPRESENTED BY ITS COMMISSIONER AND SECY. DEPTT. OF REVENUE,
GOVT. OF ASSAM, DISPUR, GHY-6

2:THE DEPUTY COMMISSIONER
KAMRUP (M)
PANBAZAR
GUWAHATI 1

3:THE CIRCLE OFFICER

GUWAHATI REVENUE CIRCLE
PANBAZAR GHY-

For the petitioner (s) : Mr. S. P. Roy, Advocate
Mr. J. Das, Advocate

For the respondent (s) : Mr. N. Goswami, Advocate

BEFORE
HON'BLE MR. JUSTICE DEVASHIS BARUAH
O R D E R

23.08.2023

The instant writ petition has been filed by the five petitioners challenging the notice dated 29.10.2021 primarily on the ground that the said notice was issued under Rule 18 (3) of the Settlement Rules framed under the Assam Land and Revenue Regulation, 1886. However, the mandatory 15 days period was not mentioned in the said notice.

2. This Court duly taken note of the provisions of Rule 18 (3) (a) of the Settlement Rules. It stipulates that for ejectment under Rule 18 (3) of the Settlement Rules, the said action has to be preceded by publication of a notice in the manner as prescribed in the Rule thereby requiring the

occupant to vacate the land specified in the notice within 15 days from the date of publication of the notice.

3. The mandate of Rule 18 (3) (a) of the Settlement Rules, therefore, is clear that there has to be a notice thereby enabling the occupants to vacate the land specified in the notice within 15 days.

4. Now coming to the notice dated 29.10.2021 so issued to the petitioners it is seen that by the said notice the petitioners were asked to vacate the land under their occupation in Dag No.184 of Village Ulubari 3rd Part. Surprisingly, there is no mention of any area wherein the petitioners are in occupation. There is also no mention within what period, the petitioners have to vacate. It is also interesting to note that though the notice clearly stipulated the provisions of Rule 18 (3) of the Settlement Rules and that failing to vacate actions would be taken as per law but the subsequent events which are admitted in the affidavit filed by the respondent Circle Officer, Guwahati Revenue Circle is shocking. An affidavit-in-opposition filed by the Circle Officer, Guwahati Revenue Circle is on record. It has been mentioned that pursuant to the issuance of the notice dated 29.10.2021, an eviction drive was conducted on 01.11.2021 whereby the encroachers of Dag No.184 were evicted including the petitioners and 234.04 Are of land was freed from encroachment. It is also seen from the said affidavit that there is an allegation that the petitioners thereupon again encroached upon the land. It is astonishing that when the notice was issued under Rule 18 (3) of the Settlement Rules, how eviction drive could have been conducted within 3 days.

5. Taking into account the above and more particularly the mandate of

Rule 18 (3) (a) of the Settlement Rules which categorically mandates that 15 days time is required to be granted to the occupants to vacate the land in their occupation and also the said notice dated 29.10.2021 being completely ambiguous in respect to the portion of land which the petitioners were possessing, this Court has no other option but to set aside and quash the impugned notice dated 29.10.2021.

6. Accordingly, the instant writ petition stands allowed.

7. Mr. N. Goswami, the learned counsel for the respondents submitted that setting aside and quashing of the impugned notice issued to the petitioners should not preclude the respondents to take such action as permissible under law.

8. This Court makes it clear that this Court had only dealt with the impugned notice dated 29.10.2021 and had set aside the same for being not in accordance with law on account of the infraction to Rule 18 (3) (a) of the Settlement Rules and the ambiguity in the impugned notice as regards the land under the occupation of the petitioners.

9. The above observations made in this order and the setting aside of the impugned notice dated 29.10.2021 shall not preclude the respondent authorities to take such steps as permissible under law.

JUDGE

Comparing Assistant