

GAHC010185872014



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

Writ Petition (C) No. 3434/2014

1. Smt. Sambari Pathak, W/o Late Akhil Pathak.
2. Smt. Chanu Ray, S/o Wate Hiran Ray.
3. Sri Hiran Ray, S/o Late Jagen Ray.
4. Sri Danda Ray, S/o Bipen Ray.
5. Smt. Puspa Choudhury, W/o Sri Ranu Choudhury.
6. Smt. Gita Chouhan, W/o Nan Kumar Chouhan.
7. Sri Lakshan Das, S/o Late Tulsi Das.
8. Sri Babul Mahajan, S/o Late Bajendra Lal Mahajan.
9. Smt. Sadhana Guha Ray, W/o Late Pran Gopal Guha Ray.
10. Sri Dinanath Yadav, S/o Late Shyam Lal Yadav.
11. Smt. Bimala Sah, W/o Late Kishan Sah.
12. Sri Mangla Barman, S/o Late Bhola Barman.
13. Sri Ram Lal Prasad, S/o Ram Khalon Prasad.
14. Sri Ajoy Singh, S/o Late Bhola Singh

All are resident of Ram Krishna Mission Road, New Bongaigaon, P.O. & District – Bongaigaon, Assam, Pin – 783381.

.....Petitioners

-Versus-

1. State of Assam, Through the Deputy Commissioner

[Rev.], Bongaigaon, Assam.

2. Sub-Divisional Land Advisory Committee, Bongaigaon, Through the Deputy Commissioner [Rev.], Bongaigaon, Assam.

3. Vice Chairman, Bongaigaon Municipal Board, Bongaigaon.

4. Circle Officer, Bongaigaon Revenue Circle, P.O. & District – Bongaigaon.

5. President, Dolaigaon Gaon Panchayat, P.O. & District – Bongaigaon.

.....***Respondents***

Advocates :

Petitioners	:	Mr. B.J. Mukherjee, Advocate
Respondent nos. 1, 2 & 4	:	Mr. B.J. Talukdar, Senior Advocate Ms. D. Bora, Advocate
Respondent no. 5	:	Mr. R. Sarma, Advocate
Date of Hearing, Judgment & Order	:	26.07.2023

BEFORE

HON'BLE MR. JUSTICE MANISH CHOUDHURY

JUDGMENT & ORDER [ORAL]

The petitioners, 14 in nos., have joined together to institute the writ petition under Article 226 of the Constitution of India in order to make a challenge to a Notice dated 10.07.2014 issued under the hand of the Circle Officer, Bongaigaon Revenue Circle [the respondent no. 4] and served upon them.

2. The case projected by the petitioners, in brief, is that the petitioners and/or the predecessors-in-interest of the petitioners were allowed to settle on a few parcels of land located in Revenue Village – Dolaigaon Part – III, Bongaigaon Revenue Circle about 40 years earlier by the President, Dolaigaon Gaon Panchayat. On being so allowed, residential houses were constructed thereon and the families of the petitioners have been staying on those parcels of land. The petitioners were aware that those parcels of land were allotted in the name of Dolaigaon Gaon Panchayat. The petitioners have stated that Touzi Bariha revenue

have been regularly collected from them by the respondent authorities since long. But all of a sudden, they were served with the impugned Notice dated 10.11.2014 with the allegation that they were in illegal occupation of Government land recorded in the name of Dolaigaon Gaon Panchayat, covered by Dag no. 249, located in Village – Dolaigaon Part – III, Bongaigaon Revenue Circle. By serving the notices, they were asked to vacate the said Government land within 14.07.2024 without fail. The Notice had further mentioned that in the event of their failure to vacate the land, an eviction process would be carried out on 16.07.2014 in terms of the resolution adopted in the Meetings of the Sub-Divisional Land Advisory Committee, Bongaigaon, held on 09.07.2013 and 17.06.2014 respectively.

3. Heard Mr. B.J. Mukherjee, learned counsel for the petitioners; Mr. B.J. Talukdar, learned Senior Counsel assisted by Ms. D. Bora, learned State Panel Lawyer for the respondent nos. 1, 2 & 4; and Mr. R. Sarma, learned counsel for the respondent no. 5.

4. The learned counsel for the parties are at agreement that as the subject-land is located within the territorial jurisdiction of Dolaigaon Gaon Panchayat, the respondent no. 3 is not a necessary party to the instant writ proceedings.

5. Mr. Mukherjee, learned counsel for the petitioners has submitted that the petitioner had submitted applications for allotment/settlement of the plots of land under reference in their favour before the competent authority long back and the said applications were duly processed. On 10.04.1996, the Additional Deputy Commissioner [R], Bongaigaon wrote to the Secretary [Revenue], Bodoland Autonomous Council [BAC], Kokrajhar by submitting a proposal for allotment of land to the petitioners indicating therein, the particulars of the land and areas. By the said letter dated 10.04.1996, it was informed that as the plots of land proposed for allotment/settlement fall within the Bodoland Autonomous Council [BAC] area prior approval of the BAC would be necessary as per the then extant rules. Mr. Mukherjee has, thus, submitted that when the proposal for allotment of the plots of land under reference in favour of the petitioners was under consideration, the impugned Notice dated 10.07.2014 seeking eviction of the petitioners from same plots of land was clearly an unauthorized act on the part of the respondent no. 4.

6. Mr. Talukdar, learned Senior Counsel representing respondent nos. 1, 4, 5 & 6 has submitted, by referring to the counter affidavits filed on behalf of the respondent nos. 1 & 2, that the petitioners have not produced any documents evidencing that they were paying Touzi Bahira revenue for occupying the plots of land under Dag no. 249 in Village – Dolaigaon Part – III. The plots of land, which are being occupied by the petitioners is admittedly Government land, which was allotted in the name of Dolaigaon Gaon Panchayat. In order to show their occupation on the plots of land, the petitioners have referred to a certificate issued by the President, Dolaigaon Gaon Panchayat on 02.12.2002, but the President, Dolaigaon Gaon Panchayat had no authority and jurisdiction to give any permission to the petitioners to enjoy occupation of the plots of land permanently. Since the entire plot of land is in the name of Dolaigaon Gaon Panchayat in the revenue records, there cannot be any further settlement of the same plot to any private individual.

7. Mr. R. Sarma, learned counsel for the respondent no. 5 has submitted that a Government plot of land measuring 2 Bighas, covered by Dag no. 249 [‘the subject-plot’, for short], located in Dolaigaon Part – III, Mouza – Bogaigaon, Bongaigaon Revenue Circle, District – Bongaigaon, was allotted in the name of Dolaigaon Gaon Panchayat. He has contended that the Dolaigaon Gaon Panchayat had never allowed the petitioners and/or the predecessors-in-interest of the petitioners to settle on the said plot of land, covered by Dag no. 249. He has contended the petitioners and/or the predecessors-in-interest of the petitioner have/had been living on the subject-land without any permission from the Dolaigaon Gaon Panchayat. He has denied about any decision on the part of the Dolaigaon Gaon Panchayat to permit the petitioners and/or a predecessors-in-interest of the petitioners to stay on the said subject-land. The certificate, relied on by the petitioners, to buttress their claim was not issued by the then President, Dolaigaon Gaon Panchayat subsequent to any collective decision taken by the Dolaigaon Gaon Panchayat.

8. I have considered the submissions advanced by the learned counsel for the parties and have also perused the materials brought on record by the parties through their respective pleadings.

9. As per chitha for surveyed village in respect of the subject-plot, annexed to the counter affidavit of the respondent no. 5, the plot of land measuring 2 Bighas, covered by Dag no. 249, is Government land and as per the remarks therein, the same is shown allotted to Dolaigaon Gaon Panchayat. Though the petitioners have claimed that they have been living on the subject-land since about 40 years or more by paying Touzi Bahira revenue to the respondent authorities by constructing permanent houses, no document evidencing deposit of Touzi Bahira revenue has been annexed to their pleadings.

10. As the matter of eviction in relation to Government land is to be undertaken as per the provisions contained in Rule 18 of the Settlement Rules framed under Assam Land and Revenue Regulation, 1886, it is apposite to refer to the relevant parts of Rule 18 hereunder :-

18. Ejectment-

[1] Subject as hereinafter provided, the Deputy Commissioner may eject any person from land over which no person has acquired the rights of a proprietor, landholder, or settlement-holder.

[2] When such person has entered into possession of Government khas land, or Waste land or estate over which no person has acquired the right of a proprietor, landholder or settlement-holder or any land that has previously been reserved roads or roadside land or for the grazing of village cattle or for other public purposes, or has entered into possession of land from which he has been excluded by general or special orders and when further, there is no bona fide claim of right involved he may be ejected or ordered to vacate the land forthwith, and the Deputy Commissioner may sell, confiscate or destroy any crop raised, or any building or other construction erected without authority on the land.

Rule 16 of the Settlement Rules is also relevant for the case in hand and the same reads as under :

16. Prohibition to enter into land until issue of lease. – Lease shall issued on written application only and no person shall enter into possession of waste land in any area

until a lease has been issued to him or otherwise a written permission by Deputy Commissioner has been granted to him, pending issue of such lease, to enter into possession.

11. A reading of Rule 16 of the Settlement Rules goes to show that no person can enter into possession of any Government land in any area until a lease has been issued to him or otherwise, a written permission has been granted to him by the Deputy Commissioner, pending issue of such lease, to enter into possession of Government land. It is not a case of the petitioners that they had at an earlier point of time, prior to occupying the subject-plot, submitted any application for lease for the Government land in question in writing before the jurisdictional Deputy Commissioner in terms of Rule 5 of the Settlement Rules. It is, thus, clear that the entry of the petitioners into the subject-land was much prior to their applications purportedly submitted for allotment. The question which arose before the Hon'ble Supreme Court of India in *State of Assam and others vs. Radha Kanoo [Smt.] and others*, reported in [1996] 8 SCC 692, was whether the persons who entered into possession otherwise than in accordance with Rule 16 would be recognized to be a person to have duly entered into possession of the Government wasteland. It has been held that Rule 16 is mandatory in character and a person is entitled to enter into possession of Government land only in two situations, that is, after settlement of the land by way of a written lease granted by the Deputy Commissioner pursuant to a written application; or by a written permission given by the Deputy Commissioner pending settlement. It is only in either of the two events, a person is entitled to enter into possession of Government wasteland and no other person has got any legitimacy. It is, thus, deducible from *Radha Kanoo [supra]* that a person who does not fulfill any of the two characters is a trespasser and the same does not bind the Government as his entry into the Government land in any other manner is contrary to the provisions of Rule 16.

12. After examining the provisions of Rule 16, Rule 17, Rule 17A and Rule 18 of the Settlement Rules framed under the Assam Land and Revenue Regulation, 1886 [the Regulation, 1886', for short] in the context of the right of a person who had entered into possession of Government land otherwise than in accordance with Rule 16 from whom amounts are collected as *Touzi Bahira* revenue, it has been held that such collection of *Touzi*

Bahira revenue would not confer any right on such person in unauthorized occupation. It has been further held that such collection has to be regarded as illegal collection and it cannot bind the Government, because of the mandate embodied in Rule 16. It has, thus, emerged that collection of **Touzi Bahira** revenue does not amount to collection of revenue and the possession of person in unauthorized occupation from whom **Touzi Bahira** revenue is collected, does not become lawful because of such collection. It is also discernible from said decision that merely for the fact that **Touzi Bahira** revenue has been collected from such a person, the person who is a trespasser of Government land, can make no claim that he cannot be evicted from such land to recover possession of land under Rule 18 of the settlement rules. The term, **Touzi Bahira** is also known as **Bedakhali Jarimona** [Encroachment Penalty].

13. In this connection, it also apposite to refer to the decision of the Hon'ble Supreme Court in **Jagpal Singh and others vs. State of Punjab and others**, reported in [2011] 11 SCC 396. In **Jagpal Singh** [supra], the issue for consideration was illegal encroachment of common village land/community land and regularization of such land in favour of encroachers due to their occupation of such land for long duration. The land in question in the said case was recorded as pond in the revenue records. It has been held that regularization of such common village land in favour of private individuals who had been occupying such land for long duration, is not permissible. It is observed in the decision in **Jagpal Singh** [supra] that even if any person has built houses on such kind of land, such person must be ordered to remove their constructions and possession of the land must have to be handed back.

14. The petitioners have not been able to show any provision either in the Land Policy, 1989 or the Land Policy, 2019 which permits the settlement of land which are reserved for Gaon Panchayat as per the revenue records, in favour of any individual applicant for homestead purpose. The land policies have laid down that mere possession by way of encroachment shall not be a criteria for entitlement to get allotment/settlement of Government land. By the Land Policy, 2019, the system of collecting Encroachment Penalty [**Bedakhali Jarimona/Touzi Bahira**] has been discontinued.

15. A Circle Officer is empowered under the Regulation, 1886 and the Settlement Rules to issue a notice like the one impugned herein. Thus, assailment cannot be made on the ground of lack of authority on the part of the authority issuing the notice to vacate. In view of the above discussion, this Court is not persuaded to arrive at a finding that the impugned Notice dated 10.07.2014 has suffered from any illegality or infirmity and as such, the challenge of the petitioners to the impugned Notice dated 10.07.2014 should fail. It is accordingly held.

16. This Court while issuing notice to the respondents on 15.07.2014, on considering the submissions made on behalf of the petitioners that a proposal for allotment of land was pending, had observed, in the interim, that no coercive step should be taken for enforcement of the impugned Notice dated 10.07.2014. Till date, the said interim order is in operation resulting in continuance of the occupation of the petitioners on the subject-land, which occupation is found unauthorized on the final analysis. Having regard to the same, it is provided that the petitioners should be given an opportunity to respond to the impugned Notice dated 10.07.2014 till 15.09.2023. In the event the petitioners submit such replies, the respondent authorities shall consider the same in accordance with law. While considering such replies, the respondent authorities shall also consider about the applications submitted by the petitioners for allotment of land, if any, in terms of the Regulation, 1886 and the Settlement Rules framed thereunder. After such consideration, the respondent authorities shall pass a speaking order as expeditiously as possible, but within an outer limit of 4 [four] weeks from 15.09.2023 and shall thereafter, proceed with the matter of eviction or otherwise in terms of such decision recorded in the speaking order to be passed and in accordance with the procedure prescribed in the Regulation, 1886 and the Settlement Rules framed thereunder.

17. The writ petition is disposed of in the afore-mentioned terms. No cost.

JUDGE

Comparing Assistant