

GAHC010186562014



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

Case No. : WP(C)/4521/2014

ZAHARUL ISLAM BORBHUIYA and ANR
S/O- KAMRUL ISLAM BORBHUIYA, R/O- DISPUR LAST GATE, P.S.- DISPUR,
GHY- 6, DIST.- KAMRUP M, ASSAM.

2: SRI MANO BARMAN

S/O. LT. LANKESWAR BARMAN
R/O. DISPUR LAST GATE
PS.-DISPUR
GHY.-6
DIST.-KAMRUP M
ASSAM

VERSUS

THE STATE OF ASSAM AND 4 ORS
REP. BY THE SECY. TO THE GOVT. OF ASSAM, REVENUE DEPTT., DISPUR,
GHY- 6.

2:THE DEPUTY COMMISSIONER

KAMRUP M
GHY.-1
DIST.-KAMRUP M
ASSAM.

3:THE ADD. DEPUTY COMMISSISONER

KAMRUP M
REVENUE
GUWAHATI
DIST.-KAMRUP M
ASSAM.

4:THE SETTLEMENT OFFICER

ULUBARI
GHY.-7.

5:THE CIRCLE OFFICER

DISPUR REVENUE CIRCLE
GHY.-6

For the petitioner (s) : Mr. K. M. Hassan, Advocate

For the respondent (s) : Mr. B. J. Talukdar, Addl. Sr. Govt. Advocate
Mr. P. K. Medhi, Advocate
Ms. S. Devi, Advocate (R No.6)

BEFORE
HON'BLE MR. JUSTICE DEVASHIS BARUAH
ORDER

12.10.2023

The instant writ petition has been filed by the two writ petitioners challenging the notice dated 30.08.2014 whereby they have been directed by the Circle Officer, Dispur Revenue Circle to vacate the land measuring 13.38 Are situated in Dag No.132 (old)/35 (new) of Village- Sarumataria under Beltola Mouza on the ground that the said land has already been allotted to the respondent No.6.

2. The facts involved in the instant case as could be discerned from a perusal of the pleadings are that the Governor of Assam had recommended for settlement of land measuring 18 lechas covered by Dag No.132 of Village- Sarumataria under Beltola Mouza with the petitioner No.1 and his wife Smti. Raima Begun Borbhuiya for residential purpose subject to payment of premium at 40% of the land value which has been

fixed at Rs.3 lakh per katha. This recommendation was communicated to the Deputy Commissioner, Kamrup (M) by the Deputy Secretary to the Government of Assam, Revenue (Settlement) Department vide a communication dated 03.08.2006. It was also mentioned in the said communication that the possession of the land may be handed over to the person concerned and the land records may be corrected and patta be issued after realization of the premium in full. Subsequent to the said communication, the Additional Deputy Commissioner, Kamrup (M) issued a communication to the Settlement Officer, Guwahati forwarding the communication dated 03.08.2006 and requesting the Settlement Officer to make necessary correction as per the trace map of the plot of land measuring 18 lechas covered by Dag No.132 of Village- Sarumataria under Beltola Mouza and to give possession to the petitioner. The record further reveals that the petitioner deposited the said amount as mentioned in the communication dated 03.08.2006 on 10.08.2006 itself vide payment through the Challan.

3. Be that as it may, although there has been a recommendation to make settlement by the Governor, it is not known as to whether the periodic lease has been issued in favour of the petitioner No.1.

4. Now coming to the case of the petitioner No.2 it is an admitted fact that there has been no recommendation as was done in the case of the petitioner No.1.

5. In the backdrop of the above, if this Court takes note of the impugned notice it reveals that the said notice pertains to an area of 13.38 Are which corresponds to 1 bigha of land of Dag No.132 (old)/35 (new). The petitioners though having completely two different sets of

rights have filed the instant writ petition jointly challenging the impugned notice dated 30.08.2014. This Court vide an order dated 16.09.2014 issued notice and in the interim stayed the eviction notice dated 30.08.2014 to the extent that the same shall not be enforced against the 18 lechas of land allotted on 03.08.2006 to the petitioner No.1. However, in respect to the petitioner No.2, there was no order passed in view of some interim protection granted to the petitioner No.2 in another writ proceedings.

6. The record further reveals that Kishalaya Vidyapith High School to whom the land was allotted as mentioned in the impugned notice had sought impleadment in the instant proceedings by filing an Interlocutory Application being I.A.(C) No.1508/2016. This Court vide an order dated 15.03.2017 impleaded the said Kishalaya Vidyapith High School as the respondent No.6. It is also seen that the respondent No.6 had also filed an Interlocutory Application seeking vacation and modification of the order dated 16.09.2014 in the instant writ proceedings.

7. Ms. S. Deb, the learned counsel appearing on behalf of the respondent No.6 submits that the said Interlocutory Application be treated as affidavit-in-opposition of the respondent No.6. This Court has perused the said Interlocutory Application wherein it is seen that on 14.09.1994, the Deputy Secretary to the Government of Assam, Revenue (S) Department had informed the Deputy Commissioner, Kamrup, (M) that the Governor of Assam had ordered for allotment of a reserved 'Sarkari' land measuring 1 bigha covered by No.132 (part) of Village- Sarumataria under Beltola Mouza in the name of the respondent No.6 subject to the conditions that the allotted land must be utilized within three years for

specific purpose failing which the land will be reverted to the Government in the Revenue Department. It was also mentioned in the said communication that the possession of land may be handed over to the concerned authority after keeping roads and drains etc. as per the norms of the Guwahati Metropolitan Development Authority and as per the latest guidelines communicated vide the Department's letter No.RSS.833/93/Pt.II/6 dated 19.09.1994. It is also relevant that to the said communication a trace map and Chitha were also sent for taking necessary action. The record further reveals that the Under Secretary to the Government of Assam, General Administration Department issued a communication to the Deputy Commissioner, Kamrup (M) for handing over the possession of 1 bigha of land to the respondent No.6 by removing the unauthorized encroachers. Subsequent thereto, on 14.02.1995, the Settlement Officer, Guwahati had written to the Deputy Commissioner, Kamrup (M) that the allotted land could not be handed over in view of occupation on the alleged land by one Sri Kaminisen Deka and three other persons. It further reveals that vide another communication on 21.11.2000, the Deputy Secretary to the Government of Assam, Revenue (S) Department requested the Deputy Commissioner, Kamrup (M) that as the injunction order which was passed in respect to the land has been vacated necessary steps be taken to hand over the possession of the land to the respondent No.6 school. It is also seen that various steps were taken but the possession could not be handed over to the respondent No.6. On 17.08.2014, the Additional Deputy Commissioner, Kamrup (M) had written a communication to the Circle Officer, Dispur Revenue Circle directing the said Circle Officer to initiate eviction process for land

measuring 13.38 Are covered by Dag No.132 (old)/35 (new) of Village-Sarumataria under Beltola Mouza already allotted in favour of Kishalaya Vidyapith vide Government letter dated 14.09.1994 as per Rules and provisions from his end. It is therefore the case of the respondent No.6 that the impugned notice thereupon was issued.

8. This Court has duly considered the submissions of the learned counsel for the parties. The petitioner No.1 upon being recommended for allotment vide the communication dated 03.08.2006 had duly deposited the premium on 10.08.2006. It is also seen that the Deputy Commissioner, Kamrup (M) had also written a letter to the Settlement Officer to that effect the said 18 lechas of land be handed over the possession to the petitioner No.1. Under such circumstances though the petitioner No.1 is yet to be issued the settlement but the petitioner's possession in respect of 18 lechas of land which has been allotted cannot be disturbed by issuance of impugned notice dated 30.8.2014. Be that as it may, it is also relevant to take note of that while the petitioner's allotted land is 18 lechas, the impugned notice is in respect of 13.38 Are which corresponds to 1 Bigha of land. Under such circumstances this Court permits the respondent authorities to proceed with the eviction in terms with the notice dated 30.08.2014. However, it is made clear that while proceeding with the said eviction process, the petitioner No.1's possession over 18 lechas of land which was allotted to him should not be disturbed.

9. This Court further makes it clear that the petitioner No.2 has no right over the land if so in occupation. The respondent authorities would be at liberty to take such action as deem fit unless prohibited by any other order passed by this Court.

10. Before parting with the record, this Court further makes it clear that this Court has not adjudicated the right as regards the respondent No.6's entitlement to the possession over the land allotted to the respondent No.6. The respondent No.6 would be at liberty to resort to such action as permissible under law.

JUDGE

Comparing Assistant