

GAHC010195032017



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

Case No. : WP(C)/2091/2017

LALUNG GAON KRISHI SAMITY and ANR
VILLAGE and P.O.- LALUNG GAON, PS. BATADRABA, DISTRICT NAGAON,
ASSAM REPRESENTED BY ITS PRESIDENT SHRI MUSLIM UDDIN

2: SD/- ABDUL KHALIQUE

SECRETARY
LALUNG GAON KRISHI SAMITY
LALUNG GAON
P.S. BATADRABA
DIST. NAGAON
ASSA

VERSUS

THE STATE OF ASSAM and 3 ORS.
TO BE REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE
GOVERNMENT OF ASSAM, DEPARTMENT OF LAND AND REVENUE,
DISPUR, ASSAM

2:THE DIRECTOR
LAND AND REVENUE RECORD
GOVERNMENT OF ASSAM
RUPNAGAR
GUWAHATI
ASSAM

3:THE DEPUTY COMMISSIONER
DIST. NAGAON
NAGAON
ASSAM

4:THE CIRCLE OFFICER
DHING REVENUE CIRCLE

DHING DIST. NAGAON
ASSA

For the Petitioner (s) : Mr. S.K. Deori, Advocate.

For the Respondent (s) : Mr. A. Bhattacharjee, SC, Revenue.

Date of hearing & Judgment : **27.09.2023**

BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH
JUDGMENT AND ORDER(ORAL)

The Petitioners herein are aggrieved by the non-consideration of their application for allotment of land of 60 bighas under Dag No. 354 at Lalung Gaon, Kisamot under Bratadaba Mouza, Nagaon to the Petitioners Society pursuant to the approval granted in Resolution No. 141 dated 03.04.1991 by the Sub-Divisional Land Advisory Committee, Nagaon.

2. The records reveals that the Petitioners' Society is a Society of 29 members carrying their livelihood through agricultural. The members of the Petitioners' Society claim that they have been in occupation of land admeasuring 60 bighas by constructing dwelling houses. It is relevant to mention that the said 60 bighas of land is situated at Dag No. 354 Lalung Gaon under Bratadaba Mouza in the District of Nagaon, Assam. The said dag being Dag No. 354 contains as per the Petitioners 264 bighas of land which was a marshy grazing reserved land. In the year 1988, the Government de-reserved the 264 bighas

of land for rehabilitation of the ex-Army Men and the landless cultivators.

3. The Petitioners thereupon duly applied for 60 bighas of land. It is further apparent from a perusal of the writ petition that the Sub-Divisional Land Advisory Committee, District-Nagaon had recommended vide the Resolution being 141 dated 03.04.1991 that 60 bighas of land be allotted in favour of the Petitioners' Society. It is also seen from the records that on 08.07.2003 the Collector-cum-Deputy Commissioner, Nagaon had directed the Petitioners Society to pay revenue in respect of 60 bighas of land under the possession of the Petitioners. The Petitioners thereupon claims to have paid the said revenue. It is further seen from the pleadings that the Petitioners' Society have been approaching the Respondent Authorities for granting the allotment pursuant to the recommendation made by the Sub-Divisional Land Advisory Committee. It is the case of the Petitioners that the Respondents did not take any steps for which the instant writ petition has been filed. It is also the case of the Petitioners that on one hand the Respondents have not issued the allotment order but on the other hand the Respondent Authorities were trying to evict the Petitioners.

4. The instant writ petition was filed on 03.04.2017 and vide an order dated 06.04.2017, this Court had issued notice. It reveals further from the records that on 11.11.2022, an application was filed

by the Petitioners seeking a direction upon the Respondents not to disturb/evict the Petitioners from the peaceful possession and occupation of land of 60 bighas of land under Dag No. 354 of Lalung Gaon, Mouza–Bratadaba, Nagaon. The said application was registered and numbered as I.A. (C)No. 3306/2022. This Court vide an order dated 15.11.2022 had directed that no coercive action should be taken by the Respondent Respondents for evicting the Petitioners from the land under their possession.

5. It is further relevant to take note of that even after a passage of around 6 years the Respondent Authorities have not filed any affidavit and this aspect of the matter was also duly noted by this Court on 26.04.2023. In spite of the order passed on 26.04.2023, whereby the Revenue Department of the Government of Assam was directed to file their affidavit within 4 weeks, the said affidavit has not been filed.

6. Today when the matter was taken up, Mr. A. Bhattacharjee, the learned counsel appearing on behalf of the Revenue Department have placed a set of instructions issued by the Additional District Commissioner (Revenue) Nagaon. In the said instructions, it was mentioned that the Petitioner Society originally comprised of 31 members. Out of these 31 members, 17 members are not landless and have land in their fathers' name. At present only 9 members have been possessing and residing in the said plot of land by constructing dwelling houses. Out of these 9 members, 4 members have land in

their fathers' name. So only 5 members who have possession and residing in the said land are found landless. This is based upon reports of the Circle Officer dated 23.5.2023 and 3.3.2021. It was further mentioned that in the disputed land measuring 60 bighas, some of the Petitioners are in possession as encroachers and it was not allotted to the Petitioners' Society as per the Chitha copy available at the Dhing Revenue Circle.

7. Further to that, it was mentioned that in the minutes of the Sub-Divisional Land Advisory Committee meeting dated 25.4.1991 filed with the writ petition by the Petitioners could not be traced out in the Office. Be that as it may it was further stated that the said minutes were examined in the Office and it was found that in the said minutes of the said meeting the name of the Petitioners Society appeared on two occasions i.e. firstly in the Resolution No. 99 whereby the allotment was not approved and secondly in the Resolution No. 141 where it was approved. It was also mentioned that in a Sub-Divisional Land Advisory Committee meeting two contradictory resolutions for the said allotment proposals are never passed. It was further mentioned that the font size of Page 2 and 3 is different from the font size of Page 1 and 4. It was alleged that Page 2 and 3 were manufactured.

8. Apart from the above, the instructions further states that the land revenue paid by the Petitioners was nothing but the encroachment

penalty as the land in question was the Government land and this aspect of the matter had been approved by the Mouzadar Batradava. The said instructions alongwith the documents enclosed therewith are collectively kept on record and marked with the letter "X".

9. I have heard the learned counsels for the parties and perused the materials on record.

10. The materials on record shows that the claim of the Petitioners are on the basis that the Petitioners have made application seeking allotment and the Petitioners' proposal for allotment was recommended by the Sub-Divisional Land Advisory Committee to allot 60 bighas of land in favour of the Petitioners. But the question arises as to whether the Petitioners have any enforceable right over the lands under their occupation on the basis of being in occupation of Govt. lands and on the basis of filing application for allotment which was purportedly recommended by the Sub-Divisional Land Advisory Committee.

11. A perusal of the Assam Land Revenue Regulation, 1886 read with the Settlement Rules clearly show that no right accrues upon a person who does not have any rights as stipulated in Section 6 of the Regulation merely being in possession of Govt. lands. The Deputy Commissioner as well as his delegate in terms with Rule 3 of the Settlement Rules can evict the persons who has no right over the lands as recognized by Section 6 of the Regulation. Therefore, by merely filing

application or even a recommendation by the Sub-Divisional Land Advisory Committee for allotment would not confer any enforceable right for a Court of law to enforce such rights. Under such circumstances, it is the opinion of this Court that the Petitioners herein have no enforceable right.

12. This Court further finds it relevant at this stage to take note of that in the year 2019, the Government of Assam had come up with a new Land Policy which is presently in force. Under such circumstances, if any allotment has to be made in favour of the Petitioners Society or its members, the same has to be done in terms with the Land Policy of 2019. This Court therefore grants the liberty to the Petitioners herein to file fresh applications under the Land Policy of 2019 seeking allotment of the land. It is observed that upon such applications being filed, the Deputy Commissioner, Nagaon as well as the Revenue Department of the Government of Assam shall take necessary decision as regards the entitlement of the Petitioners in respect to allotment as sought for in terms with the extant Land Policy.

13. This Court further finds it relevant to take note of that the Petitioners have an apprehension that they may be evicted by the Respondent Authorities in the meantime. This Court therefore grants the liberty to the Petitioners to file their application within a period of 30 days from today and if such application is filed within a period of 30 days from today before the Deputy Commissioner, Nagaon, the status-

quo as on today shall be maintained in respect to the lands in question till the disposal of the application by the Deputy Commissioner, Nagaon in consultation with the Revenue Department of the Government of Assam. It is however, clarified that if such application is not filed within 30 days as stipulated herein, the benefit of the status-quo order shall not apply.

14. With the above observations and directions, the petition stands disposed of. Interim orders, if any stands vacated.

JUDGE

Comparing Assistant