GAHC010202612023

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

Case No. : WP(C)/5237/2023

ABDUL WAHAB
SON OF- LATE SAMSUDDIN,
VILLAGE- NO. 2 BORCHALA,
POST OFFICE- GORCHIGA,
MOUZA- NOWBOICHA,
PIN- 7871025,
DISTRICT- LAKHIMPUR, ASSAM.

VERSUS

THE STATE OF ASSAM AND 2 ORS.
THROUGH THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM,
REVENUE AND DISASTER MANAGEMENT DEPARTMENT,
DISPUR, GUWAHATI-6.

2:THE DEPUTY COMMISSIONER
LAKHIMPUR
P.O.- LAKHIMPUR

DISTRICT- LAKHIMPUR
ASSAM.

3:THE CIRCLE OFFICER
NOWBOICHA REVENUE CIRCLE
P.O.- NOWBOICHA
DISTRICT- LAKHIMPUR

ASSAM

For the Petitioner : Mr. M. H. Ahmed, Advocate.

For the Respondents : Mr. R. Borpujari, SC, Revenue Deptt., Assam.
Ms. M. Barman, Govt. Advocate, Assam.

BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH

ORDER

08.09.2023

The instant writ petition has been filed by the petitioner seeking a writ in the nature of certiorari for setting aside the eviction notice dated 02.09.2023 issued by the Circle Officer, Nowboicha Revenue Circle as well as also the seeking a writ of mandamus directing not to evict the petitioner from his own patta land admeasuring 2 Bighas 0 Katha 0 Lecha covered by Dag No.625 of Periodic Patta No.50(Old)/222(New).

2. Taking into account the issue involved and the respondents are duly represented, this Court proposes to dispose of the writ petition at the motion stage itself.

3. The case of the petitioner herein is that the petitioner is the owner of a plot of land measuring 2 Bighas 0 Katha 0 Lecha covered by Dag No.625 of Periodic Patta No.50(Old)/222(New) situated at Village No.2, Borchala, Mouza-Nowboicha, Revenue Circle- Nowboicha in the district of Lakhimpur, Assam. The said land, for the sake of convenience herein is referred to as the "petitioner's land". It is the case of the petitioner that on 03.09.2023, a notice was issued under Rule 18(2) of the Settlement Rules framed under the Assam Land & Revenue Regulation, 1886, by the respondent No.3 asking the petitioner to remove his residential houses, ponds etc. under his possession within 7 (seven) days. The said notice has been impugned in the instant proceedings.

4. It further appears from the records that the said notice has been enclosed as Annexure-2 to the writ petition. From a perusal of the said notice it is seen that the land wherein the petitioner has been alleged to be in possession is a plot of land covered by Dag No.628/419 of Pandhowa/No.2 Borchala map, under the Nowboicha Mouza.

5. The petitioner immediately upon receipt of the said notice on 05.09.2023 informed the respondent No.3 that the petitioner is not occupying the land mentioned in the said notice and in that regard the petitioner also mentioned that the petitioner is in occupation of the petitioner's land and for that purpose enclosed the jamabondi as proof of the petitioner's ownership of the petitioner's land. It is the further case of the petitioner that in spite of the said representation so submitted the respondent No.3 is going to evict the petitioner from the petitioner's land and for which the petitioner has approached this Court by filing the instant writ petition.

6. I have heard the learned counsel for the parties.

7. Mr. R. Borpujari, the learned counsel appearing on behalf of the Revenue Department of the Government of Assam submits that the respondent authorities shall take action of eviction only in respect of the land mentioned in the notice and not any other land. He further submitted that it is not known why the petitioner has been issued the notice if the petitioner is not in occupation of the land mentioned in the schedule to the said notice. This aspect would require verification.

8. Upon hearing the learned counsel for the parties, this Court is of the opinion that if the land under the possession of the petitioner is the petitioner's land as described above, and not the Government land, the petitioner cannot

be evicted from the petitioner's land. However, if the petitioner is in occupation/possession of Government land, by virtue of Rule 18(2) of the Settlement Rules, the Deputy Commissioner or his delegate in terms Rule 3 would have the power to evict any person possessing Government lands.

9. This Court also takes due note of the submission of Mr. R. Borpujari, the learned counsel appearing on behalf of the respondents that the authorities be directed to verify before proceeding with the eviction as to whether the land presently in occupation of the petitioner is the petitioner's land or Government land.

10. Taking into account the above, this Court, therefore, disposes of the instant writ petition thereby directing the respondent authorities, more particularly the respondent Nos.2 and 3 not to evict the petitioner from the petitioner's land, the details of which have been mentioned herein above. However, if the petitioner is in possession of the land described in the schedule to the said notice, this Court is not inclined to restrain the respondent authorities from proceeding with the eviction. This Court further directs the respondent Nos.2 and 3 to the effect that prior to taking any further action on the basis of the impugned notice to verify as to whether the petitioner is occupation of the petitioner's land or in respect of the Government land mentioned in the notice. It is clarified that upon verification if it is found that the petitioner is in occupation of the land mentioned in the impugned notice, the respondent authorities would be at liberty to take such actions as per the provisions of law.

11. With the above observation, the instant writ petition shall stand disposed of.

12. Mr. M. H. Ahmed, the learned counsel appearing on behalf of the

petitioner submits that the 7(seven) days period is expiring tomorrow and as such, it may not be possible to get an urgent certified copy of this order today. This Court directs the Court Master of this Court to provide a true copy of this order to Mr. M. H. Ahmed, the learned counsel for the petitioner during the course of the day. Further to that, this Court also directs Mr. R. Borpujari, learned counsel appearing on behalf of the Revenue Department of the Government of Assam to apprise the respondent Nos.2 and 3 of the order so passed by this Court today.

JUDGE

Comparing Assistant