

GAHC010207462023



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

Case No. : WA/357/2023

KONPONA HAZARIKA AND ANR.
S/O- SRI KONPONA HAZARIKA, R/O- VILL- GAYAN GAON,
P.O. BONAI DIST.- JORHAT, ASSAM, PIN- 785683

2: RANTU HAZARIKA
S/O- SRI KONPONA HAZARIKA R/O- VILL- GAYAN GAON
P.O. BONAI DIST.- JORHAT ASSAM PIN- 78568

VERSUS

1: THE STATE OF ASSAM AND 4 ORS. REP. BY THE COMM. AND SECY. TO
THE GOVT. OF ASSAM, REVENUE DEPTT., DISPUR, GHY-06, ASSAM

2: THE SECRETARY TO THE GOVT. OF ASSAM
REVENUE (SETTLEMENT) DEPTT. DISPUR GHY-06 ASSAM

3: THE DY. COMMISSIONER
JORHAT DIST.- JORHAT ASSAM PIN- 785001

4: THE SUB DIVISIONAL OFFICER (SADAR)
JORHAT DIST.- JORHAT ASSAM PIN- 785001

5: THE SUB DY. COLLECTOR
JORHAT DIST.- JORHAT ASSAM PIN- 78500

For the Appellant(s) : Mr. B. Baruah, Advocate.

For the Respondent(s) : Mr. R. Borpujari, Standing Counsel, Revenue Department for
respondent Nos.1 & 2.

: Mr. R.K. Borah, Additional Senior Government Advocate, Assam
for respondent Nos.3, 4 & 5.

- B E F O R E -
HON'BLE THE CHIEF JUSTICE
HON'BLE MRS. JUSTICE SUSMITA PHUKAN KHAUND

25.09.2023

The instant intra-Court writ appeal is directed against the common judgment & final order dated 27.04.2022 passed by the learned Single Judge in WP(C) No.1185/2022; WP(C) No.4608/2021; WP(C) No.6551/2021; WP(C) No.4710/2021 and WP(C) No.747/2022, whereby, amongst others, the WP(C) No.4710/2021 preferred by the writ petitioners (appellants herein) was disposed of with the following directions:-

“21. In the event of filing such representation by the petitioners as directed above, the Deputy Commissioner, Jorhat shall submit its report with regard to the land involved in the case within a period of 2 (two) months before the Secretary to the Government of Assam in the Revenue and Disaster Management Department. Thereafter, the Secretary to the Government of Assam in the Revenue and Disaster Management Department shall pass necessary orders on the basis of the said report of the Deputy Commissioner, Jorhat with regard to the land of Dag No. 156 of Jagduar Habi Gaon, Teok Mouza under Teok Revenue Circle, District-Jorhat a Government VGR reserved land, in terms of the observations made earlier by the Court vide orders dated 01.10.1999 in WP(C) No. 5030/1999, dated 11.10.1999 in WP(C) No. 5249/1999 and dated 15.10.1999 passed in WP(C) No. 5388/1999.”

Mr. B. Baruah, learned counsel representing the appellants (writ petitioners in WP(C) No.4710/2021) urged that in view of the order passed by this Court in the earlier round of litigations, i.e. WP(C) No.5030/1999, WP(C) No.5249/1999 and WP(C) No.5388/1999, there was no option with the authorities but to issue a settlement order in favour of the appellants for the land in question. He thus urged that this Court, while exercising writ appellate jurisdiction, should come to the rescue of the appellants and while issuing an

injunction against their proposed eviction from the land on which they are cultivating tea plantation for last few decades, a further direction deserves to be issued to the authorities for issuing the settlement in favour of the appellants herein.

Per contra, Mr. R. Borpujari, learned standing counsel, Revenue Department and Mr. R.K. Borah, learned Additional Senior Government Advocate, Assam, vehemently and fervently opposed the submissions advanced by the appellants' counsel. They urged that while deciding WP(C) No.5249/1999 filed by the son of the appellant No.1, the Court, by order dated 11.10.1999, gave liberty to the petitioner therein to submit an application to the Deputy Commissioner for the purpose of settlement of the land in question. However, other than forwarding a copy of the order dated 11.10.1999 passed in WP(C) No.5249/1999, the writ petitioner therein (son of the appellant No.1) did not file any formal application for settlement. This fact has been highlighted in the affidavit-in-opposition filed by the Circle Officer in WP(C) No.4710/2021.

Pertinent averments to this effect made in the above affidavit was not controverted by the appellants/writ petitioners and since no formal petition was ever filed seeking settlement, no follow up action was required to be carried out in terms of the Court's direction dated 11.10.1999. They further urged that there was a pertinent assertion in the affidavit of the Circle Officer that the land in question was falling in the category of Village Grazing Reserve (VGR) and there was no scope of allotment of the said land to any one in view of the judgment rendered by Hon'ble the Supreme Court in the case of **Jagpal Singh & Ors. -Vs- State of Punjab & Ors.**, reported in **AIR 2011 SC 1123**. They thus urged that the writ appeal does not merit acceptance and the same is liable to be dismissed.

Having given our thoughtful consideration to the submissions advanced at bar and after going through the material available on record, we find that pursuant to the order dated 11.10.1999 passed in WP(C) No.5249/1999 (filed by one Srimanta Hazarika, i.e. the son of the appellant No.1 herein), no formal application seeking settlement of the land in question was submitted to the authorities. Even as per the documents placed on record of the writ petition, only the copy of the order dated 11.10.1999 was forwarded by post.

For nearly a period of 22(twenty-two) years thereafter, the appellants/their family members kept on sleeping over the matter and no further action was taken regarding the alleged non-compliance of the order passed by the Writ Court in the earlier round of litigation.

There is a specific pleading of the respondents in the writ petition that the land in question fell within the category of Village Grazing Land. This assertion made by the respondents in the pleadings/affidavit filed before the learned Writ Court was not controverted by the appellants/writ petitioners by filing any affidavit-in-reply and in this background, the same has to be accepted unless material to the contrary is brought on record. Hon'ble the Supreme Court in the case of **Jagpal Singh**, referred to supra, has categorically laid down that Village Grazing Land cannot be allotted to any one without following the due process of law.

There is no dispute that the appellants/ their family members did not file any formal application to the authorities in terms of the direction given by this Court vide order dated 11.10.1999 passed in WP(C) No.5249/1999. Hence, there was no occasion for the authorities to have unilaterally considered the claim of the appellants/their family members for settlement of the land/plot in question in their favour.

That apart, the learned Single Bench while disposing of the writ petition by the impugned order dated 27.04.2022 has already given liberty to the writ petitioners/appellants to file a representation to the Deputy Commissioner so as to seek necessary follow up action in terms of the orders passed by this Court in the earlier round of litigation.

In view of the above, the appellants/writ petitioners are not entitled for any further relief in this writ appeal, which is dismissed as being devoid of merit.

No order as to cost.

JUDGE

CHIEF JUSTICE

Comparing Assistant