

GAHC010211452021



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

Case No. : WP(C)/6614/2021

RAMAJI HARIJAN
SON OF LATE MAHENDRA HARIJAN @ MAHENDRA MUSI
VILL- BAIHATA,
MOUZA- MADARTOLA
P.O. BAIHATA, P.S. KAMALPUR
DIST. KAMRUP, ASSAM
PIN-781380

VERSUS

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

2:THE DEPUTY COMMISSIONER

KAMRUP AT AMINGAON.

3:THE CIRCLE OFFICER

KAMALPUR REVENUE CIRCLE AT KAMALPUR

Advocate for the Petitioner : MR. U K DAS

Advocate for the Respondent : GA, ASSAM

**BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH**

JUDGMENT AND ORDER(ORAL)

Date : 22.05.2023

Heard Mr. U.K. Das, the learned counsel appearing on behalf of the petitioner. Mr. R. Borpujari, the learned counsel appears on behalf of the respondent No. 1 and Mr. J. Handique, the learned counsel appears for the respondent Nos. 2 and 3.

2. Taking into account that in the instant writ petition the affidavit-in-opposition as well as the affidavit-in-reply have already been filed, this Court takes up the instant writ petition for disposal at the motion stage itself.

3. The case of the petitioner herein is that the petitioner has been occupying a plot of land measuring 1 bigha 1 Katha 6 lessa comprised in Dag No. 674 under Mouza Madartola with Kamalpur Revenue Circle and has been residing therein by constructing a thatched house since long back. The petitioner also has been paying Touzibahi revenue to the Government from time to time. As would appear from the records that taking into account that the petitioner's father was residing in the said land for the last 60 years and after death of his father he has been residing for the last 30/40 years. The petitioner submitted an application on 16/2/2020 for settlement of the land. It has been admitted in the affidavit filed by the respondent No. 3 to the instant writ petition that the said application dated 16/2/2020 filed by the petitioner is still pending. However, on 1/12/2021, the petitioner was served a notice by the respondent No. 3 directing him to vacate the land within seven days. It is under such circumstances, the instant petition was filed.

4. A perusal of the Rules framed under the Assam Land and Revenue Regulation, 1886 clearly stipulates that the Deputy Commissioner or any other Officer not lower than the status of the Sub-Deputy Collector has the power to issue a periodic lease subject to the limits as mentioned in Rule 3(i) of the Settlement Rules. Rule 5 of the Settlement Rules categorically mentions how the application is required to be filed.

5. At this stage, this Court also finds it relevant to take note of the recent Land Policy of 2019 wherein in Clause 3, allotment/settlement of land for homestead purpose in rural areas have been mentioned. From a perusal of Clause 3.1 of the Land Policy, 2019, it reveals that an indigenous family of the State who does not have a homestead land in the name of any member of their family anywhere in the entire State may be allotted with a suitable homestead land not exceeding half a bigha per family or in other words 2 kathas 10 lechas. It is also relevant to mention that prior to the present Land Policy of 2019, the Land Policy, 1989 was holding the field wherein also an indigenous person who did not have any homestead land would have been entitled to allotment/settlement of homestead land. Clause 3 of the Land Policy, 2019 being relevant is quoted herein below :-

“3. ALLOTMENT/SETTLEMENT OF LAND FOR HOMESTEAD PURPOSE IN RURAL AREAS :

3.1. An indigenous family of the State who does not have homestead land in the name of any member of their families anywhere in the entire State may be allotted with suitable homestead land not exceeding half a bigha (1/2) per family. The land so allotted shall be settled on periodic basis with the allottee provided the land is utilized for the purpose for which it is allotted within 3 years of allotment. Land thus settled shall be nontransferable for 15 years from the date of settlement. Further, the Deputy Commissioners shall ensure that landless indigenous person with whom land is settled does not become landless again by transferring any part of his settled land.

3.2 The land previously allotted under Rural House Site Scheme (MNP Scheme), may be expeditiously settled with the allottees or their legal heirs as the case may be, provided the land so allotted has been properly utilized as homestead.

3.3. Deputy Commissioners shall expedite the process of settlement of land to Tea and Ex-Tea labourers as per the policy of the Government.

3.4. For allotment/settlement of land to landless indigenous persons under this policy, detail method and manner of submission of applications and other aspects, will be issued separately.”

6. This Court made a specific query upon the learned counsel for the petitioner taking into account that as per the present Land Policy, the total area of land under the petitioner's occupation cannot be granted for settlement, the learned counsel appearing on behalf of the petitioner submits that he has no objection if 2 kathas 10 lechas of land is being settled or allotted to him and the remaining land can be taken by the Government.

7. At this stage, this Court finds it relevant to mention that the Notice dated 1/12/2021 is silent as to under what provisions the said Notice has been issued. Be that as it may, this Court finds it relevant to take into account the instructions so given by the Circle Officer to the Junior Govt. Advocate on 17/12/2021 which is made a part of the record by enclosing the same to the Affidavit filed by the Respondent No. 3. Paragraphs 1, 2 & 3 of the said instructions are quoted herein below :-

“1. For Dag No. 674 of Village Baihata, Mouza-Madartala under Kamalpur Revenue Circle the petitioner alone being the sole encroacher at the Dag No.674 has been given notice, as the petitioner herein is neither the owner nor the tenant of the land in question which is recorded as a govt. land. They are in fact trespassers and unauthorized occupants of the land. Moreover there are no other encroachers on the stated dag apart from the petitioner. It may be stated here that, as of now there are no reports of encroachment from the concerned Lot Mandals for the adjoining areas

however if any such information is received, the undersigned will take measures as per amended provisions of Rule 18(2) of the Settlement Rules framed under Assam Land Revenue Regulation 1886.

2. The land in occupation by the petitioner is required for various purposes such as 'Construction of Inspection Bungalow cum Office Building at Kamalpur' for which administrative approval has already been accorded by Public Works (Roads) Department, Govt. of Assam for an amount of Rs. 7.0953639 crores. Office of the Spl. Director General of Police-cum-Director of Fire & Emergency Services, Assam vide letter dated 28-08-2021 requested for allotment of suitable land in an around Kamalpur town for construction of a new 'Fire & Emergency Services Station'. The Intelligence Bureau verbally is also seeking land for establishment of a Training Centre. Moreover, there is a pressing demand from the al public for creating a public parking space meant for vehicles coming to Circle Office. As with the increase in footfall at the circle office has led to huge traffic jam in front of the office and the concern govt. land being the nearest to the circle office is best placed for the parking space. Besides 1 Katha from the Dag No. 674 was settled with Kamalpur Nabajyoti Club vide resolutions dated 06-06-2008 of the Sub-Divisional Land Advisory Committee, Rangia. However as the club never took possession of the allotted land, for the purpose for which it was allotted within a period of 3 years therefore such land will be reverted back to the Govt. in the Revenue & Disaster Management Department as per Govt. Circular No. RSS.47/89/6 dated 03-10-1989.

3. Having such nature of myriad requirements, the undersigned decided to demarcate the said dag to establish the real extent and to establish actual boundary of the dag as per cadastral map of the Baihata village, for optimum utilization of the land. Moreover, unless the dag is not properly demarcated it is very difficult for the agencies to design and plan their project. But the said petitioner has illegally occupied the front portion of the dag/plot of land, facing the main road and thereby making it difficult for the undersigned to demarcate the said dag. Therefore, it is of utmost importance that the petitioner to vacate the un-authorized occupation of government land in the greater public interest."

8. The above quoted portion of the instructions shows that the land the petitioner is occupying is required by the State Government for varied reasons. This Court duly takes note of the requirement of the land as mentioned in the instructions as quoted hereinabove. This Court also cannot be unmindful of the legitimate expectation of the petitioner being considered for settlement/allotment on the basis of the Land Policy, 2019, the previous land policies as well as the Settlement Rules which stipulates that settlement/allotment to be given to indigenous people of the State. This Court also feels it relevant to clarify that a person howsoever long his possession does not have vested right in respect to the land unless he enters into possession in the manner known to law.

9. Be that as it may, taking into account the facts involved, more particularly, the fact that the petitioner had already submitted an application on 16/2/2020 which is still pending before the authorities concerned and thereupon only the Circle Officer had taken action to issue the impugned notice, this Court therefore disposes off the instant writ petition with a direction upon the respondent authorities and more particularly, the respondent Nos. 2 and 3 to consider the application so filed by the petitioner on 16/2/2020 for the purpose of allotment/settlement in terms with Clause 3.1 of the Land Policy of 2019.

10. This Court further directs the Circle Officer, i.e the respondent no. 3 to verify the said application so submitted and if it is found that the same is not in the format prescribed, then in such case, the Circle Officer may grant liberty to the petitioner within such time as deemed reasonable for submitting a fresh application for settlement in the manner prescribed.

11. This Court further is of the opinion that the right of the petitioner for allotment/settlement is limited to half a bigha i.e. 2 kathas 10 lechas of land.

But the petitioner is in possession of 1 bigha 1 katha 6 lechas of Government land which by far exceeds the quantum the petitioner can seek settlement. Under such circumstances, this Court grants the liberty to the Respondent No. 3 to demarcate the land in possession of the petitioner and leaving aside a compact plot of 2 kathas 10 lechas in possession of the petitioner, the Respondent No. 3 would be entitled to evict the petitioner from the remaining land. Liberty further is given to the Respondent No. 3 while demarcating the land to choose the portion desirable in public interest inasmuch as the petitioner cannot claim a right to choose except a compact plot of 2 katha 10 lechas of land.

12. It is further observed that the Deputy Commissioner as well as the Circle Officer as the case may be i.e. the respondent Nos. 2 and 3 while considering the application of the petitioner, shall also take into account whether the petitioner fulfills the criteria in terms with Clause 3 of the Land Policy, 2019. If the petitioner fulfills the criteria, the Respondent Authorities are directed to take appropriate steps in terms with its Land Policy, 2019 to grant settlement/allotment. Otherwise, the Respondents are given the liberty to take such action in accordance with law.

13. This Court further directs that till such time, the application of the petitioner is not disposed off against the petitioner by way of a reasoned order, the Respondents shall not evict the petitioner from the 2 kathas 10 lechas of land which would be in possession of the petitioner after demarcation in terms with paragraph 11 hereinabove.

14. With the above directions and observations, the petition stands disposed off. Interim order if any stands modified to the extent indicated above.

15. The Registry is directed to serve a copy of this judgment to Mr. R. Borpujari and Mr. J. Handique, the learned counsels for effective compliance.

JUDGE

Comparing Assistant