

GAHC010221552022



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

Case No. : WP(C)/7041/2022

ABDUR RASHID
S/O- LATE ABDUL BARI SARKAR, R/O- VILL.- SREEGRAM PART-VI, P.O.
HATIPOTA, P.S. BILASIPARA, DIST. DHUBRI, ASSAM, PIN- 783348.

VERSUS

THE STATE OF ASSAM AND 3 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE GOVT.
OF ASSAM, DEPARTMENT OF REVENUE (LR), DISPUR, GUWAHATI-6.

2:THE DIRECTOR OF LAND
RECORDS AND SURVEY
RUPNAGAR
GUWAHATI-32
DIST. KAMRUP(M)
ASSAM

3:THE DEPUTY COMMISSIONER
GOALPARA
DIST. GOALPARA
ASSAM
PIN- 785621.

4:THE CIRCLE OFFICER
LAKHIPUR REVENUE CIRCLE
LAKHIPUR
DIST. GOALPARA
ASSAM
PIN- 783129

Advocate for the Petitioner : MR. S A AHMED

Advocate for the Respondent : GA, ASSAM

**BEFORE
HONOURABLE MR. JUSTICE SANJAY KUMAR MEDHI**

ORDER

20.02.2023

Heard Shri SA Ahmed, learned counsel for the petitioner as well as Ms. M Barman, learned State Counsel, Assam. Also heard Ms. G Hazarika, learned Standing Counsel, Revenue Department, Assam.

2. The matter pertains to demarcation of the plots of land of the petitioner. The petitioner claims to be the legal heir of Late Abdul Bari Sarkar, who had purchased plots of land measuring 12 bighas covered by Tauji No. 1049 and 25 bighas 4 kathas 15 lechas covered by Tauji No. 1068 of Village-Rowkhowa (River Block) Part-III, Mouza-Rowkhowa under Lakhipur Revenue Circle, District-Goalpara, Assam vide registered Sale Deeds dated 07.11.1967 and 12.01.1968, respectively.

3. It is the case of the petitioner that after the demise of his father, he has been possessing and cultivating the said plot of land. However, his peaceful possession at times has been disturbed by some strangers for which the petitioner submitted representation before the Deputy Commissioner with a prayer for demarcation.

4. That being not done, the doors of the writ court have been approached. At the outset, this Court is intrigued by the claim as to how there could be a registered sale deed of Tauji land, inasmuch, as that there cannot be any question of ownership of a

land for which Tauji is paid which has been clarified by the Hon'ble Supreme Court in the case of ***State of Assam Vs. Radha Kanoo***, reported in **(1996) 8 SCC 692**. The relevant paragraph, being paragraph 5, is quoted hereinbelow:

“5. It is true, as pointed out by Shri Goswami that mauzadars have been given right to collect touzi of miscellaneous land revenue in the appropriate cash form prescribed in the instructions and that on collection the mauzadar is enjoined to deposit the collection so made in the manner prescribed. The question is: whether the persons who enter into possession otherwise than in accordance with Rule 16 would be recognised to be a person to have duly entered into possession of the government wasteland and thus entitled to be recognised in touzi possession of the land, even though they may have paid revenue to mauzadars? The mauzadar as an agent of the government cannot clothe himself with any higher right than is given as an agent to collect revenue on behalf of the government and has no power to create any right under Rule 16. His collection of land revenue from persons other than those covered by Rules 16, 17 and 17-A would not confer any right on such persons in unauthorised occupation. At best such collection must be only illegal collection and it does not bind the government. A reading of Rule 16 clearly indicates its mandatory character. The person is entitled to enter into possession in two characters, namely, settlement of a written lease granted by the Deputy Commissioner pursuant to a written application; or by a written permission given by the Deputy Commissioner pending settlement. In either of the events, a person is entitled to enter into possession of government wasteland and from such person the mauzadar is entitled to collect the revenue, as contemplated in terms of lease. Since Rule 17 or 17-A gives express power to the Deputy Commissioner either to increase the revenue as specified in the lease or to reduce the revenue, as circumstances warrant under Rule 17-A this would indicate that the mauzadar is a local revenue collection agent of the government to collect revenue only in respect of the persons who rightly and lawfully entered into possession of the lands pursuant to orders in Rule 16. No other person has got any legitimacy to make any payment to the mauzadars. Nor the mauzadar has any power to collect such land revenue from the trespasser; nor shall it bind the government which is contrary to the provisions of Rule 16. Any other interpretation would be clearly repugnant to

the scheme of the relevant provisions of the Regulation and the Rules. The administrative instructions issued to the mauzadars for revenue collection do not override the statutory operation of the Regulation and the Rules nor do they give legitimacy to illegal acts of mauzadar for which he would be liable to disciplinary action. The High court, therefore, was clearly in error in holding that Touzi Bahira Revenue collected by mauzadar would amount to collection of revenue and that the possession of such person would not become unlawful and no action under Rule 18 is called for unless action is taken to terminate a non-existent lease or to pass any proper order and then to recover possession of lands from the encroacher in accordance with the provisions of the Assam Public Premises (Eviction of Unauthorised Occupants) Act, 1976 (20 of 1976.”

5. Be that as it may, for matters pertaining to demarcation, the State of Assam has enacted the Assam Right to Public Services Act, 2012 followed by an Office Memorandum dated 21.12.2020. This Court has been consistently passing orders of the present nature by remanding the petitioners to approach the appropriate forum under the aforesaid Act and the office memorandum. One of such orders is dated 18.05.2022 passed, amongst others in **WP(C)/2743/2022 (Premchan Mandal & 2 Ors. Vs. State of Assam)**.

6. In view of the above, this Court is also of the view that apart from the fact that an alternative remedy has been made available for redressal of dispute of the present in nature, the dispute in question would also require adducing of evidence which is not within the ambit of a */is* to be adjudicated by a writ court.

7. In view of the above, if it is found that a case for demarcation is made out, the same may be placed by the petitioner before the appropriate jurisdictional designated public servant in the standard form on receipt of which the same shall be disposed of within the time stipulated under the said Act.

8. The writ petition is, accordingly disposed of.

JUDGE

Comparing Assistant