

GAHC010246952019



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

Case No. : WP(C)/7734/2019

ON THE DEATH OF SYED ALI MOLLAH HIS LEGAL HEIRS
S/O LATE WAHED ALI SHEIKH, RESIDENT OF VILLAGE ALOMGANJ PART-
IV, P.O. ALOMGANJ, P.S. GAURIPUR, DISTRICT- DHUBRI (ASSAM).

1.1: SOKINA KHATUN
D/O LATE SAYED ALI MOLLAH
VILL- ALOMGANJ PART-9
P.O. ALOMGANJ
P.S. GAURIPUR
DIST- DHUBRI(ASSAM)

1.2: HASINA BIBI
W/O JOYNUL ABEDIN
D/O LATE SAYED ALI MOLLAH
VILL- ALOMGANJ PART-III
P.O. ALOMGANJ
P.S. GAURIPUR
DIST- DHUBRI(ASSAM)

1.3: HAJERA KHATUN
W/O SAHAR ALI
D/O LATE SAYED ALI MOLLAH
VILL- SALMARA PART-V
P.O.- BONDIHARA
P.S. FOKIRGANJ
DIST- DHUBRI(ASSAM)

1.4: ELIAS MOLLAH
S/O LATE SAYED ALI MOLLAH
VILL- ALOMGANJ PART-9
P.O. ALOMGANJ
P.S. GAURIPUR
DIST- DHUBRI(ASSAM)

1.5: SABURA KHATUN
W/O NURUL HOQUE
D/O LATE SAYED ALI MOLLAH
VILL- SAND BLOCK
P.O. JORUACHAR
P.S. FAKIRGANJ
DIST- DHUBRI(ASSAM)

1.6: FATEMA KHATUN
W/O ROHIZUDDIN
D/O LATE SAYED ALI MOLLAH
VILL- BARAIBARI
P.O. ALOMGANJ
P.S. GAURIPUR
DIST- DHUBRI(ASSAM)

1.7: JAKARIA MOLLAH
S/O LATE SAYED ALI MOLLAH
VILL- ALOMGANJ PART-9
P.O. ALOMGANJ
P.S. GAURIPUR
DIST- DHUBRI(ASSAM)

VERSUS

THE STATE OF ASSAM AND 4 ORS.
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE
GOVERNMENT OF ASSAM, REVENUE DISASTER MANAGEMENT
DEPARTMENT, (SETTLEMENT BRANCH), DISPUR, GUWAHATI-6.

2:THE DIRECTOR
LAND RECORDS AND SURVEYS ETC.
RUPNAGAR
GUWAHATI- 32.

3:THE DEPUTY COMMISSIONER
DHUBRI (ASSAM)
PIN- 783301.

4:THE CIRCLE OFFICER
DHUBRI REVENUE CIRCLE
DHUBRI
PIN- 783301.

5:THE ASSISTANT SETTLEMENT OFFICER
DHUBRI CIRCLE
DIST DHUBRI
ASSAM

PIN- 783301

For the Petitioner(s) : Mrs. R. Choudhury, Advocate
For the Respondent(s) : Mr. A. Bhattacharjee, SC, Revenue
: Mr. H. Sarma, Addl. Sr. Government Advocate

**BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH**

JUDGMENT AND ORDER (ORAL)

Date : 11-10-2023

1. The instant writ petition was filed by one Syed Ali Mollah (since deceased) seeking for a writ of mandamus thereby directing the Respondent Authorities to approve the allotment proposal of land approved by the Sub-Divisional Land Advisory Committee, Dhubri in its meeting dated 29.01.2011 as modified in the subsequent meeting dated 29.09.2014 in favour of the Petitioner. The petitioner had also sought for a direction upon the Respondents to settle the said land thereafter with the Petitioner in accordance with law.

2. From a perusal of the writ petition, it transpires that the Sub-Divisional Land Advisory Committee, Dhubri had in its meeting held on 29.01.2011 had approved/recommended the settlement proposal for land measuring 1 Bigha 2 Kathas 18 lechas covered by Dag No.183/178 (Part) of Village Alomganj Part-IX. Subsequent thereto, in another meeting held on 29.09.2014, the Sub-Divisional Land Advisory Committee, Dhubri modified the earlier recommendation in respect to the area to be settled/allotted to 1 Bigha only in view of the then existing Land Policy. The record further reveals that the Petitioner thereupon approached before the Respondent Authorities time and again for settlement of the said land which was recommended by the Sub-

Divisional Land Advisory Committee on 29.09.2014. As the Petitioners requests before the Respondent Authorities bear no fruits, the instant writ petition was filed.

3. This Court vide an order dated 23.10.2019 had issued notice making it returnable by 6 (six) weeks and it was further observed that the pendency of the writ petition shall not be a bar for the Respondents to redress the grievance of the petitioner in accordance with law.

4. At this stage, this Court further finds it relevant to take note of that during the pendency of the writ petition, the Petitioner Late Syed Ali Mollah expired and on the basis of an order dated 01.08.2022 passed in I.A. (Civil) No.616/2022, the legal representatives of Late Syed Ali Mollah were substituted as Petitioner Nos. 1.1 to 1.7.

5. This Court further finds it relevant at this stage to take note of that an important development that took place immediately after the filing of the writ petition inasmuch as the Land Policy, 1989 on the basis of which the Petitioner claimed the settlement in respect of 1 Bigha of land as per the recommendations made by the Sub-Divisional Land Advisory Committee, Dhubri on 29.09.2014 was substituted by the Land Policy, 2019 which had come into effect on 13.11.2019. Clause 3 of the Land Policy, 2019 is in respect to allotment/settlement of land for homestead purpose in rural areas. The said Clause 3 being relevant is reproduced hereinbelow:

“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 ($\frac{1}{2}$) 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 non-transferable 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. From a perusal of the above quoted Clause-3 of the Land Policy, 2019, it has been stipulated that the allotment with suitable homestead land cannot exceed more than half bigha per family or in other words 2 Kathas 10 Lechas. At this stage also, this Court finds it relevant to take note of the Explanation to Clause 2.2 of the Land Policy, 2019, wherein the term "family" had been defined. The said explanation being relevant is reproduced hereinunder:

"Explanation: Family means a family consisting of one or more of the following namely: 1) husband, 2) wife, 3) minor children and also includes a joint family. Joint family means family of which the members are descendants from a common ancestor and have a common mess, and shall include wife or husband, as the case may be, but shall excluded married daughters, married sons and their children: provided that a family consisting of father, and/or mother, sons and/or unmarried daughters

holding lands jointly shall be presumed to be joint in spite of having a separate mess."

7. The instant writ petition came up before this Court on 14.08.2023 on which date, Mr. H. Sarma, the learned Additional Senior Government Advocate appearing on behalf of the Deputy Commissioner, Dhubri submitted that in view of the Land Policy, 2019, the area that can be at best be allotted/settled with the Petitioners is 2 Kathas 10 Lechas of land. Subsequent thereto, when the matter was listed again on 29.09.2023, an instruction was placed which has been kept on record and marked with the letter "X" wherein it has also been mentioned that as per the Land Policy, 2019 only 2 Katha 10 Lechas of land could be allotted/settled.

8. It is under such circumstances, this Court had posted the matter today at the request of the learned counsel for the Petitioners so that she could address this Court as to whether the Petitioners were entitled to be considered as per the Land Policy, 1989 on the basis that the Sub-Divisional Land Advisory Committee had recommended the settlement/allotment of 1 Bigha of land or the rights of the Petitioners would be now regulated as per the Land Policy of 2019.

9. This Court had duly heard Mrs. R. Choudhury, the learned counsel appearing on behalf of the Petitioners in that regard whereby the learned counsel submits that the Petitioners continue to be entitled on the basis of the Land Policy, 1989 inasmuch as the process for initiation of the settlement was initiated at the time when the Land Policy, 1989 was holding the field. This Court had given an anxious consideration o the said submission and is of the opinion that the said submission is misconceived taking into account that the

right to settlement/allotment is not a vested right. Furthermore, as per Regulation 6 of the Assam Land and Revenue Regulation, 1886 as well as Rule 15 of the Settlement Rules merely being in possession howsoever long, cannot give a right upon a person for settlement. Furthermore, a perusal of the Settlement Rules duly shows that it is based upon the discretion of the Government which is required to be exercised by the Deputy Commissioner so that a land could be settled. The Land Policy, 1989 as well as the Land Policy, 2019 have been issued in order to streamline the process of settlement as per the Settlement Rules. The Policy presently prevalent stipulates only 2 Kathas 10 Lechas of land could be settled. Any direction given would amount to interfering with the policy decision of the Government which cannot be done unless the said policy is arbitrary and manifestly unreasonable. Taking into account the above and as in the present case, only a recommendation was made by the Sub-Divisional Land Advisory Committee for settlement/allotment of 1 Bigha of land in favour of the original Petitioner, the same in the opinion of this Court would not confer any right upon the original Petitioner or even the substituted Petitioners to claim rights of settlement on the basis of the Land Policy, 1989.

10. This Court further finds it relevant to take note of another submission made by Mrs. R. Choudhury, the learned counsel to the effect that taking into account the definition of family as set out in the Explanation to Clause 2.2 of the Land Policy, 2019, some of the Petitioners cannot be included to come within the ambit of the family as some of the substituted Petitioners are married daughters and as such those Petitioners who do not come within the ambit of the definition of family would have a further right to claim settlement beyond the 2 Kathas 10 Lechas of land. The said submission though at the first

blush appears to be tenable but taking into account that the rights which have been claimed by the substituted Petitioners is on the basis that they represent the estate of the deceased i.e. Late Syed Ali Mollah, the said contention in the opinion of this Court cannot be agitated before this Court in the present proceedings.

11. This Court further finds it relevant to take note of the submission of Mr. A. Bhattacharjee, the learned Standing counsel for the Revenue Department whereby he submitted that the eligibility criteria as set out in the Land Policy, 1989 is different from the eligibility criteria as per the Land Policy, 2019 and as such there is a necessity of filing a fresh application.

12. In that view of the matter, this Court therefore disposes of the instant writ petition giving liberty to the Petitioners to file an application seeking allotment as per Clause-3 of the Land Policy, 2019 and in the eventuality such application is submitted in the manner so prescribed, the District Commissioner, Dhubri as well as the Revenue and Disaster Management of the Government of Assam shall do the needful in terms with the extant Land Policy of 2019 read with Assam Land and Revenue Regulation, 1886 and the Settlement Rules. The said exercise be completed within a period of 6 (six) months from the date of submission of such application to the District Commissioner, Dhubri by the Petitioners.

13. With the above observations and directions, the instant writ petition stands disposed of.

JUDGE

Comparing Assistant