

GAHC010272582023



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

Case No. : WP(C)/7353/2023

FAZLUR RAHMAN PRODHANI AND ANR
SON OF LATE NOBIAR RAHMAN PRODHANI,
RESIDENT OF VILLAGE- HATSINGIMARI,
POLICE STATION- SOUTH SALMARA,
DISTRICT- SOUTH SALMARA MANKACHAR,
ASSAM, PIN- 783135.

2: NURIMA KHATUN
DAUGHTER OF LATE NOBIAR RAHMAN PRODHANI

RESIDENT OF VILLAGE- HATSINGIMARI

POLICE STATION- SOUTH SALMARA

DISTRICT- SOUTH SALMARA MANKACHAR

ASSAM
PIN- 783135

VERSUS

THE STATE OF ASSAM AND 18 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE GOVT.
OF ASSAM,
REVENUE DEPARTMENT, DISPUR,
GUWAHATI, ASSAM, PIN- 781006.

2:THE DIRECTOR
LAND RECORDS AND SURVEY ETC.
GOVERNMENT OF ASSAM
RANGPUR
GUWAHATI- 781032.

3:THE DISTRICT COMMISSIONER

SOUTH SALMARA MANKACHAR
POST OFFICE- HATSINGIMARI

DISTRICT- SOUTH SALMARA MANKACHAR

ASSAM
PIN- 783135.

4:THE ADDITIONAL DISTRICT COMMISSIONER
SOUTH SALMARA MANKACHAR
POST OFFICE- HATSINGIMARI

DISTRICT- SOUTH SALMARA MANKACHAR

ASSAM
PIN- 783135.

5:THE SETTLEMENT OFFICER
DHUBRI AND KOKRAJHAR DISTRICTS
DHUBRI
PIN- 783301.

6:THE ASSISTANT SETTLEMENT OFFICER
MANKACHAR CIRCLE
SALMARA MANKACHAR
ASSAM

PIN- 783131.

7:THE CIRCLE OFFICER
MANKACHAR REVENUE CIRCLE
SALMARA MANKACHAR
ASSAM

PIN- 783131.

8:ROSHIDA BEGUM
WIFE OF LATE ABUL FOJOL PRODHANI

RESIDENT OF VILLAGE AND POST OFFICE- HATSINGIMARI

POLICE STATION- SOUTH SALMARA

DISTRICT- SOUTH SALMARA MANKACHAR

(ASSAM)
PIN- 783135.

9:AFRUJA BEGUM
DAUGHTER OF LATE ABUL FOJOL PRODHANI

RESIDENT OF VILLAGE AND POST OFFICE- HATSINGIMARI

POLICE STATION- SOUTH SALMARA

DISTRICT- SOUTH SALMARA MANKACHAR

(ASSAM)
PIN- 783135.

10:ANOWARA BEGUM
DAUGHTER OF LATE ABUL FOJOL PRODHANI

RESIDENT OF VILLAGE AND POST OFFICE- HATSINGIMARI

POLICE STATION- SOUTH SALMARA

DISTRICT- SOUTH SALMARA MANKACHAR

(ASSAM)
PIN- 783135.

11:RAFIQUL ISLAM PRODHANI
SON OF LATE ABUL FOJOL PRODHANI

RESIDENT OF VILLAGE AND POST OFFICE- HATSINGIMARI

POLICE STATION- SOUTH SALMARA

DISTRICT- SOUTH SALMARA MANKACHAR

(ASSAM)
PIN- 783135.

12:RANIJA BEGUM
DAUGHTER OF LATE ABUL FOJOL PRODHANI

RESIDENT OF VILLAGE AND POST OFFICE- HATSINGIMARI

POLICE STATION- SOUTH SALMARA

DISTRICT- SOUTH SALMARA MANKACHAR

(ASSAM)
PIN- 783135.

13:ANARKOLI BEGUM
DAUGHTER OF LATE ABUL FOJOL PRODHANI

RESIDENT OF VILLAGE AND POST OFFICE- HATSINGIMARI
POLICE STATION- SOUTH SALMARA
DISTRICT- SOUTH SALMARA MANKACHAR
(ASSAM)
PIN- 783135.

14:BAABITA BEGUM
DAUGHTER OF LATE ABUL FOJOL PRODHANI

RESIDENT OF VILLAGE AND POST OFFICE- HATSINGIMARI
POLICE STATION- SOUTH SALMARA
DISTRICT- SOUTH SALMARA MANKACHAR
(ASSAM)
PIN- 783135.

15:SOFIQUL ISLAM PRODHANI
SON OF LATE ABUL FOJOL PRODHANI

RESIDENT OF VILLAGE AND POST OFFICE- HATSINGIMARI
POLICE STATION- SOUTH SALMARA
DISTRICT- SOUTH SALMARA MANKACHAR
(ASSAM)
PIN- 783135.

16:SOFIUR RAHMAN PRADHANI
SON OF LATE ABUL FOJOL PRODHANI

RESIDENT OF VILLAGE AND POST OFFICE- HATSINGIMARI
POLICE STATION- SOUTH SALMARA
DISTRICT- SOUTH SALMARA MANKACHAR
(ASSAM)
PIN- 783135.

17:MOFIDABEGUM @ MOFIDA KHATUN
DAUGHTER OF LATE ABUL FOJOL PRODHANI

RESIDENT OF VILLAGE AND POST OFFICE- HATSINGIMARI
POLICE STATION- SOUTH SALMARA
DISTRICT- SOUTH SALMARA MANKACHAR
(ASSAM)
PIN- 783135.

18:FOTEY ALI PRODHANI
SON OF LATE NOBIAR RAHMAN PRODHANI
RESIDENT OF VILLAGE AND POST OFFICE- HATSINGIMARI

POLICE STATION- SOUTH SALMARA
DISTRICT- SOUTH SALMARA MANKACHAR
(ASSAM) PIN- 783135.

19:KHAIRUL ISLAM PRODHANI
SON OF LATE NOBIAR RAHMAN PRODHANI

RESIDENT OF VILLAGE AND POST OFFICE- HATSINGIMARI
POLICE STATION- SOUTH SALMARA
DISTRICT- SOUTH SALMARA MANKACHAR
(ASSAM)
PIN- 783135

Advocate for the Petitioner : MR. M AHMED
Advocate for the Respondent : SC, REVENUE

BEFORE
HONOURABLE MR. JUSTICE MANISH CHOUDHURY

ORDER

19.12.2023

Heard Mr. M. Ahmed, learned counsel for the petitioners; Mr. A. Bhattacharjee, learned Standing Counsel, Revenue Department for the respondent nos. 1 & 2; and Mr. S. Baruah, learned Junior Government Advocate, Assam for the respondent nos. 3 – 7.

2. By filing this writ petition, the 2 [two] petitioners have sought to assail an order dated 19.10.2023 [Annexure-VIII] passed by the Additional District Commissioner, South Salmara Mankachar, Hatsingimari.

3. It is apposite to state that from the pleadings in the writ petition and case papers annexed to the writ petition, it has emerged that the dispute is with regard to a plot of land measuring 2 Bighas 3 Kathas 9 Lessas, covered by Dag no. 165 & Patta no. 64, situate at Village – Hatsingimari, Mankachar Revenue Circle, District – South Salmara [‘the subject-plot’, for short]. The erstwhile owner and pattadar of the subject-plot was one Nobior Rahman Prodhani. Nobior Rahman Prodhani had eight sons and one daughter. The dispute regarding the right to inherit the subject-plot originally arose between the petitioners herein being one

of the sons and the only daughter of Nobior Rahman Prodhani on one side [hereinafter mentioned as '1st party', for convenience], and three of their brothers viz. [i] Abdul Fazal Prodhani [since deceased]; [ii] Fotey Ali Prodhani [the respondent no. 18]; and [iii] Khairul Islam Prodhani [the respondent no. 19]; on the other side [hereinafter mentioned as '2nd party'], being three sons of Nobior Rahman Prodhani. The other four siblings of two contesting parities [1st party and 2nd party] were not originally part of the contest.

3. The dispute is relatable to incorporation of the names of the two contesting parties in the *Jamabandi* [Records-of-Right]. It transpires that the names of the 2nd party, that is, [i] Abdul Fazal Prodhani [since deceased]; [ii] Fotey Ali Prodhani [the respondent no. 18]; and [iii] Khairul Islam Prodhani [the respondent no. 19]; stood mutated at first point of time on 29.08.2019. Later on, the names of the 2nd party, that is, [i] Fazlur Rahman Prodhani [the petitioner no. 1], and [ii] Nurima Khatun [the petitioner no. 2] stood mutated in the revenue records for the subject-plot on 26.10.2019 & 18.01.2021 respectively. It was after inclusion of the names of the 1st party in the *Jamabandi* [Records-of-Right], disputes started to arise and the members of the 2nd party as the writ petitioners, preferred a writ petition, W.P.[C] no. 6434/2021. It is pertinent to mention that Abdul Fazal Prodhani who was the writ petitioner no. 1, expired in the meantime and his name was substituted by his legal heirs in the said writ petition. The said legal heirs of Late Abdul Fazal Prodhani have been impleaded as party-respondent nos. 8 to 17 in the present writ petition. The writ petition, W.P.[C] no. 6434/2021 came up for consideration on 04.01.2023 and the said writ petition was disposed of by an order of even date, after hearing the learned counsel for all the sides. The two petitioners herein were impleaded in the said writ petition as party-respondent no. 7 and the party-respondent no. 8 and they were also heard. The operative parts of the Order dated 04.01.2023 reads as under :-

In view of the aforesaid facts and circumstances and the broad consensus arrived at in the Bar, the exercise for inclusion of the names of the respondent Nos. 7 and 8 in the *Jamabandi* of the plot of land in question be re-done by the competent authority indicated above by affording the affected parties i.e. the petitioners and the respondent Nos. 7 and 8 an opportunity of hearing. The parties

would be at liberty to submit any written statement as well as documents to substantiate their respective claims.

4. It was in pursuance of the direction made in the Order dated 04.01.2023 [supra], the Assistant Settlement Officer, Mankachar heard the parties in connection with Misc. Mutation Case no. 34/2023 and after hearing the parties and after verifying the land records, disposed of the case by an Order dated 19.08.2023 observing that the members of the 1st party as well as the 2nd party are legal heirs of Nobior Rahman Prodhani, hence there was no requirement to correct the land records and the land records would remain unchanged. In the process, the Assistant Settlement Officer, Mankachar rejected the prayer petition of the 2nd party seeking deletion of the names of the members of the 1st party i.e. the two petitioners herein. Aggrieved by the rejection of their petition seeking deletion of the names of the two petitioners herein, they preferred an application before the Additional District Commissioner, South Salmara Mankachar seeking correction in the land records with regard to the subject-plot. Both the parties were heard by the Additional District Commissioner, South Salmara Mankachar. The application preferred by the members of the 2nd party was disposed of by the Additional District Commissioner, South Salmara Mankachar by the impugned Order dated 19.10.2023. A finding has been recorded in the impugned Order to the effect that when the proceedings of the mutation case was pending at the office of the Assistant Settlement Officer/Circle Officer, Mankachar, the names of the other legal heirs of Late Nobior Rahman Prodhani came to be inserted in the land records pertaining to the subject-plot and such insertions were found to be in violation of the direction made in the Order dated 04.01.2023 passed in the writ petition, W.P.[C] no. 6434/2021. The operative parts of the said Order dated 19.10.2023 read under :-

Having heard both the parties and after studying the judgment of Hon'ble Guwahati High Court in connection with W.P.[C] no. 6434/2021, the undersigned comes to this conclusion that :-

1. The ASO/CO, Mankachar Revenue Circle is ordered to cancel the mutation done in favour of the anyone except for the 2nd party.

2. Secondly, the 2nd party being the legal heirs of late Nobiur Rahman Prodhani, may approach the ASO/CO, Mankachar Revenue Circle for a fresh hearing regarding mutation of their names, where the ASO/CO, Mankachar Revenue Circle will follow the process and call for hearing of both the parties before taking any decision.

The 2nd party referred in the above Order dated 19.10.2023 is referred in this Order as 1st party, which consists of the two petitioners.

5. Aggrieved by the aforesaid Order dated 19.10.2023, the two petitioners have preferred the instant writ petition with a grievance that the Additional District Commissioner, South Salmara Mankachar apart from ordering deletion of the newly inserted names in the land records pertaining to the subject-plot, has also arbitrarily and unjustly ordered deletion of the names of the two petitioners herein from the records pertaining to the subject-plot. The petitioners herein have been directed to appear before the Assistant Settlement Officer/Circle Officer for fresh hearing.

6. Such contention does not appear to have any substance in view of the direction already made by the co-ordinate Court in the Order dated 04.01.2023 wherein it had observed that the exercise for *inclusion* of the names of the two petitioners in the *Jamabandi* [Records-of-Right] of the subject-plot in question was to be re-done by the competent authority, that is, the Assistant Settlement Officer by affording the affected parties, that is, the 1st party [the petitioners herein] and the 2nd party [the respondent nos. 8 to 19] an opportunity of hearing. The Court had also observed that the parties would be at liberty to submit their written statements as well as documents to substantiate their respective claims.

7. Thus, it is clear that the competent authority was directed to undertake the exercise for *inclusion* of the names of the two petitioners in the *Jamabandi* [Records-of-Right] of the subject-plot as if their names were not included in the revenue records relating to the subject-plot. In such view of the matter, the writ petition is found not merited. As the writ petition is found to be misconceived as the observation/direction made in the Order dated 04.01.2023 has not been assailed by the petitioners herein till date, issuance of notice to the other respondents is not found necessary. Accordingly, the writ petition is not entertained.

The Assistant Settlement Officer, Mankachar shall proceed with the matter of *inclusion* of the names of the two petitioners in the *Jamabandi* [Records-of-Right] relating to the subject-plot by affording opportunities of hearing to the two contesting sides and also giving liberties to the contesting sides to submit written statements as well as documents, to substantiate their respective claims. The entire exercise shall be completed as expeditiously as possible, preferably within a period of 2 [two] months from the date of submission of a copy of this order by the petitioners at the office of the Assistant Settlement Officer, Mankachar. No cost.

JUDGE

Comparing Assistant