

GAHC010293462023



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

Case No. : WP(C)/7581/2023

PHUKAN CHANDRA BORA
S/O LT PREMESWAR BORA R/O NUMALI JALAH MOUZA SINDURIGHUPA
P.S. CHANGSARI DIST. KAMRUP RURAL GUWAHATI ASSAM 781031

VERSUS

THE STATE OF ASSAM AND 8 ORS
REP BY THE CHIEF SECRETARY TO THE GOVT OF ASSAM DISPUR
GUWAHATI 781006

2:THE DIRECTOR GENERAL OF POLICE
ASSAM
ULUBARI GUWAHATI 7

3:THE COMMISSIONER AND SECRETARY
TO THE GOVT OF ASSAM REVENUE RELIEF AND DISASTER
MANAGEMENT DEPTT. DISPUR GUWAHATI 6

4:THE DEPUTY COMMISSIONER
KAMRUP RURAL
AMINGAON GUWAHATI 781031

5:THE SUB DEPUTY COLLECTOR

AMINGAON REVENUE CIRCLE AMINGAON GUWAHATI 781031

6:THE CIRCLE OFFICER
KAMRUP RURAL
AMINGAON REVENUE CIRCLE AMINGAON GUWAHATI 781031

7:THE LAT MONDOL
KAMRUP RURAL

AMINGAON REVENUE CIRCLE AMINGAON GUWAHATI 781031

8:THE OFFICER IN CHARGE
GAURIPUR POLICE STATION AMINGAON GUWAHATI 781031

9:GUWAHATI BIOTECH PARK
THROUGH THE CHIEF EXECUTIVE OFFICER HAVING OFFICE AT
AMINGAON NEAR S P OFFICE GUWAHATI 78103

Advocate for the Petitioner : MR. P K TIWARI

Advocate for the Respondent : GA, ASSAM

BEFORE
HONOURABLE MR. JUSTICE MANISH CHOUDHURY

ORDER

22.12.2023

Heard Mr. P.K. Tiwari, learned senior counsel assisted by Mr. R.J. Das, learned counsel for the petitioner; Mr. N. Goswami, learned Junior Government Advocate, Assam for the respondent nos. 1, 2 & 4 - 8; and Mr. R. Borpujari, learned Standing Counsel, Revenue Department for the respondent no. 3.

2. In view of the issue involved in the writ petition and agreed to by the learned counsel for the parties, the writ petition instituted under Article 226 of the Constitution of India, is taken up for final decision at the motion stage itself.

3. The petitioner has asserted that he is in continuous occupation of a plot of land measuring 1 Kath 5 Lessas, covered by Touzi no. 388 & Dag no. 305, situate at Village – Numali Jalah, Mouza – Sindurighupa, Police Station – Changsari, District – Kamrup [Rural] [‘the subject-plot’, for short], since 1982. The petitioner has stated that he along with his family has been living in the subject-plot by constructing shed, etc., thereon.

3.1. There were litigations earlier in the form of two writ petitions, W.P.[C] no. 4033/2014 & W.P.[C] no. 3187/2021. There was also a miscellaneous proceedings in the form of Misc. Case no.

2490/2014, which arose out of the writ petition, W.P.[C] no. 4033/2014.

3.2. When in the year 2014, action was initiated to evict the petitioner from the subject-plot, the writ petition, W.P.[C] no. 4033/2014 was instituted and in the miscellaneous case, Misc. Case no. 2490/2014 arising therefrom, was disposed of by an order dated 18.02.2019 with the following observations :-

6. Be that as it may, the eviction process has to be preceded by a notice under Rule 18[3] of the Settlement Rules made under the Assam Land and Revenue Regulation, 1886 and in absence of the same, an eviction process will not be legally sustainable.

7. In view of the above, this writ petition is disposed of by directing that the petitioner in question shall not be evicted from the land under his possession without following the due process of law and without issuing notice under Rule 18[3] of the Settlement Rules as indicated above. The writ petition is accordingly disposed of.

3.3. When the respondent authorities initiated another process of eviction in the year 2021 by serving a notice dated 21.6.2021, the petitioner aggrieved thereby, instituted the 2nd writ petition, W.P.[C] no. 3187/2021. By an order dated 29.06.2021, interim protection was granted to the petitioner to the following effect :-

Considering the facts and circumstances of the case, it is hereby provided that the petitioner shall appear before the Circle Officer on 30.06.2021 as per the impugned notice but his possession over the land in question shall not be disturbed without the leave of this Court.

3.4. The writ petition, W.P.[C] no. 3187/2021 was disposed of finally by an order dated 28.08.2023. The relevant excerpts of the order dated 28.08.2023 read as under :-

6. Under such circumstances, it is the opinion of this Court that no interference is called for to the impugned notice dated 21.06.2021. Be that as it may, this Court further finds it relevant to observe before concluding that the respondent authorities shall be at liberty to take such steps as permissible under law by taking into account the order dated 18.02.2019 passed in W.P.[C] no. 4033/2014. The interim order so passed on 29.06.2021 stands merged with this order taking into account the stand of

the Respondents and liberty is granted to the Respondents aforesaid.

3.5. It is in the backdrop of above fact situation, the petitioner has laid challenge, through the instant writ petition, to 2 [two] notices – [i] a notice dated 28.11.2023 issued by the Chief Executive Officer, Guwahati Biotech Park, Guwahati whereby the petitioner was requested to furnish valid documents in support of the subject-plot under his occupation with the further observation that in the event of his failure, the petitioner should vacate the subject-plot; and [ii] a notice dated 20.12.2023 issued by the Circle Officer, North Guwahati Revenue Circle, Kamrup, Amingaon whereby the petitioner has been asked to vacate the subject-plot within a period of 3 [three] days on the ground that the subject-plot has already been allotted in favour of the Guwahati Biotech Park and the petitioner is found to be in unauthorized occupation of the subject-plot.

4. Though a number of contentions have been advanced on behalf of the petitioner, what is striking is that the direction made by this Court in the order dated 18.02.2019, quoted above, is in operation till date. The learned counsel appearing for the respondents have fairly submitted that the respondent authorities are obligated to issue a notice under Rule 18[3] of the Settlement Rules framed under the Assam Land and Revenue Regulation, 1886, as amended [‘the Regulation 1886’, for short].

5. Rule 18[3] of the Regulation 1886 read as under :-

Rule 18[3] :-

[a] In all other cases ejectment shall be preceded by publication of a notice in the manner prescribed below requiring the occupant generally to vacate the land specified in the notice, *within 15 days* of the date of publication of the notice on the land concerned or in a prominent place in the vicinity thereof, and to remove any buildings, houses, fences or crops, etc., which may have been raised on such land; provided that the Deputy Commissioner may give time to any particular occupant to harvest the crops, if any, growing on such land. Any buildings, houses, fences, crops, etc., which have not been removed in accordance with such notice shall be confiscated to the Government.

[b] The notice referred to in clause [a] of sub-rule [3] above shall be published by affixing a copy thereof in the Notice Board of the office of the Deputy Commissioner or the Sub-Divisional Officer, as the case may be, and also in the Notice Board of the office of the Sub-Deputy Collector within whose jurisdiction the land is situated. A notice shall also be published by affixing a copy thereof on the land concerned or in a prominent place in the vicinity thereof.

6. It is an admitted position that the petitioner is in occupation of a Government *Khas* land. Under the Settlement Rules framed under the Regulation 1886, no authority and jurisdiction is found vested in an authority like the Chief Executive Officer, Guwahati Biotech Park to ask a person in occupation of a Government *Khas* land even if such occupation is unauthorized occupation, to vacate from Government *Khas* land and to take any steps thereafter, directly for his eviction. In such view of the matter, the impugned notice dated 28.11.2023 issued by the Chief Executive Officer, Guwahati Biotech Park, Guwahati is found to be lacking any jurisdiction. There is no necessity of making any further observation in this regard.

7. In so far as the notice dated 20.12.2023 issued by the Circle Officer, North Guwahati Revenue Circle, Kamrup, Amingaon is concerned, it is noticed that only 3 [three] days' time period has been given to the noticee, that is, the petitioner to vacate from the subject-plot.

8. The learned counsel for the respondents have fairly submitted that the impugned notice dated 20.12.2023 is neither in conformity with the direction made in the order dated 18.02.2019 passed Misc. Case no. 2490/2014, arising out of the writ petition, W.P.[C] no. 4033/2014, and the order dated 28.08.2023 passed in the writ petition, W.P.[C] no. 3187/2021, nor in conformity with the provisions contained and the procedure prescribed in Rule 18[3] of the Settlement Rules framed under the Regulation, 1886.

9. As the impugned notice dated 20.12.2023 issued by the Circle Officer, North Guwahati Revenue Circle, Kamrup, Amingaon is found neither in conformity with the direction made in the order dated 18.02.2019 passed in Misc. Case no. 2490/2014, arising out of the writ petition, W.P. [C] no. 4033/2014, and the order dated 28.08.2023 passed in the writ petition, W.P.[C] no. 3187/2021, nor in conformity with the provisions contained and the procedure prescribed in Rule

18[3] of the Settlement Rules framed under the Regulation, 1886, the same is found not sustainable accordingly, the notice dated 20.12.2023 is set aside and quashed.

10. While setting aside the impugned notice dated 20.12.2023, it is observed that the respondent authorities will be at liberty to proceed strictly in terms of the direction made in the order dated 18.02.2019 passed in Misc. Case no. 2490/2014, arising out of W.P.[C] no. 4033/2014, and as per the provisions contained and the procedure prescribed in Rule 18[3] of the Settlement Rules framed under the Regulation, 1886.

11. This order disposes of the writ petition. No cost.

JUDGE

Comparing Assistant