GAHC010004772024

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

Case No. : WP(C)/104/2024

CHAFA BEGUM
W/O LT. IRFAN ALI, VILL- PANCHARATNA, P.O.-GOBINDAPUR, DIST-GOALPARA, ASSAM

VERSUS

THE STATE OF ASSAM AND 5 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE GOVT OF ASSAM, REVENUE AND DISASTER MANAGEMENT DEPARTMENT, DISPUR, GUWAHATI-781006

2:THE DISTRICT COMMISSIONER
GOALPARA
P.O.- BALADMARI
DIST-GOALPARA
ASSAM
PIN-783121

3:THE ASSISTANT SETTLEMENT OFFICER
BALIJANA REVENUE CIRCLE
GOALPARA
P.O.-BALADMARI
DIST-GOALPARA
ASSAM
PIN-783121

4:THE CIRCLE OFFICER
BALIJANA REVENUE CIRCLE
GOALPARA
P.O.-BALADMARI
DIST-GOALPARA
ASSAM

PIN-783121

5:THE SUPERINTENDING ENGINEER
PWD ROAD
GOALPARA AND SOUTH SALMARA ROAD DIVISION
GOALPARA
P.O.-BALADMARI
DIST-GOALPARA
ASSAM
PIN-783121

6:THE DISTRICT ROAD SAFETY COMMITTEE
GOALPARA
REPRESENTED BY THE DISTRICT COMMISSIONER
GOALPARA
P.O.- BALADMARI
DIST-GOALPARA
ASSAM
PIN-7831

Advocate for the Petitioner : MR. S ISLAM

Advocate for the Respondent : SC, REVENUE AND DISASTER MANAGEMENT DEPT

BEFORE
HONOURABLE MR. JUSTICE MANISH CHOUDHURY

ORDER

09.01.2024

Heard Mr. S. Islam, learned counsel for the petitioner; Mr. J. Handique, learned Junior Government Advocate, Assam for the respondent no. 1; Mr. H. Sarma, learned Additional Senior Government Advocate, Assam for the respondent nos. 2, 3, 4 & 6; and Ms. S. Sarma, learned Standing Counsel, Public Works Department [PWD] for the respondent no. 5.

2. It is the case of the petitioner that he is in occupation of a plot of Government land [Touzi Land] under Dag no. 135 at Village – Pancharatna, Mouza – Balijana, Balijana Revenue Circle, District – Goalpara for more than 60 years by constructing dwelling house thereon and by paying Touzi Bahira revenue regularly. The petitioner has approached this Court by the instant writ petition under Article 226 of the Constitution of India on receipt of an eviction notice dated

27.12.2023 issued under the hand of the respondent no. 3, that is, the Assistant Settlement Officer, Balijana Revenue Circle.

2.1. Assail is made to the said eviction notice primarily on 3 [three] counts, firstly, there is no mention in the impugned eviction notice about the statutory provisions under which the respondent no. 3 has exercised the right to issue eviction notice; secondly, there is no mention in the eviction notice about the land details/particulars from which the petitioner has been sought to be evicted; and thirdly, under the Settlement Rules framed under the Assam Land and Revenue Regulation, 1886, more particularly, Rule 18 thereof, it is the authority who comes within the definition provided in Section 3[m] of the Assam Land and Revenue Regulation, 1886 who can issue such an eviction and an Assistant Settlement Officer does not come within the definition provided by Section 3[m].

3. Both Mr. Handique and Mr. Sarma, learned State Counsel have fairly submitted that the impugned eviction notice *prima facie* appears to have suffered from above deficiencies and in such view of the matter, necessary steps would be necessary to recall the eviction notice. At the same time, they have submitted that the petitioner as per their own admission, appear to be in occupation of Government land and as such, an exercise for eviction of the petitioner from such Government land will also be undertaken as per the prescribed procedure by issuance of a notice afresh, if so advised.

4. On perusal of the eviction notice dated 27.12.2023 issued by the respondent no. 3, this Court finds force in respect of the three points raised in respect of the said eviction notice. The deficiencies in respect of the impugned eviction notice on the said three counts have also been admitted by the learned State counsel as both Mr. Handique and Mr. Sarma, learned State Counsel have submitted that the impugned eviction notice has suffered from deficiencies at least on the three counts, as indicated above.

5. In view of the above fact situation obtaining in the case and for the reasons indicated about the deficiencies in respect of the impugned eviction notice dated 27.12.2023, this Court is of the considered view that the writ petition can be allowed without issuance of any notice and at the motion stage itself. As the impugned eviction notice is found to have suffered from

deficiencies on three counts, already indicated hereinabove, the impugned eviction notice dated 27.12.2023 is set aside. The writ petition stands allowed to the aforesaid extent. Considering the fact that the petitioner is in occupation of a Government land, the State respondents are at liberty to undertake an exercise for eviction of the petitioner from the said Government land but such exercise must be strictly in accordance with the procedure prescribed by law, more particularly, the Assam Land and Revenue Regulation, 1886 and the Rules framed thereunder.

JUDGE

Comparing Assistant