

GAHC010048512024



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

Case No. : WP(C)/1374/2024

SASHADHAR SHIL @ SHASHADHAR SIL
S/O- LATE ASHINI SIL,
R/O- VILLAGE ABHAYAPURI TOWN SHEET NO-1,
P.O AND P.S- ABHAYAPURI,
DIST- BONGAIGAON, ASSAM

VERSUS

THE STATE OF ASSAM AND 5 ORS
THROUGH THE SECRETARY TO THE GOVERNMENT OF ASSAM, REVENUE
DEPARTMENT, DISPUR, GUWAHATI- 781006.

2:THE COMMISSIONER AND SECRETARY
TO THE GOVERNMENT OF ASSAM
REVENUE DEPARTMENT
DISPUR
GUWAHATI- 781006.

3:THE DEPUTY COMMISSIONER

BONGAIGAON
P.O.- BONGAIGAON
DISTRICT- BONGAIGAON
ASSAM.

4:THE ADDITIONAL DEPUTY COMMISSIONER

BONGAIGAON
P.O.- BONGAIGAON
DISTRICT- BONGAIGAON
ASSAM.

5:THE SUB-DIVISIONAL OFFICER

NORTH BONGAIGAON
DISTRICT- BONGAIGAON
ASSAM.

6:THE CIRCLE OFFICER

SRIJANGRAM CIRCLE
ABHAYAPURI
DISTRICT- BONGAIGAON
ASSAM

Advocate for the Petitioner : MR H DAS

Advocate for the Respondent : SC, REVENUE

BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA

ORDER

Date : 03-05-2024

Heard Mr. H. Das, learned counsel for the petitioner as well as Mr. A. Bhattacharya, learned standing counsel for the respondent nos.1 and 2 as well as Mr. J. Handique, learned Govt. Advocate appears for the respondent nos.3 to 6.

2. It is claimed in this writ petition that the petitioner got allotment of a plot of land measuring 1K-15L situated at village Abhayapuri and the said land was mutated in his favour by order passed by the Addl. Deputy Commissioner, Bongaigaon district bearing no.BRS.87/95/12 dated 23.07.1998 and accordingly, the land revenue records were collected.

3. However, the Commissioner and Secretary to the Govt. of Assam, Revenue Department vide order no. RLR-49/99/10 dated 16.07.1999 directed the Settlement Officer, at Goalpara to take immediate steps for cancellation of the corrections of the records in respect of 38 nos. of letters at an early date and correct the land records bringing the land to the *Khas* status. The land of the petitioner is at Sl. No.13 in the list appended to the letter/ communication dated 16.07.1999 referred above.

4. It is noted that the facts of this case is similar to the facts on which this Court had decided the case of *Brindaban Choudhury and another v State of Assam and 6 ors., WP(C) 4594/2020* decided on 09.02.2022. The said petitioner's land is also covered by the list appended to the herein before referred communication dated 16.07.1999 issued by the Commissioner and Secretary to the Govt. of Assam, Revenue Department.

5. By the said aforesaid order dated 09.02.2022, this Court had set aside the herein before referred communication dated 16.07.1999 issued by the Commissioner and Secretary to the Govt. of Assam, Revenue Department with a further direction that the Settlement Officer, Bongaigaon shall make an inquiry with regard to the claim of the petitioners on the basis of the Office Memorandum dated 16.07.1988 and if the petitioners are found entitled on the basis of Office Memorandum dated 16.07.1988 or any other Office Memorandum, benefit was directed to be given to them.

6. The operative paragraph-7 to 9 of the order dated 09.02.2022 passed in WP(C) 4594/2020 is extracted below:

7. Subsequent thereto it reveals that without issuing any notice or giving any opportunity of hearing to the Pattadars who have been allotted the new Pattas on the basis of the Memorandum dated 16.07.1988, the Commissioner & Secretary issued the communication dated 16.07.1999 whereby directed the Settlement Officer, Goalpara for cancellation of all the Pattas issued to 38 numbers of Pattadars including the vendor of the Petitioners. It needs to be taken note of that on the basis of the Patta being issued after necessary verification being conducted by the Office of the Additional Deputy Commissioner a right had accrued upon the vendor of the Petitioners and the cancellation which have been done without affording any opportunity of hearing or even without any show-cause-notice is not only in violation to the principles of natural justice but also it violates the very tenets of Article 14 of the Constitution of India. Under such circumstances this Court interferes with the communication no. RLR-49/99/70-A dated 16.07.1999 issued by the Commissioner & Secretary to the Government of Assam, Revenue Department and accordingly the same is set aside. In fact a perusal of the order dated 15/12/2005 passed in W.P.(C) No. 5063/1999 wherein communication dated 16/7/1999 was put to challenge, it would show that this Court had inspite of the communication dated 16/7/1999 directed that Settlement Officer, Bongaigaon to make an enquiry as regards the claim of the Petitioners on the basis of the Office Memorandum dated 16/7/1988 and if entitled on the basis thereof or any other Office Memorandum, benefit was directed to be given. The record reveals that it was only on account of the communication dated 16/7/1999 such benefit has not been restored to the petitioners herein. In view of setting aside and quashing of the communication dated 16/7/1999 by this court, the Respondent Authorities shall proceed purely on the entitlement on the basis of the Office Memorandum dated 16/7/1988 and the directions contained in the said communication dated 16/9/1999 should be treated as nonest.

8. In view of the above, the petitioners may approach the concerned Respondent No.4 seeking mutation of their names on the basis of the Deed of Sale executed on 17.09.1998 and the Respondent No. 4 shall deal with such application in terms with the observations made herein above.

9. With the above observations, the instant petition stands disposed of. No cost.

8. As the petitioner is situated similarly to the petitioners in WP(C) 4594/2020, this writ petition is allowed in terms of herein before observations as made in the said WP(C) 4594/2020.

9. By granting liberty to the petitioner to approach the concerned respondent no.3 i.e. the Deputy Commissioner, Bongaigaon seeking mutation in his name on the basis of his documents and the said authority shall deal with such applications in terms of the said observations which are made in the order dated 09.02.2022 passed in WP(C) 4594/2022.

10. It is clarified herein that as the communication dated 16.07.1999, issued by the Commissioner and Secretary to the Govt. of Assam, Revenue Department has already been set aside vide order passed in WP(C) 4594/2020. Therefore, the said communication has already been set at naught, no fresh order to the same effect is required.

11. This writ petition stands allowed to the extent as indicated above.

JUDGE

Comparing Assistant