

GAHC010110082023



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

Case No. : WP(C)/2878/2023

MRINAL KANTI DAS AND ANR
S/O LT. DHARANI KANTA DAS R/O VILL. SRIAMPUR REVENUE CIRCLE
GOSSAIGAON P.O. SRIRAMPUR DIST. KOKRAJHAR BTC ASSAM

2: MRIDUL KANTI DAS
S/O LT. DHARANI KANTA DAS R/O VILL. SRIAMPUR REVENUE CIRCLE
GOSSAIGAON P.O. SRIRAMPUR DIST. KOKRAJHAR BTC ASSA

VERSUS

THE STATE OF ASSAM AND 3 ORS
REP. BY THE PRINCIPAL SECRETARY TO THE GOVT. OF ASSAM REVENUE
AND DISASTER MANAGEMENT DEPTT. DISPUR GUWAHATI 781006 ASSAM

2:BODOLAND TERRITORIAL COUNCIL
REP. BY THE SECRETARY LAND REVENUE AND DISASTER
MANAGEMENT DEPTT. BODOLAND SECRETARIAT COMPLEX BODOFA
NWGWR P.O. AND DIST. KOKRAJHAR 783307

3:THE DEPUTY COMMISSIONER
KOKRAJHAR
P.O. KOKRAJHARA 783307

4:THE CIRCLE OFFICER
GOSSAIGAON REVENUE CIRCLE P.O. GOSSAIGAON DIST. KOKRAJHAR
BTC ASSA

Advocate for the petitioner(s): Mr. JC Gaur

Advocate for the respondent(s): Mr. P Nayak

Standing Counsel, BTC

Mr. S Baruah

Junior Government Advocate, Assam

B E F O R E

HON'BLE MR. JUSTICE DEVASHIS BARUAH

ORDER

12.09.2024

I have heard Mr. J C Gaur, the learned counsel appearing on behalf of petitioners and Mr. P Nayak, the learned counsel appearing on behalf of the BTC. Also heard Mr. S Baruah, the learned Junior Government Advocate, Assam.

2. The petitioners herein have approached this Court seeking a direction upon the respondents not to cancel the allotment of land measuring 2 kathas, 10 lechas covered by Dag No.8/627 of periodic patta No. 40 of Revenue Village Srirampur, Mouza - Santal Colony, Revenue Circle Gossaigaon in the district of Kokrajhar, BTC and further not to remove their names from the revenue records. In addition to that the petitioners also have sought for the relief not to forcibly evict the petitioners from their houses without following the due process of law.

3. The case of the petitioners is that the father of the petitioners had been occupying a plot of land since 1968. This aspect of the matter is apparent from the communication issued by the Circle Officer, Gossaigaon Revenue Circle to the Joint Secretary (Land and Revenue) Department BTC dated 11.12.2018. In the statement enclosed to the said communication, the name of the father of the petitioners is reflected at Serial No. 62 and his name has been recorded

against the Dag No.627. Thereupon, by the communication dated 03.03.2020 issued by the Secretary BTC, it was informed that the BTC Kokrajhar had received Rs.13,37,500/- from the various allottees as land value premium for issuing patta to the inhabitants at Srirampur under the Gossaigaon Revenue Circle of Kokrajhar district. The names of the petitioners are seen at Serial No. 15 of the said document. It is also seen from the said document that the Circle Officer, Gossaigaon Revenue Circle was directed by the Secretary BTC to hand over the possession of the aforesaid plot of land to the allottees and correct records thereon at an early date with intimation to the Secretary, BTC.

4. The record further reveals that the names of the petitioners were duly entered in the *Chitha* against Dag No.627 and the patta had been issued being patta No. 40. The record of rights i.e. in the *Jamabandi* also the petitioners' name had been duly mentioned as against patta No. 40 under Dag No. 8/627. The Circle Officer of Gossaigaon Revenue Circle had also issued a land holding certificate in favour of the petitioners and the petitioners had also been paying the land revenue from time to time.

5. In the backdrop of the above, it is relevant to take note of that on 10.05.2023, it was informed to the petitioners that their lands would be acquired and their allotments would be cancelled and thereupon they would be evicted from the lands without any compensation. It is under such circumstances, the petitioners have, therefore, approached this Court seeking for the reliefs, as aforementioned.

6. It is seen that pursuant to the filing of the writ petition, this Court by the order dated 24.05.2023 had issued notice and further restrained the respondent Nos.2 and 4, from evicting the petitioners from their patta land without following due process of law. The records further reveal that on 22.01.2024, 21.02.2024, 28.03.2024, 19.07.2024, 07.08.2024 as well as 22.08.2024, the counsel for the BTC had sought for accommodation to file the affidavit. In fact, in the order dated 22.08.2024, this Court made it very clear that a final opportunity had been granted to the BTC to obtain instruction(s) in the matter and their stand be brought on record by filing an affidavit.

7. Today, when the matter had been listed, Mr. P Nayak, the learned Standing Counsel, BTC had produced before this Court two documents to show that the petitioners herein were paid *Zirat* compensation, but the land has been shown as Government land. The said documents under no circumstances can be said to be official documents having any sign or seal of the concerned authorities. This Court enquired with Mr. P Nayak, the learned Standing Counsel, as to in relation to what are those documents being placed? The learned counsel submitted that these documents pertain to acquisition proceedings under the National Highways Act, 1956 (for short, the 'Act of 1956').

8. At this stage, it is very pertinent to mention that these documents are neither gazetted documents nor the said documents have any sign or seal of any authorized person. Irrespective of that, it is relevant to take note of that the Act of 1956 categorically stipulates the manner in which the acquisition is to be carried out. It would start with notice to be issued under Section 3A of the Act of 1956 and which is required to be published in a particular manner. This Notification under Section 3A is also required to be published in the gazette.

Thereupon, for the purpose of vesting the land upon the Central Government there is also a requirement of issuance of a Notification under Section 3 D of the Act of 1956 which is also required to be gazetted. These Notifications, however, have not been placed before this Court. There is also no affidavit filed by the respondents i.e. BTC, inspite of various opportunities being given as stated hereinabove.

9. This Court has also heard the learned counsels appearing on behalf of the parties and has given its anxious consideration. From the materials on record, it transpires that land had been duly allotted to the petitioners and their names had been recorded in the record of rights. The petitioners had also duly paid the premiums which had been acknowledged by the BTC authorities as far back as in the year 2020 and the petitioners have also been paying the land revenue. Under such circumstances, a right is vested in respect to the land, in question, in favour of the petitioners, and this right of the petitioners can only be taken away by authority of law, which is the mandate of Article 300 A of the Constitution. It is also to be beared in mind that this right under Article 300 A is not only a constitutional right, but it is also akin to human rights.

10. Under such circumstances, this Court observes that the petitioners' rights in respect to the land under Dag No.8/627 of periodic patta No. 40 of Revenue Village Srirampur, Mouza - Santal Colony, Revenue Circle Gossaigaon in the district of Kokrajhar BTC cannot be cancelled or taken away without authority of law, as well as in accordance with law. In addition to that, as such right is vested upon the petitioners in respect to the land, in question, and the petitioners also cannot be evicted without following the due process.

11. Accordingly, the instant writ petition, therefore, stands disposed of, directing the respondent authorities not to cancel the settlement so made in favour of the petitioners in respect to the land, measuring 2 kathas 10 lechas under Dag No.8/627 of periodic patta No. 40 of Revenue Village Srirampur, Mouza - Santal Colony, Revenue Circle Gossaigaon in the district of Kokrajhar BTC, without following the due process of law and the petitioners also cannot be evicted without the due process of law being followed.

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

JUDGE

Comparing Assistant