

GAHC010110262022



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

Case No. : WP(C)/3773/2022

BIJOY SARMA
S/O- LATE BIREN SARMA
R/O- WARD NO-9,
BIHPURIA TOWN,
DIST- LAKHIMPUR, ASSAM, PIN-784161

VERSUS

THE COMMISSIONER AND SECRETARY TO THE GOVT OF ASSAM, AND 3
ORS
TO THE GOVT. OF ASSAM, DEPARTMENT OF LAND REVENUE AND
DISASTER MANAGEMENT, DISPUR, GUWAHATI 06

2:THE COMMISSIONER AND SECRETARY
TO THE GOVT. OF ASSAM
DEPARTMENT OF FINANCE
DISPUR
GUWAHATI 06

3:THE DEPUTY COMMISSIONER
LAKHIMPUR
ASSAM
PIN-787001

4:THE CIRCLE OFFICER
BIHPURIA REVENUE CIRLE

BIHPURIA

DIST- LAKHIMPUR
ASSAM
PIN-78416

Advocate for the Petitioner : MR. S J SARMAH, SC, REVENUE, MR. T BARUAH, MR. P BOIRAGI

Advocate for the Respondent : GA, ASSAM, SC, FINANCE

BEFORE
HONOURABLE MR. JUSTICE ARUN DEV CHOUDHURY

ORDER

Date : 24.09.2024

Heard Mr. S J Sarmah learned counsel for the petitioner.

The present writ petition is filed apprehending eviction from a plot of land measuring 1 Bigha 2 Katha 70 lessas covered by Dag No.298 Old/353 (New) and Patta No.1 (Old)/9 (New) located in Revenue village - Ward No.1, Part-I Mouza Bihpuria, District Lakhimpur.

The respondent has taken a stand by filing affidavit that no eviction notice has been served upon the petitioner and the land is recorded as Government khas land and therefore, the Government may use the land for any purpose, as and when required.

A Division Bench of this court in ***WP(C) 1057/2022 (Md. Salak Uddin Vs. State of Assam and 2 Ors.)*** while dealing with a reference as to whether a notice is required to be issued under Section 18(2) of the Settlement Rules framed under the Assam Land and Revenue Regulation, 1886 has made certain conclusion. Since such conclusions are having importance and determinative factor in adjudication of an eviction process, the same are curved out in the

following manner:

I. Rule 18(2) of the Settlement Rules clearly shows that Deputy Commissioner or such authority duly empowered under Rule 3 of the Settlement Rule has to arrive at a subjective satisfaction that there is no bona-fide claim of right.

II. Revenue authorities cannot be permitted to unilaterally decide as to whether an occupier/ possessor has a bona-fide claim of right involved inasmuch as it would require adjudication of both law and facts and without providing an opportunity to the occupier / possessor, would be in violation of the principle of natural justice which in turn would violate Article 14,19 and 21 of the Constitution.

III. Though Rule 18 (2) is silent on the question of issuance of the notice, but use of the word 'forthwith' does not necessarily and absolutely exclude the prior application of audi alteram partem Rule inasmuch as immediacy or urgency requiring swift action is a situational fact, having a direct nexus with the likelihood of adverse affect.

IV. Bona-fide claim, in case of Government khas land or waste land, may involve a bona-fide claim of right to claim settlement over the land on the basis of settlement Rules and extant land policy of the Government of Assam. In respect of other lands i.e. lands previously reserved for roads or roadside lands, or for grazing of village cattle or for other

public purposes or the occupant had entered into possession of land from which he has been excluded by general or special order, such lands are outside the purview of settlement, there may be various situations, where the question of disputes pertaining to the boundary or there may be disputes pertaining to reservations or de-reservation for grazing of village cattle or for that matter, there may be a dispute that the persons who have been granted the settlement in respect of a land even prior to being previously reserved for the purpose, may arise.

v. Under such circumstances, issuance of a notice shall be necessary to form a subjective satisfaction, which is in consonance with the principles of natural justice inasmuch as same will facilitate a just, fair and transparent procedure, which are facets of Article 14,19 and 21 of the Constitution

In view of the stand taken by the Government and the law laid down by this court in *Salak Uddin* (supra), this writ petition is disposed of with an observation that the petitioner shall not be evicted from the land in question without following due process of law.

With the aforesaid, the writ petition stands disposed of.

JUDGE

Comparing Assistant