

GAHC010148402021



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

Case No. : WP(C)/4926/2021

KHAGEN CHANDRA MEDHI AND ANR.

S/O- LT. HEM CHANDRA ALIAS HEMEN MEDHI, R/O- 1 NO. BAPUJI PATH,
P.O. SUWALKUCHI- 781103, DIST.- KAMRUP (R), ASSAM

2: HIRALAL MEDHI

S/O- LT. HEM CHANDRA ALIAS HEMEN MEDHI

R/O- 1 NO. BAPUJI PATH

P.O. SUWALKUCHI- 781103

DIST.- KAMRUP (R)

ASSA

VERSUS

THE STATE OF ASSAM AND 7 ORS.

REP. BY THE COMM. AND SECY. TO THE GOVT. OF ASSAM, MINISTRY OF
DISASTER MANAGEMENT AND LAND REVENUE, DISPUR, P.O. GHY-06

2:THE DY. COMMISSIONER

KAMRUP (R)

P.O. AMINGAON- 781031

3:THE ADDL. DY. COMMISSIONER

KAMRUP (R)

P.O. AMINGAON- 781031

4:DHANESWAR KAKATI

S/O- LT. JADURAM KEOT AND R/O- VILL- NIZ MODERTOLA

MOUZA- MODERTOLA

P.O. AND P.S. KAMALPUR- 781122

DIST.- KAMRUP

5:JALTIRAM KAKATI

S/O- LT. JADURAM KEOT AND R/O- VILL- NIZ MODERTOLA

MOUZA- MODERTOLA

P.O. AND P.S. KAMALPUR- 781122
DIST.- KAMRUP

6:UMESH CHANDRA KAKATI
S/O- LT. JADURAM KEOT AND R/O- VILL- NIZ MODERTOLA
MOUZA- MODERTOLA
P.O. AND P.S. KAMALPUR- 781122
DIST.- KAMRUP

7:PARAGJYOTI KAKATI
S/O- LT. BHUBAN CHANDRA KAKATI AND R/O- VILL- NIZ MODERTOLA
MOUZA- MODERTOLA
P.O. AND P.S. KAMALPUR- 781122
DIST.- KAMRUP
ASSAM

8:MITHURANI KAKATI
W/O- LT. BHUBAN CHANDRA KAKATI AND R/O- VILL- NIZ MODERTOLA
MOUZA- MODERTOLA
P.O. AND P.S. KAMALPUR- 781122
DIST.- KAMRUP
ASSA

For the Petitioner(s) : Mr. J. C. Gaur, Advocate
: Ms. M. Borah, Advocate

For the Respondent(s) : Mr. N. Goswami, Jr. Govt. Advocate
: Mr. A. Bhattacharjee, Standing Counsel
: Mr. D. Borah, Advocate

Date of Hearing : **19.09.2024**

Date of Judgment : **19.09.2024**

BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH

JUDGMENT AND ORDER (ORAL)

Heard Mr. J. C. Gaur, the learned counsel appearing on behalf of the Petitioners and Mr. A. Bhattacharjee, the learned Standing counsel appearing on behalf of the Respondent No.1. I have also heard Mr. N. Goswami, the learned

Junior Government Advocate appearing on behalf of the Respondent Nos. 2 and 3 and Mr. D. Borah, the learned counsel appearing on behalf of the Respondent No.4 to 8.

2. The present writ petition under Article 226 of the Constitution is filed challenging the order dated 25.11.2019 passed by the Respondent No.3 in Tenancy Case No.7/2019 whereby the Respondent No.4 to 8 who were the recorded Ryati were granted the ownership rights in terms of Section 23 of the Assam (Temporarily Settled Areas) Tenancy Act, 1971 (for short 'the Act of 1971').

3. The challenge made to the said order dated 25.11.2019 is primarily based on two grounds. First, the Petitioners herein had submitted an objection in the said proceedings. However, the said objection was not taken into account. The second ground which is taken is that there is no compliance to Rule 10 and 11 of the Assam (Temporarily Settled Areas) Tenancy Rules, 1972 (for short, 'the Rules of 1972') inasmuch as it is the case of the Petitioners that the Respondent No.3 allowed the application filed under Section 23 of the Act of 1971 on the ground that there was no objection so filed by the Petitioners and without even making any attempt to record the memorandum of evidence.

4. This Court also finds it relevant to take note of that pursuant to the order dated 25.11.2019, the Petitioners had filed an application before the Deputy Commissioner, Kamrup (Rural) seeking a review of the order dated 25.11.2019 on the ground that the Petitioners had duly submitted an objection which was not taken into account. The said proceedings however was not further proceeded with taking into account the file wherein the order dated 25.11.2019 was passed being file No.KRL 7/2019 was missing. This aspect of the matter is clear from Annexure-E to the writ petition.

5. In the background of the above, this Court also finds it relevant to take note of the records which were produced by Mr. N. Goswami, the learned Standing counsel appearing on behalf of the Respondent Nos. 2 and 3. This Court had enquired with the learned counsel as to when the file being KRL 7/2019 could be traced out. The learned Standing counsel submits that there is no specific instruction as to when the file was traced out but in the affidavit so filed by the Respondent No.2 on 19.10.2022, it has been mentioned that the file was misplaced due to shifting of the office from the old building to the new building. The file subsequently was traced out.

6. This Court has also perused the said records of KRL 7/2019 which was produced. From a perusal of the said file, it is apparent that there is no such objection on record. A perusal of the records reveals that on 14.11.2019, the proceedings was initiated and a direction was issued to issue notice upon the Petitioners thereby fixing the matter on 20.11.2019. On 20.11.2019, an order was passed recording that though the Petitioners were represented by their respective counsels, but when the matter was taken up, nobody was present and accordingly the matter was fixed on 25.11.2019. On 25.11.2019, the Respondent No.3 had passed the impugned order on the basis that there was no objection filed and on that very date, the compensation was also adjudicated in terms of Section 24 of the Act of 1971 and the ownership rights in respect to the said land was also confirmed in favour of the Respondent Nos. 4 to 8.

7. A perusal of the records therefore shows that within a span of fifteen days, the entire proceedings was finalized. It is also very pertinent to mention that while passing the order dated 25.11.2019, the Additional District Commissioner had not taken note of Rule 11 of the Rules of 1972 wherein there is a requirement of making a memorandum of evidence, if any adduced by the

parties. It is also seen that merely on the basis of the application filed by the Respondent Nos. 4 to 8 and on the basis of the Circle Officer's report, the said order was passed.

8. Taking an overall view of the matter and the fact that by virtue of Section 23, the ownership rights of the Petitioners have been taken away and conferred upon the private Respondents, it is the opinion of this Court that the ends of justice would be met if a direction is issued to the Additional Deputy Commissioner to carry out a de novo adjudication in respect to the applications filed by the Respondent Nos. 4 to 8. Accordingly, this Court grants the liberty to the Petitioners to submit their written objection.

9. Taking into account the above, the instant writ petition stands disposed of thereby interfering with the order dated 25.11.2019 and all consequential actions taken in pursuance thereto. This Court further directs the Additional District Commissioner, Kamrup (Rural) to decide the said proceedings being KRL No.7/2019 afresh. The Petitioners herein are given 20 (twenty) days time from the date of the instant judgment to submit their objections in KRL No.7/2019, if so advised.

10. The Additional District Commissioner, Kamrup (Rural) shall upon receipt of the objections, issue notice to the Respondent Nos. 4 to 8 herein. It is further directed that the Additional District Commissioner shall grant reasonable opportunity to both the parties to adduce evidence. Further, both the parties be given an opportunity of hearing.

11. This Court finds it relevant to observe that if within the period permitted hereinabove, the objection(s) are not filed, the learned Additional District Commissioner shall proceed with the disposal in accordance with law.

12. This Court further directs that the Additional District Commissioner shall decide the proceedings in accordance with the Act of 1971 and the Rules framed thereinunder.

13. With above observations and directions, the instant petition stands disposed of.

14. The records which have been produced are hereby returned.

JUDGE

Comparing Assistant