

GAHC010158742024



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

Case No. : WP(C)/4052/2024

ANJALI DAS
WIFE OF LATE NARESH CH DAS, RESIDENT OF HOUSE NO. 38, PUBALI
PATH, LALGANESH, P.S. DISPUR, P.O. ODALBAKRA, DIST- KAMRUP (M),
GUWAHATI- 34, ASSAM

VERSUS

THE STATE OF ASSAM AND 2 ORS
REPRESENTED BY THE SECRETARY TO THE GOVERNMENT OF ASSAM,
LAND AND REVENUE DEPARTMENT, DISPUR, GUWAHATI-6

2:THE DEPUTY COMMISSIONER OF KAMRUP (M)
GUWAHATI-36

3:THE CIRCLE OFFICER
DISPUR REVENUE CIRCLE
BELTOLA
GUWAHATI- 2

For the Petitioner(s) : Mr. J. Mahanta, Advocate

For the Respondent(s) : Mr. J. Handique, Government Advocate

BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH

ORDER

Date : 14.08.2024

Heard Mr. J. Mahanta, the learned counsel appearing on behalf of the
Petitioner and Ms. G. Hazarika, the learned Government Advocate

appearing on behalf of the Respondent No.1. I have also heard Mr. J. Handique, the learned Government Advocate appearing on behalf of the Respondent Nos. 2 & 3.

2. Taking into account the facts involved, this Court takes up the instant writ petition for disposal at the motion stage itself.

3. The petitioner herein claims that she is the owner of a plot of land measuring 13 Lechas covered by Dag No.10(old)/264(new) included in Patta No.1(old)/16(new) within the revenue village Dakhingaon under Mouza Beltola within Dispur Revenue Circle in the District of Kamrup(M) Assam.

4. The petitioner had decided to give the said plot of land to his son out of love and affection. However taking into account the provisions of Section 21A of the Registration Act, 1908 insofar as the same applies to the State of Assam, the petitioner applied for permission from the District Commissioner, Kamrup (M) through online mode. However, while applying for the said No Objection Certificate, a remark is shown in the online portal that there is an objection against transfer of the said land and as such cannot apply for No Objection Certificate for transfer of immovable property. Therefore, the Petitioner submitted a representation to the Respondent No.2 which however fell into deaf years. It is under such circumstances, the petitioner has approached this Court under Article 226 of the Constitution.

5. This Court has heard the learned counsels appearing on behalf of the both the parties and has given anxious consideration to their respective submissions.

6. The right of the petitioner over the land in question is a right under Article 300A of the Constitution. In terms with the Transfer of Property Act, 1882, the petitioner has a right to transfer and/or convey his land subject to the petitioner having right, title and interest over the said land. The Respondent Authorities cannot take away the right of the petitioner without due process else it would amount to violation of Article 300A of the Constitution.

7. This Court further takes note of Section 21A of the Registration Act, 1908 as applicable insofar as the State of Assam. The said provision postulates that no Registration Officer shall register a document as regards transfer of an immovable property without the No Objection Certificate issued by the Deputy Commissioner or such other authority duly empowered to do so. It further mandates that such application has to be decided within a period of 30 days. In the instant case, it is seen that the petitioner's application for No Objection Certificate is required to be applied in view of Section 21A of the Registration Act, 1908 have not been accepted in the portal stating that there is an objection.

8. In the opinion of this Court taking into account the mandate contained in Section 21A of the Registration Act, 1908, the Respondent Authorities are statutorily obligated to complete the process of disposing of the application within 30 days from the date of submission of the said application. Taking into account that the petitioner's application is not accepted by the said portal, this Court grants the liberty to the petitioner to submit the application before the District Commissioner on offline mode and in view of the mandate contained in Section 21A of the Registration Act, 1908, the Respondent Authorities shall dispose of the

said application within a period of 30 days from the date of submission of the said application. If there is any objection as regards the transfer of such land, the petitioner be duly informed so that the petitioner can meet the said objection.

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

JUDGE

Comparing Assistant