

GAHC010163682024



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

Case No. : WP(C)/4109/2024

BIPLABANANDA CHOUDHURY
S/O- LATE BRAHMANANDA CHOUDHURY, R/O- HOUSE NO. 05, A K AZAD
ROAD, BYE - LANE NO. 1, P.O. REHABARI, P.S. PALTANBAZAR, PIN- 781008,
DIST. KAMRUP(M), ASSAM

VERSUS

THE STATE OF ASSAM AND 4 ORS
REPRESENTED BY THE SECRETARY TO THE GOVERNMENT OF ASSAM,
DEPARTMENT OF LAND RECORDS AND SURVEY, ASSAM SACHIVALAYA,
DISPUR, GUWAHATI, DIST. KAMRUP(M), ASSAM

2:THE DIRECTOR
DEPARTMENT OF LAND RECORDS AND SURVEY
GUWAHATI
DIST. KAMRUP(M)
ASSAM

3:THE DISTRICT COMMISSIONER
BARPETA
P.O.
P.S. AND DIST. BARPETA
ASSAM

4:THE CIRCLE OFFICER
BARPETA REVENUE CIRCLE
BARPETA
DIST. BARPETA
ASSAM

5:THE LOT MANDAL
BARPETA REVENUE CIRCLE

DIST. BARPETA
ASSA

Advocate for the petitioner(s): Mr. D Gogoi

Advocate for the respondent(s): Mr. H Sarma

Additional Senior Government Advocate, Assam

Mr. S Dutta

Standing Counsel,

Revenue Department, Govt. of Assam

B E F O R E

HON'BLE MR. JUSTICE DEVASHIS BARUAH

ORDER

12.09.2024

Heard Mr. D Gogoi, the learned counsel appearing on behalf of the petitioner. Mr. H Sarma, the learned Additional Senior Government Advocate, appears on behalf of the State respondents and Mr. S Dutta, the learned counsel appears for the authorities under the Revenue Department, Government of Assam.

2. The instant writ petition has been filed being aggrieved by the inaction on the part of the District Commissioner, Barpeta in not deciding the 10(ten) appeals which were filed by the petitioners on 04.05.2021 challenging the mutation orders in respect of a plot of land measuring 18 bighas 4 kathas 10 lechas covered by dag No.137 and 179 included in myadi khiraj patta No.108 situated at village Bonakuchi Mouza Barpeta in the district of Barpeta.

3. This Court vide order dated 16.08.2024, issued notice and directed the State respondents to apprise this Court as to whether the appeals have been duly received by the Office of the District Commissioner, Barpeta and if so what is the status of the present appeals.

4. On 22.08.2024, Mr. H Sarma, the learned counsel appearing on behalf of the District Administration, submitted that based on the file number which was provided by the petitioner, the statutory appeals could not be located. He, however, in view of the additional affidavit filed by the petitioner and there being another file No.being BRKG-43/2020/307 submitted that he would take instruction in that regard.

5. Today, Mr. H Sarma, the learned counsel submitted that upon enquiry being made, it came to light that there was a pleaders' notice issued by the Advocate on behalf of the petitioner on account of the inaction on the part of the respondent District Commissioner in deciding the 10(ten) appeals. In the said pleader's notice there was reference to 10(ten) appeals of which the first page of the said appeals were also enclosed. The learned counsel appearing on behalf of the District Administration submitted that in view of the said first page of the appeals, it is seen that 10(ten) appeals were filed by the petitioner and were received by the Office of the Deputy Commissioner, Barpeta on 04.05.2021. However, they do not have the records of the said appeals. In addition to that, the learned counsel appearing on behalf of the District Administration submitted that on further enquiry, it came to light that a miscellaneous case has been initiated being Misc Case No.17/2024-25 by the Circle Officer, Barpeta Revenue Circle on the basis of the pleaders notice and

notices had been generated in that regard.

6. This Court has duly taken note of that the appeals were filed before the District Commissioner, Barpeta challenging the mutation orders.

7. Mr. D Gogoi, the learned counsel appearing on behalf of the petitioner submitted that although in the appeals it has been shown to have been filed under Section 53A of the Assam Land and Revenue Regulations, 1886 (for short, the Regulations of 1886), but the said appeals ought to be construed as appeals filed under Section 147(b) of the Regulations of 1886. The learned counsel appearing on behalf of the petitioner submitted that wrong quoting of the Section would not divest the jurisdiction which is otherwise vested by law.

8. Taking into account the above submissions and the fact that appeals were duly filed on 04.05.2021, this Court is of the opinion that it is the District Commissioner or the Additional District Commissioner, who has to decide the said appeals. This Court has also taken note of that upon filing of the appeals, the matter was referred to the Circle Officer and on the basis of which, a Misc.Case being Misc.Case No.17/24-25 was initiated by the Circle Officer. The same is totally *non est* in law, *inasmuch as*, the Regulations of 1886 do not confer a power of review upon the Circle Officer.

9. This Court has also taken note of that the Office of the District Commissioner, Barpeta had misplaced the Appeal memos. Under such circumstances, there would be a requirement of reconstruction of the Appeal memos. Accordingly, this Court, therefore, disposes of the instant writ petition

thereby giving liberty to the petitioner within 15 (fifteen) days from today to submit a fresh memo of appeals against the mutation orders which were the subject matter of challenge in the appeals which were filed earlier. Upon filing of the said appeals within the period mentioned hereinabove, the same shall be construed to have been filed before the Office of the District Commissioner Barpeta, on 04.05.2021.

10. The District Commissioner or the Additional District Commissioner, as the case may be shall thereupon decide the said appeals taking it as appeals filed under Section 147(b) of the Regulations of 1886 and the same be done at the earliest and preferably within a period of 6(six) months after the service of notice upon the respondents of the Appeals.

11. Writ petition accordingly stands disposed of.

JUDGE

Comparing Assistant