

GAHC010169312016



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

Case No. : WP(C)/1349/2016

SMT. KANIKA SARMA
W/O SRI KUMUD SARMA R/O WARD NO. 1, MONGALDOI P.O. MONGALDOI
DIST. DARRANG, ASSAM, PIN - 784125.

VERSUS

THE STATE OF ASSAM and 3 ORS.
REP. BY THE PRINCIPAL SECRETARY, DEPARTMENT OF REVENUE, GOVT.
OF ASSAM, DISPUR, GUWAHATI-6.

2:THE DEPUTY COMMISSIONER

DARRANG
P.O. MONGALDOI DIST. DARRANG
ASSAM
PIN - 784125.

3:THE ADDL. DEPUTY COMMISSIONER

REVENUE P.O. MONGALDOI DIST. DARRANG
ASSAM. PIN - 784125.

4:THE REVENUE CIRCLE OFFICER

MONGALDOI TOWN
P.O. MONGALDOI DIST. DARRANG
ASSAM
PIN - 784125

Advocate for the Petitioner : MR.D PHUKAN, MR. S BORTHAKUR,MR.B C CHOUDHURY

Advocate for the Respondent : GA, ASSAM,

**BEFORE
HONOURABLE MR. JUSTICE ARUN DEV CHOUDHURY**

ORDER

29.08.2024

1. Heard Mr. S. Borthakur, learned Amicus Curiae. Mr. H. Sarma, learned State counsel is present representing the respondents.
2. It is the case of the petitioner that the petitioner is occupying a government land in Mangaldoi Town but she was served with an eviction notice on 01.08.2015 under Rule 18(2) of Assam Land and Revenue Regulation by the Additional Deputy Commissioner, Mangaldoi. It is the further case of the petitioner that the petitioner had filed an application for settlement of such land and was expecting settlement, however, the eviction notice was issued. From the record, more particularly, Annexure-D, it is seen that proposal for settlement of land was submitted before the land Advisory Board in the year 2009 for settlement of the land in favour of the petitioner. Considering such pending proposal, this Court by an interim measure, under its order dated 02.03.2016, provided that the petitioner shall not be evicted from 10 Lechas of land under Dag No. 2282 of Chapai Mouza, Mangaldoi Town.
3. As none did represent the petitioner on 21.08.2024, this Court requested Mr. S. Borthakur, learned counsel to represent the petitioner and to assist this Court and also requested Mr. H. Sarma, learned State Counsel to obtain instruction from the Deputy Commissioner, Darrang, Mangaldoi as regards the present status of occupation of the petitioner over the aforesaid land.
4. Mr. Sarma, learned State Counsel has obtained instruction in this regard. The instruction reflects that the Circle Officer of the concerned Revenue Circle has

ascertained, on the basis of report of the Lot Mandol, that the petitioner is occupying the government land under Government Dag No. 2282 and nobody has been granted settlement in respect of the aforesaid land and though an eviction case being Eviction Case No. 6/2015 was initiated, however, no eviction has been carried out.

5. In the aforesaid backdrop, Mr. Borthakur, learned counsel submits that the record reveals that there is already an application for settlement way back on 04.08.2015 and therefore, in terms of land policy as well as the principle laid down by the Division Bench in **Md. Salak Uddin –Vs- State of Assam and 2 Ors (WP(C)/1057/2022)**, this Court may direct the respondent Deputy Commissioner to consider the case of the petitioner in conformity with the land policy and the ratio laid down in **Md. Salak Uddin** (supra).
6. Mr. Sarma, learned State Counsel has also submitted that in view of the determination made in **Md. Salak Uddin** (supra) and in the backdrop fact that the petitioner had already applied for settlement, the competent authority is to come to a logical conclusion on the basis of the application filed by the petitioner in permissible under the land policy as well as the ratio laid in **Md. Salak Uddin** (supra).
7. This Court has given anxious consideration to the submissions advanced by the learned counsel for the parties. Also perused the materials available on record.
8. From the record, it prima facie appears to the Court subject to however, verification by the respondent authorities that the petitioner is a landless lady and she is occupying a plot of government land. It is also seen from the instruction of the Circle Officer that such land has not been allotted to any institution or any individual.
9. The notice was issued under Section 18(2) of the Settlement Rules asking the

petitioner to vacate the land immediately.

10. A Division Bench of this court in **Md. Salak Uddin (supra)** 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. Such conclusions are having importance and determinative factor in adjudication of an eviction process under Rule 18(2) of the Settlement Rules which is the case in the present writ petition. Therefore, the principle laid down is 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.

11. In the aforesaid settled propositions of law and the factors recorded hereinabove, this court is of the view that the petitioner cannot be evicted in the manner as sought to be evicted that too without giving her reasonable opportunity of hearing as held in **Md. Salak Uddin** (supra).
12. That being the position, in the considered opinion of this court the impugned notices issued to the petitioner is not even sustainable under the scheme of Rule 18 (2) of the Settlement Rules. Accordingly, impugned notice dated 01.08.2015 is set aside. However, it is provided that the respondent No. 2 i.e. Deputy Commissioner, Darrang, Mangaldoi, shall still be at liberty to initiate proceeding of eviction afresh in accordance with law and in terms of law laid by the Division Bench in **Md. Salak Uddin** (supra), if so advised.
13. While parting with the record, this Court put on record its appreciation of Mr. S. Borthakur, learned counsel who ably assisted this Court.
14. With the aforesaid reason, decision and observation, the present writ petition stands allowed
15. Accordingly, the writ petition stands disposed of. Parties to bear their own cost.

JUDGE

Comparing Assistant