

GAHC010187962018



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

Case No. : WP(C)/5860/2018

PREM KANTA BORUAH AND 4 ORS.
S/O. LATE KHAGESWAR BORUAH, R/O. VILL- GARAMUR SATTRA, P.O.
GARAMUR SATTRA, P.S. GARAMUR, DIST. MAJULI, ASSAM, PIN- 785104

2: ON THE DEATH OF CHANDRA KANTA BORUAH
HIS LEGAL HEIR SRI BIMAN BORUAH
S/O. LATE CHANDRAKANTA BORUAH
R/O. VILL- GARAMUR SATTRA
P.O. GARAMUR SATTRA
P.S. GARAMUR
DIST. MAJULI
ASSAM
PIN- 785104

3: ON THE DEATH OF ACHUYAT BORUAH
HIS LEGAL HEIR SRI BIKASH BORUAH
S/O. LATE ACHYUT BORUAH
R/O. VILL- GARAMUR SATTRA
P.O. GARAMUR SATTRA
P.S. GARAMUR
DIST. MAJULI
ASSAM
PIN- 785104

4: KRIPARBOR BARUAH
S/O. LATE KHAGESWAR BORUAH
R/O. VILL- GARAMUR SATTRA
P.O. GARAMUR SATTRA
P.S. GARAMUR
DIST. MAJULI
ASSAM
PIN- 785104

5: TILOK BORUAH

S/O. LATE KHAGESWAR BORUAH
R/O. VILL- GARAMUR SATTRA
P.O. GARAMUR SATTRA
P.S. GARAMUR
DIST. MAJULI
ASSAM
PIN- 78510

VERSUS

THE STATE OF ASSAM AND 5 ORS.
REP. BY THE CHIEF SECRETARY TO THE GOVT. OF ASSAM, DISPUR,
GUWAHATI-6, DIST- KAMRUP(M), ASSAM.

2:THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM

REVENUE AND DISASTER MANAGEMENT DEPTT.
SETTLEMENT BRANCH
ASSAM SECRETARIAT (CIVIL)
DISPUR
GUWAHATI-06
DIST. KAMRUP(M)
ASSAM.

3:THE DEPUTY SECRETARY TO THE GOVT. OF ASSAM

REVENUE AND DISASTER MANAGEMENT (S) DEPTT.
DISPUR
GUWAHATI-06
DIST.- KAMRUP(M)
ASSAM.

4:THE DEPUTY COMMISSIONER
MAJULI DISTRICT

P.O.- GARAMUR
DIST. MAJULI
ASSAM
PIN- 785104.

5:THE SUB-DIVISIONAL OFFICE (CIVIL)

GARAMUR
MAJULI
P.O.- GARAMUR
DIST.- MAJULI
ASSAM
PIN- 785104.

6:THE CIRCLE OFFICER (REVENUE)

MAJULI REVENUE CIRCLE
P.O. KAMALABARI
PIN- 785106
DIST.- MAJULI
ASSAM

Advocate for the Petitioner : MR. D BORAH

Advocate for the Respondent : GA, ASSAM

Linked Case : I.A.(Civil)/40/2023

PREM KANTA BORUAH AND 4 ORS.
S/O. LATE KHAGESWAR BORUAH
R/O. VILL- GARAMUR SATTRA
P.O. GARAMUR SATTRA
P.S. GARAMUR
DIST. MAJULI
ASSAM
PIN- 785104

2: ON THE DEATH OF CHANDRA KANTA BORUAH HIS LEGAL HEIR SRI
BIMAN BORUAH
AGE 30 YEARS
S/O. LATE CHANDRAKANTA BORUAH
R/O. VILL- GARAMUR SATTRA
P.O. GARAMUR SATTRA
P.S. GARAMUR
DIST. MAJULI
ASSAM
PIN- 785104

3: ON THE DEATH OF ACHYUT BORUAH
HIS LEGAL HEIR SRI BIKASH BORUAH

S/O. LATE ACHYUT BORUAH
R/O. VILL- GARAMUR SATTRA
P.O. GARAMUR SATTRA
P.S. GARAMUR
DIST. MAJULI

ASSAM
PIN- 785104

4: KRIPARBOR BARUAH
S/O. LATE KHAGESWAR BORUAH
R/O. VILL- GARAMUR SATTRA
P.O. GARAMUR SATTRA
P.S. GARAMUR
DIST. MAJULI
ASSAM
PIN- 785104

5: TILOK BORUAH
S/O. LATE KHAGESWAR BORUAH
R/O. VILL- GARAMUR SATTRA
P.O. GARAMUR SATTRA
P.S. GARAMUR
DIST. MAJULI
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VERSUS

THE STATE OF ASSAM AND 5 ORS.
REP. BY THE CHIEF SECRETARY TO THE GOVT. OF ASSAM
DISPUR
GUWAHATI-6
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ASSAM.

2:THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM

REVENUE AND DISASTER MANAGEMENT DEPTT.
SETTLEMENT BRANCH
ASSAM SECRETARIAT (CIVIL)
DISPUR
GUWAHATI-06
DIST. KAMRUP(M)
ASSAM.

3:THE DEPUTY SECRETARY TO THE GOVT. OF ASSAM

REVENUE AND DISASTER MANAGEMENT (S) DEPTT.
DISPUR
GUWAHATI-06
DIST.- KAMRUP(M)
ASSAM.

4:THE DEPUTY COMMISSIONER
MAJULI DISTRICT

P.O.- GARAMUR
DIST. MAJULI
ASSAM
PIN- 785104.
5:THE SUB-DIVISIONAL OFFICE (CIVIL)

GARAMUR
MAJULI
P.O.- GARAMUR
DIST.- MAJULI
ASSAM
PIN- 785104.
6:THE CIRCLE OFFICER (REVENUE)

MAJULI REVENUE CIRCLE
P.O. KAMALABARI
PIN- 785106
DIST.- MAJULI
ASSAM.

Advocate for : MR. D BORAH

Advocate for : GA

ASSAM appearing for THE STATE OF ASSAM AND 5 ORS.

BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA

ORDER

02.05.2024

Heard Mr. D. Borah, learned counsel for the petitioners. Also heard Mr. B. Goswami, learned Additional Advocate General for the State, assisted by Ms. M. Barman, learned Govt. Advocate, respondent Nos. 1, 4, 5 and 6; and Mr. A. Bhattacharyya, learned Standing Counsel for the Revenue Department, respondent nos.2 and 3.

2. The case of the petitioners in this writ petition filed under Article 226

of the Constitution of India is that they are the sons of late Khageswar Boruah, who was a freedom fighter. They are the residents of Garamur Satra. It is claimed that they are occupying an agricultural land measuring about 17 bigha 4 katha and 15 lecha, covered by Dag nos. 3 and 4 of No. 5 Lat in Garamur Satra Revenue Village, under Mouza Kamalabari of Majuli Revenue Circle. It is claimed that the land is in their occupation for last 70-80 years since the days of their forefathers. The breakup of land, which is in occupation of the petitioners are as follows – (i) Sri Prem Kanta Boruah – 3B – 2K – 19L, (ii) Sri Biman Boruah (S/o- Chandra Kanta Boruah) – 3B - 2K - 19L, (iii) Sri Bikash Boruah (S/o- Achyut Boruah)- 3B – 2K – 19L, (iv) Sri Kripabar Boruah- 3B – 2K – 19L and (v) Sri Tilak Boruah- 3B – 2K – 19L.

3. It is projected that the petitioners have made a prayer before the concerned Revenue Authorities for settlement of the aforesaid land in their favour.

4. The learned counsel for the petitioners has submitted that the entire land earlier belonged to the Garamur Satra, but under the Assam State Acquisition of Lands Belonging to Religious or Charitable Institution of Public Nature Act, 1959, those lands were acquired and were made Government land. However, the land referred above were held by the forefathers and the father of

the petitioners. It is further submitted that several representations have been submitted before the concerned Revenue officials including the District Commissioner, Majuli and the Circle Officer concerned for settlement of the land in favour of the petitioners. However, it is the projected case of the petitioners is that the Government Authorities did not take any steps for settlement of those lands to the petitioners. Hence, this writ petition.

5. By referring to the pleadings made in this writ petition as well as in the affidavit-in-reply, it is submitted that a large area of land covered by Dag no. 3 and 4 have been settled with various persons and as no settlement has been made in favour of the petitioners, the petitioners have been discriminated and therefore, the non-settlement of the land to the petitioners is projected to be discriminatory. It is further stated that there are several documents on record to show that the officials of the Land Revenue establishment of the District Commissioner, Majuli, which was previously under administrative control of Deputy Commissioner, Jorhat have also issued certificates from time to time to the petitioners who were in occupation of the aforesaid land. Referring to the RTI reply received by the petitioners, it is submitted that about 77 bigha 3 katha 5 lecha land of Dag no. 4 have been converted to miyadi patta land and 51 bigha 1 katha 6 lecha out of 110 bighas 4 katha 13 lechas land were also converted to myadi patta land, which is stated to be so done after the orders

were passed in the Year 1984 for reserving the land for Government purpose.

6. By way of an additional affidavit filed by the petitioners, it is projected that the part of land which is held by the petitioners are being developed by the concerned authorities under the PWD and illegal earth cutting and earth filling works are being done on a part of the said land for the purpose of construction of Integrated Office-cum-Residential Building. It is projected that in such process, the writ petitioners are being dispossessed from their said land without following due process of law. It is also submitted that most of the land which are settled with various allottees was illegally done as most of those allottees do not fall in the landless category and therefore, the action of the State respondents in allotting land within 2 (two) miles from the Sub-Divisional Head Quarter Office, now the District Commissioner's Office, is also being questioned as illegal action on the part of the respondent authorities.

7. Accordingly, it is submitted that the petitioners are entitled for consideration of allotment of land in their favour on the strength of their representations.

8. It is also submitted that the *Satradhikar* of Garamur Satra has also issued a certificate that the petitioners are the *ryots* under the Satra.

9. In addition to the oral submissions, the learned counsel for the

petitioners has submitted a written note of argument, which is kept as a part of record.

10. The learned Additional Advocate General for the State has produced the original chitha copy of the Dag no. 285 in terms of directions issued by this Court vide order dated 24.01.2024, which is stated to be relatable to the stand taken in affidavit-in-opposition filed by respondent no. 4. Let a photocopy thereof be retained in the record.

11. Referring to the stand taken in the affidavit in opposition as well as instructions received by him, the learned Additional Advocate General has submitted that the land covered by Dag no. 3 had a land of 110 bigha 4 katha 13 lecha, out of which Government land is about 54 bigha 3 katha 7 lecha, and the rest of the land have been made patta land and upon allotting land to the beneficiaries/alottees, it roughly makes 56 bigha 1 katha 5 lecha land allotted and converted into patta land. It is submitted that Dag no. 4 has a total land holding of 77 bigha 3 katha 5 lecha and land converted to miyadi patta land is about 8 bigha 0 katha 5 lecha and the remaining total Government land is 69 bigha 3 katha 0 lecha.

12. It is further submitted that the father of the petitioners, as he was a freedom fighter, was allotted 6 bigha 2 katha 10 lecha land in Dag no. 17, 25,

31, 36 and 322 in Garamur Satra Gaon. Accordingly, it is submitted that the petitioners cannot claim themselves to be landless persons since the beneficiary of the land was their own father and they have a heritable right over the same.

13. It is further submitted that the petitioner no. 1 is purportedly an agriculturist by profession and despite land being allotted in the name of his father, he also had applied for land allotment under the Basundhara 2.0 scheme and he was allotted 3 katha 10 lecha land, which is covered by the Dag no. 998 of Patta 532, which is an agricultural land. It is submitted that it is a suppression of the material facts in the writ petition by not referring to such additional allotment in the name of the petitioner no 1.

14. It is also submitted that in so far as the petitioner Nos. 2 and petitioner No. 5 are concerned, there is no record available of any application for land allotment being made and therefore, in the absence of instruction, he is unable to state as to whether any land allotment application is pending with the authorities or not.

15. It is also submitted that the petitioner Nos. 2 and 3 have expired and their wives have been substituted in this writ petition and they had also applied for land allotment notwithstanding that father-in-law had already been allotted land and the authorities had allotted 1 bigha homestead land to Gitanjali

Boruah, which is covered by Dag no. 996, Patta no 530.

16. In so far as the petitioner no. 4 is concerned, notwithstanding that his father was allotted land, on his application, the concerned authorities have allotted 1 bigha land for residential purpose, which is covered by Dag no. 997 of Patta no. 531.

17. It is further submitted that none of the petitioners fall in the landless category not only because they have inherited the land in the name of their father, but the petitioner no. 2, who had expired in the meanwhile, was a Government servant and even his son is a Government servant. The petitioner no. 3, who had expired was also a Government servant and his wife Gitanjali Boruah is now a pensioner as per the communication dated 08.03.2024. The petitioner no. 4 is a retired Government servant and is a pensioner and the petitioner no. 5 is also a Government employee. In this regard, it is submitted that the aforesaid statement is being made on the strength of instructions received by letter no. RM/35/2023-REV-MJL/1460-61 dated 08.03.2024.

However, it is submitted that the said facts could not be brought on record by way of an affidavit-in-opposition. In view of above, it is submitted that due to the suppression of material facts, the writ petition is not maintainable.

18. Although the learned counsel for the petitioners has taken pains of

referring to the allotment of land in similarly situated persons, but from the entries made in the *chitha* in respect of Garamur Satra Village, Lat no. 5 of Mouza- Kamalabari, we find that there is a entry made therein which is made pursuant to memo no. NRS 1/81/85/3725-25/5/81 dated 29.04.1984 by the Sub Divisional Officer (Civil), to the effect that land falling within 2(two) mile radius of the present District Commissioner's Office, which was erstwhile the Office of the Sub Divisional Officer (Civil), is restrained from being allotted and settled. Therefore, if any allotment of land is made contrary to the said entry in the *chitha*, such allotment would be illegal and not sustainable and therefore, it would be open to the State to take such measure as they may be so advised.

19. However, when there is an express ban in the allotment of the land within the area falling within 2(two) mile radius from the Office of the District Commission, Majuli, merely because somebody has been allotted land within the said area without the sanction of law, it cannot be a ground for the Court to pass any order directing the respondent authorities to violate their revenue orders and to consider land allotted to the petitioners as because this is not a case where the right of negative equality can be invoked by the petitioners.

20. The observation of the Court as to the allotment of land being illegal is only on the strength of the submissions made at the Bar and as the concerned

parties are not before this Court, the observation of this Court shall not be construed to be a finding of fact and therefore, the determination on case to case basis has to be made by the concerned authorities on the basis of facts available before them.

21. The fact that the father of the petitioners was allotted land is a fact which is not disclosed in this writ petition amounts to suppression of the material facts. Under the circumstance where the father of the petitioners had got allotment of land in the category of freedom fighters quota, the petitioners have a legal right to inherit the land and therefore, the petitioners cannot be considered by this court to be landless persons.

22. The learned counsel for the petitioners has referred to the cases of (i) *Arun Kumar Singh & 10 Ors. –Vs- The State of Assam & Ors. vide Judgmet dated 10.06.2020 passed in W.P.(C) No. 292/2020*, (ii) *Sri Rama Kanta Das & 4 Ors. –Vs- The State of Assam & Ors. vide Order dated 25.09.2023 passed in W.P.(C) No. 3929/2023*, and (iii) *Md. Bujan Ali –Vs- The State of Assam & 2 Ors. vide Order dated 22.09.2020 passed in W.P.(C) No. 8713/2018*.

The said decisions are not an authority on point that even when the father of the concerned persons were allotted land, they would still have a undefeasible right to be allotted with more land in their individual names by treating them as

landless persons. Therefore, the ratio of the cited cases would not apply under the facts and circumstances of this case.

23. If the petitioners do not fall within the meaning of landless persons, they would not have any right to be heard before the concerned authorities who are acting under the Assam Land Policy, 2019. There is nothing contained in the Land Policy, 2019, which entitle the legal representatives or the legal heirs of allottee of land to be considered as a landless person, thereby giving him/her right to apply for allotment of the Government land.

24. On the said two grounds of suppression of material facts as well as on ground that the petitioners are legal heirs and representatives of Late Khageswar Boruah, who has been allotted 6 bigha 2 katha 10 lecha land in Dag no. 17, 25, 31, 36 and 322 in Garamur Satra Gaon, this writ petition is not maintainable on facts and in law.

25. Accordingly this writ petition stands dismissed.

26. Both the parties shall bear their own cost.

27. Interim orders, if any, stands vacated forthwith.

JUDGE

Comparing Assistant