

GAHC010197542018



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

Case No. : WP(C)/6188/2018

M/S. MAHAKALI TEA CO. PVT. LTD.
(PADUMONI TEA ESTATE) P.O. RODHALA- 785622 VIA DHEKIAL DISTRICT
GOLAGHAT, ASSAM, REP. BY ITS JOINT MANAGING DIRECTOR SRI BINAY
TODI

VERSUS

THE STATE OF ASSAM AND 3 ORS.
REP. BY THE COMM. AND SECY. TO THE GOVT. OF ASSAM, HOME DEPTT.,
DISPUR, GHY-6

2:THE DY. COMMISSIONER
GOLAGHAT

3:THE SUB DIVISIONAL OFFICER
GOLAGHAT

4:THE CIRCLE OFFICER
GOLAGHAT REVENUE CIRCLE
GOLAGHA

Advocate for the Petitioner(s) : Mr. G.N. Sahewalla, Senior Counsel

Ms. K. Bhattacharjee

Advocate for the respondent(s): Mr. B.J. Talukdar

**BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH**

ORDER

Date : 16.08.2024

Heard Mr. G.N. Sahewalla, the learned Senior Counsel assisted by Ms. K. Bhattacharjee, the learned counsel appearing on behalf of the petitioner. Mr. B.J. Talukdar, the learned counsel appears on behalf of the respondent Nos. 1,2,3 & 4.

2. The petitioner herein has assailed a notice dated 16.07.2018 whereby the petitioner was informed that it was illegally possessing a plot of land measuring 1 Bigha, 4 Kathas, 17 Lechas under Village: Podumani, Mouza: Moukhuwa by erecting fencing. From a perusal of the materials on record it is seen that the petitioner company purchased a tea garden which consist of 725 Bighas 1 Kathas, 13 Lechas of land as on 08.05.1958. The dispute arises as to whether the land presently under the occupation of the petitioner which has been alleged by the respondents to be Dag No. 613 below is a part of actually Dag No. 602 inasmuch as it was the stand as is seen in the writ petition that the petitioner claims that the land in their possession which has been mentioned in the impugned notice as Dag No. 613 is a part of Dag No. 602.

3. It is also seen that the petitioner has sought for demarcation pursuant to the issuance of the said impugned notice. However, from the affidavit-in-opposition filed by the respondent No. 2, it is seen that though the demarcation was sought for but the same could not be carried out on account of the rainy season. It is also seen from the affidavit filed by the respondent No.2 that the petitioner has also submitted a letter to the ADC, Revenue Golaghat with a prayer to settle the excess Government land under Dag No. 613 of Village: Podumani, if any has been absorbed within Dag Nos. 602 and 603. The submission of the said letter for settlement was made after the notice of eviction dated 16.07.2018. This Court has also taken note of the affidavit-in-reply filed by the petitioner categorically denying that the land in Dag No. 603 is a road side reserved land, on the ground that the road in question is in Dag No. 611 and adjacent to that is Dag No. 612 which is a reserved forest and thereafter there is Dag No. 613 which abuts the land of the petitioner in Dag no. 602. To that aspect the petitioner has also enclosed a survey map enclosed as Annexure-8 to the affidavit-in-reply.

4. In the backdrop of the above factual aspects, this Court has heard the

learned Senior Counsel Mr. G. N. Sahewalla as well as Mr. B. J. Talukdar, the learned counsel appearing on behalf of the parties.

5. The learned Senior Counsel submitted that the land in question in Dag No. 613 cannot be a road side reserved land. He further submitted that the petitioner company after purchase of the said land from its predecessor in interest has been enjoying the possession and it is at the behest of the certain persons, the respondent authorities have taken action. To the said submission, this Court had put a specific query upon the learned counsel appearing on behalf of the petitioner as to whether in terms of the Land Policy of 2019, does the petitioner's company has a right for settlement of the said Government land. The learned Senior Counsel submits that the petitioner has duly applied for the said settlement but the said proposal for settlement has not yet been decided as could be seen from the affidavit-in-opposition filed by the respondents itself.

6. This Court, at this stage finds it relevant, to take note of the Judgment of Division Bench in the case of ***Md. Salak Uddin vs The State of Assam and 2 ors***, reported in ***2024 SCC Online GAU 629***, wherein it was categorically observed that road side reserved lands cannot be granted settlement, in view of the mandate of Rule 23 of the Settlement Rules. However, as regards the waste lands, settlement is permissible provided it meets the parameters in terms with the Assam Land Policy of 2019.

7. Under such circumstances, this Court directs the respondent Nos. 2,3 & 4 to carry out the demarcation of Dag No. 613 which is the land on which the impugned notice has been issued and if from the records it is seen that the said land is a road side reserved land, the petitioner be evicted. However, if it is found from the records that the land, in question, is not a road side reserved land, the petitioner is given the liberty to file a fresh application for settlement in terms with the *Basundhara 3* Portal or in the offline mode depending on the decision so taken in the said application, the respondent authorities shall take due steps as regards the land, in question. The liberty to file such an application is limited to 10 days time from today.

8. With the above observation and direction the instant writ petition stands disposed of.

9. Interim order, if any stands vacated.

JUDGE

Comparing Assistant