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

Case No. : WP(C)/5176/2023

SIRAJUL HOQUE MANDAL AND ANR
S/O- AJGAR ALI MANDAL,
VILL.- FULERCHAR PART-IV,
P.O.- FULERCHAR, P.S.- SUKCHAR,
DIST.- SOUTH SALMARA- MANKACHAR,
ASSAM.

2: JOSIJUL HOQUE MANDAL
S/O- AJGAR ALI MANDAL

VILL.- FULERCHAR PART-IV

P.O.- FULERCHAR
P.S.- SUKCHAR

DIST.- SOUTH SALMARA- MANKACHAR

ASSAM

VERSUS

THE STATE OF ASSAM AND 4 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE GOVT.
OF ASSAM,
REVENUE AND DISASTER MANAGEMENT DEPARTMENT,
DISPUR, GUWAHATI-6.

2:THE DEPUTY COMMISSIONER

SOUTH SALMARA- MANKACHAR DISTRICT

HATSINGIMARI
ASSAM.

3:THE SETTLEMENT OFFICER
DHUBRI AND KOKRAJHAR
DIST.- DHUBRI
ASSAM.

4:THE ASSISTANT SETTLEMENT OFFICER
MANKACHAR
DIST.- SOUTH SALMARA- MANKACHAR

ASSAM.

5:JINU KAIN AZIM (MASTER) @ BAPPI
S/O- LATE NURUL AZIM MANDAL

R/O- VILL- HATSINGIMARI

(NEAR STATEFAD GODOWN)
P.O.- HATSINGIMARI

P.S.- SOUTH SALMARA

DIST.- SOUTH SALMARA- MANKACHAR

ASSAM

Advocate for the Petitioner : MR. R ALI, MR A S SK,MR H A AHMED

Advocate for the Respondent : SC, REVENUE, MR. S RAHMAN (R-5),MR S MUKTAR (R-5),GA,
ASSAM

**BEFORE
HONOURABLE MR. JUSTICE SOUMITRA SAIKIA
ORDER**

21.11.2024

Heard Mr. R. Ali, learned counsel for the petitioners. Also heard Mr. B.J. Talukdar, learned Addl. Senior Government Advocate for the respondents No. 2, 3 & 4; Ms. G. Hazarika, learned Standing Counsel, Revenue and Disaster Management Department for the respondent No. 1 and Mr. S. Muktar, learned counsel for the respondent No. 5.

2. The petitioner is before this Court claims that his father Ajgar Ali Mandal

had possessed 10 Bighas 2 Kathas 01 lacha of Jungle land covered by Dag No. 373 Khatian No. 1 of Village Molakhowa under Mankachar Revenue Circle since 1965. The said land under his possession was a part of contiguous land of 30 Bighas of land.

3. It is submitted that the name of the father of the petitioners was also recorded in the draft Chita and land record on 23.04.1985 and the said land was under his possession till his death. After demise of the petitioner's father, they started cultivating on the land. The respondent No. 5 who was working as a Teacher of a Government school namely Sukchar Government High School also got his name recorded in the draft chita along with the father of the petitioner on the said Government land covered under Dag No. 373. It is the case of the petitioner that the father of the respondent No. 5 in collusion with the revenue staff managed to create a new Dag being Dag No. 438 by covering 20 Bighas of land by creating new Khatian No. 176 which is different from the Old Khatian being Khatian No. 1 in Dag No. 373. This came to be created by the father of the respondent No. 5 by an order dated 29.12.1972. The petitioners having been made aware of this order approached the Revenue authorities for correction of their name in place of their father by way of inheritance. However, the respondent No. 5 along a group of persons took steps to evict the petitioners from the said land saying that the said land is a part of the 20 Bigha land which has been settled in the name of Respondent No. 5 and converted to Miyadi Patta land from the Government land being Patta No. 188 of Dag No 376. In view of the dispute between the petitioners and the respondent No. 5, an application was filed by the petitioner before the office of the Settlement Officer, Dhubri and Kokrajhar on 28.06.2023 against the activities alleged to have been carried out by the Respondent No. 5. The petitioners also filed a representation

before the Deputy Commissioner, South Salmara, Mankachar on 30.06.2023 praying for necessary action.

4. Notice in the matter was issued on 08.09.2023. Pursuant thereto the state respondents as well as the respondent No. 5 have filed the counter-affidavits.

5. In so far as the affidavit filed by the State is concerned, there is a categorical averment in Paragraph No. 7 that the application for settlement or allotment of land by the petitioner which was forwarded to the Assistant Settlement Officer and was received on 15.07.2023 could not be accepted as the settlement/allotment of the individual land in the said period can only be considered under "Mission Basundhara 2.0" through online service. It is further stated that "Mission Basundhara 2.0" is not applicable in respect of Mankachar Revenue circle as the land record is yet to be digitized in the Integrated Land Record Management System. It is further stated in the said affidavit that the petition filed by the petitioner before the Deputy Commissioner dated 15.07.2023 vide No. 370 requesting for correction of Government Khas land by virtue of inheritance, could not be undertaken as mutation by inheritance can only be done in case of Patta land. In the affidavit filed by the Additional Commissioner, South Salmara, Mankachar there is a clear averment that the name of the father of the petitioner is not recorded as a pattadar in the said land but is recorded as an encroacher in the remarks column of the Record of Rights. This averment however is not supported by any documents enclosed in the affidavit.

6. The reply affidavit filed by the petitioner denies such averments and reiterates the contentions made before this Court that the petitioner's father's name was recorded in the Khatian and a certified copy thereof was placed before the court.

7. The respondent No. 5 was also filed an affidavit denying the contention of the petitioner that their father had possessed land measuring 10 Bighas 2 Katha 1 Lecha covered by Dag No 373 Khatian No.1 since 1965 out of 30 Bighas of land. It is stated in the said affidavit that 5 Bighas of land out of 30 Bighas of land covered by Dag No. 373, Khatian No. 1 was orally gifted by the grandfather of the respondent No. 5 to the petitioner's father. The contention of the petitioner that his father was in possession of 10 Bighas 2 Kathas 1 Lecha land out of 30 Bighas of land is categorically denied by the respondent No. 5. It is further submitted that the land measuring 5 Bighas of land belonging to the petitioner's father was declared as river block in 1972. The further statement made in the affidavit by the respondent No. 5 is that his father and subsequently respondent No. 5 has been in possession of 20 Bighas of land and he has been regularly paying the land revenue which has been duly accepted by the concerned Revenue officials. It is further stated in the affidavit that 10 Bighas 2 Kathas 1 Lecha land out of 30 Bighas of the contiguous land was declared as river block in which 5 Bighas of land belonged to the balance to the respondent No. 5. On 29.12.1972 when this 10 Bighas odd land was declared as river block, the government bifurcated the said 30 Bighas of land covered by Dag No. 373 and created a new Dag being Dag No. 438 and new Khatian being Khatian No. 176 covering 20 Bighas of land in the name of the father of the respondent No. 5 and the uncle of the respondent 5. As such the contentions of the writ petition that 10 Bighas of land belonged to the petitioner's father or that there was any attempt by the respondent No. 5 to disposes or evict the petitioner from the said land. On the contrary, it is stated that the petitioners have illegally trespassed into the land of the respondent No. 5.

8. Although allegations and counter allegations are leveled against the party

and the Government has also taken a stand that the name of the father of the petitioner is recorded as an encroacher on the said plot of land, no official document is placed before the Court either as an enclosure to the pleading filed or even the original records.

9. Considering that there are serious disputes with regard to questions of facts, this Court is of the view that the matter should be decided by the Deputy Commissioner of the concerned district, namely Deputy Commissioner South Salmara, Mankachar into the *inter se* claims made by the petitioner and the respondent No. 5 in respect of the land in question. The Deputy Commissioner will call for a field verification report supported by necessary record as available in the Revenue office and also give an opportunity of hearing to both the petitioner and the respondent No. 5 and thereafter pass a detailed order deciding the dispute between the petitioner and the respondent No. 5 as to the *inter se* claims of the petitioner and the respondent No. 5 in respect of land measuring 10 Bighas 2 Kathas 1 Lecha covered by Dag No. 373/408 at village Molakhowa under Mankachar Revenue Circle in the district of South Salmara, Mankachar. This exercise will be carried out by the Deputy Commissioner as directed within a period of 60 days from the date of receipt of a certified copy of the order to be placed before the Deputy Commissioner by the petitioner for the petitioner. Any order that is passed copies thereof will be served on both the petitioner as well as the respondent No. 5.

10. The writ petition accordingly stands disposed of.

11. Till the matter is decided by the Deputy Commissioner, Status quo be maintained as of today by both parties on the land in question.

JUDGE

Comparing Assistant