

GAHC010178152019



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

Case No. : WP(C)/5449/2019

ASHOK KUMAR GARODIA AND 3 ORS.
S/O LT. SHYAM SUNDAR GARODIA, VILL. DARANDHA, MOUA BELTOLA,
GUWAHATI, DIST. KAMRUP (M), ASSAM

2: SANTOSH GARODIA
S/O LT. SHYAM SUNDAR GARODIA
VILL. DARANDHA
MOUA BELTOLA
GUWAHATI
DIST. KAMRUP (M)
ASSAM

3: DILIP GARODIA
S/O LT. SHYAM SUNDAR GARODIA
VILL. DARANDHA
MOUA BELTOLA
GUWAHATI
DIST. KAMRUP (M)
ASSAM

4: ROHITESH PRASAD AGARWALLA
S/O LT. MEMCHAND AGARWALLA
S.R.C.B. ROAD
BELOW ALLAHABAD BANK
FANCY BAZAR
GUWAHATI-781001
REP. BY POWER OF ATTORNEY HOLDER SHRI SUNIL KUMAR KEJRIWAL

VERSUS

THE STATE OF ASSAM AND 3 ORS.
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM,
REVENUE DEPTT. DISPUR, GUWAHATI-781006, ASSAM

2:THE DEPUTY COMMISSIONER
KAMRUP (M)
GUWAHATI-781001
ASSAM

3:THE CIRCLE OFFICER
DISPUR REVENUE CIRCLE
DISPUR
ASSAM

4:DAYAL CHANDRA DE
S/O LT. NEPAL CHANDRA DE
R/O BIRUBARI P.S. AND P.O. PALTAN BAZAR
DIST. KAMRUP (M)
ASSA

For the Petitioner(s) : Mr. P. K. Roychoudhury, Sr. Advocate

For the Respondent(s) : Mr. M. J. Baruah, Advocate
: Mr. H. Sarma, Standing Counsel

Linked Case : WP(C)/7184/2021

DAYAL CH DEY
S/O LATE NEPAL CH. DEY
RESIDENT OF BIRUBAR
PO AND PS PALTAN BAZAR
DIST KAMRUP (M) ASSAM 781016
REPRESENTED BY HIS POWER OF ATTORNEY HOLDER SRI BISWAJIT
BARUAH S/O LATE MANIK BARUAH RESIDENT OF AKASH BLOCK
FLAT NO. 201
SUBHAM HEIGHT
KAHILIPARA ROAD
NEAR FORENSIC LABORATORY
KAHILIPARA
GUWAHATI 19
DIST KAMRUP M ASSAM

VERSUS

THE STATE OF ASSAM AND 7 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE GOVT.
OF ASSAM
REVENUE DEPARTMENT
DISPUR

GUWAHATI 06

2:THE DEPUTY COMMISSIONER

KAMRUP M GUWAHATI 01

3:ADDITIONAL DEPUTY COMMISSIONER (LAND AND REVENUE)

KAMRUP M GUWAHATI 01

4:THE CIRCLE OFFICER

DISPUR REVENUE CIRCLE

5:ASHOK KUMAR GARODIYA

S/O SHYAM SUNDER GARODIYA

RESIDENT OF VILLAGE DWARANDHA MOUZA BELTOLA

GUWAHATI DIST KAMRUPM ASSAM

6:SRI SANTOSH GARODIYA

S/O SHYAM SUNDER GARODIYA

RESIDENT OF VILLAGE DWARANDHA MOUZA BELTOLA

GUWAHATI DIST KAMRUPM ASSAM

7:SRI DILIP GARODIYA

S/O SHYAM SUNDER GARODIYA

RESIDENT OF VILLAGE DWARANDHA MOUZA BELTOLA

GUWAHATI DIST KAMRUPM ASSAM

8:SRI ROHITASH PRASAD AGARWALA

S/O LATE MEMCHAND AGARWALA

RESIDENT OF SRCB ROAD BELOW ALLAHABAD BANK FANCY BAZAR
GUWAHATI 01

REPRESENTED BY HIS POWER OF ATTORNEY HOLDER SRI SANJAY
KUMAR KEJRIWAL

For the Petitioner(s) : Mr. M. J. Baruah, Advocate

For the Respondent(s) : Mr. P. K. Roychoudhury, Sr. Advocate
: Mr. H. Sarma, Standing Counsel

**BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH**

ORDER

Date : 17.02.2024

1. Both the writ petitions are taken up for disposal by this common order taking into account that the facts and the allegations are inter-related.
2. From the records, it is claimed by the Petitioners in WP(C) No.5449/2019 that the predecessor-in-interest of the Petitioners had purchased a plot of land vide a registered Deed bearing Deed No.4045 dated 06.07.1962 measuring 4 Bighas 3 Kathas 12 Lechas covered by Dag No.25(old)/202(new) included in 41(old)/529(new) of the N.K. Patta No.2, Khatian No.17.
3. The record further reveals that proceedings were initiated by issuance of a notification under the provisions of the Assam State Acquisition of Land Belonging to Religious and Charitable Institution of Public Nature Act, 1959 (for short "the Act of 1959") vide a Government Notification No.RRT.17/66/62 dated 05.04.1967. The resultant affect of the said notification and reading the same in terms with Section 3 of the said Act of 1959 and the definition of the "agricultural year" as defined in Section 2(a) of the said Act of 1959 would show that the said notification had come into effect w.e.f. 15.04.1967. Thereupon, this land covered by Dag No.25(old)/202(new) was settled with the predecessor-in-interest of the Petitioners in WP(C) No.5449/2019.
4. It is also seen from the records that this Dag No.25(old)/202(new) covered by patta No.41(old)/529(new) of N.K. Patta No.2 during the recent concluded resettlement operation became Dag No. 2335 covered by Patta No.1400 of village Dwarandah. It also appears from the instructions kept on record and

marked with the letter "X" that this very Dag No.2335 was again partitioned amongst the Petitioners in WP(C) No.5449/2019 and thereby the Petitioner Nos. 1, 2 and 3 were issued a fresh patta bearing Patta No.1675 and the new Dag became 2658. However, as regards the Petitioner No.4, he was issued a fresh patta being patta No.1674 and the Dag became 2657(new).

5. In the backdrop of the above facts, if this Court takes up the writ petition i.e. WP(C) No.7184/2021, it reveals that a plot of land measuring 4 Bighas covered by Dag No.205 of Patta No.2 of Village Dwarandha under Mouza Beltola was claimed to have been purchased by one Nepal Chandra Dey (since deceased) i.e. the father of the Petitioner vide a registered Deed bearing Deed No.4527 dated 13.06.1966 and there was a mutation order dated 22.08.1967 passed by the Office of the Deputy Commissioner, Kamrup (M). It is not known as regards the exact quantity of the land in Dag No.205 however, it is seen from the records that this very Dag No.205 during the resettlement operation became Dag Nos. 2337, 2338, 2341, 2342, 2345, 2346, 2350 and 2351.

6. It is the further case of the Petitioner in WP(C) No.7184/2021 that the name of the Petitioner's father was mysteriously removed from the record of rights and under such circumstances, an application was filed before the Respondent Authorities. Be that as it may, it is the specific case of the Petitioner in WP(C) No.7184/2021 that the said Petitioner's right is confined to Dag No.205(old) and such Dags which were curved out from the said Dag and not in respect to the Dag No. 202 (old) which subsequently was made Dag No.2335 and presently Dag Nos. 2657 and 2658.

7. In the above perspective, this Court finds it relevant to take note of the challenge so made in WP(C) No.5449/2019 wherein the Petitioners have assailed the notice dated 13.07.2018 issued by the Circle Officer, Dispur

Revenue Circle.

8. From a perusal of the said notice, it reveals that in view of an application submitted by the father of the Petitioner i.e. late Nepal Chandra Dey seeking demarcation of the land, the Respondent Authorities have asked the Petitioners to appear before the said Circle Officer along with the necessary documents. It is the opinion of this Court that merely by asking the Petitioners to produce certain documents by an authority do not require any interference. Under such circumstances, it is the opinion of this Court that the question of setting aside the notice dated 13.07.2018 does not arise.

9. The Petitioners in WP(C) No.5449/2019 would be well advised to place the relevant documents before the Circle Officer, Dispur Revenue Circle in support of their claims.

10. Now coming to the writ petition i.e WP(C) No.7184/2021, it is seen that amongst the reliefs which have been sought for, one of such relief is that this Court should declare that the Petitioner is the owner of Dag No.205(old) in Nisf Kheraj Patta No.1/2 (new) in Village Dwarandha under Beltola Mouza and that the Respondent Nos. 5 to 8 are the owners of a plot of land measuring 4 Bighas 3 Kathas 12 Lechas covered by Dag No. 202(old) in Patta No.1/2 (new) in village Dwarandha, Mouza Beltola in the District of Kamrup. In the opinion of this Court, such a relief cannot be granted in a proceedings under Article 226 of the Constitution and the Petitioner, if he desire such a relief for declaration, the same has to be done before the Civil Court. As regards the other two reliefs as sought for in the writ petition, it is seen that the Respondent Authorities are already taking up such action and in consequence thereof have issued notice dated 13.07.2018 which have been put to challenge in WP(C) No.5449/2019. Under such circumstances, it is the opinion of this Court that as the matter is

pending before the Circle Officer, Dispur Revenue Circle, the Petitioner would be well advised to take appropriate steps before the said authority.

11. I have also heard Mr. H. Sarma, the learned Standing counsel who submitted that the Circle Officer, Dispur Revenue Circle is taking steps in pursuance to the application which have been filed by the Petitioner in WP(C) No.7184/2021 and would bring the said proceedings to a logical conclusion after hearing both the parties.

12. Taking into account the above, this Court therefore disposes of the both the writ petitions with the following observations and directions:

(i) The notice dated 13.07.2018 impugned in WP(C) No.5449/2019 is not interfered with and the Petitioners would be well advised to approach the Circle Officer, Dispur Revenue Circle by placing the necessary documents as sought for.

(ii) This Court is not inclined to issue any declaration as sought for in WP(C) No.7184/2021. However, it is observed that the rejection of the said prayer for issuance of declaration shall not preclude the Petitioners in both the writ petition to approach the competent Court of law seeking declarations, if need be. As regards the other reliefs, which have been sought for i.e. for demarcation as well as for correction of the records, the same being now be taken into consideration by the Circle Officer, Dispur Revenue Circle and this Court directs the Circle Officer, Dispur Revenue Circle to bring the said proceedings to a logical conclusion in accordance with law within a period of 6 (six) months from today. The Registry is directed to serve a copy of the instant order to Mr. H. Sarma, the learned Standing counsel for due compliance.

(iii) This Court however would like to observe that the land claimed by the

Petitioners in WP(C) No.5449/2019 arises out of Dag No.202 whereas the land which has been claimed by the Petitioner in WP(C) No.7184/2021 arises out of Dag No.205(old). This Court in the preceding segments of the instant order has categorically mentioned the various dags which were curved out of the above mentioned two dags. The Circle Officer, Dispur Revenue Circle shall duly take note of while deciding the said aspects.

(iv) The interim order so passed earlier in WP(C) No.5449/2019 is vacated.

JUDGE

Comparing Assistant