

GAHC010217062024



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

Case No. : WP(C)/5573/2024

SURUJ ALI
S/O- LATE KALA SHEHK, VILL- 2 NO. BANGALBORI, P.O.- DONGABORI, P.S.
JAGIROAD, DIST.- MORIGAON (ASSAM), PIN- 782410

VERSUS

THE STATE OF ASSAM AND 2 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE GOVT.
OF ASSAM, LAND REVENUE DEPARTMENT, DISPUR, GUWAHATI-6

2:THE DISTRICT COMMISSIONER
MORIGAON
DISTRICT- MORIGAON
ASSAM
PIN- 782105

3:THE CIRCLE OFFICER
MAYONG REVENUE CIRCLE
JAGIBHAKAT GAON
P.S. AND DISTRICT MORIGAON
ASSAM

Advocate for the Petitioner : MD B ISLAM, MR. S S AHMED,MR M HOQUE,MR. S UDDIN

Advocate for the Respondent : SC, REVENUE, GA, ASSAM

BEFORE
HONOURABLE MR. JUSTICE MANISH CHOUDHURY

ORDER

Date : 30.10.2024

Heard Mr. B. Islam, learned counsel for the petitioner; Ms. G. Hazarika, learned Standing Counsel, Revenue Department for the respondent no. 1; and Mr. N. Goswami,

learned Junior Government Advocate, Assam for the respondent nos. 2 & 3.

2. The petitioner has projected that he is a joint pattadar of a plot of land measuring 24 Bighas 1 Katha 17 Lessas [24B-01K-17L], covered by Periodic Patta no. 24 and Dag no. 134, situate at Revenue Village - No. 2 Bongalbori, Mouza – Gobha, Mayang Revenue Circle, District – Morigaon along with four other co-pattadars. It is the further case of the petitioner that out of said 24 Bighas 1 Katha 17 Lessas [24B-01K-17L], he has inherited a part of it measuring 10 Bighas 2 Kathas 10 Lessas [10B-02K-10L] as a legal heir of his deceased father, Late Kala Shehk. Due to situations beyond his control, the petitioner has been paying land revenue for the entire parcel of land measuring 24 Bighas 1 Katha 17 Lessas [24B-01K-17L] since a long time and as a result, the same has affected his financial condition.

3. The petitioner has projected that seeking partition and demarcation of the plot of land, inherited by him, measuring 10 Bighas 2 Kathas 10 Lessas [10B-02K-10L] from the joint Periodic Patta [Ejmali], he had approached the Circle Officer, Mayang Revenue Circle by filing an application on 06.08.2024 for demarcation and partition. The petitioner has further projected that for such demarcation and partition, his co-pattadars has issued a No Objection-cum-Consent Certificate.

4. Chapter VI of the Assam Land and Revenue Regulation, 1886 [‘the Regulation, 1886’, for short] deals with partition and union of revenue paying estates. As per Section 96, ‘perfect partition’ means the division of a revenue paying estate into two or more such estates, each separately liable for the revenue assessed therein. As per Section 97 has described the persons entitled to partition and as per Section 97, every recorded land holder, if he is in actual possession of the interest, in respect of which he desires partition, can claim perfect.

5. Both perfect partition in case of no objection from co-pattadars and demarcation are notified services under Assam Right to Public Services Act.

6. In so far as perfect partition is concerned, the State Government by a notification no. AR.69/2011/Pt-II/98 dated 10.04.2013 has notified the Designated Public Servant, Appellate

Authority, Reviewing Authority, stipulated time limit, user charge for delivery of notified services, etc. as under :-

Serial No.	23.
Notified public service	Perfect partition in case of no objection from co-pattadars
Stipulated time limit for providing the service [Days]	Total 90[ninety] days, if no objection from any person is filed during the proceeding. [20 (twenty) days for LM/10 (ten) days for SK's report and 7 (seven) days for process Servers report]
Designation of Designated Public Servant	Circle Officer/ Circle Officer [Attached]
Designation of Appellate Authority	Additional Deputy Commissioner nominated by Deputy Commissioner
Time limit for disposal by Appellate Authority [Days]	30 days
Designation of Reviewing Authority	Commissioner of Division
Time limit for disposal by Reviewing Authority [Days]	30 days
Documents to be enclosed with the application	1. Photocopy the original patta/Jamabandi where the applicants name is recorded as pattadar. 2. An affidavit stating that the applicant is in absolute possession of the quantum of land applying and his/her specific share over the plot of land. 3. Up to date Land Revenue paying receipt/Clearance certificate
User charge, if any [in Rupees]	Rs. 2000/- [in Guwahati Municipal Corporation are]; Rs. 100/- [in rural areas]; Rs. 1000/- [in urban areas]
Eligibility criteria to obtain service	

7. By an Office Memorandum bearing no. RRG.18/2017/Pt/163 dated 21.12.2020 of the Government of Assam in the Revenue and Disaster Management [Reforms] Department, demarcation has been declared to be a notified service under Section 4 of the Act. For ready reference, the contents of the Office Memorandum dated 21.12.2020 are extracted

hereinbelow in its entirety :-

GOVERNMENT OF ASSAM
REVENUE & DISASTER MANAGEMENT [REFORMS] DEPARTMENT
ASSAM SECRETARIAT [CIVIL] : DISPUR
GUWAHATI-6

No.RRG.18/2017/Pt/163

Dated Dispur the 21st December, 2020.

Office Memorandum

Subject: Declaration of services under Revenue & D.M. Department as per provision of the Section 4 of the Assam Right to Public Service Act, 2012.

With a view to provide the delivery of Public Service to the eligible citizens within stipulated time limit the following service of the Revenue & D.M. Department has been identified as Notified service under Section 4 of the Assam Right to Public Services Act, 2012.

Service Name: Demarcation Certificate [where there is no dispute on title]

An important service which is provided by the Revenue & Disaster Management Department is the issue of Demarcation Certificate. This certificate is required to establish the real extent/interest of the land and to establish actual boundary of a particular Dag as per cadastral map of the revenue village/town. This service can be obtained in the Offices of the Circle Officers.

Eligibility Criteria:

Any citizen of Assam who is recorded Pattadar of the scheduled land can avail this service.

Procedural Steps for Issuance of Demarcation Certificate:

The applicant has to apply in Standard Application format before Circle Officer of the concerned Circle and Circle Officer will endorse the same to the concerned Dealing Assistant/Copyist. The Dealing Assistant/Copyist after verifying the application,

forwards to the concerned Lot Mandal for field verification. Lot Mandal submits the field verification report to Supervisor Kanungo for verification and Supervisor Kanungo after verifying the report forwards to the Circle Officer. Circle Officer, based on the report submitted by Lot Mandal and Supervisor Kanungo approves/rejects the demarcation application.

Once demarcation is allowed by the Circle Officer, the Dealing Assistant prepares a notice regarding the demarcation of the proposed land and it is served to all the co-pattadars of the concerned Dag and pattadars of the adjacent Dags and sends it to Circle Officer for signing. The LM then visits the S/L on the fixed date and demarcate the concerned Dag in presence of all the stakeholders.

Documents to be annexed along with the Application:

1. Applicant must submit duly signed Application form mentioning details if the scheduled dag.
2. Up to date land revenue receipt.

<u>User Charges:</u>	Rs.30/-
<u>Citizen Charter:</u>	Annexure-1
<u>Time-line:</u>	30 [thirty] working Days.

8. It is settled that if there is an alternative, efficacious and adequate remedy, then a person should avail that remedy instead of approaching this Court under Article 226 of the Constitution of India. If it is a case of simple demarcation and perfect partition, as it has been projected by the petitioner, the petitioner should avail the remedy by applying for the notified public services [demarcation and perfect partition] under the Assam Rights to Public Services Act first by approaching jurisdictional Designated Public Servant by submitting the prescribed application form and by depositing of the requisite user charges. On receipt of such application, the jurisdictional Designated Public Servant shall acknowledge the same and shall proceed to dispose of the said application as per the procedure laid down in the Act within the stipulated time period prescribed for the said notified public service [demarcation]. It is accordingly observed.

9. In view of the availability of the alternative and efficacious statutory remedy, the writ

petition is not entertained, reserving the liberty to the petitioner to avail statutory remedy under the Act, available to him under the law.

JUDGE

Comparing Assistant