

GAHC010230702024



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

Case No. : WA/395/2024

AMIR HUSSAIN
S/O-LATE JYOTI MAMUD SHEIKH, VILLAGE- KAZIPARA PART I, P.O-
CHAPAR, PIN-783371, DIST- DHUBRI, ASSAM

VERSUS

1.THE STATE OF ASSAM AND 4 ORS
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM,
DEPARTMENT OF LAND AND REVENUE, ASSAM DISPUR, GUWAHATI,
ASSAM, PIN-781006

2:THE DISTRICT COMMISSIONER, DHUBRI
P.O AND DIST- DHUBRI PIN-783301 ASSAM

3:THE CIRCLE OFFICER
CHAPAR REVENUE CIRCLE
DIST-DHUBRI ASSAM PIN-783371

4:THE SUB-DIVISIONAL OFFICER (CIVIL) BILASIPARA
DIST- DHUBRI ASSAM PIN-783348

5:THE SETTLEMENT OFFICER
CHAPAR REVENUE CIRCLE CHAPAR
DIST-DHUBRI ASSAM PIN-78337

For the Appellant : Mr. M.A. Sheikh, Advocate.

For the Respondent(s) : Ms. N. Bordoloi, Standing Counsel, Revenue Department.

: Mr. N. Das, Government Advocate, Assam.

– BEFORE –
HON'BLE THE CHIEF JUSTICE MR. VIJAY BISHNOI
HON'BLE MR. JUSTICE KAUSHIK GOSWAMI

03.12.2024

(Vijay Bishnoi, CJ)

Heard Mr. M.A. Sheikh, learned counsel appearing for the appellant. Also heard Ms. N. Bordoloi, learned Standing Counsel, Revenue Department appearing for respondent No.1 and Mr. N. Das, learned Government Advocate, Assam for respondent Nos.2 to 5.

This writ appeal is preferred by the appellant/writ petitioner challenging the order dated 13.09.2024 passed by the learned Single Judge in WP(C) No.4421/2024.

The appellant has approached the Writ Court challenging the notice dated 19.08.2024 issued by the Circle Officer, Chapar Revenue Circle, whereby the petitioner was directed to vacate the land in question within 3(three) days from the date of receipt of the said letter.

Initially, the Writ Court has granted *interim* order in favour of the appellant. However, the counsel for the State has entered appearance on behalf of the State Government and stated that the land in question cannot be settled in favour of the appellant as the same is a pond (Water Body).

Considering the rival stands of the parties, the learned Single Judge has disposed of the writ petition filed by the appellant, while observing as under:

“6. I have heard the learned counsels for both the parties and given my anxious consideration to the above of the matter. In the opinion of this Court the question of relegating the petitioner now to again submit a representation would be a useless formality, taking into account that the petitioner was issued notice as on 31.07.2024 and the petitioner was duly heard before issuance of the impugned notice dated 19.08.2024. It is further seen that the land in question is a pond (Water Body). Under such circumstances, the question of granting settlement to the petitioner over the said land does not arise. In addition to that the petitioner's application for settlement has also been cancelled. Under such circumstances,

this Court finds no ground to interfere with the impugned notice dated 19.08.2024. The respondents would be at liberty to take due action in accordance with law.

7. Before parting with the record this Court however observes that the petitioner herein, inspite of the rejection of his Settlement proposal by the SubDivisional Land Advisory Committee would be at liberty to apply for any other land for settlement subject to confirming to the mandate of the Land Policy, 2019.

8. With the above observation(s) and direction(s) the instant writ petition stands disposed of.”

Learned counsel for the appellant has submitted that the learned Single Judge has not taken into consideration the fact that the show-cause notice dated 31.07.2024 was issued against the dead persons and no notice was issued to the petitioner to present his case.

We have gone through the pleadings and find that there is no averment in the writ petition to the effect that the show-cause notice dated 31.07.2024 was issued against the dead persons.

Apart from that the contention of the learned counsel for the appellant that no opportunity of hearing was granted to the appellant is also contrary to the averments made in the writ petition.

In para No.13 of the writ petition, it is specifically stated by the appellant/writ petitioner in response to the notice dated 31.07.2024, the appellant has raised certain issues before the respondents but the respondents have not considered those issues at all.

In view of the above fact, it is clear that the contention of the learned counsel for the appellant that the appellant was not provided any opportunity of hearing before passing the impugned order is incorrect and the same cannot be accepted.

Learned counsel for the appellant has tried to raise certain points. However, the said points have not specifically been pleaded in the writ petition nor argued before the learned Single Judge.

The attempt on the part of the counsel for the appellant to justify his submissions, though the same are in clear contradiction to the pleadings to the writ petition on oath, is not appreciable and the writ appeal is liable to be dismissed with heavy cost. However, we restrain ourselves from imposing any cost to the appellant in the facts and circumstances of the case.

The writ appeal is, accordingly, dismissed.

JUDGE

CHIEF JUSTICE

Comparing Assistant