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

Case No. : WP(C)/5874/2024

RAJIB BARMAN
SON OF LATE JAMINI BARMAN, VILLAGE- ULUBARI (BIRUBARI), DR.
B.R.AMBEDKAR NAGAR, MOUZA- ULUBARI, P.S. PALTAN BAZAR,
DISTRICT- KAMRUP (M), ASSAM

VERSUS

THE STATE OF ASSAM AND 2 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE GOVT.
OF ASSAM, REVENUE DEPARTMENT, DISPUR, GUWAHATI- 781006

2:THE DEPUTY COMMISSIONER
KAMRUP (M)
HENGRABARI
GUWAHATI- 781036
ASSAM

3:THE CIRCLE OFFICER
GUWAHATI REVENUE CIRCLE
ULUBARI
GUWAHATI- 78100

Advocate for the Petitioner : MD. A MATLIB, MR R DHAR

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

**BEFORE
HONOURABLE MR. JUSTICE SOUMITRA SAIKIA**

ORDER

02-12-2024

Heard Mr. R. Dhar, learned counsel for the petitioner. Also heard Mr. R. Borpujari, learned Standing Counsel, Revenue Department and Mr. S. Baruah, learned Government Advocate, Assam.

2] This writ petition has been filed by the petitioner seeking a direction to the respondents not to evict the petitioner from his respective land measuring 15 lechas covered under Dag No.12(O)/97 (N) at Village-Ulubari (Birubari), Dr. B.R. Ambedkar Nagar, Mouza-Ulubari, P.S.-Paltan Bazar, District Kamrup (M), under Guwahati Revenue Circle. The petitioner has been residing in the said plot of land since 1992 by making a dwelling house. The said polot of land is admittedly Government land. It is the grievance of the petitioner that on several occasions the petitioner had submitted his applications to the Deputy Commissioner, Kamrup(M) for settlement the land in his favour but the concerned Authority did not consider his prayer and verbally threatened the petitioner to vacate the land. Being aggrieved, the present writ petition has been filed.

3] Learned counsel for the petitioners submits that similar directions have

already been issued by this Court vide judgment dated 07.11.2023 in WP(C) No. No.3715/2020. It is further submitted that notices of eviction of the Government Land were issued by the Circle Officer to the writ petitioners in WP(C) No.3715/2020. He, however, fairly submits that in the present case no eviction notice has been served on him by the Circle Officer, as was done in WP(C) No.3715/2020.

4] Learned counsel for the petitioner submits that as the lands in questions wherein the petitioner is in occupation is Government waste land and as the petitioner is residing thereupon since past several years by constructing house, the actions taken by concerned Respondent Authorities to evict the petitioner is in violation to the principles of Natural Justice, as well as, the settled principles of Law as laid by a Division Bench of this Court in case of *Md. Salak Uddin vs. State of Assam & Ors.* reported in *2024 SCC Online GAU 921*. The learned counsel for the petitioner further submits that at the time when the petitioner possessed the land under his occupation, the revenue records never showed that the lands in question were previously reserved for any public purpose. However, an attempt is being made by the respondent authorities to show the land to be specifically reserved for T.B. Hospital and subsequently, during the pendency of the instant writ petition have again shown it to be in the name of the Second Medical College. The learned counsel, therefore, submits that as the

land under the possession was not previously reserved, the petitioner cannot be evicted by resorting to the summary proceedings as he has a bona fide claim of right involved.

5] Learned counsel for the petitioner submits that the matter can be disposed of in terms of the directions issued in Paragraph-50 of WP(C) No. No.3715/2020 vide order dated 07.11.2023.

6] Mr. R. Borpujari, learned Standing Counsel, Revenue Department submits that the proper course of action for the petitioner will be to approach the Deputy Commissioner, Kamrup(M).

7] Upon perusal of the judgment and order dated 07.11.2023 passed in WP(C) No.3715/2020, it is seen that the issues raised in the present writ petition stands covered by the judgment and order dated 07.11.2023 passed in WP(C) No. 3715/2020. However, this Court is of the view that no one can be evicted from the land in question without issuing a notice under Section 18(2) of the Assam Land and Revenue Regulations Act, 1996. In the event, any such notice is issued, the petitioner shall be at liberty to take a stand that he/she has some kind of a legal rights as over the said land and upon stand being taken, the respondents authorities shall consider and adjudicate the same.

8] As such, this Court is of the considered view that the State respondent

Authorities may issue the required notice upon the petitioner within a period of 30 (thirty) days from today and if any such notice is issued to the petitioner, the petitioner is given the liberty to submit individual replies and substantiating the same with documents, and such evidence as deemed proper thereby showing cause that the petitioner has a bona fide claim of right involved in respect to the land under their occupation and as such the recourse to Rule 18 of the Settlement Rules is not permissible.

The liberty given above is to be exercised within 30 (thirty) days, from the date of the issuance of the said Notice.

The Deputy Commissioner, Kamrup (M) is directed to give an opportunity of hearing to the petitioner either personally or through their authorized representative(s), if any notice is served to the petitioner to vacate the land. The Deputy Commissioner, Kamrup (M) shall thereupon pass appropriate speaking orders. The Deputy Commissioner, Kamrup (M) is further directed to allot a particular area in his office wherein, such replies could be submitted. A notice be hanged in the Office of the Deputy Commissioner, Kamrup (M) indicating the area.

9] This Court further directs that upon the speaking orders being passed, the Deputy Commissioner, Kamrup (Metro) shall notify in its notice board about the fact that the speaking order has been passed and for a period of 30 (thirty)

days from such speaking order, no coercive measures be taken so that if the petitioner is aggrieved, he may avail remedies as permissible under law.

10] With the above observations and directions, the writ petition stands disposed of.

JUDGE

Comparing Assistant