

GAHC010242202023



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

Case No. : WP(C)/6239/2023

BABUL AHMED SODIOL
S/O- LATE SUNGUL MIA SODIOL,
R/O- NARAYANPUR PART III,
P.O- NARAYANPUR,
P.S HAILAKANDI,
DIST- HAILAKANDI, ASSAM

VERSUS

THE STATE OF ASSAM AND ANR
REP. BY THE COMMISSIONER AND SECRETARY GOVERNMENT OF
ASSAM, REVENUE AND DISASTER MANAGEMENT DEPARTMENT,
DISPUR, GUWAHATI-781006

2:THE DISTRICT COMMISSIONER
P.O
P.S
DIST- HAILAKANDI
ASSA

Advocate for the Petitioner : MR. R PHUKAN,

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

BEFORE
HONOURABLE MR. JUSTICE SOUMITRA SAIKIA

ORDER

06-12-2024

Heard Mr. P. Phukan, learned counsel for the petitioner. Also heard Mr. B.J.

Talukdar, learned Senior Government Advocate, Assam assisted by Mr. P.K. Medhi, learned counsel for the respondent no.2 and Ms. G. Hazarika, learned Standing Counsel, Revenue Department for the respondent no.1

2] The petitioner is aggrieved by the impugned order bearing No.RM-72/6/2023-REV-HKD (E-11072)//165-168 dated 19.09.2023 passed by the District Commissioner, Hailakandi, whereby his prayer for allotment of land was rejected on the following grounds:

“Observations and decisions:

Babul Ahmed Sodiol, S/o Lt. Sungul Mia Sodiol, a resident of Vill-Narayanpur Pt-III, P.O.-Chandpur West, P.S. & Dist.-Hailakandi, Assam is not a landless person in pursuance of Land Policy 2019 due to the following reasons:

- 1) On perusal of the report submitted by Circle Officer & Assistant Settlement Officer, Hailakandi Revenue Circle vide No.HCO.03/Misc/2023/598 dated 28.07.2023 and No.HCO.03/Misc/2023/529 dated 28.06.2023 it is crystal clear that Babul Ahmed Sodiol, S/o. Lt. Sangul Mia Sodiol is not a landless person as there is an agriculture land measuring 02B-08K-08 Ch found under his father's name Lt. Sungul Mia Sodiol, S/o. Lt. Abdul Bari Sodiol in Phorgona-Serispore, Revenue Gillage-Narainpur Part-III, 2nd R.S. Patta No.19, Dag No.32, 33, 34, 157, 158, 159, 160 & 161.*
- 2) Also, seen and perused the report submitted by the Asstt. Director i/c, Food Civil Supplies & CA, Hailakandi Dated 22.04.2023 which stated that Babul Ahmed Sodiol is an F.P. Shop Dealer under Bhatirkupa GPSS Ltd. and he is receiving an average monthly commission from NFSA Rice amounting to Rs.4000/- to 5000/- per month as per allotment which clearly shows he is not a cultivator. Since Babul Ahmed Sodiol, S/o. Lt. Sangul Mia Sodiol is not a landless person in pursuance of the Land Policy 2019, he cannot be allotted a plot of land covered by Dag No.163,*

436, 437, 438, 439, 441 and 442 of Narainpur, Village-Pt-III, under Mouza-Narainpur, District-Hailakandi, Assam.”

3] Learned counsel for the petitioner submits that the finding of the authority that he had inherited family land belonging to his father is incorrect on facts as he does not have the share of the same and he is living separately. The petitioner has a fair price shop on the land under his possession. Learned counsel for the petitioner, therefore, submits that the rejection of his prayer for allotment of land by the impugned order dated 19.09.2023 passed by the District Commissioner, Hailakandi is contrary to the Land Policy 2019 as amended. He submits that even assuming without admitting that he has a share in the family land, the quantum of land itself, had it devolved in his name, would still fall short of the limit prescribed under the said Policy. Learned counsel for the petitioner has also referred to the Clause-3 of the said Policy to submit that an indigenous family of the State who does not have homestead land in the name of any member of the families anywhere in the State may be allotted with suitable homestead land not exceeding one Bigha (as amended) per family. He submits that his case is entitled to be considered under these provisions, which, however, was not done by the District Commissioner, Hailakandi while passing the impugned order dated 19.09.2023.

4] Mr. B.J. Talukdar, learned Senior Government Advocate, Assam assisted by

Mr. P.K. Medhi, learned counsel for the respondent no.2 submits that an additional affidavit has been filed on 08.11.2024 where the report of the Circle Officer, Hailakandi is enclosed. The report reflects that an agricultural land measuring 2 Bigha 08 Katha 8 Chatak has been found under the name of the petitioner's father and under such circumstances, he cannot be considered to be a landless person in keeping in view of the Land Policy 2019. That apart, the order of the District Commissioner, Hailakandi reflects that the petitioner is not carrying his livelihood as an agriculturist but he is a fair price shop dealer instead. These findings are not disputed by the petitioner. Under such circumstances, there is no infirmity in the order dated 19.09.2023 and the writ petition should be dismissed.

5] Ms. G. Hazarika, learned Standing Counsel, Revenue Department appearing for the respondent no.1 also adopts the arguments made by the learned Senior Government Advocate, Assam for the respondent no.2.

6] Learned counsel for the parties have been heard and the pleadings available on record are perused along with Land Policy 2019.

7] This Court by earlier order dated 09.05.2022 passed in WP(C) No. 1264/2020 disposed of the writ petition filed by the petitioner on the ground that the representation filed before the District Commissioner, Hailakandi seeking allotment of adequate land to enable him to earn his livelihood by

cultivation of the same land was not considered. No effective order had been passed. Under such circumstances, this Court disposed of the said writ petition with a direction to the District Commissioner, Hailakandi to pass appropriate order on the representations within a period of 2 (two) months from the date of receipt of a certified copy of the order. The representations filed by the petitioner before the authority on 01.09.2018 as well as on 05.01.2020 were available in the writ petition. In the said representation dated 05.01.2020 the petitioner has prayed for placing his representation before the Sub-Divisional Land Advisory Committee, Hailakandi for recommendation for settlement of land on the ground that he is a poor farmer and he earns his livelihood through cultivation. On these materials, the District Commissioner, Hailakandi directed the concerned Circle Officer to conduct an enquiry and on the basis of such an enquiry the order dated 19.09.2023 was passed by the District Commissioner, Hailakandi rejecting the claim of the petitioner. The claim was rejected primarily on the ground that the petitioner cannot be considered to be a landless person as agricultural land measuring 2 Bigha 08 Katha 8 Chatak was found allotted in the name of his late father. That apart, it is found that the petitioner is a fair price shop dealer under the Bhatirkupa GPSS Limited and is receiving an average monthly commission from the NFSA rice amounting to Rupees 4000 to 5000 per month per allotment. On these materials the Deputy Commissioner

Hailakandhi arrived at the conclusion that the petitioner is not a cultivator and in view of the fact that land measuring 2 Bigha 8 Katha 9 Chatak is found to be standing in the name of his late father and he cannot be considered for allotment of a plot of land as a landless person under Land Policy 2019.

8] Having perused the Land Policy 2019, this Court finds that the provisions in under Clause 1 of Land Policy 2019 are for allotment and settlement of Government land for ordinary cultivation in rural areas. The petitioner's claim under this Clause 1 of Land Policy 2019 has to be understood in terms of clause 1.7 of Land Policy 2019 which has to be considered in terms of the explanation 2 of Clause 1.7 of Land Policy 2019 which provides that a person who has less than one Bigha or less of name in his family either as a tenant or as an owner anywhere in the State of Assam and has no means of livelihood other than cultivation, will be regarded as a landless person. Admittedly the petitioner is earning his livelihood as a fair price shop dealer and not by cultivation as is revealed in the enquiry report of the Circle Officer, Hailakandi which is relied upon by the District Commissioner, Hailakandi while passing the impugned order dated 19.09.2023.

9] Under such circumstances, it is clear that the petitioner does not fall under the said Explanation 2 of Clause-1.7 of Land Policy 2019. In that view of the matter, the Court does not find any infirmity in the impugned order dated

19.09.2023 passed by the District Commissioner, Hailakandi. However, a perusal of Clause-3 of the same Land Policy reveals that there is a provision for allotment or settlement of land for homestead purpose in rural areas. The submission of the learned counsel for the petitioner before this Court is that even the land on which he is dwelling is not allotted to him and therefore, he is a landless person. Therefore, his claim ought to have been considered under Clause-3 of the same Land Policy 2019. But having perused the representation dated 05.01.2020 filed by the petitioner which was disposed of by the District Commissioner, Hailakandi, by order dated 19.09.2023 in terms of the direction issued by this Court, it is seen that the application of the petitioner was only for allotment of land for agriculture purpose. Under such circumstances, while disposing of this petition without interfering with the order dated 19.09.2023 passed by the District Commissioner, Hailakandi, the petitioner is granted liberty to file proper application before the competent authority for allotment of land for homestead in rural areas. If any such application is filed, the authority, competent to deal with it, will examine the matter in the light of Clause 3 of the Land Policy of 2019 and dispose of the same application by passing the speaking order and the petitioner shall be notified about the said speaking order.

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

disposed of.

JUDGE

Comparing Assistant