

GAHC010246322023



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

Case No. : WP(C)/6770/2023

MD. ABDUL HAKIM
SON OF LATE ISMAIL SHEIKH, RESIDENT OF KATIMARI PATHAR, P.S.
NAGAON, DISTRICT- NAGAON, ASSAM

VERSUS

THE STATE OF ASSAM AND 2 ORS
REPRESENTED BY THE PRINCIPAL SECRETARY TO THE GOVERNMENT OF
ASSAM, REVENUE AND DISASTER MANAGEMENT DEPARTMENT, DISPUR,
GUWAHATI- 781006

2:THE DISTRICT COMMISSIONER
NAGAON DISTRICT
NAGAON
PIN- 782001

3:THE CIRCLE OFFICER
NAGAON REVENUE CIRCLE
NAGAON
PIN- 78200

Advocate for the Petitioner : MR. J SARMAH

Advocate for the Respondent : GA, ASSAM

BEFORE
HONOURABLE MR. JUSTICE MANISH CHOUDHURY

ORDER

Date : 05-01-2024

Heard Mr. J. Sarmah, learned counsel for the petitioner; Ms. G. Hazarika,
learned Standing Counsel, Revenue and Disaster Management Department for

the respondent no. 1; and Mr. S. Baruah, learned Junior Government Advocate, Assam for the respondent nos. 2 & 3.

2. The petitioner has approached this Court by instituting the instant writ petition under Article 226 of the Constitution of India seeking a direction to the respondent authorities to take appropriate steps for conversion of a parcel of land, covered by annual patta into periodic patta, on the basis of his application.

3. The petitioner has claimed that after demise of his father, Ismail Sheikh who was holder of an annual patta, a parcel of land, covered by Dag no. 173 & 175, situate in Revenue Village – Katimari Pathar, Mauza – Kashmari, District – Nagaon stood transferred in favour of the petitioner. The petitioner has further claimed that the said parcel of land is in his continuous occupation since then and the petitioner as per the Land Policy, 2019, framed by the Government of Assam, is eligible to get the said annual patta land converted to periodic patta land. The petitioner has further stated that seeking such conversion, he preferred an application on 26.05.2015. But, the said application has not been given consideration by the respondent authorities.

4. Mr. Sharma, learned counsel for the petitioner has submitted that the services of conversion and settlement of annual patta land to periodic patta land has been brought under the purview of the Assam Right to Public Services Act, 2012 by a Notification dated 11.1.2022 [Annexure-7 to the writ petition].

5. Ms. Hazarika and Mr. Baruah, learned counsel representing the State respondents have submitted, in unison, that as per an application seeking

conversion of annual patta land to periodic patta land has to be submitted on-line, as per the provisions of the Assam Right to Public Services Act, 2012 and the notifications issued thereunder from time to time. In such view of the matter, the petitioner is required to submit such an application on-line as per the procedure prescribed in the Notification dated 11.11.2022 by uploading all the supporting documents with such on-line application along with the user fee.

6. The Assam Right to Public Services Act, 2012 [‘the ARTPS Act’, for short] has been enacted by the Assam Legislative Assembly in order to provide for delivery of notified public services to the people of the State of Assam within the stipulated time limit and for matters connected therewith and incidental thereto. As per Section 2[h], ‘Right to Public Service’ means right to obtain the notified service under the Act from time to time within the stipulated time limit as described under Section 5 and as per Section 2[i], ‘notified service’ means any service notified by the State Government under Section 4. Section 5 of the Act has laid down that every eligible person shall have the right to obtain the services in accordance with the Act within the time bound period as notified under Section 4. It is liability of the Government Servant to deliver services, under Section 6 of the Act, within the stipulated period. The stipulated time limit, as per Section 7[1], starts from the date when the application for obtaining a required notified service is submitted to the Designated Public Servant or to a person subordinate to him authorized to receive the application. Such application shall be duly acknowledged. As per Section 7[2], the Designated Public Servant on receipt of an application under sub-section [1] shall, within the stipulated time limit, provide the notified service or reject the application and in case of rejection of application, he shall record the reasons in

writing and communicate to the person making the application,- [i] the reasons for such rejection; [ii] the period within which an appeal against such rejection may be preferred; and [iii] the particulars of the Appellate Authority. Section 8 of the Act has provided for an appeal before the Appellate Authority and also for a review before the Reviewing Authority. A set of Rules viz. the Assam Right to Public Services Rules [‘the ARTPS Rules’ for short] have also been framed under the ARTPS Act.

7. The State Government by the Notification dated 11.11.2022 has mentioned that once an application is submitted online by following all the required formalities, Lot Mandal physically verifies the land for confirmation of possession of the land and he is required to take the geo tagged photograph of the schedule land and forward a report thereafter, to the Circle Officer online. The Circle Officer after verifying the report and after following the other required formalities, has to forward the application to the office of the Deputy Commissioner for further processing. On receipt of the online application, if the Deputy Commissioner finds the application eligible as per extant policies, then the application is processed for settlement of government land and issue of periodic patta after payment of applicable premium.

8. It is a settled position of law that when there is an alternative and equally efficacious statutory remedy available for relief the exercise of jurisdiction under Article 226 of the Constitution of India which jurisdiction is discretionary and extra-ordinary in nature, is ordinarily not to be exercised by bypassing the machinery created under the statute for the same remedy.

9. In the light of the above discussion as regards exercise of the extraordinary and discretionary jurisdiction under Article 226 of the Constitution of India, this Court on analysis of the provisions of the alternative statutory remedy available to the petitioner, is of the considered view that such remedy is an efficacious and adequate one providing also for an appeal and a second appeal as well as imposition of penalty in the event the provisions provided in the statute and the rules framed thereunder, that is, the ARTPS Act and the ARTPS Rules are not followed in extending the notified public service. In such view of the matter, this Court finds that this writ petition is not to be entertained. As it is open to the petitioner to have recourse to the remedy under the ARTPS Act and the ARTPS Rules by filing an appropriate application under the provisions of the ARTPS Act and the ARTPS Rules to pursue the notified service, conversion of annual patta to periodic patta in accordance with the procedure laid down therein, the petitioner is at liberty to pursue the said alternative statutory remedy.

10. This order with the observations made above, disposes of the writ petition. No cost.

JUDGE

Comparing Assistant