

GAHC010250572019



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

Case No. : WP(C)/7646/2019

SANDEEP KUMAR AGARWALLA
S/O SHRI NIRMAL KUMAR AGARWALLA, RESIDENT OF WARD NO. 5,
BARPETA ROAD, RAILWAY STATION, ASSAM.

VERSUS

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

2:THE DEPUTY COMMISSIONER
BARPETA.

3:THE CIRCLE OFFICER
BARNAGAR REVENUE CIRCLE
SORBHOG

For the Petitioner(s) : Mr. N. Choudhury, Advocate

For the Respondent(s) : Mr. B. J. Talukdar, Sr. Government Advocate
: Ms. G. Hazarika, Standing Counsel

**BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH**

ORDER

Date : 16.09.2024

Heard Mr. N. Choudhury, the learned counsel appearing on behalf of the Petitioner and Ms. G. Hazarika, the learned Standing Counsel appearing on behalf of the Respondent No.1. I have also heard Mr. B. J. Talukdar, the learned Senior Government Advocate appearing on behalf of the Respondent Nos. 2 and 3.

2. The Petitioner herein has approached this Court challenging the notice dated 01.10.2019 issued by the Circle Officer, Barnagar Revenue Circle, Sarbhog.

3. It is the case of the Petitioner that the Petitioner is in possession of a plot of land measuring 1 Katha 5 Lechas situated under Tauzi No.57 of Ward No.5 under Govardhan Mouza, Barpeta Road Town, in the District of Barpeta since the year 1998.

4. It is the case of the Petitioner that the Petitioner has been regularly paying the Touzi Revenue and the tax thereof. In addition to that, the Petitioner had also applied for settlement of the said land in terms with the then existing Land Policy of 1989. However, while the said application for settlement has been pending, the said impugned notice was issued on 01.10.2019 asking the Petitioner to remove the encroachment within 48 hours.

5. It is seen from the records that this Court had issued notice on 04.10.2019 and an interim order has been passed. However, the Respondents have neither placed before this Court any instruction nor

filed any affidavit in that regard.

6. This Court has duly heard the learned counsels appearing on behalf of the parties and given anxious consideration to their submissions.

7. From a perusal of the materials on record, more particularly the impugned notice dated 01.10.2019, it is seen that the Circle Officer, Barnagar Revenue Circle is not sure as to whether the land on which he has issued notice is a Railway land or Government land. This aspect of the matter has got great significance taking into account that if it is a Railway land, the District Administration have no authority inasmuch as if it is a Railway land, the provisions of Public Premises (Eviction of Unauthorized Occupants) Act, 1971 (for short "the Act of 1971") would apply and in such circumstances, the eviction proceedings would have to be initiated on the basis of the said Act of 1971 and the Estate Officer, N. F. Railway would have the authority to initiate such proceedings. The Circle Officer would only have the jurisdiction if the land is a Government land.

8. It is also seen from the impugned notice dated 01.10.2019 that there is no mention of any Dag Number or any details of the land in respect to which the notice was issued.

9. Under such circumstances, as the Circle Officer, Barnagar Revenue Circle is not clear whether the land is a Railway land or Government land and there is no identification to the land wherein the notice is issued, this Court is of the opinion that this is a fit case for setting aside the said impugned notice dated 01.10.2019. Accordingly, the impugned notice dated 01.10.2019 is set aside and quashed.

10. Before parting with the records, this Court however observes that the setting aside of the impugned notice dated 01.10.2019 shall not preclude the Circle Officer, Barnagar Revenue Circle to initiate fresh process for eviction provided the land in question is a Government land wherein the question of settlement to the Petitioner does not arise.

11. With the above observations and directions, the instant petition stands disposed of.

JUDGE

Comparing Assistant