

GAHC010258022017



2024:GAU-AS:11628

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

Case No. : WP(C)/1396/2017

KHANINDRA NATH DAS and ANR.
S/O SRI DHIRENDRA NATH DAS, R/O BARPETA ROAD, W/NO.6, P.O.
BARPETA ROAD, DIST- BARPETA, ASSAM

2: PHULEN DAS
S/O SRI DHIRENDRA NATH DAS
R/O BARPETA ROAD
W/NO.6
P.O. BARPETA ROAD
DIST- BARPETA
ASSA

VERSUS

THE STATE OF ASSAM and 2 ORS.
REP. BY THE SECY. TO THE GOVT. OF ASSAM, REVENUE DEPTT., DISPUR,
GHY-6

2:THE DY. COMMISSIONER
BARPETA
P.O. and DIST- BARPETA
ASSAM

3:THE CIRCLE OFFICER
BAGHBOR REVENUE CIRCLE
BAGHBOR
DIST- BARPETA
ASSA

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

For the Respondent(s) : Mr. H. Sarma, Govt. Advocate
Ms. N. Bordoloi, SC, Revenue Department

Date of hearing : 25.11.2024

Date of Judgment : 25.11.2024

**BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH**

JUDGMENT & ORDER(ORAL)

Heard Mr. N. Haque, the learned counsel appearing on behalf of the petitioners. Mr. H. Sarma, the learned Govt. Advocate appears on behalf of the District Administration and Ms. N. Bordoloi, the learned Standing Counsel appears on behalf of the Revenue Department of the Government of Assam.

2. The petitioners herein have assailed the initiation of proceedings for eviction vide the notice dated 24.01.2017, issued by the Circle Officer, Baghbor Revenue Circle, so far it relates to the plot of land admeasuring 20 Bighas covered by the Dag No. 235(Ka) VGR of Bhatkuchi village under Jania Mouza in the Barpeta district.

3. From a perusal of the materials on record it is seen that the Government of Assam had made a *Land Policy* in the year 1989. In terms with the *Land Policy* and, more particularly, in Clause 8.1, it was envisaged that temporary permission for use of Government khas land for manufacturing brick, tiles, etc. may be given not exceeding 10 Bighas in case of individuals and not exceeding 20 Bighas for Cooperative Society of firm subject to execution of undertaking by the permit holder to the effect that he would pay in advance the land revenue of the land and the royalty as fixed by the Government and would vacate the land

after expiry of the term not exceeding 3(three) years. It was also mentioned in the said policy that the term of permission would automatically stand terminated at the end of 3(three) years.

4. In pursuance to the said *Land Policy*, the petitioners applied for allotment of land on behalf of Ms. D.N.D Enterprise (Brick), for a period of 3(three) years. The record reveals that on the basis of a letter No. BRSG- 97/93/2021 dated 25.11.1993, the possession of 20 Bighas of land was handed over to the petitioners on 21.12.1993. It is however very strange to note that without even any formal letter of allotment such possession was handed over by the Deputy Commissioner, Barpeta. The record further reveals that the said aspect was regularized by issuance of a communication by the Deputy Secretary to the Government of Assam Revenue(S) Department to the Deputy Commissioner whereby land admeasuring 20 Bighas covered by Dag No. 235(Ka) of village Bhatkuchi under Jania Mouza in Barpeta District was allotted to the petitioners on behalf of Ms. D.N.D Enterprise (Brick) for a period of 3(three) years only on realization of the royalty as instructed by Government Circular dated 26.05.1986. It was also mentioned in the said communications that the land be handed over to the persons concerned on realization of the royalty in full.

5. Be that as it may, it is further apparent from the perusal of the affidavit filed by the respondent No. 2 that although the land was handed over on 21.12.1993, and the same was regularized vide the communication dated 16.11.1995, but the petitioners neither entered into any lease agreement with the government nor deposited any royalty amount. It is also very pertinent at this stage to take note of that the lands in question are VGR lands wherein such allotment for being used as a Brick industry was not at all permissible, taking into account Rule 95 of the Settlement Rules as well as also the judgment of the

Supreme Court in the case of ***Jagpal Singh and Others Vs. State of Punjab and Others reported in (2011) 11 SCC 396.***

6. Be that as it may, the petitioners continued to enjoy the land without payment of any royalty as well as land revenue. It is only seen that in the month of December 2016, the petitioners paid certain amounts towards royalty for the period from 2016-17 and also paid certain amounts on account of land revenue in the month of January 2017. It is also relevant to take note of that for the period from 1993 to 2015, the petitioners did not make any payment as is evident from the affidavit filed with respondent No. 2 to which there is no reply so filed.

7. In the backdrop of the above, this Court has heard the learned counsel appearing on behalf of the petitioners as well as the learned counsel appearing on behalf of the respondents.

8. Mr. N. Haque, the learned counsel appearing on behalf of the petitioners has laid emphasis on a judgment passed by this court in the case of ***Banjit Barman and Others Vs. The State of Assam and Others*** dated 06.11.2024, whereby this Court held that the initiation of summary proceedings under section under Rule 18 of the Settlement Rules was not permissible, taking into account the land was allotted to the petitioner therein. He further submitted that the petitioner stands in a similar situation and as such the petitioner should also get the benefit of similar directions.

9. This Court has duly perused the judgment passed in ***Banjit Barman (supra)*** wherein it was a specific case that pursuant to the allotment so made the petitioner therein had entered into a lease agreement. It was also seen that from time to time the petitioner therein had also made the payment towards the

royalty as well as also the land revenue. It is under such circumstances, this Court had held that the initiation of the summary proceedings under Rule 18 of the Settlement Rules was not permissible. However, in the instant case it is seen that there is no lease agreement. It is further seen that the petitioners herein had not made any payment towards land revenue or towards the royalty for the period from 1993 to 2015. Further from the perusal of the affidavit of the respondents which remains unrebutted that the petitioners were asked to enter into the lease agreement and the petitioners did not do so.

10. Additionally, it is also very pertinent to take note of that the land wherein the petitioners were handed over the possession in the year 1993 is a VGR land which as per the provisions of Rule 95 of the Settlement Rules read with the judgment of the Supreme Court in the case of **Jagpal Singh (supra)** could not have been allowed to be used in the manner sought to be done.

11. Under such circumstances, this court does not find any merit in the instant proceedings to interfere with the notice dated 24.01.2017 passed in the Eviction Case No. 01/2017 by the Circle Officer, Baghbor Revenue Circle in so far as the plot of land admeasuring 20 Bighas covered by Dag No. 235(Ka) of Bhatkuchi village under Jania Mouza in the Barpeta district.

12. Accordingly, the writ petition being devoid of merit stands dismissed.

13. Interim order passed earlier stands vacated.

JUDGE

Comparing Assistant