

GAHC010281482023



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

Case No. : WP(C)/7539/2023

RIPIN GARYRI
S/O LATE DHELA RAM GAYARI,
VILL.- BHAREGAON, P.O.- CHAPARBORI, P.S.- BALAPARA, MOUZA- PAKA,
SARTHEBARI REVENUE CIRCLE, DIST.- BARPETA, ASSAM.

VERSUS

THE STATE OF ASSAM AND 3 ORS.
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM,
REVENUE DEPTT., DISPUR, GUWAHATI- 6.

2:THE DEPUTY COMMISSIONER
BARPETA AT BARPETA
P.O. AND P.S.- BARPETA
DIST.- BARPETA
ASSAM
PIN- 781301.

3:THE ADDITIONAL DEPUTY COMMISSIONER
BARPETA @ BARPETA
P.O. AND P.S.- BARPETA
DIST.- BARPETA
ASSAM
PIN- 781301.

4:THE CIRCLE OFFICER
SARTHEBARI REVENUE CIRCLE
P.O. AND P.S.- SARTHEBARI
DIST.- BARPETA
ASSAM
PIN- 781307

Advocate for the Petitioner : MR R S CHAUHAN

Advocate for the Respondent : GA, ASSAM

**BEFORE
HONOURABLE MR. JUSTICE MANISH CHOUDHURY**

ORDER

Date : 22-01-2024

Heard Mr. D. Sharma, learned counsel for the petitioner; Ms. G. Hazarika, learned Standing Counsel, Revenue Department for the respondent no. 1; and Mr. S. Baruah, learned Junior Government Advocate, Assam for the respondent nos. 2 – 4.

2. In this writ petition instituted under Article 226 of the Constitution of India, the petitioner has claimed that on 26.01.1986, he was requested by one Banamali Das to cultivate two plots of land – [i] first plot measuring 20 Bighas, covered by Dag no. 91 and [ii] the second plot measuring 6 Bighas 4 Kathas 12 Lessas, covered by Dag no. 93 & K.P. Patta no. 4, that is, a total of 26 Bighas 4 Kathas 12 Lessas situate at Village – Bharegaon, Mouza – Paka, Sarthebari Revenue Circle, District – Barpeta [‘the subject-plots’, for short]. The petitioner has averred that since 1986, he has been carrying out cultivation in the subject-plots till date. The petitioner has, thus, claimed himself to be a tenant as per the definition of sub-Section 17 of Section 3 of the Assam [Temporarily Settled Areas] Tenancy Act, 1971 [‘the Tenancy Act, 1971’, for short].

3. Claiming himself to be such a tenant under the Tenancy Act, 1971, the petitioner has submitted an application on 04.10.2017 before the District

Revenue authorities seeking acquisition of ownership rights in respect of the subject-plots under the provisions of Section 23 of the Tenancy Act, 1971. In support of his such claim as occupancy tenant, the petitioner had submitted a number of land revenue paying receipts and a certificate from the Mouzadar, Mouza – Paka. It has been stated that the said application seeking acquisition of ownership rights has been registered as Case no. 690 at the office of the respondent no. 4. The petitioner has further claimed that since he has been cultivating the subject-plots for about 35 years, he is entitled to be granted the ownership rights as per the provisions of the Tenancy Act, 1971, more particularly, Section 23 thereof.

4. The petitioner in this writ petition has averred that despite initiation of the proceedings by Case no. 690 and issuance of notice to the legal heirs of the petitioner's erstwhile landlord, Late Banamali Das, the proceedings of Case no. 690 has not been brought to a logical conclusion despite elapse of more than 5 [five] years since institution. In this writ petition, the petitioner claiming himself to be legally entitled for the same as per the provisions of Section 6 and Section 23 of the Tenancy Act, 1971, has *inter alia* sought for a direction to the respondent authorities, more particularly, the respondent no. 2 and the respondent no. 3 to issue Rayati Patta/occupancy right in his favour.

5. Section 3[17] of the Tenancy Act, 1971 has contained the definition of 'tenant' and 'tenant' means a person who cultivates or holds the land of another person, and is, or but for a special contract [express or implied] would be, liable to pay rent for that land to that other person, and includes a person who under system generally known as 'Adhi' [whether Guchiadhi or Guti-adhi], 'barga',

'chukti', 'bhag' or 'chukani' cultivates the land of another person on condition of delivering a share or quantity of the produce of such land to that person. It has been provided that that a person who cultivates or holds land immediately under the State Government, is not a tenant within the meaning of this definition. As per Section 5 of the Tenancy Act, 1971 a person who for a period of not less than 3 years has continuously held land as a tenant shall have a right of occupancy in respect of that land. As per sub-section [4] of Section 5 of the Tenancy Act, 1971, a person shall be deemed, to have held as a tenant any land held as a tenant by a person whose heir he is. As per the provisions of Section 6 : 'Incidence of occupancy right' of the Tenancy Act, 1971 an occupancy tenant shall have permanent, heritable and transferable right of use and occupancy in the land of his holding, subject to the other provisions of the Act.

5.1. It has been set forth in Section 21,: 'Acquisition of ownership rights and intermediary rights by tenants' of the Tenancy Act, 1971 to the effect that - Notwithstanding anything to the contrary in any law, custom, or agreement, an occupancy tenant personally cultivating the land of his tenancy, shall be entitled to acquire the rights, titles and interests of his landlord, hereinafter called 'the ownership rights' according to the provisions of Section 23(I). Sub-section [1] of Section 23 reads as under :-

Acquisition of ownership rights and intermediary rights by tenants –

23 (I) Any occupancy tenant personally cultivating the land of his tenancy, desirous of acquiring the ownership rights of his landlord may at any time make an application in writing to the Deputy Commissioner and on such application being made and Compensation as provided in Section 25 is determined and paid by the occupancy tenant, the Deputy Commissioner shall declare the said occupancy tenant to have acquired the ownership rights free from all encumbrances.

6. It is found that the petitioner has already submitted an application under sub-section [1] of Section 23 of the Tenancy Act, 1971 and the same has been registered and numbered as Case no. 690. From the Notice dated 18.01.2018 issued by the respondent no. 4, appended to the writ petition, it is evident that the respondent no. 4 after registering the application as Case no. 690, had already issued notices to the legal heirs of the petitioner's erstwhile landlord, Late Banamali Das for their appearance before him on the claim made by the petitioner for acquisition of ownership rights in respect of the subject-plots. It is the grievance of the petitioner that the proceedings of Case no. 690 has not been brought to any conclusion despite elapse of more than 5 [five] years since submission of application by him under Section 23[1] of the Tenancy Act, 1971.

7. Ms. Hazarika, learned Standing Counsel, Revenue Department and Mr. Baruah, learned Junior Government Advocate, Assam have submitted, in unison, that procedure has been prescribed for disposal of an application filed under Section 23[I] of the Tenancy Act, 1971 and Assam [Temporarily Settled Areas] Tenancy Rules, 1972 [the Tenancy Rules, 1972', for short]. Since the respondent nos. 2, 3 & 4 are in seisin of the proceedings as regards the ownership rights of the petitioner in Case no. 690, the writ petition can be disposed of, at this stage, with a direction to the State respondent authorities to bring the proceedings of Case no. 690 to its logical conclusion.

8. From sub-section [1] of Section 23, it is evident that it is the Deputy Commissioner [presently, the District Commissioner] who has been specifically empowered to declare a person that an occupancy tenant who has acquired the ownership rights free from all encumbrances. As per Rule 10 of the Tenancy

Rules, 1972, the Deputy Commissioner [presently, the District Commissioner] on receipt of such an application claiming status of occupancy tenant, has to cause and make an enquiry to satisfy himself about the eligibility of the applicant to acquire the ownership right before ordering further proceedings. If the Deputy Commissioner [presently, the District Commissioner] is satisfied that there is a *prima facie* case for acquisition under Section 23, he is required to serve notices to all persons mentioned in the application at the applicant's cost and to any other person or persons, who in the opinion of the Deputy Commissioner [presently, the Deputy Commissioner] are interested in it. As per Rule 11 of the Tenancy Rules, 1972, the Deputy Commissioner [presently, the District Commissioner] has to hear all objections presented before him and to make a memorandum of the evidences, if any, adduced by the parties. For the purpose of such enquiry, he has been given all the powers of a civil court. It is after completion of the enquiry, the Deputy Commissioner [presently, the District Commissioner] has to allow the acquisition of a parcel or parcels of land by the applicant by passing a formal order in the proceedings to that effect. The Tenancy Rules, 1972 have also provided for other procedures in detail.

9. Reverting back to the facts of the case in hand, it is noticed that after registration of Case no. 690 on the basis of application submitted by the petitioner as an applicant under Section 23[1] of the Tenancy Act, 1971, the respondent no. 4 has already issued notices to the legal heirs of late Banamali Das, the erstwhile landlord under whom the petitioner has claimed right as an occupancy tenant in respect of the subject-plots. As the jurisdictional Deputy Commissioner [presently the District Commissioner] has been specifically empowered to grant ownership right on the basis of an application submitted

under Section 23[1] under the Tenancy Act, 1971 and the Tenancy Rules, 1972, this court is of the considered view that any such direction sought for in the writ petition is not required to be considered in a writ petition which the petitioner has instituted which can be termed as parallel proceeding.

10. Taking the above fact situation obtaining, this court has found force in the submission of the learned State Counsel that a direction can be given considering the fact that the proceedings is pending in the form of Case no. 690, to the respondent authorities, more particularly, the respondent nos. 2, 3 & 4 to bring the proceedings of Case no 690 to a logical conclusion as expeditiously as possible. The writ petition is accordingly disposed of with a direction to the respondent nos. 2 – 4, more particularly, the respondent no. 2 to bring the proceedings of Case no. 690, initiated on the basis of an application filed by the petitioner as an applicant under Section 23[1] of the Tenancy Act, 1971 to final conclusion as expeditiously as possible, preferably within a period of 6 [six] months from today. In the event the petitioner finds himself to be in any manner aggrieved by the formal order to be passed by the said respondents at the conclusion of the proceedings of Case no. 690, it will be open for the petitioner to resort to appropriate legal remedy as permissible under the law.

11. The writ petition is disposed of in the above terms. No cost.

JUDGE

Comparing Assistant