

GAHC010287592023



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

Case No. : WP(C)/7484/2023

RAJESH MAHATO
S/O- YOGENDRA MAHATO, R/O- VILL.- PAMOHI, MOUZA- RAMCHARANI,
P.O. AND P.S. GORCHUK, DIST. KAMRUP(M), ASSAM-781035.

VERSUS

THE STATE OF ASSAM AND 3 ORS
REPRESENTED BY THE PRINCIPAL SECRETARY TO THE GOVERNMENT OF
ASSAM, REVENUE AND DISASTER MANAGEMENT DEPARTMENT, F-
BLOCK, 1ST FLOOR, ASSAM SECRETARIAT (CIVIL), DISPUR, GHY, ASSAM,
PIN- 781006.

2:THE DISTRICT COMMISSIONER
KAMRUP(M)
ASSAM
PIN- 781031.

3:THE CIRCLE OFFICER
AZARA REVENUE CIRCLE
AZARA
GUWAHATI
ASSAM
PIN- 781017.

4:THE GUWAHATI METROPOLITAN DEVELOPMENT AUTHORITY
REPRESENTED BY CHIEF EXECUTIVE OFFICER STATFED BUILDING
BHANGAGARH
GHY-78100

For the petitioner (s) : Mr. M. Barman, Advocate

For the respondent (s) : Ms. S. Baruah, Govt. Advocate
Mr. A. Bhattacharjee, Advocate

BEFORE
HON'BLE MR. JUSTICE DEVASHIS BARUAH
O R D E R

10.01.2024

The instant writ petition has been filed by the petitioner being aggrieved by the rejection of the application seeking settlement as well as the notice dated 08.12.2023 issued by the Circle Officer, Azara Revenue Circle directing the petitioner along with two others to vacate the land within three days.

2. From a perusal of the writ petition, it reveals that the petitioner claims to be a resident of Pamohi, Gorchuk in the district of Kamrup (M), Assam.

3. It is the further case of the petitioner that since 2005, the petitioner has been residing in Dag No.515 which is admittedly a Government land by constructing an Assam Type house. This Court, at this stage, however finds it relevant to take note of that there is no document placed or record that any permission was taken for the purpose of construction of the Assam Type house from any authority or any photograph pertaining to the Assam Type house was enclosed. No records have also been placed that the Assam Type house was assessed by any authority.

4. The petitioner had stated that he has been paying the Tauzi Bahira till 2010 and thereafter no Tauzi Bahira was accepted by the Government. This Court also finds it relevant to mention that Tauzi Bahira is a form of

penalty for unauthorized use of the Government land. Be that as it may, it is very pertinent herein to mention that a perusal of Annexure-6 to the writ petition shows that the said document is dated 20.04.2022 which aspect however appears to be contrary to the pleadings.

5. It is further relevant to take note of that the petitioner claims that he had applied for settlement through the Basundhara Scheme on 02.01.2023, but the said application was rejected on 14.11.2023 on the ground that the applicant was not in possession of the land in question. The record further reveals that pursuant to the rejection of the application for seeking allotment, on 08.12.2023, the impugned notice was issued to the petitioner along with two others for vacating the land in question.

6. The record further reveals that upon the writ petition being filed, this Court vide an order dated 20.12.2023, had directed the respondent authorities to obtain instructions in the matter and further directions were issued that till the next date of listing, there shall not be any process of eviction with regard to the plot of land reflected in the impugned notice and the status-quo as regards the possession of land as on 20.12.2023 shall be maintained.

7. Today, Ms. S. Baruah, the learned counsel appearing on behalf of the respondents, and more particularly, the District Commissioner, Kamrup (M) as well as the Circle Officer, Azara Revenue Circle has placed before this Court an instruction dated 08.01.2024.

8. From a perusal of the said instruction, it reveals that the petitioner herein has encroached the land pertaining to Government Dag No.515 for which the notice under Rule 18 (2) of the Settlement Rules was issued. It

was mentioned that the petitioner had not submitted Tauzi Bahira revenue receipt till 2010. It was also stated that from the Voters Identity Card which has been enclosed to the writ petition, it reveals that the address of the petitioner is at 15 FA Raod, B. C. Das Lane, Guwahati, Bharalumukh. In fact, this Court also finds it pertinent to observe that a perusal of Annexure-5 to the writ petition also shows that the petitioner had sworn an affidavit showing that he is a resident of FA Road, Kumarpara, Guwahati-781001. Further to that, it has also been mentioned that eviction was carried out in respect to particular plot of land on 10.04.2023 and 11.04.2023. Subsequently it was observed that the land was again encroached by the petitioner for which a notice was served before 15 days prior to eviction. It was also noticed that the petitioner has started construction for which again three days has been mentioned in the notice to halt that ongoing construction. It was also mentioned that the petitioner and others had visited the Office of the Circle Officer, Azara Revenue Circle wherein it was told to them to vacate and sufficient time was granted. It was categorically mentioned that even before the receipt of the Court notice, eviction was carried out.

9. Mr. M. Barman, the learned counsel appearing on behalf of the petitioner submits that the instructions which have been placed by Ms. S. Baruah, the learned Government Advocate are misleading in as much as no eviction was carried out by the respondent authorities till date.

10. I have heard the learned counsels for the parties. It has been the categorical stand of the petitioner that the petitioner has not yet been evicted and the settlement application was rejected without taking into consideration that the petitioner was actually in possession of the land in

question.

11. This Court has also given an anxious consideration to the said submission and is of the opinion that if the petitioner was in possession of the land in question and the application was rejected on the ground that the petitioner was not in possession, then it would result in passing of a rejection of the application for settlement on non-existent ground. Be that as it may, this Court cannot also be unmindful of the fact that the respondent authorities have categorically stated that the petitioner was evicted in the month of April, 2023 and thereupon the petitioner had encroached. If that be so, then in that case, the rejection of the application for settlement would be on proper grounds. This aspect of the matter however would require an adjudication to be made by the authority concerned as to whether the petitioner had been in possession of the land in question, since 2005 as alleged.

12. The petitioner is given the liberty to file a representation to the District Commissioner, Kamrup (Metro) within 15 days from today along with all such documents evidencing that he had been in possession of the land since 2005. The District Commissioner, Kamrup (Metro) shall either by himself or through his delegatee and not below the rank of an Additional District Commissioner decide on the said representation by giving an opportunity to the petitioner to place his case.

13. This Court further directs the District Commissioner, Kamrup (M) either by himself or through his delegatee decide as to whether the petitioner was in possession of the land in question since 2005 and thereupon if it is found that the petitioner was in possession of the land since 2005, then in that case the application for settlement be

reconsidered afresh. However, if on enquiry, it is found that the petitioner was evicted and was not in possession of land since 2005, then in that case the question of again revisiting the application for settlement would not arise.

14. With the above direction and observation, the instant petition stands dismissed.

15. The instructions placed before this Court by Ms. S. Baruah, the learned counsel appearing on behalf of the respondents are kept on record and marked with the letter "X".

JUDGE

Comparing Assistant