GAHC010144372017

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

Case No. : WP(C)/6293/2017

THANESWAR BARMAN and 2 ORS.
S/O- LATE BIHBARI BARMAN, R/O- VILL- AGYATHURI, P.O- DADARA, P.S- HAJO, KAMRUP, ASSAM

2: PRADIP BARMAN

3: SARASWATI BARMA

VERSUS

THE STATE OF ASSAM and 4 ORS.
REP. BY SECRETARY, GOVT OF ASSAM, REVENUE SETTLEMENT DEPARTMENT, DISPUR, GHY

2:THE ADDITIONAL CHIEF SECRETARY

3:THE DEPUTY COMMISSIONER

4:THE ADDITIONAL DEPUTY COMMISSIONER

5:THE CIRCLE OFFICE

Advocate for the Petitioner : MR.P KAKATI

Advocate for the Respondent : GA, ASSAM

BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA

ORDER

Date : 18-11-2020

Heard Mr. M. Khataniar, learned counsel for the petitioners. Also heard Mr. J. Handique, learned Standing counsel for the Revenue Department appearing for the respondents no.1 and 2 and Ms. D.D. Barman, learned Additional Senior Government Advocate appearing for the respondents no.3, 4 and 5.

2. By filing this petition under Article 226 of the Constitution of India, the case projected by the petitioner no.1 is that he is the priest of Sri Sri Agyathuri Ganesh Mandir in Kamrup Amingaon district and the petitioners no.2 and 3 are his brother and sister respectively. It is projected that the petitioners were the joint patta holders of 1B 5L of land covered by Dag No.12, Patta No.24 of Mouza Purb Bonxo Village: Charmoujuli No.10 Lat of Hajo under North Guwahati Revenue Circle. It is also projected that about 1B of his land was taken over by State for construction of Sri Ganesh Mandir Park with a promise or assurance that the petitioners would be provided alternative land elsewhere. It is projected that by a communication dated 15.12.2014, the Deputy Commissioner, Kamrup Amingaon, (respondent no.3) proposed for allotment of 2K 10L of land for homestead purpose for the petitioners and accordingly, the District Land Advisory in its meeting held on 06.09.2013, approved the allotment proposal. It is projected that till date the alternative land has not been allotted and therefore the petitioners pray for immediately providing alternative land of 1B as promised by the respondents particularly by the respondent no.3.

3. It is seen that the notice of motion in this writ petition was issued by order dated 24.10.2017 and till date the respondents have not filed their affidavit-in-opposition.

4. It is also seen that although order was passed on 06.02.2019 directing the Revenue department to produce necessary records relating to SDLAC approval granted by meeting held on 06.09.2013 as well as the documents showing action taken by the concerned authorities, such records has not been produced till date. Under such circumstances, having seen that the State respondents have taken the land of the petitioners, and converted it into a public park, but they have not provided the petitioners with the alternative land. Hence, the Court is of the considered opinion that the petitioners have been able to make out a strong case for being granted reliefs in terms of the prayer made.

5. Having taken over the land of the petitioners after assuring them suitable alternative land, the State respondents appears to have taken the benefit of a non-gratuitous act of the petitioners, as such, the respondents are bound to specifically perform their part of the contract/ agreement. The State cannot be allowed to become a land grabber by giving false promise as has been done in this

case.

6. The Secretary to the Government of Assam, Revenue (Settlement) Department (respondent no.1) and the Additional Chief Secretary to the Government of Assam, Revenue and Disaster Management Department (respondent no.2) and the Deputy Commissioner, Kamrup, Amingaon (respondent no.3) are directed to take note of (i) the letter No.RSS.1189/2006/30 dated 08.04.2013 from the Deputy Secretary to the Government of Assam, Revenue and Disaster Management Department to the Deputy Commissioner, Kamrup whereby the representation dated 04.04.2013 by the petitioner no.1 is forwarded, as well as (ii) the minutes of the meeting held by the Deputy Commissioner, Kamrup in the Conference Hall of the Deputy Commissioner, Kamrup, Amingaon on 16.03.2017, wherein it was decided to handover land in lieu of the land taken from the petitioners for the purpose of construction of Sri Ganesh Mandir Park, which was circulated vide memo no. KMJ.36/ 2017/ GMandir/ 1/ 197 dated 17.03.2017 and signed by the Deputy Commissioner, Kamrup, Amingaon. Accordingly, the State authorities shall take appropriate steps to place the case of the petitioner before the State Level Land Advisory Committee within a period of 1(one) month from the date of receipt of the certified copy of the order and that the competent authorities including the SLLAC shall dispose of the claim of the petitioner within a period 15(fifteen) days thereafter. If any of the said authorities are unable to take a decision within the time allowed and to provide alternative suitable land to the petitioner, it is provided that the Deputy Commissioner, Kamrup would take immediate steps within a period of 1(one) month thereafter to revert back to the petitioners the same land of the petitioners which was taken over for the purpose of Sri Sri Ganesh Mandir Park. The entire exercise shall be completed within the time allowed.

7. With the aforesaid directions, this writ petition stands allowed.

8. Before parting with the records, it may be pertinent to add here that ordinarily, the Court would have granted compensatory cost equivalent to rent of the petitioner’s land to the petitioners for delay on part of the State to adhere to its promise made to the petitioners through communications made by the Deputy Commissioner, Kamrup. However, in view of time-lines provided, herein before, we refrain from imposing any compensatory cost on the respondents, jointly and severally.

9. A copy of the order may be provided to the learned Standing counsel for the respondents no.1 and 2 as well as for the respondents no.3, 4 and 5.

JUDGE

Comparing Assistant