

GAHC010005382024



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

Case No. : WP(C)/873/2024

ANIMA GOGOI
W/O- KIRAN GOGOI,
R/O- KPM CHARIALI, WARD NO-9,
P.O, P.S AND DIST- SIVASAGAR, ASSAM

VERSUS

THE STATE OF ASSAM AND 3 ORS
REP. BY THE COMMISSIONER SECRETARY TO THE GOVT OF ASSAM,
REVENUE AND DISASTER MANAGEMENT DEPARTMENT
GOVT OF ASSAM, DISPUR, ASSAM SECRETARIAT, P.O. ASSAM
SACHIVALAYA, GUWAHATI-781006

2:THE JOINT SECRETARY
TO THE GOVT OF ASSAM
REVENUE AND DISASTER MANAGEMENT DEPARTMENT

GOVT OF ASSAM
DISPUR
ASSAM SECRETARIAT
P.O. ASSAM SACHIVALAYA
GUWAHATI-781006

3:THE DEPUTY COMMISSIONER
SIVASAGAR CUM CHAIRMAN OF SUB - DIVISIONAL LAND ADVISORY
COMMITTEE
SIVASAGAR SUB- DIVISION
DIST- SIVASAGAR
ASSAM

4:THE CIRCLE OFFICER
SIVASAGAR REVENUE CIRCLE

DIST- SIVASAGAR
ASSA

Advocate for the Petitioner : MR. P J SAIKIA

Advocate for the Respondent : SC, REVENUE

BEFORE
HONOURABLE MR. JUSTICE MANISH CHOUDHURY

ORDER

21.02.2024

Heard P.J. Saikia, learned counsel for the petitioner; Ms. G. Hazarika, learned Standing Counsel, Revenue & Disaster Management Department for the respondent nos. 1 & 2; and Mr. S. Baruah, learned Junior Government Advocate, Assam for the respondent nos. 3 & 4.

2. In this Writ petition preferred under Article 226 of the Constitution of India, the petitioner has assailed a Speaking Order dated 24.07.2019 passed by the respondent no. 3, which reads as under :-

GOVT. OF ASSAM
OFFICE OF THE DEPUTY COMMISSIONER SIVASAGAR
(LAND SETTLEMENT BRANCH)

SVRS. 61/2014/87

Dated Sivasagar, the 24th July/2019

SPEAKING OEDER

Seen the prayer petition filed by Smti Anima Gogoi, W/o Shri Kiron Gogoi dated 05.11.2015 & 23.11.2015 an inhabitant of Sivasagar Town, Ward Town, Ward no. 9 near K.P.M. Chariali under Nagarmahal Mouza regarding settlement of land measuring 15 Lessas covered by Dag no. 5072 situated at Sivasagar Town under Nagarmahal Mouza.

Also seen the proposal submitted by the Circle Officer, Sivasagar Revenue Circle for settlement of land measuring 0B-OK-15L covered by Govt. Dag no. 5072 of Sivasagar Town [Part-II] under Nagarmahal Mouza vide letter no. SSRC.20/ Abonton/2014/812, dated 06.06.2014 in favour of Smti Anima Gogoi which was placed in the SDLAC, Sivasagar held on

12.01.2015 and committee approved the same vide Resolution no. 3. Accordingly, the proposal was sent to Govt. for approval vide this office letter no. SVRS.61/2014/15, dated 20.06.2015. It is noted that as per report of Circle Officer, the petitioner has a plot of Myadi patta land measuring 00B-01K-05L at Sivasagar Town, Nagarmahal Mouza covered by Dag No. 5028 of P.P No. 3083.

Perused the instruction issued by Govt vide letter no. RSS.136/2011/189 dated 29.06.2015 for settlement of land for homestead purpose in towns with eligible indigenous landless persons

Also perused the order passed by Hon'ble Gauhati High Court, Guwahati on dated 22.04.2015 in respect of W.P[C] no. 5731/2013 [Smti Amti Anima Gogoi vs. the State of Assam and others] where the Hon'ble High Court ordered to carry out the exercise by passing a Speaking Order

In view of above, I, Dr. Lakshmanan S, IAS, Deputy Commissioner, Sivasagar do hereby reject the proposal as time barred.

Deputy Commissioner,
Sivasagar

3. During the course of deliberation, it has emerged that the same writ petitioner had earlier preferred another writ petition, W.P.[C] no. 7551/2019 assailing the same Speaking Order dated 24.07.2019 passed by the respondent no. 3 whereby the petitioner's prayer for settlement of a plot of land measuring 15 Lessas, covered by Government Dag no. 5072, situate at Sivasagar Town [Part-II], Mouza – Nagarmohol, District – Sivasagar had been rejected. The said writ petition, W.P.[C] no. 7551/2019 was dismissed by Judgment and Order dated 19.12.2023.

4. For ready reference, the relevant excerpts of the Judgment and Order dated 19.12.2023 are reproduced hereinbelow :-

3. The petitioner claims to be an indigenous person. It transpires from the impugned speaking order that the petitioner submitted applications, dated 05.11.2015 & 23.11.2015, before the respondent authorities with a prayer to accord approval for settlement of the subject-plot.

4. The petitioner has stated that the petitioner had been in possession of a plot of

land since a long period of time. The petitioner had earlier approached this Court by way of a writ petition, W.P.[C] no. 5731/2013. While issuing notices to the respondents by order dated 07.10.2013, the Court had directed, as an interim measure, that possession of the petitioner in respect of a parcel of land measuring 2 Kathas 8 Lessas situate at Ward no. 9, Mouza – Nagarmohol, District - Sivasagar should not be disturbed. The subject-plot is part of the said 2 Kathas 8 Lessas in respect of which the said interim order was passed on 07.10.2013.

4.1. On the basis of the application of the petitioner seeking settlement of the subject-plot, the Circle Office, Sivasagar Revenue Circle prepared a proposal for allotment/settlement of the subject-plot and the said proposal came to be placed before the Sub-Divisional Land Advisory Committee [SDLAC], Sivasagar Sub-Division in its Meeting, held on 12.01.2015, under the chairmanship of the Deputy Commissioner, Sivasagar being the Chairman of the SDLAC. The SDLAC discussed the proposal for settlement of the subject-plot in favour of the petitioner and had thereafter, approved the same subject to realization of due premium.

4.2. Alleging that the proposal regarding settlement of the subject-plot in favour of the petitioner was not considered with due earnestness, the petitioner preferred the writ petition, W.P.[C] no. 5731/2013. The writ petition was finally disposed of by an Order dated 22.04.2015 observing inter alia to the effect that whether the particular land should be allotted to the petitioner or not, was a matter to be decided by the appropriate department of the State Government. Having regard to the nature of the grievance raised, the writ petition was disposed of by directing the State Government to examine the feasibility or otherwise of the case of the petitioner for settlement of the subject-plot and after taking such decision, to communicate the decision to the petitioner.

4.3. After disposal of the writ petition, W.P.[C] no. 5731/2013 by the Order dated 22.04.2015, a proposal was forwarded by the Circle Officer, Sivasagar Revenue Circle to the Deputy Commissioner, Sivasagar on 15.06.2015 indicating the premium amount that was required to be collected in the event of settlement of the subject-plot was made in favour of the petitioner. The proposal for settlement of the subject-plot was thereafter, forwarded to the Revenue & Disaster Management Department from the office of the

Deputy Commissioner, Sivasagar on 20.06.2015 and the Revenue & Disaster Management Department had, in turn, wrote to the Deputy Commissioner, Sivasagar on 04.11.2015 to abide the direction made in the Order dated 22.04.2015 passed in the writ petition, W.P.[C] no. 5731/2013. It was thereafter, the impugned speaking order came to be passed on 24.07.2019.

5. The main ground on which the proposal for settlement of the subject-plot in favour of the petitioner has been rejected is that the petitioner has a periodic patta land measuring 1 Katha 5 Lessas at Sivasagar Town at Mouza – Nagarmohol, District – Sivasagar.

6. It has been clarified by the learned counsel for the parties that the petitioner sought allotment of 15 Lessas of land out of Government Dag no. 5072.

7. In the counter affidavit filed by the respondent no. 3, it has been categorically asserted that the petitioner had already been allotted/settled with a plot of land measuring 1 katha 5 Lessas under new Dag no. 3083 [carved out of original Government Dag no. 5072] and Periodic Patta no. 3208 at Sivasagar Town, Mouza – Nagarmohol, District - Sivasagar and accordingly, possession of the said plot of land measuring 1 Katha 5 Lessas was also handed over to the petitioner. It has further been averred that the petitioner after taking over possession of the said plot of land settled in her favour, has been in its possession and she has been running a hotel therefrom. It has been asserted that after settlement of the plot of land measuring 1 Katha 5 Lessas in her favour, the petitioner had again applied for settlement of the subject-plot measuring 15 Lessas. It has been stated that the petitioner is in unauthorized occupation of the subject-plot since long.

8. In view of such categorical assertion from the State respondents, it is also apposite to find out the stand of the petitioner taken in the affidavit-in-reply. In the affidavit-in-reply, the petitioner has admitted that a plot of land measuring 1 katha 5 Lessas at Sivasagar Town [Part-II], Mouza – Nagarmohol, District - Sivasagar had already been settled in favour of the petitioner by carving out a new Dag no. 3083 under Periodic Patta no. 3208. It has also been admitted by the petitioner that the said settlement had been made in favour of the petitioner on 20.05.1998.

9. The matter of allotment/settlement of land – both rural and urban – are to be considered in terms of the land policies framed by the Government of Assam from time to time. At the time of passing the impugned Order dated 24.07.2019, the prevailing land policy was the Land Policy of 1989. Clause 14 of the Land Policy, 1989 has provided for ‘Settlement and Reservation of Land in Towns’. Clause 14.3 are of import and relevance for the purpose of the case in hand and the contents of Clause 14.3 are extracted hereinbelow in extensor :-

14.3.Land within Greater Guwahati notified under Government Notification no. RSR. 21/59/126 dated 1st October, 1966 and in any other Towns may be settled on payment of due premium with the indigenous persons of the State in order of preference as follows :-

[i] An indigenous person, who has no land in his name or in the name of any member of his family and who has been in occupation of Government land with members of his family for last 15 years or more.

[ii] An indigenous person, who has land in rural area of the State, but has no land in City or Town in his name or in the name of any member of his family and has been in occupation of Government land with members of his family for last 15 years or more.

[iii] An indigenous person, who has no land in rural areas or in City or Town in the State either in his name or in the name of any member of his family, and has been staying in urban area for last 15 years or more with the members of his family.

[iv] An indigenous person, who has land in rural areas, but has no land in any urban areas either in his name or in the name of any member of his family, and who has been residing in urban area for last 15 years or more with members of his family :

Provided that such person is required to reside in urban area permanently by very nature of his service/profession and who has not been able to purchase land in urban area on account of poor pecuniary conditions. [v] Other indigenous landless persons of the State.

10. As per sub-clause [i] of Clause 14.3, an indigenous person to be eligible for settlement of any plot of land in a town has to meet the twin conditions of eligibility, firstly, such person shall have no land in her/his name or in the name of any member of her/his family and secondly, such person shall be in possession of Government land with the member of her/his family for last 15 years or more. Though it is claimed that the petitioner has fulfilled the second condition of eligibility, the petitioner is found ineligible in view of the fact that the petitioner has already been settled with a plot of land measuring 1 Katha 15 Lessas in the year 1998 and as such, the petitioner is not an indigenous person who has no land in her name. The petitioner is also found to be ineligible to get settlement of any Government land in Sivasagar in terms of Clause 14.3 of the Land Policy of 1989.

11. The petitioner is found to have not fulfilling the conditions of eligibility under Clause 14.3 of the Land Policy of 1989. The reason assigned in the impugned Order to reject the claim of the petitioner and from the admitted facts emerging from the pleadings of the parties including the admission made by the petitioner herself, this Court does not find any good and sufficient reason to interfere with the impugned Order dated 24.07.2019 passed by the Deputy Commissioner, Sivasagar as the competent authority to take the final decision as regards the matter of settlement. As the writ petition is found not merited, the same is accordingly dismissed. The interim order passed earlier stands recalled. There shall, however, be no order as to cost.

5. I have perused the statements and averments made in the present writ petition. On a careful perusal of the statements and averments made in this writ petition, it is found that there is no whisper in the entire writ petition about institution and dismissal of the writ petition, W.P.[C] 7551/20219.

6. Mr. Saikia, learned counsel for the petitioner has submitted that the petitioner has not informed him about filing of the writ petition, W.P.[C] no. 7551/2019 and its consequent dismissal by the Judgment and Order dated 19.12.2023.

7. From the above discussion, it is clearly demonstrated that the petitioner has preferred the present writ petition by suppressing material facts and has, thus, approached this Court with soiled

hands.

8. In this connection, the following observations made in *Prestige Lights Ltd. vs. State Bank of India*, reported in [2007] 8 SCC 449, and *K.D. Sharma vs. Steel Authority of India Limited and others*, reported in [2008] 12 SCC 481, can be appropriately referred to.

8.1. In *Prestige Lights Ltd.* [supra], the Hon'ble Supreme Court of India has observed in the following manner :-

33. The High Court is exercising discretionary and extraordinary jurisdiction under Article 226 of the Constitution. Over and above, a court of law is also a court of equity. It is, therefore, of utmost necessity that when a party approaches a High Court, he must place all the facts before the Court without any reservation. If there is suppression of material facts on the part of the applicant or twisted facts have been placed before the Court, the writ court may refuse to entertain the petition and dismiss it without entering into merits of the matter.

8.2. The observation made by the Hon'ble Supreme Court of India in *K.D. Sharma* [supra], can be appropriately referred to :-

34. The jurisdiction of the Supreme Court under Article 32 and of the High Court under Article 226 of the Constitution is extraordinary, equitable and discretionary. Prerogative writs mentioned therein are issued for doing substantial justice. It is, therefore, of utmost necessity that the petitioner approaching the writ court must come with clean hands, put forward all the facts before the court without concealing or suppressing anything and seek an appropriate relief. If there is no candid disclosure of relevant and material facts or the petitioner is guilty of misleading the court, his petition may be dismissed at the threshold without considering the merits of the claim.

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36. A prerogative remedy is not a matter of course. While exercising extraordinary power a writ court would certainly bear in mind the conduct of the party who invokes the jurisdiction of the court. If the applicant makes a false statement or suppresses material

fact or attempts to mislead the court, the court may dismiss the action on that ground alone and may refuse to enter into the merits of the case by stating, “*We will not listen to your application because of what you have done.*” The rule has been evolved in the larger public interest to deter unscrupulous litigants from abusing the process of court by deceiving it.

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38. As per settled law, the party who invokes the extraordinary jurisdiction of this Court under Article 32 or of a High Court under Article 226 of the Constitution is supposed to be truthful, frank and open. He must disclose all material facts without any reservation even if they are against him. He cannot be allowed to play “hide and seek” or to “pick and choose” the facts he likes to disclose and to suppress (keep back) or not to disclose (conceal) other facts. The very basis of the writ jurisdiction rests in disclosure of true and complete (correct) facts. If material facts are suppressed or distorted, the very functioning of writ courts and exercise would become impossible. The petitioner must disclose all the facts having a bearing on the relief sought without any qualification.....

9. The present writ petition is found preferred with concealment of material facts, as have been alluded hereinabove. The petitioner has approached this Court abusing the process of law and as such, the writ petition is not to be entertained. Accordingly, the writ petition is dismissed imposing a cost of Rs. 25,000/- [Rupees twenty five thousand only], which amount the petitioner shall deposit with the Registry of this Court within 15 [fifteen] days from today. On deposit of the said amount, the Registry will remit the said amount in favour of ‘the Gauhati High Court Legal Services Committee’.

JUDGE

Comparing Assistant