

GAHC010016312015



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

Case No. : WP(C)/3689/2015

SMTI. BINA MIRDHA and ANR.

D/O- SUNA MIRDHA @ SONATAN MIRDHA, W/O- RAM JIBON MIRDHA,
VILL.- BALESWAR GRANT, PORGONA JALALPUR, P.S.- KATIGORAH, P.O.-
JALALPUR, DIST.- CACHAR, ASSAM, PIN- 788816.

2: KALPANA MIRDHA

D/O- SUNA MIRDHA @ SONATAN MIRDHA
VILL.- KALAIN CHERRA TEA ESTATE
P.O.- KALAIN CHERRA
P.S.- KATIGORAH, DIST.- CACHAR
ASSAM, PIN- 788814

VERSUS

THE STATE OF ASSAM AND 3 ORS

REP. BY THE COMMISSIONER and SECY. TO THE GOVT. OF ASSAM, DEPTT.
OF REVENUE and DM. SETTLEMENT BRANCH, ASSAM CIVIL
SECRETARIAT, DISPUR, GUWAHATI, ASSAM, PIN- 781006.

2:THE DY. COMMISSIONER

CACHAR, SILCHAR
ASSAM, PIN- 788001.

3:THE SETTLEMENT OFFICER

CACHAR
SILCHAR, DIST.- CACHAR
ASSAM, PIN- 788001.

4:THE ASSTT. SETTLEMENT OFFICER

KATIGORAH CIRCLE
DIST.- CACHAR
ASSAM, PIN- 788814

For petitioner(s) : Mr. M.A. Sheikh, Advocate
For respondent(s) : Mr. B.J. Talukdar, Sr. Advocate
Mr. R. Borpujari, Advocate

- BEFORE -

HON'BLE MR. JUSTICE DEVASHIS BARUAH

Date of Hearing & judgment : 30.01.2024

JUDGMENT & ORDER
(ORAL)

Heard Mr. M. A. Sheikh, learned counsel appearing on behalf of the petitioners. Also heard Mr. R. Borpujari, learned counsel appearing on behalf of respondent No. 1 and Mr. B.J. Talukdar, learned Senior Counsel, appearing on behalf of respondent Nos. 2, 3 and 4.

2. The petitioners herein, being aggrieved by the inaction on the part of the respondent authorities to allot the land and grant settlement by issuance of permanent Patta in their favour, have filed the instant writ petition. The facts as would appear from the pleadings, are that the petitioners' grandfather one Late Lakswan Mirdha was working as a workman at the Jalalpur Tea Estate in the district of Cachar. It has been mentioned in the writ petition that the said tea garden authorities had granted settlement of the plot of land in question to the grandfather of the petitioners and the grandfather of the petitioners had possessed and utilised the said land during his life time. It is also mentioned that after the death of the petitioners' grandfather, the father of the petitioners, Late Sanatan Mirdha @ Suna Mirdha was possessing and utilising the said land.

3. A plot of land comprising of 9 Bighas 1 Katha, 3 Chatak located in Mouza Baleswar Grant, Porgana Jalalpur, bearing Dag No. 256 of 2nd R.S. was acquired by the Government in terms with the provisions of the Assam Fixation of Ceiling on Land Holding Act, 1956 (for short, "Act of 1956"), as the same was ceiling surplus land. The father of the petitioners, who was in possession of the land applied for allotment of

the land. It is mentioned in the writ petition that the father of the petitioners came to learn that there was a proposal to allot some land to the father of the petitioners along with others. It is seen from the pleadings of the petitioners that specific emphasis has been made to a communication dated 21.05.1980 (Annexure-4 to the writ petition), issued by the Sub-Deputy Collector, Katigorah, to the Deputy Commissioner, Cachar, Silchar. The said communication was issued in connection to a petition filed by one Shri Alok Ahmed Laskar and 117 others praying for public road from Biswamberpur to Kushiarkul via Baleswargrant over ceiling surplus land. This Court finds it very pertinent to take note of the contents of the said communication taking into account that the entire case of the petitioners rests on the said communication. From a perusal of the communication dated 21.05.1980, it reveals that various persons had applied for allotment of land pursuant to the acquisition of the ceiling surplus land of the said tea estate under the Act of 1956. At the request of the local people, it was decided that 1 Bigha 1 Katha 13 Chatak of land from Dag Nos. 224, 254 and 256 of Mouza Baleswargrant was required for construction of the road. It was also mentioned that amongst the various persons, the petitioners' father was also proposed to be allotted 2 Bighas of land. However, the allotment certificate was not prepared and distributed and the final possession was not handed over to the proposed allottees. It further reveals from the chart, which was a part of the said communication dated 21.05.1980 that the father of the petitioners was proposed to be allotted 2 Bighas of land and, out of which 5 Katha 13 Chatak of land was to be excluded for the purpose of construction of the road and allotment could be given in respect of 1 Bigha 14 Katha 3 Chatak of land. It is the case of the petitioners that other persons have been granted settlement except the father of the petitioners and, as such, the present writ petition has been filed seeking a direction to the respondent authorities to issue permanent Patta in favour of the petitioners.

4. The record reveals that the Assistant Settlement Officer, Katigorah Revenue Circle had filed an affidavit-in-opposition on 19.02.2016 stating *inter alia* that land

measuring 9 Bighas 1 Katha 3 Chatak under 2nd R.S. Dag No. 256 of Mauza Baleswarpar Grant, Pargana Jalalpur was made ceiling khas vide L.C. Case No. 13/1974-1975 dated 07.06.1976 and allotment was made in favour of different landless people who were in occupation of the land. It was specifically mentioned that occupation of the petitioners or their father over the L.C. Khas land was not found on spot verification. There was also not trace in the record regarding allotment of the land in the name of the petitioners or their father. Further to that, it was stated that from the spot enquiry, it revealed that the petitioner's father had left the place by handing over possession of the land to others and allotment was made in favour of the people who were in occupation. It was also stated that allotment had been made for an area of land measuring 1 Bigha 14 Kathas and 3 Chatak in favour of different occupants at present. Further to that it was stated that allotment of land measuring 10 Kathas pertaining to L.C. Khas Dag Nos. 256/587 of the said Mouza and Pargana was made in favour of Lakhan Mirdha, son of Gobinda Mirdha and no trace of occupation of other legal heirs of Late Gobinda Mirdha was found. It was stated that as the petitioners were neither occupants nor allottees, so the question of conversion of allotted land to Annual Patta or periodic Patta did not arise. At paragraph 13 of the said affidavit, it was stated that on spot enquiry the petitioners were not found in possession of the L.C. Khas land. However, other people were found in occupation of the land by way of constructing house etc. It is relevant to take note from the said affidavit itself stated that the total area of the L.C. Khas Dag No. 256 was 9 Bigha 1 Katha 3 Chatak only, out of which 6 Bigha 7 Katha had been allotted to different occupants. In addition to that, an area of land measuring 8 Katha was lying under the occupation of the garden authority. Further, the Baleswar-Kushiarkul Road had been constructed over an area of 13 Katha 5 Chatak, so total area under utilization stood measuring 7 Bigha 8 Katha 5 Chatak and remaining area of the L.C. Khas Dag measuring 2 Bigha 14 Chatak only was lying under occupation of different people by way of constructing house etc. but no trace of occupation of Mirdha family was found

on the spot.

5. To the said affidavit-in-opposition, an affidavit-in-reply was filed by the petitioners, wherein it was *inter alia* mentioned that the ceiling surplus land was acquired by the Government in the year 1976, wherein the petitioners' father was in possession. It was stated that as per the Government policy initiative was taken to distribute the said land to the landless persons who were in possession. Accordingly, necessary enquiry was carried out and proposal was made to allot the land to the deserving persons including the petitioners' father vide DC's order No. 23/75-76/31 dated 07.05.1977, which is amply clear from the Annexure-4 of the writ petition. It was also mentioned that on the one hand the respondent authorities did not grant allotment in favour of the petitioners but allotted land to some other persons, who were not at entitled to.

6. It is further relevant to take note of an additional affidavit filed by the respondent Nos. 3 and 4. In the said affidavit it was stated that as the allotment of land under Dag No. 256 of Mouza-Baleswarpar Grant was made during the year 1983-84, such old order/documents were not found available with the office of the Assistant Settlement Officer, Katigorah Revenue Circle, but on the basis of such earlier order names of allottees with Dag Nos. and area allotted etc. were found recorded in the authentic 2nd R.S. Chitha Book. Amongst the three documents annexed to the said additional affidavit, Annexures-A is a letter dated 14.06.2018, issued by the Assistant Settlement Officer, Katigorah Revenue Circle, providing information in terms with the order passed by this Court. Annexure-B is the list of allottees. A perusal of the said Annexure-B, it reveals that 17 persons had been allotted land under the L.C. Khas Dag Nos. 256 in the year 1983-84. From a perusal of Annexure-C it reveals that 5 persons were found in occupation of the remaining land of the L.C. Khas land under Dag No. 256 of Mauza Baleswarpar Grant, Pargana-Jalalpur. From a perusal of Annexure-B and C, it is seen that the names of the petitioners or their father is not reflected therein.

7. To the additional affidavit filed by the respondent Nos. 3 and 4, an additional affidavit-in-reply was filed by the petitioners stating *inter alia* that the land in question measuring 1 Bigha 14 Katha 3 Chatak is in clear possession of the petitioners and there is none in occupation of the said land except the petitioners. Further to that, another affidavit-in-reply was filed by the petitioners stating *inter alia* that the list of allottees enclosed to the additional affidavit as Annexure-B is not connected with the land in question measuring 1 Bigha 14 Katha 3 Chatak covered by Dag No. 256, Mouza-Baleswar Grant, Porgona-Jalalpur and that the petitioners are in possession of the said land and there is no other occupants over the said land.

8. In the backdrop of the above pleadings, this Court had heard the learned counsel appearing on behalf of the petitioners as well as the learned counsel for the respondents.

9. The question which arises before this Court is whether a writ can be issued in the present facts and circumstances for the purpose of issuance of Patta in favour of the petitioners. Admittedly, a plot of land measuring 9 Bigha 1 Katha 3 Chatak was acquired in terms with the provisions of the Act of 1956. The petitioners' case is that the father of the petitioners was in occupation of 2 Bighas of the aforesaid land and, accordingly, he filed an application for settlement. The entire thrust of the petitioners' case is on the basis of the communication dated 21.05.1980, which records that there was a proposal to allot land to the petitioners' father, excluding an area of 0 Bigha 5 Katha 13 Chatak from the originally proposed 2 Bigha of land. The said communication dated 21.05.1980 further shows that it was proposed that allotment of 1 Bigha 14 Katha 3 Chatak of land could be made in favour of the father of the petitioners. Be that as it may, the fact remains that there was no allotment made in favour of the petitioners' father or the petitioners. The communication dated 21.05.1980 only evidences that there was a proposal for granting settlement to the father of the petitioners. It reveals from the record, more particularly, the affidavit-in-opposition and as well the additional affidavit filed by the respondent authorities that within the

total land, which was acquired under the provisions of the Act of 1956, 6 Bigha 7 Katha of land had already been allotted to different occupants and the list containing the names of such occupants could be found in Annexure-B to the additional affidavit. An area of land measuring 8 Katha is still lying with the garden authority from whom the land in question had been acquired. An area measuring 13 Katha 5 Chatak has already been used for construction of road and an area measuring 2 Bigha 14 Chatak is lying in occupation of different persons. However, a perusal of Annexure-C to the additional affidavit shows that an area measuring 1 Bigha 12 Katha 14 Chatak under Dag No. 256 is in occupation of other persons.

10. A fundamental question has arisen in the instant proceeding is as to how allotment/settlement can be made in respect of a land which has been acquired under the provisions of the Act of 1956. Chapter-III of the Act of 1956 stipulates the manner of disposal of Khas land. In terms with Section 16, disposal of the Khas land has to be made in favour of those persons who are cultivating tenants. Admittedly, the petitioners' father or the petitioners are not cultivating tenants. Therefore, the question arises as to whether the petitioners would be entitled for grant of settlement in terms with Section 17 which stipulates that if disposal of the Khas land cannot be made in terms with Section 16, then Section 17 would resorted to. Section 17(1) clearly stipulates that settlement has to be done in terms with Section 12 of the Assam Land and Revenue Regulation, 1886, or the Settlement Rules as framed under the provisions of the Assam Land and Revenue Regulation, 1886. Interestingly, a perusal of sub-section (3) of Section 17 would show that there is a stipulation, under which preference is required to be given. It stipulates that preference shall be given as far as practicable to the following categories of persons in the order of narration, i.e. (a) landless cultivator who has been rendered homeless due to flood, erosion or earthquake, (b) landless cultivator, (c) Agricultural Farming Corporation as defined in the Assam Agricultural Farming Corporation Act, 1973. This Court finds it relevant to observe that sub-section (3) of Section 17 only states that "*preference has to be*

given", meaning thereby that if there are persons falling within the categories as mentioned in sub-section (3) of Section 17, they are to be given preference against other persons in the matter of giving allotment. There is yet another relevant consideration to be taken note in the present proceeding is the Land Policy of Assam, 2019, which stipulates at Clause 2 as to how land is to be disposed in respect to lands acquired under the Act of 1956. Clauses 2.4 and 2.5 of the Land Policy of Assam, 2019 being relevant are reproduced herein below:

"2.4. The unoccupied ceiling acquired land not yet allotted/settled may be allotted expeditiously to the deserving indigenous landless persons as per provisions of the Act and in pursuance to the Land Policy of the Government.

2.5. Persons belonging to Tea and Ex-Tea garden community will be given preference in allotment of land acquired from tea estates under the Assam Fixation of Ceiling on Land Holdings Act, 1956 (as amended)."

11. Another significant aspect to take note of is Section 11 of the Act of 1956, which stipulates that the Collector is required to proceed to take possession of the land transferred and, for that purpose, he can use force as may deem necessary. Therefore, it is not understandable as to how 8 Katha of land is still lying in possession of the tea estate, as has been stated in the affidavit filed by the Settlement Officer. Further to that, from the affidavit so filed by the Settlement Officer, it reveals that 2 Bighas 14 Chatak of land had not been settled and is presently under the occupation of different people by constructing house etc., meaning thereby that apart from the 8 Katha of land lying in the occupation of the garden authority, there is additional 2 Bigha 14 Katha of land under the occupation of other persons without any allotment having been granted to them. In addition to the above, this Court also finds it very pertinent to observe that in the Annexure-C to the additional affidavit, it is also mentioned that 1 Bigha 12 Katha 14 Chatak of land is in occupation of some other persons, who had not been granted allotment.

12. In the backdrop of the above analysis, the question therefore arises as to whether a direction should be passed for granting settlement in favour of the

petitioners on the basis of the communication dated 21.05.1980. As already stated above, it needs to be mentioned that there has been no order of allotment made in favour of the petitioners or their predecessor-in-interest. However, in view of the assertion of the petitioners that they are still in occupation of the plot of land in question, which, however, have been denied by the respondents, this Court is not in a position to adjudicate upon the issue whether the petitioners are still in occupation of the land in question or not. Be that as it may, considering the matter in its entirety, this Court is of the opinion that if the petitioners are in occupation of the lands, then the petitioners are required to be considered for the purpose of allotment inasmuch as, admittedly, there are lands which are yet to be settled or allotted. This, however, would be subject to verification whether the petitioners are actually in occupation of the land in question.

13. Considering the above, this Court, therefore disposes of the instant writ petition thereby directing the District Commissioner, Cachar, to make an enquiry by himself or through his delegate as to whether the petitioners are in occupation of the land in question and if it is found that the petitioners are in occupation of the land, which is yet to be settled/allotted and the land falls within the ambit of Khas land, the petitioners be considered for grant of settlement/allotment of the land. The said exercise be completed within a period of six months from the date a certified copy of the instant order is served upon the District Commissioner, Cachar. The petitioners are given the liberty to produce necessary papers/documents on the basis of which they claim their right to allotment/settlement over the said land.

The writ petition stands disposed of in terms of the above observations and directions.

JUDGE

Comparing Assistant