GAHC010026312022

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

Case No. : WP(C)/1057/2022

MD. SALAK UDDIN
S/O. ASHID MIYA, R/O. BISHNUPALLY, WARD NO.17, P.O. AND P.S. HOJAI, DIST. HOJAI, ASSAM, PIN-782435.

VERSUS

THE STATE OF ASSAM AND 2 ORS
REP. BY THE COMM. AND SECY. TO THE GOVT. OF ASSAM, REVENUE DEPTT., DISPUR, GUWAHATI-06.

2:THE DEPUTY COMMISSIONER

NAGAON
DIST. NAGAON
ASSAM.

3:THE SUB-DIVISIONAL OFFICER (CIVIL)

SANKARDEV NAGAR
HOJAI
DIST. NAGAON
ASSAM

For the Petitioner(s) : Mr. P. K. Roychoudhury, Advocate

For the Respondent(s) : Mr. D. Saikia, Advocate General, Assam

: Mr. R. Borpujari, SC, Revenue

: Mr. B. D. Deka, Amicus Curiae

Date of Hearing : **30.05.2024**
Date of Judgment : **27.06.2024**

BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH
HONOURABLE MR. JUSTICE ARUN DEV CHOUDHURY

JUDGMENT AND ORDER (CAV)

Heard Mr. P. K. Roychoudhury, the learned counsel appearing on behalf of the Petitioner. Mr. D. Saikia, the learned Advocate General assisted by Mr. R. Borpujari, the learned Standing counsel, Revenue Department, Government of Assam appears for the State of Assam. We have also heard Mr. B. D. Deka, the learned Amicus Curiae.

2. The present writ petition was filed by the Petitioner herein claiming inter alia that he is in occupation of a land measuring 2 Kathas 10 Lechas covered by Dag No.8 (Part) situated at Paschim Dhaniram Pathar, Hojai, Assam for the last 10 years. The Petitioner thereupon had constructed a house and his family is residing therein. It is the further case of the Petitioner that there is a Grazing Reserve called Dhaniram Pathar Grazing Reserve under Jogijan Mouza, Hojai which is covered by Dag No.8 (Part). It was the further case of the Petitioner that this Dhaniram Pathar Grazing Reserve was constituted about 50 years back for the benefit of the people of the surrounding villages. However, many of the families who were landless were given settlement of land by the Government in one corner of the said Grazing Reserve. It is also claimed by the Petitioner that the Petitioner has been paying the land revenue to the competent authority and had also approached the appropriate authority for settlement of the land in favour of

the Petitioner inasmuch as the Grazing Reserve land was de-reserved. It is also alleged that the Respondents are in the process to evict the Petitioner from the possession of his land that too without notice and due procedure. It is under such circumstances, the instant writ petition was filed seeking direction upon the Respondent Authorities to consider the case of the Petitioner for settlement of land measuring 2 Kathas 10 Lechas covered by Dag No.8 (Part) situated at Paschim Dhaniram Pathar under Jogijan Mouza in the District of Hojai, Assam in favour of the Petitioner. Pending disposal of the writ petition, the Petitioner had sought for a direction upon the Respondent Authorities not to evict the Petitioner from the land in his possession.

3. Upon the writ petition being filed, it was contended on behalf of the Petitioner before the learned Single Judge that without issuance of any notice under Rule 18(2) of the Settlement Rules framed under the Assam Land and Revenue Regulations, 1886 (for the sake of convenience referred to as "the Regulation"), the Petitioner cannot be evicted from the land under his possession and in that regard, the Petitioner referred to the judgment of the Single Bench of the Court in the case of ***Bimal Chandra Das Vs. State of Assam*** *reported in* ***2018 (1) GLR 30*** wherein it was observed that without issuance of a notice under Rule 18(2) of the Settlement Rules, the State Respondents cannot evict the Petitioner therein. On the other hand, the Revenue Department of the Government of Assam contended before the learned Single Judge that the provision of Rule 18(2) of the Settlement Rules empowered the authorities to evict any person in possession of reserved land including a land reserve for grazing of village cattle and for any other purpose without issuance of prior notice before eviction. The learned counsel

representing the Revenue Department placed another judgment of the Single Bench in the case of ***Kundargaon Anti Eviction Action Committee Vs. State of Assam and Others*** *reported in* ***(2006) 3 GLR 99*** wherein it was held that Sub-Rule (2) of Rule 18 of the Settlement Rules does not provide any notice before eviction.

4. In view of the conflicting opinions delivered by two Single Benches, the learned Single Judge vide an order dated 18.02.2022 referred the issue before the learned Division Bench for settling the law as to whether any notice is required prior to initiation of action under Rule 18(2) of the Settlement Rules. On the basis of the said reference being made by the learned Single Judge in its order dated 18.02.2022, the matter was laid before the learned Chief Justice of this Court on the administrative side and thereupon a Special Division Bench was constituted to decide the point of law which was referred by the learned Single Judge in its order dated 18.02.2022.

5. On 19.03.2024, when the matter was placed before us, we heard the matter and raised certain queries which touches on the question referred to us. The queries so raised were as follows:

(i) Rule 18(2) of the Regulation prior to its amendment vide notification dated 21.03.1997 only dealt with lands which were previously reserved for roads or roadside lands or for grazing of village cattle or for other public purpose or when a person who had entered into possession of the land from which he had been excluded by general or special order. However, after the amendment, vide notification dated 21.03.1997, Rule 18(2) further included Government khas land or waste land or estate over which no person had

acquired the right of proprietor, land holder or settlement holder in addition to the earlier lands which were included within the purview of Rule 18(2) of the Settlement Rules. We pointed out that post amendment, the only bar to exercise the jurisdiction under Rule 18(2) of the Settlement Rules is if there is a bonafide claim of right involved. We therefore queried upon the counsels including the learned Advocate General as to who would decide as to whether there is a bonafide claim of right involved and if the Revenue Authorities are required to decide, how would the Revenue Authorities know about the existence of a bonafide claim of right involved if no notice is issued or an opportunity not granted to the possessor/occupant to state as to whether he/she has a bonafide claim of right involved.

(ii) We further drew the attention of the counsels to the provisions of Sections 12, 13, 32, 33, 34 and 35 of the Regulation which stipulate how waste lands can be settled. We referred to the Settlement Rules which have framed in terms with Section 12 and 29 of the Regulations which specifically deals with the powers and procedure to be followed for granting settlement by the settling authority subject to such directions and orders passed by the State Government. We further brought to the notice of the counsels the Land Policy, 1989 as well as the Land Policy, 2019, whereby the State Government had framed policies as to whom and how the settlement is to be made in respect to the lands which now falls within the ambit of Rule 18(2) post the 1997 amendment. Specifically referring to Clause 14 of the Land Policy of 2019, we queried as to what yardstick/guideline the Revenue Authority or the State Government would follow inasmuch as in absence of a notice being issued, can it be left to the absolute discretion of the Revenue Authorities whom to settle the land or whom to evict. In other words,

whether the absence of the necessary guidelines/parameters would render the powers violative of Article 14 of the Constitution.

(iii) We further queried as to whether the principles of proportionality which is a facet of Article 14 of the Constitution can be applied to the extraordinary powers of the Revenue Authorities under Rule 18 taking into account the absence of guidelines.

(iv) We further enquired as to whether the principles of natural justice which are facets of Article 14, 19 & 21 of the Constitution are not required to breathe into the provisions of Rule 18(2) of the Settlement Rules in order to retain its constitutional validity or whether the exceptions to the principles of natural justice would be applicable.

6. On the basis of broad queries being raised, the learned Advocate General as well as the learned counsel for the Petitioner sought for accommodation to address us on the above queries and accordingly, we fixed the matter on 30.04.2024. On 30.04.2024, when the instant proceedings was laid before us, we taking into account that a question of great public importance is involved, were of the opinion to appoint an Amicus Curiae to assist the Court in the matter and accordingly we appointed Mr. B. D. Deka, the learned counsel as the Amicus Curiae in the instant proceedings and thereby fixed the matter on 16.05.2024 for hearing.

7. **SUBMISSIONS MADE BY THE COUNSEL OF THE PETITIONER**:

(A) Mr. P. K. Roychoudhury, the learned counsel appearing on behalf of the Petitioner gave a brief history of the land system as it prevailed prior to the British period and post. The reason for giving the sketch is to show how

waste lands came into existence. He submitted that the grants which were made by the Ahom Kings were divided into three classes namely Debottar (dedicated to idols), Dharmattar (dedicated to religious purpose) and Brahmattar (dedicated to priests). The other lands were allowed to be cultivated by Paiks who were allotted two Puras (8 Bighas) of Rice Land free of rent. Each Paik was allowed a piece of land for his house and garden for which he paid Rs.1/- as house tax or poll tax. Non-cultivators paid higher rate of poll tax. Mr. P. K. Roychoudhury, the learned counsel submitted that the British Government acknowledged Debottar Grants which included Bhogdani and Paikan lands as Lakhiraj or Revenue free. However, the other two classes of lands were assessed to half the ordinary rates of Revenue and therefore were known as Nisfkhiraj or half Revenue Paying Estates. Thereupon, the British Government prepared Waste-Land Grant Rules for special cultivation and Settlement Rules for ordinary cultivation. The Revenue Free Waste-Land Grants were for encouragement of growth and expansion of tea industry in Assam. The rates at which such Grant were sold on Revenue Free terms were almost equal to or even less than what an ordinary cultivator would pay to the Government for a year of cultivation. This created disparity and in-equality in enjoyment of land rights and privileges between grant-holders and ordinary cultivators. It is under such circumstances, the Assam Assessment of Revenue Free Waste Land Grants Act, 1948 was enacted providing for assessment of Revenue Free Waste Lands of Tea Grants. Further to that, as large areas of these tea Grants were lying unutilized and waste while numbers of landless cultivators were increasing in order to make available these unutilized lands to landless cultivators for growing crops, the Assam Land (Requisition and Acquisition)

Act, 1948 was enacted. Further he submitted that in respect to settlement for ordinary cultivation, New Lease Rules, 1876 were framed whereby the Revenue was assessed at a concessional rates for several years at the beginning and thereafter at the rate as of other lands in the neighbourhood. The period of grant was for 30 years with the right of renewal. After the New Lease Rules of 1876, the land rights and administration of land saw the introduction of the Assam Land and Revenue Regulation, 1886 i.e. the Regulation.

(B) Mr. P. K. Roychoudhury submitted that Section 6 of the Regulation recognizes the following rights over the lands.

(a) Rights of Proprietors, Land-Holders, Settlement holder;

(b) Rights legally derived from any right of Proprietors, Land Holders and Settlement holders;

(c) Rights acquired under Section 26 and 27 of the Indian Limitation Act, 1877;

(d) Rights acquired by any person as tenant under the Rent Law for the time being in force.

He therefore submitted that as a corollary to Section 6 of the Regulation, it would be apparent that lands over which no proprietor, Land-holder or Settlement-holder has any right are solely at the disposal of the State Government. The learned counsel therefore submits that such lands which are at the disposal of the State Government are disposed of in the following manner

(i) By way of grant or lease to individuals

(ii) By allotment for the purpose of grazing-ground

(iii) By allotment for jhum cultivation

(iv) By constitution of proclaimed fisheries and by leasing out such fisheries.

(C) The learned counsel for the Petitioner submitted that Rule 18 of the Settlement Rules deals with such ejectment of persons from waste land and reserved land. As per his submissions, there are two categories of Government Land, (a) Land reserved for specific public purpose and (b) Land lying unsettled which is known as waste-land. The purpose of ejectment is that an occupant of a land over which no person had acquired the rights of a Proprietor, Land-holder or Settlement-holder would obviously be an unauthorized occupant of Government land. He submitted that the procedure for ejectment varies in each case inasmuch as Rule 18(2) of the Settlement Rules conceives of a situation of forthwith ejectment and the Deputy Commissioner may sell, confiscate or destroy any crop raised, or any building or any other construction erected without authority on the land. In contradistinction, Rule 18(3) of the Settlement Rules permits ejectment preceded by publication of notice requiring the occupant generally to vacate the land and to remove the buildings, houses, fences or crops etc. which may have been raised on such land specified in the notice, within 15 days of its publication. He further submitted that the power of the Revenue Authorities under Rule 18(2) of the Settlement Rules can be only exercised when there is no bonafide claim of right involved. Referring to the judgment

of the learned Division Bench of this Court in the case of ***Kamala Kanta Deka Vs. State of Assam and Others*** *reported in* ***1983 (2) GLR 258***, the learned counsel submitted that the learned Division Bench of this Court had categorically held that in a summary proceedings under Rule 18 of the Settlement Rules, the Authority is not to adjudicate any complicated questions of possessory right or title of the occupant. It was also opined that if the Revenue Authority finds that there exist semblance of claim of bonafide right, the Revenue Authority should not proceed under Rule 18(2) of the Settlement Rules. The learned counsel for the Petitioner submitted that a perusal of Paragraph No.13 of the said judgment would show that what would constitute a bonafide claim of right involved.

(D) The learned counsel submitted that the language of Rule 18(2) of the Settlement Rules makes it explicit that it is for the authorities to satisfy itself as to whether or not any bonafide claim of right is involved. He submits that a harmonious construction of the ratio in the case of ***Kamala Kanta Deka (supra)*** and the prescription of Rule 18(2) of the Regulation would invariably go to show that Rule 18(2) does not prescribe issuance of notice prior to ejectment. As such, the natural corollary would be that such subjective satisfaction or for that matter, existence or non-existence of a bonafide claim of right involved has to be reached by the jurisdictional authorities through a process to be followed namely:

(a) Basing on an adjudication by a Civil Court of competent jurisdiction; or

(b) Basing on an adjudication by the jurisdictional authorities by taking resort to other provisions of law; or

(c) Basing on an adjudication by the jurisdictional authority by taking resort to some other law.

The learned counsel for the Petitioner therefore submitted that the law laid down by the Division Bench in the case of ***Kamala Kanta Deka (supra)*** still holds the field and as such if notice is not to be issued prior to the issuance of Rule 18(2) Settlement Rules, the only manner in which the Revenue Authorities can exercise the power under Rule 18(2) of the Settlement Rules is by taking the three steps as stated above.

(E) The learned counsel for the Petitioner submitted that the Government of Assam recently came up with the Land Policy, 2019. Clause 14.4 of the Land Policy of 2019 gives one category of parameter which if satisfied, there would be no ejectment inasmuch as the Land Policy, 2019 being later in point of time protects those persons from ejectment who satisfy the pre-conditions prescribed in Clause 14.4 of the Land Policy, 2019. Further to that, he submits that any move to evict an indigenous landless person by the jurisdictional authority in exercise of powers under Rule 18(2) of the Settlement Rules would have to be invariably construed to have undertaken after subjective satisfaction of the absence of the pre-conditions enumerated in Clause 14.4 of the Land Policy, 2019 as otherwise such a person would qualify for a consideration for settlement. However, if such a person is not an indigenous landless person, then such a person would have a right to have his/her bonafide claim over the land in context adjudicated in the manner elaborated in the case of ***Kamala Kanta Deka (supra)***.

(F) The learned counsel for the Petitioner further referring to Section 154(1)(n) as well as Section 154A of the Regulation submitted that the said

provisions bars the jurisdiction of the Civil Court in respect to actions taken for ejectment as well as any act done or purported to be done under Rule 18 of the Settlement Rules. The learned counsel further submits that Article 19(1)(e) of the Constitution is a freedom guaranteed to a citizen to reside and settle in any part of India. This right is however subject to reasonable restrictions which has to be in the interest of general public. The restrictions enumerated in Rule 18(2) of the Settlement Rules is that a person who enters into possession of Government Khas land or waste land who has not acquired the right of a proprietor, land holder or settlement holder and where further there is no bonafide claim of any right involved, he/she may be ejected or ordered to vacate the land forthwith. In Rule 18(3) of the Settlement Rules, ejectment shall be proceeded by publication of a notice requiring the occupant generally to vacate the land within 15 days from the date of publication of the notice. The learned counsel therefore submitted that the above Rule 18 determining the necessary and sufficient conditions for limitation of a constitutionally protected right by a law, to be constitutionally permissible has to satisfy the test of proportionality. The law imposing restrictions will be treated as proportional if it is meant to achieve a proper purpose and if the measures taken to achieve such a purpose are rationally connected to the purpose and such measures are necessary. The exercise which therefore is to be undertaken is to find out as to whether the limitation of constitutional rights is for a purpose that is reasonable and necessary in a democratic society and as such, an exercise involves the weighing of competitive values and ultimately an assessment based on proportionality i.e. balancing of different interest.

(G) The learned counsel therefore submitted that before an authority takes

a summary eviction proceedings, it must consider whether there exists any bonafide claim of right involved of the possessor/occupant. The Rule making authority itself consider that even Government lands, there might be a bonafide claim of right of the possessor/occupant involved and accordingly made in the condition that only when there exist no bonafide claim of right involved, the authority can exercise powers under Rule 18(2) of the Settlement Rules. The learned counsel therefore submitted that for the authority to consider the nature of the claim of the occupier or the possessor before taking summary action under Rule 18(2) of the Settlement Rules, an opportunity provided to the occupier or the possessor prior to initiation of any action under Rule 18(2) of the Settlement Rules is to be infused to Rule 18(2) of the Settlement Rules.

8. **SUBMISSION OF THE LEARNED ADVOCATE GENERAL, ASSAM**:

(A) A plain reading of Rule 18(2) of the Settlement Rules makes it clear that the said Rule do not conceive of issuance of any notice prior to taking action for eviction. He submitted that the reason behind framing of the said Rule is clear from reading of the Settlement Rules itself. Drawing the attention to Rule 5 of the Settlement Rules, the learned Advocate General submitted that application for lease of waste land shall be in writing and shall be presented to the Deputy Commissioner or to such other Officer as may be empowered by the Deputy Commissioner under Rule 3. He submitted that upon such application filed, the Deputy Commissioner or such other person as may be empowered by the Deputy Commissioner shall either reject the application or grant the lease or allow it in part. The learned Advocate General further referring to Rule 15 of the Settlement Rules

submitted that no person shall have any right to settlement merely because he is in occupation of land not included in any lease granted by the State Government either to himself or to any other person. The learned Advocate General therefore submitted that a person has no right for settlement merely because he is in occupation of land which is not included in any lease granted by the State Government either to himself or to any other person. Drawing reference to Rule 16, he submitted that there is an express provision in the Settlement Rules stating that no person shall enter into possession of waste land in any area until a lease have been issued to him or otherwise a written permission by the Deputy Commissioner have been granted to him, pending issuance of such lease to enter into possession. The learned Advocate General therefore submitted that any person who enters without a lease or a written permission as visualized in Rule 16 of the Settlement Rules is nothing but an encroacher of the Government lands. The natural corollary to the above as per the learned Advocate General is that as an encroacher of a Government land, the said person has no right to remain in possession of Government lands. Consequently, the Deputy Commissioner or such person who is duly authorized can take recourse to forthwith eviction and there is no requirement of issuance of any notice whatsoever.

(B) The learned Advocate General further submitted that cases falling under Rule 18(3) of the Settlement Rules are those cases where the Deputy Commissioner had granted permission pending issuance of lease or for that matter, when on account of floods or for some reason or the other where the Government needs to relocate certain persons, permissions are accorded by the Government or the Deputy Commissioner to possess for the time being, it is only in such circumstances, Rule 18(3) of the Settlement Rules would be

applicable whereby the possessor would be asked to vacate within 15 days from the date of publication of the notice so that the possessor is not put to inconvenience as the possessor had duly entered into possession on the basis of permission. The learned Advocate General therefore submitted that no person whosoever has a right to occupy the land of the Government and as such, the Government would be within its powers to forthwith evict any person who had entered into possession without permission which is the mandate of Rule 18(2) and in the case where permission is being granted, then the Deputy Commissioner or such other person duly authorized would be within its power to issue a notice asking the occupant or the possessor to vacate within 15 days. The learned Advocate General submitted that if any other construction is given to the provisions of Rule 18(2) or Rule 18(3), it would have far reaching affect on the rights of the Government on its own land. The learned Advocate General therefore submitted that the Co-ordinate Bench of this Court in their judgment and order dated 17.02.2023 in PIL No. 76/2021 (***All India Kishan Mazdoor Sabha and Others Vs. State of Assam and Another***), ***Md. Ishaque Ali and Others Vs. The State of Assam and Others*** reported in ***(2016) SCC OnLine Gau 390*** and ***Deben Das and Others Vs. The State of Assam and Others*** *reported in* ***2016 (4) GLT 1185*** had categorically held that an encroacher has no right to remain in possession of Government lands. In that regard, the learned Advocate General also referred to the judgment of the Supreme Court in the case of ***State of Assam and Others Vs. Radha Kanoo (SMT) and Others*** *reported in* ***(1996) 8 SCC 692.***

(C) The learned Advocate General further submitted that the learned Single Benches of this Court in the cases of (i) ***Monikha Borah and 19 Others Vs. State of Assam*** (judgment dated 14.12.2023 in WP(C) No.6569/2023); (ii)

Rupjyoti Bora Buragohain and 9 Others Vs. State of Assam and Others [judgment dated 03.03.2023 in WP(C) No.1156/2023]; (iii) ***Taher Ali Vs. State of Assam and 2 Others*** [judgment dated 26.09.2019 in WP(C) No.6158/2019] and (iv) ***Md. Khorshed Ali Vs. State of Assam and Others*** *reported in* ***2010 (5) GLR 258*** has categorically held that Rule 18(2) of the Settlement Rules do not provide for any issuance of notice before eviction and the authorities were therefore justified in taking steps under Rule 18(2) of the Settlement Rules even without issuance of notice.

(D) The learned Advocate General further submitted that the Respondent Authorities have the requisite details of all lands as they are the custodian of the land records. The Respondent Authorities are aware as to who is in possession of Government lands that too without any lease or permission. Under such circumstances, when the said aspect of the matter is clear on the basis of the records, issuance of show cause notice prior to taking action under Rule 18(2) or even 18(3) of the Settlement Rules do not arise as the same would be an empty formality. He further submitted that taking into account the recent cases which came up before the learned Single Benches, the reference to which we have made hereinabove, the Respondent Authorities when necessary issued notice thereby granting sometime to vacate or taking into account the exigencies takes steps for forthwith eviction. This is permissible in view of the very mandate of Rule 18(2) of the Settlement Rules which categorically stipulates that the person may be ejected or ordered to vacate the land forthwith. He further submitted that the use of the word 'forthwith' duly shows that immediate action is the prescription and not issuance of notice.

(E) On the question of proportionality of the actions of the Respondent Authorities, the learned Advocate General drew the attention of this Court to the judgment of the Supreme Court in the case of ***Commissioner of Police and Others Vs. Syed Hussain*** *reported in* ***(2006) 3 SCC 173*** and referred to paragraph No.13 wherein the Supreme Court observed that the doctrine of proportionality has to be applied in appropriate case as the depth of judicial review will depend on the fact and circumstances of each case. The learned Advocate General also referred to the judgment of the Supreme Court on the aspect of proportionality in the case of the ***Union of India and Another Vs. G. Ganayutham*** *reported in* ***(1997) 7 SCC 463*** and submitted that when there is no allegation of offending fundamental freedoms, the question of going into the principle of proportionality need not be gone into. In that regard, he referred to paragraph Nos. 10 to 29 of the said judgment.

(F) The learned Advocate General further drew the attention of this Court to the judgment of the Supreme Court in the case of ***Raghunath Rai Bareja and Another Vs. Punjab National Bank and Others*** *reported in* ***(2007) 2 SCC 230*** more particularly to paragraph No. 50 and submitted that when the language of Rule 18 of the Settlement Rules is plain and unambiguous, it would not be proper on the part of this Court to interfere with. He submitted that only when the language employed by the legislature is doubtful or ambiguous or leads to some absurdity, the question of interpreting the language of the said provision may be necessary. However, when the language is plain and explicit and does not admit of any doubt, the Court cannot by reference to any assume legislative intent, expand or alter the main meaning of an expression employed by the legislature. He further submitted that when Rule 18 of Settlement Rules has not been put to

challenge, the question of giving any other interpretation to Rule 18 of the Settlement Rules does not arise.

9. **SUBMISSION OF THE LEARNED AMICUS CURIAE**:

(A) A reading of Rule 18(2) of the Settlement Rules shows that the power to carry out forthwith eviction or issue notice to vacate forthwith imposes also a corresponding duty upon the authority to find out that there is no bonafide claim of right involved. Explaining the term "bonafide claim of right involved", he submitted that the term bonafide claim had come up for interpretation before the Supreme Court in the context of an offence under Section 380 of the Indian Penal Code in the case of ***Suvvari Sanyasi Apparao And Anr vs Boddepalli Lakshminarayana*** *reported in* ***AIR 1962 SC 586*** wherein the Supreme Court observed that when a bonafide claim of right exist, it can be a good defence in a prosecution for theft. It was observed by the Supreme Court that an act does not amount to theft unless there be not only legal right but also no appearance or colour of a legal right. In a subsequent judgment, the Supreme Court in the case of ***Chandi Kumar Das Karmakar and Another Vs. Abanidhar Roy*** *reported in* ***AIR 1965 SC 585*** further explained the expression "colour of a legal right" to mean not false pretence but a fair pretence and not a complete absence of a claim put a bona fide claim however weak. He therefore submitted that the question of finding out as to whether the occupier or a possessor had a bona fide claim of right involved, the same ought to be on the basis of putting the occupier/possessor to notice so that the occupier/possessor can place the materials before the authority as to whether they have a bonafide claim of right involved.

(B) The learned Amicus Curiae drew the attention of this Court to the

judgment of the learned Division Bench of this Court in the case of ***Bandhana Goala Vs. Assam Board of Revenue and Others*** *reported in* ***AIR 1972 Assam & Nagaland 11*** wherein the learned Division Bench of this Court had held that Rule 18 was violative of Article 14 of the Constitution on the ground that Rule 18 of the Settlement Rules deals with eviction of encroachers on Government land in a summary manner and the Government's right to evict trespassers by recourse to Civil Court is neither barred under the Settlement Rules nor under any other provisions in the Regulations. On the basis thereof, the learned Division Bench of this Court in ***Bandhana Goala (supra)*** opined that being the position, there were two alternative remedies available to the Government to deal with trespassers. The first one is under Rule 18 of the Settlement Rules and the second, when the Government so chooses to do so by filing a suit in the Civil Court. It was also opined by the learned Division Bench in the said judgment that neither there was a guidance in the Settlement Rules nor under the provisions of the Regulations as to under what circumstances the first remedy would be invoked and the second remedy would not be. On the basis thereof, the learned Division Bench of this Court held that Rule 18 of the Settlement Rules was clearly discriminating following the judgment of the Supreme Court in the case of ***Northern Indian Caterers Private Ltd. Vs. State of Punjab and Another*** *reported in* ***AIR 1967 SC 1581***. The learned Amicus Curiae further drew the attention of this Court that on 04.06.1971, the said judgment in the case of ***Bandhana Goala (supra)*** was pronounced. Immediately thereafter on 28.11.1971, amendments were carried out to the Regulations whereby Section 154 (1)(n) and Section 154A were inserted to the Regulations. The learned Amicus Curiae further submitted that the

question of bar imposed under Section 154(1)(n) and Section 154A of the Regulation was dealt with by the Full Bench of this Court in the case of ***Daulatram Lakhani Vs. State of Assam and Others*** *reported in* ***(1989) 1 GLR 131***. In the said judgment, the Full Bench of this Court categorically held that the jurisdiction of the Civil Court would not be bar in the following cases:

(a) When the order under Rule 18 is patently illegal or without jurisdiction;

(b) Where the remedy provided by the Regulation to adjudge the objection raised is not sufficient;

(c) Where complicated questions relating to title are involved; or

(d) Where the plaintiff seeks declaration of his title over the land from which he is sought to be evicted.

(C) The learned Amicus Curiae further referring to the judgment in the case of ***Daulatram Lakhani (supra)*** submitted that in respect to cases falling under the conditions (c) and (d) as stated above, the learned Full Bench of this Court observed that the assertion of title must be genuine and not a mere pretext – a bona fide claim of having title and not having only a husk of title. The learned Amicus Curiae further submitted that the learned Full Bench of this Court in the case of ***Daulatram Lakhani (supra)*** also dealt with the Section 154A of the Regulations and observed that inserting Section 154A in the Regulation was to afford protection to the Government and its officials for the acts done in discharge of duties so also to the various acts, in the wake of Rule 18 having been declared violative of Article 14 of the

Constitution in the case of ***Bandhana Goala (supra)***. He submitted that it was categorically observed by the Full Bench that this protective barrier under Section 154A of the Regulation does not have much to do with the question of the jurisdiction of the Civil Court.

(D) Adding further, the learned Amicus Curiae submitted that the mischief which was there in Rule 18 of the Settlement Rules as pointed out in the case of ***Bandhana Goala (supra)*** for which it was held to be discriminatory and violative of Article 14 of the Constitution had again come into existence in view of the enactment of the Assam Land Grabbing (Prohibition) Act, 2010 (for short "the Act of 2010") which specifically deals with encroachment upon Government lands and provides a more effective and detailed adjudication in respect to encroachment upon the Government lands. The learned Amicus Curiae therefore submitted that the Special Tribunals so constituted under the Act of 2010 are empowered to try all cases arising out of any alleged act of land grabbing or with respect to ownership and title to or lawful possession of the land grabbed whether before or after commencement of the Act of 2010. He submitted that this power which is given to the Special Tribunal could be exercised either suo moto or on an application made by an aggrieved person or any officer or authority. The learned Amicus Curiae further drew the attention of this Court to Section 2(e) of the Act of 2010 which defines "land grabbing" to mean every activity of land grabber to occupy or attempting to occupy with or without the use of force, threat, intimidation and deceit, any land (whether belonging to the Government, a Public Sector undertaking, a local authority, a religious or charitable institution or endowment, including a wakf or any other private person) over which he or they have no ownership, title or physical

possession, without any lawful entitlement and with a view to illegally taking possession of such land or creating illegal tenancies or lease or licence, agreements or by constructing unauthorized structures thereon for sale or hire or use or occupation of such unauthorized structures and the term "grabbed land" shall be construed accordingly. He therefore submitted that the mischief which was there prior to bringing into force Section 154(1)(n) and 154A of the Regulation had recurred for which Rule 18 of the Settlement Rules as it stands would be violative of Article 14 of the Constitution.

(E) The learned Amicus Curiae further drew the attention of this Court to the judgment of the Supreme Court in the case of ***V. Laxminarasamma Vs. A. Yadaiah (dead) and Others*** *reported in* ***(2009) 5 SCC 478*** and submitted that the Supreme Court was dealing with the Andhra Pradesh Land Grabbing (Prohibition) Act, 1982 which is pari materia to the Act of 2010. The Supreme Court in that case observed in paragraph No.43 that it is one thing to say that a summary proceedings cannot be resorted to when a noticee registered bona fide dispute involving complicated questions of title and his right to remain in possession of the land but it is another thing to say that a special Court and/or Tribunal which has all the powers of a Civil Court would not be entitled to enter into such a contention. The learned Amicus Curiae therefore submitted that in view of the Act of 2010 which is a subsequent Act of the State Legislature even pursuant to the amendments inserting Sections 154(1)(n) and Section 154A of the Regulation, the Special Tribunal so constituted under the Act of 2010 bring the present status of Rule 18 of the Settlement Rules in similar parlance that stood at the time when the judgment was delivered in the case of ***Bandhana Goala (supra)***.

(F) The learned Amicus Curiae further referring to the judgment of the Supreme Court in the case of ***Government of Andhra Predesh Vs. Thummala Krishna Rao and Another*** *reported in* ***(1982) 2 SCC 134*** submitted that the Supreme Court in the said judgment categorically observed that if there was a bona fide dispute regarding title of Government to any property, the Government cannot take a unilateral decision to its own favour that the property belonged to it and on the basis of such decision cannot take recourse to summary remedy for evicting the person who is in the possession of the property under a bona fide claim or title. He further submitted that the Supreme Court had observed in the said decision that when there is a bona fide claim to litigate, a person cannot be evicted save by due process of law. The learned Amicus Curiae submitted that the Supreme Court was very clear and categorical in the said judgment that the summary remedy prescribed by Section 6 of the Andhra Pradesh Land Encroachment Act, 1905, is not the kind of legal process which is suited to an adjudication of complicated questions of title and therefore such a process is not the due process of law for evicting the Respondents therein.

(G) On the basis of the said proposition, the learned Amicus Curiae further submitted that as there is a corresponding duty on the part of the State or the authority exercising power under Rule 18(2) of the Settlement Rules to find out as to whether there was any bonafide claim of right involved before exercising the said power. The question as to what would be the due process required to be followed would also arise on the basis of such satisfaction to be arrived at. This satisfaction to be arrived at involves due application of mind to the facts and the law by the authority. He therefore submitted that the principles of natural justice demand that due notice be served upon the

occupier/possessor thereby giving him an opportunity to explain as to whether he has a bonafide claim of right involved before arriving at a satisfaction that such bonafide claim of right is not involved, to exercise the powers under Rule 18 of the Settlement Rules. In that regard, the learned Amicus Curiae referred to the judgment of the Supreme Court in the case of ***State Bank of India and Others Vs. Rajesh Agarwal and Others*** *reported in* ***(2023) 6 SCC 1***. The learned Amicus Curiae further submitted that the word "forthwith" used in Rule 18(2) of the Settlement Rules does not exclude the application of the *Audi Alteram Partem Rule*. Referring to the judgment of the Supreme Court in the case of ***Swadeshi Cotton Mills Vs. Union of India*** *reported in* ***(1981) 1 SCC 664,*** he submitted that the Supreme Court categorically observed that the mere use of the word "immediate" did not necessarily and absolutely exclude the prior application of the *Audi Alteram Partem Rule*. The learned Amicus Curiae therefore submitted that though Rule 18(2) of the Settlement Rules may have provided the word "forthwith" but there is no indication that the *Audi Alteram Partem Rule* is to be excluded.

(H) The learned Amicus Curiae further submitted that taking into account that the principles of natural justice are facets of Article 14 and 21 of the Constitution, it is the norm followed by the Constitutional Courts to include the principles of natural justice in order to make a provision which is otherwise constitutionally invalid on procedural grounds. He therefore submitted that in Rule 18(2) of the Settlement Rules, there is a requirement of including the principles of natural justice more so, in view of various judicial pronouncements as well as the Land Policy of 2019 whereby certain rights to make a bona fide claim arises upon the occupier or possessor. The

learned Amicus Curiae further submitted that what is to be looked into in Rule 18(2) of the Settlement Rules is as to whether there is bonafide claim of right involved and not that the occupier or possessor of Government land is in possession without permission or a lease.

(I) The learned Amicus Curiae before concluding had drawn the attention of this Court to an order dated 06.02.2023 passed in PIL (Suo Moto) No.10/2018 wherein the Division Bench of this Court had categorically observed that the occupier/possessor of Government land are entitled to take a stand that they have a bona fide claim over the land under their occupation and accordingly, directions were issued that the persons/encroachers be issued respective notices and the respective persons/encroachers would be at liberty to take their own stand and substantiate as regards any bona fide claim. In that regard, the learned Amicus Curiae referred to paragraph Nos. 17 and 23 of the said order.

OUR ANALYSIS AND DETERMINATION:

10. We have heard the learned counsels appearing on behalf of the parties and duly taken note of their respective contentions.

11. The issue which has been referred to us is as to whether any action taken under Rule 18(2) of the Settlement Rules, should be preceded by a notice or not.

12. At the outset, before dealing with the issue referred to us, we would like to make it clear that the provisions of Rule 18 of the Settlement Rules are not under challenge. Under such circumstances, we are not inclined to deal with the submission so made by the learned Amicus Curiae that Rule 18

of the Settlement Rules are discriminatory and violative of Article 14 of the Constitution post the enactment of the Act of 2010. However, we keep this question open to be decided in an appropriate proceedings.

13. For the purpose of deciding the question as to whether action taken under Rule 18 of the Settlement Rules should be preceded by a notice or not, we feel that it would apposite to take note of certain changes which were brought into Rule 18 of the Settlement Rules pursuant to it being made. The Regulation was enacted in the year 1886. Various sets of Rules were framed in pursuance thereto. On 06.04.1931, in supersession of all those Rules, a consolidated set of Rules namely the Settlement Rules were published in the Assam Gazette on 08.04.1931. Rule 18 as it stood in the year 1931 reads as follows:

> "*18.(1) Subject as hereinafter provided, the Deputy Commissioner may eject any person from land over which no person has acquired the rights of a proprietor, landholder, or settlement-holder.*
>
> *(2) When such person has entered into possession of land that has previously been reserved for roads or roadside lands or for the grazing of village cattle or for other public purposes or has entered into possession of land from which he has been excluded by general or special orders and when, further, there is no bona fide claim of right involved, he may be ejected or ordered to vacate the land forthwith, and the Deputy Commissioner may sell, confiscate or destroy any crop raised, or any building or other construction erected, without authority on the land.*
>
> *(3) In all other cases ejectment shall be preceded by service of notice requiring the occupant to vacate the land within three months and to remove any buildings or fences which may have been raised on such land, subject to*

the proviso that crops actually growing on the land may be allowed to remain till they are ripe for harvest. Any buildings, fences or crops which have not been removed in accordance with such notice may be sold by order of the Deputy Commissioner, provided that the sale-proceeds shall, after the deduction of any amounts due on account of process fees or cost of sale, be paid to the person who is ejected under this sub-rule.

(4) Any person or persons required by notice to vacate under the last preceding sub-rule the land which the person or persons occupy, shall comply with the requisition within the time prescribed in the notice, running from the date of its service.

(5) Any person or persons intentionally disobeying an order or requisition to vacate under sub-rule (2) or (3) shall be liable to a penalty which may extend to two hundred rupees, and, in case such disobedience is continued, to a further penalty which may extend to Rs.50/- for each day during which such breach Continues."

14. It is apposite to mention that in the year 1931 itself i.e. on 10.11.1931, Sub-Rule (6) of Rule 18 was also inserted to Rule 18. The said Sub-Rule (6) is reproduced herein below:

"*(6) Nothing in sub-rule (3) of this rule, shall apply to any person who has refused an offer of settlement in respect of the land of which he is in possession."*

15. A perusal of above quoted Rule 18 would show that the Deputy Commissioner may eject any person from land over which no person has acquired the rights of a proprietor, landholder, or settlement holder. In other words, such lands which belong to the Government whereupon no person have acquired the rights of proprietor, land holder or settlement holder. The

use of the word 'may' appears to have conferred a discretion upon the Deputy Commissioner to either evict or not to evict.

16. Sub-Rule (2) of Rule 18 as it then stood stipulated that when such person has entered into possession of land that had previously been reserved for roads or roadside lands or for the grazing of village cattle or for other public purposes or has entered into possession of land from which he has been excluded by general or special orders and when, further, there is no bona fide claim of right involved, such person may be ejected or ordered to vacate the land forthwith. The Deputy Commissioner had also been empowered to sell, confiscate or destroy any crop raised or any building or other construction erected, without authority on the land.

17. Sub-Rule (3) of Rule 18 as it then stood stipulated that in all other cases meaning thereby not those cases falling within the ambit of Sub-Rule (2) of Rule 18, ejectment shall be preceded by service of notice requiring the occupant to vacate the land within three months and to remove any buildings or fences which may have been raised on such land, subject to the proviso that crops actually growing on the land may be allowed to remain till they are ripe for harvest. It further mandated that any buildings, fences or crops which have not been removed in accordance with such notice may be sold by order of the Deputy Commissioner, provided that the sale-proceeds shall, after the deduction of any amounts due on account of process, fees or cost of sale, be paid to the person who is ejected under this Sub-Rule (3).

18. Sub-Rule (4) of Rule 18 mandated that the person or persons required by notice to vacate under Sub-Rule (3), shall comply with the requisition within the time prescribed in the notice, running from the date of its

service. The consequence for not complying with an order or requisition to vacate under Sub-Rule (2) or Sub-Rule (3) of Rule 18 is stipulated in Sub-Rule (5) as it stood then. A penalty shall be imposed which may extend to Rs.200/- and in case such disobedience is continued to a further penalty which may extend to Rs.50/- for each day during which such breach continues. Sub-Rule (6) of Rule 18 stipulated that nothing in Sub-Rule (3) would apply to a person who had refused to accept settlement of the land of which he was in possession.

19. Sub-Rule (3) of Rule 18 of the Settlement Rules as it stood in the year 1931 was amended vide an amendment carried out on 05.05.1961. Sub-Rule (3) which existed then was substituted by two Sub-Rules i.e. Sub-Rule 3(a) and 3 (b). In addition to that, a new Sub-Rule being Sub-Rule 5(a) was also inserted vide the same amendment. Sub-Rule 3(a), 3(b) and 5(a) which were inserted in the year 1961 reads as under:

> "*3.(a) In all other cases ejectment shall be preceded by publication of a notice in the manner prescribed below requiring the occupant generally to vacate the land specified in the notice within 15 days of the date of publication of the notice on the land concerned or in a prominent place in the vicinity thereof, and to remove any buildings, houses, fences or crops, etc., which may have been raised on such land; provided that the Deputy Commissioner may give time to any particular occupant to harvest the crops, if any, growing on such land. Any buildings, houses, fences, crops, etc., which have not been removed in accordance with such notice shall be confiscated to the Government.*
>
> *3.(b) The notice referred to in clause (a) of sub-rule (3) above shall be published by affixing a copy thereof in the Notice Board of the office of the Deputy Commissioner or the Sub-Divisional Officer, as the case may be, and*

also in the Notice Board of the office of the Sub-Deputy Collector within whose jurisdiction the land is situated. A notice shall also be published by affixing a copy thereof on the land concerned or in a prominent place in the vicinity thereof.

5.(a) Any person who having been once evicted under sub-rule (2) or sub-rule (3) from any land encroaches on any land over which no person has acquired the right of a proprietor, landholder or settlement-holder, shall on conviction before a Magistrate, be liable to imprisonment which may extend to six months or fine which may extend to one thousand rupees or both."

20. From a perusal of the above quoted newly inserted Sub-Rule 3(a) and 3(b), it would show that the period which was earlier 3 (three) months was reduced to 15 days and the manner of issuance of notice which was specific to the occupant was substituted by publication of the notice by affixing a copy thereof in the notice board in the office of the Deputy Commissioner or the Sub-Divisional Officer as the case may be and also in the notice board of the office of the Sub-Deputy Collector within whose jurisdiction the land is situated. It was also stipulated that the notice shall also be published by affixing a copy thereof on the land concerned or in a prominent place in the vicinity thereof. By insertion of Sub-Rule 5(a), it was stipulated that any person who having been once evicted under sub-rule (2) or sub-rule (3) from any land again encroaches on any land over which no person has acquired the right of a proprietor, landholder or settlement-holder, shall on conviction before a Magistrate, be liable to imprisonment which may extend to six months or fine which may extend to one thousand rupees or both.

21. Before further proceeding we would like to deal with the lands which fell within the ambit of Rule 18(2) as it existed then. It included the following

lands:

(i) Lands which have been previously reserved for roads; or

(ii) Lands which were previously reserved for roadside lands; or

(iii) Lands which were previously reserved for grazing of village cattle; or

(iv) Lands which were previously reserved for other public purposes; or

(v) Lands upon which a person had entered into possession from which he has been excluded by general or special order.

22. At this stage, we find it relevant to take note of Rule 23 of the Settlement Rules. The said Rule stipulates that no person would be entitled to obtain a new lease in respect of the land within 75 feet of the centre line of the public road. It also stipulates that that any person occupying or encroaching on such land shall be liable to ejectment under Rule 18 of the Settlement Rules.

We would further like to take note of Rule 95 of the Settlement Rules which stipulates that when any grazing ground has been finally demarcated under Rule 89, no person shall occupy any part of such grazing ground for purposes other than grazing and whoever contravenes the Rule shall be punished with fine to be imposed by the Deputy Commissioner which may extend to fifty rupees.

We further would like to take note of the definition of "Waste Land" as contained in Rule 1(2)(b) of the Settlement Rules which defines land at the disposal of the Government which the Government has not disposed of by

lease, grant or otherwise and which is not included in the forest reserve or a forest proposed to be reserved under Section 5 of the Assam Forest Regulation, 1891 or in a protected forest constituted under the Rules made under the said Assam Forest Regulation, 1891 and had not been allotted as a grazing ground under the Rules framed under Section 13 of the Regulation. The above definition therefore shows that the lands which are previously reserved for other public purposes, no person would have a right to occupy the same.

It would also be seen that if a person has entered into possession of land by which he had been excluded by general or special orders, he would have no right to occupy the same. Sub-Rule 5(a) of Rule 18 of the Settlement Rules also stipulates that if a person is evicted under Sub-Rule (2) and (3) of the Rule 18 of the Settlement Rules, he would be liable for imprisonment or penalty if he encroaches upon the said land.

23. The above analysis is relevant taking into account that the Rule making body had given an extraordinary power under Rule 18(2) of the Settlement Rules for summary ejectment of an occupant or to order such occupant to vacate the land forthwith when a person has entered into possession of the land categorized in Rule 18(2) as it stood then. It appears that the Rule making body had done so taking into account that in all the five categories of land, no person has a right to remain in occupation/possession. It is however very pertinent to note that even then also, the Rule making body incorporated a condition precedent to the exercise of the powers under Rule 18(2) by the Authority concerned thereby stipulating that the power under Rule 18(2) could only be exercised if there

was no bona fide claim of right involved. Therefore, the Deputy Commissioner or such Officer duly authorized while exercising the powers under Rule 18(2) of the Settlement Rules as it existed then not only has to exercise the powers in respect to the specific lands which were mentioned in Rule 18(2) as it stood then but also had to arrive at a satisfaction that there was no bonafide claim of right involved.

24. By a Notification dated 21/03/1997, amendments were made to Sub-Rule (2) as well as Sub-Rule (5) and Sub-Rule 5(a) of Rule 18 of the Settlement Rules. Sub-Rule (2) of Rule 18 as it presently stands reads as under:

> "*(2) When such person has entered into possession of Government khas land, or Waste land or estate over which no person has acquired the rights of a proprietor, land-holder or Settlement-holder or any land that has previously been reserved for roads or roadside lands or for the grazing of village cattle or for other public purposes or has entered into possession of land from which he has been excluded by general or special orders and when, further, there is no bonafide claim of right involved, he may be ejected or ordered to vacate the land forthwith, and the Deputy Commissioner may sell, confiscate or destroy any crop raised, or any building or other construction erected, without authority on the land."*

25. The amendments to Sub-Rule (5) and 5(a) are only in respect to enhancement of the amount whereby Rs.200/- and Rs.50/- so mentioned in Sub-Rule (5) was enhanced to Rs.1,000/- and Rs.250/- respectively. In Sub-Rule 5(a), the amount which was Rs.1,000/- was increased to Rs.2,000/-.

26. The amendment to Sub-Rule (2) of Rule 18 of the Settlement Rules is however very significant inasmuch as the power to eject or order to vacate

the land forthwith had been extended to all conceivable lands of the Government. The new type of lands which fall within the ambit of Sub-Rule (2) of Rule 18 in addition to the earlier five categories referred to in paragraph No.21 herein above are –

(i) Government khas lands;

(ii) Waste lands; and

(iii) Estate over which no person has acquired the rights of a proprietor, land-holder or Settlement holder.

27. Therefore, by virtue of the above amendment carried out, now all lands would come within the ambit of Rule 18(2) of the Settlement Rules. In other words, the category of lands which were involved in Rule 18(1) and Rule 18(3) of the Settlement Rules have now been assimilated amongst the categories of land which were there previously under Rule 18(2) of the Settlement Rules. At this stage, it is apposite to observe that a perusal of the Settlement Rules do not mention anything about Government khas lands save and except in Sub-Rule (2) of Rule 18 post amendment. Be that as it may, the term "khas land" in ordinary parlance means property of the Government. We have already dealt with what are waste lands supra. In short those lands which are defined in Rule 1(2)(b) of the Settlement Rules which are at the disposal of the Government and which have not been disposed of by lease, grant or otherwise. Now, if we take note of the Section 4 of the Regulation, it stipulates that Chapter-II of the Regulation which pertains to "Rights Over Land" shall apply to all lands except those included in any forest constituted a reserved forest under law for the time being in

force as well as any land which the State Government may by notification exempt from the operation of Chapter-II. Therefore the term "Government khas land" would also be a part of the waste land. The third category of lands are those estate over which no person had acquired the right of a proprietor, land holder or settlement holder. The term "estate" had been defined in Section 3(b) of the Regulation and a conjoint reading of Section 3(b) with Sections 6, 7, 8, 9 and 11 of the Regulation with Rule 18(2) of the Settlement Rules would show that estate over which no rights have been conferred upon proprietors, land holders and settlement holder would also come within the ambit of the extraordinary powers under Rule 18(2) of the Settlement Rules.

28. A further analysis of Rule 18(2) of the Settlement Rules post amendment would show that the two conditions to be fulfilled before exercising the extraordinary powers under Rule 18(2) stands reduced to one inasmuch as all lands belonging to the Government now comes within the ambit of Rule 18(2) of the Settlement Rules. Therefore, the only condition precedent for the Deputy Commissioner or his delegatee to fulfill is whether there exists any bonafide claim of right involved.

29. This condition precedent that there is no bonafide claim of right involved, in our opinion, is a very important safeguard given by the Rule making body to those persons who are in occupation or in possession of the lands mentioned in Rule 18(2) of the Settlement Rules. Now the question arises as to what is the implication of the words "no bonafide claim of right involved" or for that matter, what amounts to a bonafide claim of right involved. The term "bonafide claim of right" was explained by the Supreme

Court in the context of theft and it was observed that it was a valid defence. In the judgment of the Supreme Court in the case of ***Suvvari Sanyasi Apparao (supra)***, it was observed that where a bonafide claim of right exists, it can be a good defence to a prosecution for theft. It was also observed that an act does not amount to theft unless there be not only no legal right, but no appearance of colour of a legal right. In another judgment of the Supreme Court in the case of ***Chandi Kumar Das Karmakar (supra)***, the Supreme Court explained the expression "colour of legal right" to mean not a false pretence but a fair pretence, not a complete absence of claim put a bonafide claim, however weak. Therefore, in the context of Rule 18(2) of the Settlement Rules, we understand that the expression bonafide claim of right to be involved must be such a claim of right which may be a legal right or having a colour of legal right. Such a claim must be genuine i.e. honestly held that the belief must be one of legal entitlement to the property and not simply a moral entitlement.

30. Now let this Court take note of as to how the term "bonafide claim of right" have been construed by this Court. In the case of ***Kamala Kanta Deka (supra)***, it was categorically observed that Rule 18(2) of the Settlement Rules is a lethal weapon or summary remedy which can be resorted to by the authority when a person had entered into possession of the lands described in Rule 18(2) of the Settlement Rules. It was observed that the remedy cannot be resorted to when there is a bonafide claim of right involved. In paragraph No.11 of the said judgment, it was observed that the Rule making Authority itself considered that in the lands mentioned in Rule 18(2) of the Settlement Rules *[in the said case the lands pertained to the pre-amended rule 18(2)]* there might be a bonafide claim of right of the

possessor. It was made a condition that only where there exists no bonafide claim of right, the authority can exercise the power under Rule 18(2) of the Settlement Rules. Paragraph Nos. 11, 12 and 13 of the said judgment being relevant are reproduced herein under:

> "*11. In our opinion, before an authority takes a summary eviction proceeding it must consider whether there exists any bonafide claim of right of the possessor or the occupant. The rule-making authority itself considered that even in such lands there might be bonafide claim of right of the possessor, and, accordingly made it a condition that only where there exists on bonafide claim of right the authority can exercise power under Rule 18(2). While serving notice, it is desirable for the authority to consider the nature of the claim of the occupier or possessor, before taking summary action under Rule 18(2). In the instant case, it appears from the revenue records that the petitioner was in continuous possession of the land for the last 10 to 12 years and he had a tea stall. A summary enquiry would have revealed that the petitioner was authorised to construct the stall, that the petitioner was permitted to run it by the Superintendent of Police, that the petitioner had constructed structures and other constructions openly. Therefore, the petitioner had a strong claim to continue in possession and it was surely a bonafide claim of right. These apart, continuous occupation or possession by the petitioner and openly running a tea stall in the Verandah of the office without any let or hindrance by the authority for 10/12 years, rather with their permission which clearly show that the petitioner was a permissive occupier and has had possessory right. By virtue of his long possession he acquired some right, be paid rent, made with the permission of the authorities. All these facts show the existence of bonafide claim of right of the petitioner. Under these circumstances, no action could be taken by the authorities. In the instant case, the authorities could have taken resort to some other provisions of the law, or, should have taken resort to*

some other law or could have gone to the civil court and could have obtained the relief asked for. We are positive and hold that on the facts and circumstances of the case the petitioner has had bonafide claim of right in the property and the authority had no jurisdiction to evict him under Rule 18(2) of "the Rules".

12. If we turn to the notice served on the petitioner extracted in paragraph 2 of the judgment, we find that it was described as "a Govt. land" and nothing more. Therefore, admittedly it was only a Govt. land but not the specific lands described in Rule 18(2). As such, the notice is invalid. Secondly, we find in the notice that the petitioner had entered into possession of the land without permission. The undisputed documents produced before us clearly show that the petitioner had entered into possession of the land with due permission from the authority and continued to remain there with their permission. We do not find anything in the notice to show that the authority ever considered the bonafide claim of right of the petitioner, which admittedly the petitioner had, and, accordingly, we declare the notice as invalid and quash it.

13. In a summary proceeding under Rule 18, the authority is not to adjudicate any complicated question of possessory right or title of the occupant. If it finds that there exists a semblance of claim of bonafide right, it should not proceed under Rule 18(2). While considering the bonafide claim of right, the authority should consider the duration of the occupation of the land by the occupant, the nature of the property on which the encroachment is alleged to have been committed and whether the claim of the occupation or possession is malafide or bonafide. When a property is occupied or possessed by a person, the authority competent to take action under Rule 18(2) should not shut its eyes to the existing facts revealed from the records. If an occupant openly makes construction, his acts might create a bonafide right, title or interest in the property. The duration of occupation

is undoubtedly a relevant factor when the occupation is open and for an appreciable length of time. When some right to occupy in favour of the occupant is detected, it requires an impartible adjudication according to the established procedure of law. The length of possession, the nature of the open acts of possession, construction of the structures and dealing the property as his own certainly created a bonafide right in his favour. Such cases should go to the civil court for adjudication or the authorities may take resort to the other provisions of law or take resort to some other law."

31. It is apposite herein to take note of that the learned Division Bench of this Court in the case of ***Kamala Kanta Deka (supra)*** had observed that while considering the bonafide claim of right, the authority should consider the duration of the occupation of the land by the occupant, the nature of the property on which the encroachment is alleged to have been committed and whether the claim of the occupation or possession is malafide or bonafide. It was also observed that the duration of occupation is undoubtedly a relevant factor when the occupation is open and for an appreciable length of time. Further to that, it was observed that when some right to occupy in favour of the occupant is detected, it requires an impartial adjudication according to the established procedure of law. It was emphasized that the length of possession, the nature of the open acts of possession, construction of the structures and dealing the property as his own certainly created a bonafide right in favour of the occupant.

32. We find it very pertinent at this stage to observe that the law declared by the learned Division Bench of this Court in the case of ***Kamala Kanta Deka (supra)*** have not yet been interfered with and still holds the field. However, there seems to be an apparent shift to the understanding of the term

"Bonafide claim of right involved" and its application. The apparent shift as we see, seems to be on account of the judgment of the Supreme Court in the case of ***State of Assam and Others Vs. Radha Kanoo (SMT) and Others*** *reported in* ***(1996) 8 SCC 692***. However, we find it very pertinent herein to observe that the issue before the Supreme Court in ***Radha Kanoo (SMT) (supra)*** was whether this Court was justified in holding that the occupants/possessors had acquired any right in the land upon payment of Touzi Bahira Revenue and as such cannot be ejected under Rule 18 of the Settlement Rules. We take due notice that the Supreme Court did not deal with Rule 18(2) of the Settlement Rules and had only dealt with Rule 18(1) on the ground that the remaining Rules were only procedural. This aspect is apparent from the last sentence of paragraph 4 of the judgment itself. Paragraph No.4 of the said judgment in the case of ***Radha Kanoo (SMT) (supra)***is reproduced herein below:

> "***4.*** *Rule 16 of the Rules framed under the Regulation prescribes that lease shall be issued on written application only, and no person shall enter into possession of wasteland in any area until a lease has been issued to him or otherwise a written permission by Deputy Commissioner has been granted to him, pending issue of such lease, to enter into possession. Rule 17 imposes liability to pay revenue on such settlement. Rule 17-A gives power to the Deputy Commissioner to increase or reduce at any time, either on an application or of his own, the revenue in proportion to the change in area of the lease as a result of gain by alluvion or by dereliction of a river, or loss by diluvion, during the currency of the settlement. In other words, right of entry into possession of government land is hedged with a written lease or permission by Deputy Commissioner. They are entitled to pay revenue in terms of lease or permission. Any person who enters into possession otherwise than pursuant to Rule 16 is an encroacher into government*

vacant land. Rule 18(1) provides thus:

> "*Subject as hereinafter provided, the Deputy Commissioner may eject any person from land over which no person has acquired the rights of a proprietor, landholder, or settlement-holder.*"

Rest of the rules are not material since they deal only with procedural aspects."

33. The Supreme Court in the said judgment held that this Court was clearly in error in holding that Touzi Bahira Revenue collected by mauzadar would amount to collection of revenue and that the possession of such person would not become unlawful and no action under Rule 18 is called for unless action is taken to terminate a non-existent lease or to pass any proper order and then to recover possession of lands from the encroacher in accordance with the provisions of the Assam Public Premises (Eviction of Unauthorized Occupants) Act, 1976.

34. Therefore, the question before the Supreme Court in the case of ***Radha Kanoo (SMT) (supra)*** was not as to whether Rule 18(2) of the Settlement Rules could have been exercised when there was a bonafide claim of right involved. The Supreme Court had only dealt with Rule 16 of the Settlement Rules and specifically did not deal with Rule 18(2). Be that as it may, the judgments rendered by the learned Single Benches of this Court referred to by the State as already referred to hereinabove seems to have taken a view that once a person is an encroacher, there would be no bonafide claim of right involved. The judgments of the Division Bench of this Court in the cases of ***Md. Ishaque Ali (supra)*** and ***Deben Das (supra)*** do not deal with the aspect as to whether a notice is required to be issued to the

occupier prior to formation of the subjective satisfaction that there is no bonafide right of claim involved. In the said judgments, the Division Bench of this Court had specifically decided as to whether there was a bonafide claim of right involved on the facts before the learned Division Benches and decided the said writ petitions on the basis thereof holding that there was no bonafide claim of right involved.

35. The question however remains unanswered as to whether the subjective satisfaction can be arrived at by the Revenue Authorities before initiating action under Rule 18(2) of the Settlement Rules that there exist or not a bonafide claim of right involved of the occupier/possessor of Government land, unilaterally without notice and would that be in consonance with the Rule of Law for only permitting the occupant/possessor after having suffered civil consequences on account of the actions taken under Rule 18(2) of the Settlement Rules to approach the appropriate forum to agitate that he had a bonafide claim of right involved for which the actions taken were totally unauthorized.

36. At this stage, we would like to observe that the judgment in the case of ***Kamala Kanta Deka (supra)*** was delivered prior to the 1997 amendment. The judgment of the Supreme Court in the case of ***Radha Kanoo (SMT) (supra)*** was also delivered prior to the 1997 amendment and also did not take note of Rule 18(2) of the Settlement Rules as would be apparent from a perusal of the last sentence in paragraph No.4 of the said judgment itself. The judgments in the case of ***Md. Ishaque Ali (supra)*** and ***Deben Das (supra)*** though decided on the facts that there was no bonafide claim of right involved, but did not decide what would be a bonafide claim of right involved

or for that matter how would a bonafide claim of right be adjudged by the Revenue Authority. The various judgments of the learned Single Bench referred to by the State also did not deal with the aspect as to how a bonafide claim of right would be adjudged by the Revenue Authorities which apparently is a condition precedent for exercise of powers under Rule 18(2) of the Settlement Rules. On the other hand, there is one judgment of a learned Single Bench in the case of ***Mrinal Hazarika Vs. State of Assam*** *reported in* ***(2020) SCC OnLine GAU 1991*** wherein the learned Single Bench categorically observed that when a bonafide claim of right has been made, the condition precedent of issuing a notice under Rule 18(2) of the Settlement Rules is not satisfied and therefore observed that the notice of eviction under Rule 18(2) of the Settlement Rules would not be sustainable. In addition to that another learned Division Bench of this Court in the judgment delivered on 06.02.2023 in PIL (Suo Moto) No.10/2018 in the case of ***Inre the State of Assam and Others*** observed that the occupant/possessors are entitled to take a stand that they have a bonafide claim over the land under their occupation. Paragraph No.17 of the said judgment is reproduced herein under:

> "*17. Mr. K.N. Choudhury, learned Senior Counsel for some of the impleaded respondents, who were issued the earlier notices/orders of eviction, makes a submission that under Rule 18(2) of the Regulation, 1886, the noticees are also entitled to take a stand that they have bona fide claim over the land under their occupation. To that extent we accept the submission of learned Senior Counsel and if in any such notice, that may be issued to the person/ encroacher under Rule 18, the respective person/encroacher may take their own stand and substantiate as regards any bona fide claim and if such stand is taken by any individual*

person/encroacher, the authority while bringing the notices under Rule 18 to its logical end, shall also pass a reasoned order on such bona fide claim."

37. We find it very relevant at this stage to again revert back to the Settlement Rules. Rule 5 of the Settlement Rules stipulates that applications for the settlement of waste land or for that matter lease of waste land shall be in writing and shall be presented to the Deputy Commissioner, or to such other Officer as may be empowered by the Deputy Commissioner under Rule 3. Thereupon, Rule 6 of the Settlement Rules visualizes measurement and classification and the land records staff is also mandated to submit a report briefly as to whether the applicant is a person belonging to any of the categories mentioned in Rule 8 and whether the land is available for settlement and suitable for the purpose mentioned in the application amongst others. Rule 8 of the Settlement Rules stipulates about the disposal of the application seeking lease of waste land. It stipulates that after perusing the report and the map and making such further investigation as may seem necessary and settling any dispute that may have arisen, the Deputy Commissioner or other officer empowered in this behalf shall either reject the application or grant a lease or allow it in part. The second paragraph of Rule 8 of the Settlement Rules relates to priority of application.

38. From a conjoint reading of Rule 5, 6 and 8 of the Settlement Rules, it is not clear as to what are the various parameters to be looked into for the purpose of grant of settlement. Be that as it may, the Government of Assam have come up with various land policies from time to time. At present, the Land Policy, 2019 deals with how the settlement are to be made. It is pertinent herein to note that the Land Policy of 2019 was intended for regularization of long occupation of Government lands with landless

indigenous persons and for removal of illegal encroachment from different types of Government land, VGRs, PGRs, other reserved lands, Satra land etc. Clause-1 of the Land Policy of 2019 deals with allotment and settlement of Government land for ordinary cultivation in rural area. In terms with the scheme in the various Sub-Clauses of Clause-1, it would be seen that initially the Government would grant allotment of land to the indigenous landless cultivators and after 3 (three) years of continuous physical possession by cultivating the same, the land would be settled with the allottees, provided the land is found to have been used for the purpose for which it was allotted. The said Clause also stipulates as to whom the land would be allotted and how much would be the area. Clause 1.14 is very relevant as the language seems to be pari materia to Rule 15 of the Settlement Rules. The said Clause 1.14 is reproduced herein below:

> "*1.14 Mere possession by way of encroachment shall not be a criteria for entitlement to get allotment/settlement of Government land.*
>
> *Since encroachment has to be removed forthwith, the system of collecting Encroachment Penalty (Bedakhali Jarimana) shall be discontinued. The system of collecting Touzi Bahira revenue against allotted land only however shall continue. The Revenue Officials shall be duty bound to evict the encroachers at the earliest."*

39. The above quoted Clause shows that mere possession by way of encroachment shall not be a criteria for entitlement to get allotment/settlement of Government land and the Government would also stop collecting Encroachment Penalty (Bedakhali Jarimana). The system of collecting Touzi Bahira revenue would only be made against allotted land.

40. Clause-2 stipulates Disposal of Land Acquired under the Assam Fixation of Ceiling on Land Holdings Act, 1956 (for short "the Act of 1956") and under the Assam State Acquisition of Land Belonging to Religious or Charitable Institutions of Public Nature Act, 1959 (for short "the Act of 1959"). Clause-2.1 stipulates that the tenanted land acquired under the Act of 1956 which is under occupation of tenants or their legal heirs, shall be settled by the Deputy Commissioners as per the provisions of the said Act of 1956 and the Deputy Commissioner shall submit timely report to the Government. This seems to be in conformity with Section 16 of the Act of 1956. Clause-2.2 stipulates that the untenanted land so acquired under the Act of 1956 and already allotted to the landless persons by issuing allotment certificates may be settled with the indigenous allottee occupants or their legal heirs, if they are found in physical possession of the land so allotted, subject to the limit of 3 Bighas 2 Kathas 10 Lechas per family for agricultural and homestead purposes respectively with realization of premium as fixed by the Government from time to time. Clause-2.4 stipulates that the untenanted 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 Government. This is in conformity with Section 17 of the Act of 1956.

41. Clause-3 of the Land Policy, 2019 stipulates allotment/settlement of land for homestead purpose in rural areas. In terms with Clause 3.1 an indigenous family of the State who does not have homestead land in the name of any member of their families anywhere in the entire State may be allotted with suitable homestead land not exceeding half (½) a bigha per family. Clause-3.4 stipulates that for allotment/settlement of land to landless

indigenous persons under this policy, detail method and manner of submission of applications and other aspects will be issued separately. It is very pertinent herein to take note of that on 11.11.2022, a Notification was issued by the Revenue and Disaster Management Department of the Government of Assam wherein the criteria for eligibility for Rural Agricultural lands, Rural Homestead lands and Settlement in Towns were mentioned. It is however very pertinent to observe from a perusal of the said Notification bearing No.RDM-12011(17)/5/2022-LR-REV-R&DM/100 (e-file No.234314) dated 11.11.2022 that the documents to be annexed with the application were Touzi Bahira receipt (if any)/Bedakhali Jarimana paid receipt (if any).

42. Clause-14 of the Land Policy, 2019 relates to settlement and reservation of land in towns. Clause 14.2, 14.3 and 14.4 are relevant for which the same are reproduced herein under:

> "*14.2. An indigenous person who has not homestead land in his name or in the name of his family in the State may be eligible to get land in Guwahati city or in the urban area, provided that such person is required to reside in Guwahati city or in that urban area by very nature of his occupation/service, provided further that he has sufficient ground to justify that he has not been able to purchase land in Guwahati city/other towns.*
>
> *14.3. The State Government will not consider settlement of any Government land in Guwahati city or in other town areas under possession of individual or other persons merely on the ground that the person concerned is in occupation of such land irrespective of the period of such occupation or encroachment. It would be the policy of the State Government to consider settlement or to evict such persons as the case may be.*
>
> *14.4. However, in view of the Land Policy, 1989 and other Government*

decisions prior to adoption of this Land Policy, the cases of indigenous landless persons, if found eligible and who have been under continuous occupation of Government land since or prior to 28th June, 2001 may be considered for settlement of maximum of 1 (one) Katha 5 (five) Lessa of land in case of Guwahati and 1 (one) Katha 10 (ten) Lessa in case of other towns as one time measure for homestead purpose, if they apply for it, irrespective of having land in rural areas subject to realization of due premium.

Provided that persons having more than three and half bighas of land in rural areas will, however, be not entitled to the above benefit."

43. The above quoted clauses of the Land Policy, 2019 would show that an indigenous person who has no homestead land in his name or in the name of his family in the State may be eligible to get land in Guwahati city or in the urban area, provided that such person is required to reside in Guwahati city or in that urban area by very nature of his occupation/service, provided further that he has sufficient ground to justify that he has not been able to purchase land in Guwahati city/other towns. Clause 14.3 stipulates that the State Government will not consider settlement of any Government land in Guwahati city or in other town areas under possession of individual or other persons merely on the ground that the person concerned is in occupation of such land irrespective of the period of such occupation or encroachment. It further provides that the State Government shall have a discretion to consider settlement or to evict such persons as the case may be. It is apposite herein to observe that though Clause 14.3 stipulates that merely because a person is in possession, he would not entitled to be considered for settlement but the said land policy does not put a bar that if the person is in illegal possession or is an encroacher upon Government lands, the

occupant/possessor would not be entitled to settlement. On the other hand, the State Government retains a discretion to itself to either consider settlement or to evict a person as the case may be. This discretion however seems to be an absolute discretion unfettered by any guidelines or parameters which therefore in opinion invites the application of the principles of proportionality. Clause 14.4 is also very pertinent inasmuch as those persons who have been in continuous occupation of Government land since or prior to 28th June, 2001 may be considered for settlement of maximum of 1 (one) Katha 5 (five) Lessa of land in case of Guwahati and 1 (one) Katha 10 (ten) Lessa in case of other towns as one time measure for homestead purpose, if they apply for it, irrespective of having land in rural areas subject to realization of due premium. This Clause 14.4 grants a very valuable right to those indigenous landless persons who have been in occupation of Government lands since or prior to 28.06.2001.

44. The above analysis of the Land Policy, 2019 shows that an indigenous person of Assam has a valuable right to be considered for settlement of Government waste land. Further to that, there is no bar for being considered for settlement if an indigenous person is in occupation of Government waste land. The Policy though states that it shall not be a consideration for settlement merely being in occupation but it does not bar settlement if an indigenous person is in occupation of Government land. In our opinion, the Land Policy read with the Settlement Rules creates a legitimate expectation upon an indigenous person to settlement of waste lands. In this regard, it may be relevant to mention that the doctrine of legitimate expectation has two facets. One is the doctrine of procedural legitimate expectation and the other is the doctrine of substantive legitimate expectation.

45. We further find it relevant to observe that the doctrine of legitimate expectation in public law is founded on the principles of fairness and non-arbitrariness in Government dealings with individuals. It recognizes that a public authority's promise or past conduct would give rise to a legitimate expectation. The doctrine is premised on the notion that public authorities while performing their public duties ought to honour their promises or past practices. It is well settled that legitimacy of an expectation can be inferred if it is rooted in law, customs or established procedures. In the case of ***Punjab Communications Ltd. Vs. Union of India and Others*** *reported in* ***(1999) 4 SCC 727***, the Supreme Court observed the distinction between the two facets of legitimate expectation which was explained in paragraph 27 of the said judgment to the effect that the procedural part of legitimate expectation relates to a representation that a hearing or appropriate procedure would be afforded before the decision is made. The substantive part of the principle of doctrine of legitimate expectation is that if a representation is made that a benefit of substantive nature would be granted or if the person is already in receipt of a benefit that it would be continued and not substantially varied, then the same could be enforced. In a recent judgment passed by the Constitution Bench of the Supreme Court in the case of ***Sivanandan CT Vs. High Court of Kerala and Others*** *reported in* ***(2024) 3 SCC 799***, the Supreme Court dealt with the concept of the doctrine of legitimate expectation and how much the said doctrine had been engraved into our judicial system. Some of the paragraphs of the said judgment being relevant are reproduced herein below:

> "***22.*** *The doctrine of legitimate expectation was crystallised in common law jurisprudence by Lord Diplock in the locus classicus, Council of Civil*

Service Unions v. Minister for the Civil Service. Lord Diplock held that courts can exercise the power of judicial review of administrative decisions in situations where such decision deprives a person of some benefit or advantage which:

22.1. *They had in the past been permitted by the decision-maker to enjoy and which they can legitimately expect to be permitted to continue until there has been communicated to them some rational grounds for withdrawing it on which they have been given an opportunity to comment; or*

22.2. *They have received assurance from the decision-maker that the advantage or benefit will not be withdrawn without giving them an opportunity of advancing reasons for contending that the advantage or benefit should not be withdrawn.*

23. *The doctrine of legitimate expectation emerged as a common law doctrine to guarantee procedural fairness and propriety in administrative actions. Legitimate expectation was developed by the courts to require a degree of procedural fairness by public authorities in their dealings with individuals. Denial of an assured benefit or advantage was accepted as a ground to challenge the decision of a public authority.*

27. *A claim based on the doctrine of procedural legitimate expectation arises where a claimant expects the public authority to follow a particular procedure before taking a decision. This is in contradistinction to the doctrine of substantive legitimate expectation where a claimant expects conferral of a substantive benefit based on the existing promise or practice of the public authority. The doctrine of substantive legitimate expectation has now been accepted as an integral part of both the common law as well as Indian jurisprudence.*

38. *The doctrine of legitimate expectation does not impede or hinder the power of the public authorities to lay down a policy or withdraw it. The public authority has the discretion to exercise the full range of choices available within its executive power. The public authority often has to take into consideration diverse factors, concerns, and interests before arriving at a particular policy decision. The courts are generally cautious in interfering with a bona fide decision of public authorities which denies a legitimate expectation provided such a decision is taken in the larger public interest. Thus, public interest serves as a limitation on the application of the doctrine of legitimate expectation. Courts have to determine whether the public interest is compelling and sufficient to outweigh the legitimate expectation of the claimant. While performing a balancing exercise, courts have to often grapple with the issues of burden and standard of proof required to dislodge the claim of legitimate expectation.*

39. *In Paponette v. Attorney General of Trinidad & Tobago, the Privy Council held that a claimant only has to prove the legitimacy of their expectation. In this regard, the claimant must establish that the expectation is based on an existing promise or practice. Once the claimant establishes their legitimate expectation, the onus shifts to the authority to justify the frustration of the expectation by identifying any overriding public interest. This Court has been applying similar burden requirements in cases of legitimate expectation.*

40. *The principle of fairness in action requires that public authorities be held accountable for their representations, since the State has a profound impact on the lives of citizens. Good administration requires public authorities to act in a predicable manner and honour the promises made or practices established unless there is a good reason not to do so. In Nadarajah, Laws, L.J. held that the public authority should objectively justify that there is an overriding public interest in denying a legitimate*

expectation. We are of the opinion that for a public authority to frustrate a claim of legitimate expectation, it must objectively demonstrate by placing relevant material before the court that its decision was in the public interest. This standard is consistent with the principles of good administration which require that State actions must be held to scrupulous standards to prevent misuse of public power and ensure fairness to citizens.

45. *The underlying basis for the application of the doctrine of legitimate expectation has expanded and evolved to include the principles of good administration. Since citizens repose their trust in the State, the actions and policies of the State give rise to legitimate expectations that the State will adhere to its assurance or past practice by acting in a consistent, transparent, and predictable manner. The principles of good administration require that the decisions of public authorities must withstand the test of consistency, transparency, and predictability to avoid being regarded as arbitrary and therefore violative of Article 14.*

46. *From the above discussion, it is evident that the doctrine of substantive legitimate expectation is entrenched in Indian administrative law subject to the limitations on its applicability in given factual situations. The development of Indian jurisprudence is keeping in line with the developments in the common law. The doctrine of substantive legitimate expectation can be successfully invoked by individuals to claim substantive benefits or entitlements based on an existing promise or practice of a public authority. However, it is important to clarify that the doctrine of legitimate expectation cannot serve as an independent basis for judicial review of decisions taken by public authorities. Such a limitation is now well recognised in Indian jurisprudence considering the fact that a legitimate expectation is not a legal right. It is merely an expectation to avail a benefit or relief based on an existing promise or practice. Although the decision by a public authority to deny legitimate expectation may be termed as*

arbitrary, unfair, or abuse of power, the validity of the decision itself can only be questioned on established principles of equality and non-arbitrariness under Article 14. In a nutshell, an individual who claims a benefit or entitlement based on the doctrine of legitimate expectation has to establish : (i) the legitimacy of the expectation; and (ii) that the denial of the legitimate expectation led to the violation of Article 14."

46. The above quoted paragraphs if applied to the facts of the instant case, it would show that in respect to the waste land/Government khas land/estate over which no person had acquired the rights of a proprietor, land holder or settlement holder; an indigenous person who is in occupation of such lands under the disposal of the Government would have a procedural legitimate expectation that before taking any decision to evict him, he would be given an opportunity to explain that he had a right to be considered for settlement over the land in his occupation. This right is however subject to a caveat that the occupier/possessor submits application for settlement and the Settlement Rules and Land Policy permits such consideration for settlement. The said person would also have a substantive legitimate expectation that he ought to be considered for settlement over the land in his possession in view of the Land Policy, 2019. This is again subject to filing an application for settlement and the Land Policy, 2019 duly permitting consideration of such application for settlement. It may be that the State may have a more profound reason for eviction in respect to the land in possession on public interest. But in our opinion, this procedural and substantive legitimate expectation would be a cause of action if the consideration of the application is unfair or violates Article 14 of the Constitution which in turn would be a bonafide claim of right involved.

47. We however like to clarify that no person shall have a right of settlement over the lands previously reserved for roads or roadside or grazing grounds or water bodies or public purposes or such land where such person or persons have been by general or special orders directed not to enter into possession and as such, such person who is in possession of these lands would have no legitimate expectation both procedural or substantive and consequently shall have no bonafide claim of right involved on account of the doctrine of legitimate expectation. We also feel it very pertinent herein to observe that the observations made in ***Kamala Kanta Deka (supra)*** at paragraphs Nos. 11 to 13 quoted above should be constricted to waste lands and Government khas land only and not those lands wherein settlement cannot be granted inasmuch as if a contrary view is taken, it would violate various provisions of the Settlement Rules which in our opinion, the learned Division Bench never meant.

48. In the backdrop of the above, let us now consider as to whether it would be necessary in law for issuance of notice to the occupant/possessor prior to initiation of the proceedings under Section 18(2) of the Settlement Rules in order to arrive at a subjective satisfaction that there is no bonafide claim of right is involved.

49. We find it relevant at this stage to observe why the principles natural justice are required to read into the law and conduct of judicial and administrative proceedings. The reasons are:

(a) Fair Outcome: Procedural Rules are established to prevent the seepage of bias in the process of decision making. A decision i.e. reached after following the procedural rules is expect to be fair and outcome what is

reached through a fair process is reliable and accurate;

(b) Inherent Value in Fair Procedure: Fair procedure is not only a means to achieving a fair outcome but is an end in itself inasmuch as a fair procedure induces equality in the proceedings.

(c) Legitimacy of the Decision and the Decision Making Authority: When a decision is formed following the principles of natural justice, there is a perception that the decision is accurate and just. It preserves the integrity of the system as the decision, in addition to being fair also appears to be fair. The perception of the general public that the decision appears to be fair is important in building public confidence in institutions which aid in securing the legitimacy of the Courts and other decision making bodies.

(d) Dignity of Individuals: The principles of fairness express the elementary idea that to be a person, rather than a thing, is at least to be consulted about what is to be done with one. D. J. Galligan in his book "Due Process and Fair Procedure : A Study of Administrative Procedures" explained that to insist on fair treatment is implicit on a renewed understanding of the relationship between citizens and State.

50. The principles of natural justice are derived from common law. It has two primary facets i.e. *Audi Alteram Partem* and *Nemo Judex In Causa Sua.* While *Audi Alteram Partem* encapsulates the Rule of fair hearing, *Nemo Judex In Causa Sua* epitomizes the Rule against Bias i.e. no person should be a judge of their own cause. It is no longer res-integra that the Indian Courts have been significantly influenced by the Courts in England on the interpretation, application and content of natural justice primarily because

the principles are derived from common law and are grounded in the Rule of law. The Courts in India have with time substituted the usage of the terminology of the principles of natural justice with the doctrine of fairness because natural justice embodies the doctrine of fairness. The duty to act fairly i.e. derived from common law is not exhaustively defined in a set of concrete principles. The Courts, both in Indian and abroad have demonstrated considerable flexibility in the application of the principles of natural justice by fine-tuning them to the situational needs. It has been observed time and again that that the concept of natural justice cannot be put in a straight jacket formula and as it is incapable of precise definition. The Seven Judges Bench of the Supreme Court in the case of ***Maneka Gandhi Vs. Union of India and Another*** *reported in* ***(1978) 1 SCC 248*** for the first time constitutionalized the principles of natural justice. Prior to that, in the case of ***A.K. Gopalan Vs. State of Madras*** *reported in* ***(1950) SCC 228,*** the Supreme Court had dealt with the phrase "procedure established by law" as it finds place in Article 21 of the Constitution. The majority opinion though rejected the view that Article 21 includes within its ambit the principles of natural justice however, the minority view rendered by Justice Fazl Ali (as His Lordship then was) held that the expression "procedure established by law" cannot be given a limited meaning. His Lordship observed that the phrase must include procedural due process which includes:

(i) Issuance of notice;

(ii) An opportunity to be heard;

(iii) An impartial Tribunal; and

(iv) An orderly course of procedure.

51. This minority view was accepted by the seven Judges Constitution Bench in the case of ***Maneka Gandhi (supra)*** and it was held that life and liberty of a person cannot be restricted by any procedure i.e. established by law but only by a procedure i.e. just, fair and reasonable. It is very pertinent herein to observe that in the case of ***Maneka Gandhi (supra)***, two jurisprudential developments on the interpretation of Part-III of the Constitution took place which would aid in understanding the impact of constitutionalizing the principles of natural justice. First, is the expansion of the meaning of the expression "procedure established by law" as it finds place in Article 21 of the Constitution to include procedural due process. The second, is the shift from reading the provisions of Part-III of the Constitution as isolated silos to understanding the overlapping tendencies of fundamental rights. It is very important to take note of that in the case of ***Maneka Gandhi (supra)***, two doctrinal shifts were spearheaded on procedural fairness on account of constitutionalizing the principles of natural justice. Firstly, procedural fairness was no longer viewed merely as a means to secure a just outcome but the requirement that holds an inherent value in itself. In view of this shift, the Courts are now precluded from solely assessing procedural infringement based on whether the procedure would have prejudiced the outcome of the case and instead the Court now would have to decide if the procedure that was followed infringed upon the right to a fair and reasonable procedure, independent of the outcome. Secondly, natural justice breathe reasonableness into the procedure. It was held that the core of natural justice guarantees a reasonable procedure which is the constitutional requirement entrenched in Article 14, 19 and 21 of the Constitution.

52. In a recent judgment of the Supreme Court in the case of ***Madhyamam Broadcasting Limited Vs. Union of India and Others*** *reported in* ***(2023) SCC OnLine SC 366***, the Supreme Court observed that the facet of *Audi Alteram Partem* encompasses the components of notice, contents of the notice, reports of the enquiry and materials that are available for perusal. It was further observed that while situational modifications are permissible, the rules of natural justice cannot be modified to suit the needs of the situation to such an extent that the core of the principles are abrogated because it is the core that infuses procedural reasonableness. It was further observed that the burden is on the Applicant to prove that the procedure that was followed (or not followed) by the adjudicating authority in effect infringes upon the core of the right to a fair and reasonable hearing.

53. At this stage, we also find it very pertinent to take note of Article 13 of the Constitution which states that all laws immediately before the commencement of the Constitution as well as all laws post the Constitution which are inconsistent with the fundamental rights enumerated in Part-III of the Constitution shall be void. This is relevant inasmuch as the Regulation as well as the Settlement Rules came into existence prior to the Constitution of India coming into force. Therefore, by virtue of Article 13 of the Constitution, the Regulation as well as the Settlement Rules cannot be inconsistent with the provisions of Part-III of the Constitution.

54. An argument was advanced by the learned Advocate General that there is no challenge to the provisions of Rule 18 of the Settlement Rules and as the language of Rule 18 is clear and unambiguous, any decision reading the requirement of a notice prior to initiation of proceedings under

Rule 18 would amount to judicial legislation. The answer to the same is Article 13 of the Constitution which mandates that all laws which are inconsistent with the fundamental rights enumerated in Part-III of the Constitution shall be void. The Supreme Court in the case of ***Madhyamam Broadcasting Limited (supra)*** observed that the doctrine of procedural fairness being now a facet of Article 14, 19 and 21 of the Constitution has to be read into an enactment to save it from being declared unconstitutional on procedural grounds. Paragraph No.53 of the said judgment being very relevant is reproduced hereinbelow.

> "*53. The judgment of this Court in Maneka Gandhi (supra) spearheaded two doctrinal shifts on procedural fairness because of the constitutionalising of natural justice. Firstly, procedural fairness was no longer viewed merely as a means to secure a just outcome but a requirement that holds an inherent value in itself. In view of this shift, the Courts are now precluded from solely assessing procedural infringements based on whether the procedure would have prejudiced the outcome of the case. Instead, the courts would have to decide if the procedure that was followed infringed upon the right to a fair and reasonable procedure, independent of the outcome. In compliance with this line of thought, the courts have read the principles of natural justice into an enactment to save it from being declared unconstitutional on procedural grounds. Secondly, natural justice principles breathe reasonableness into the procedure. Responding to the argument that the principles of natural justice are not static but are capable of being moulded to the circumstances, it was held that the core of natural justice guarantees a reasonable procedure which is a constitutional requirement entrenched in Articles 14, 19 and 21. The facet of audi alterum partern encompasses the components of notice, contents of the notice, reports of inquiry, and materials that are available for perusal. While situational modifications are permissible, the rules of natural justice cannot be modified to suit the needs*

of the situation to such an extent that the core of the principle is abrogated because it is the core that infuses procedural reasonableness. The burden is on the applicant to prove that the procedure that was followed (or not followed) by the adjudicating authority, in effect, infringes upon the core of the right to a fair and reasonable hearing."

55. In the backdrop of the above, if we take note of the provisions of Rule 18(2) of the Settlement Rules, it clearly shows that the Deputy Commissioner or such other authority duly empowered under Rule 3 of the Settlement Rules has to arrive at a subjective satisfaction that there is no bonafide claim of right involved. The learned Advocate General though submits that the revenue authorities being in possession of the land records, would be in a position to decide unilaterally whether there is a bonafide claim of right involved and as such there is no requirement of notice. But the question as to whether in view of the well settled principles observed hereinabove, can one say that to reach a subjective satisfaction on the rights of occupant/possessor ex-parte without notice would be a procedure which is fair, just and reasonable.

56. In the previous segments of the instant judgment, we dealt with the term "bonafide claim of right involved". In our opinion, a procedure giving an opportunity to the occupant/possessor to have a say as to whether he has a bonafide claim of right involved or not would be in tune with the principles of natural justice. In this regard, we find it very relevant to take note of the judgment of the Supreme Court in the case of ***Rajesh Agarwal (Supra)*** wherein the question was as to whether the principles of natural justice be read into the provisions of the Master Directions on Frauds. The Supreme Court after taking into account various precedents observed that the decision

to classify an account to be fraud involves due application of minds to the facts and law by the lender banks. The lender banks either individually or through a JLF have to decide whether a borrower has breached the terms and conditions of the loan agreement and based upon such determination, the lender bank can seek appropriate remedies. It was categorically observed that the principles of natural justice demand that the borrower must be served a notice giving an opportunity to explain the findings in the forensic audit report and to represent before the account is classified as fraud under the Master Directions on Fraud. Paragraph No.81 of the said judgment being relevant is quoted herein under:

> "*81. Audi alteram partem, therefore, entails that an entity against whom evidence is collected must : (i) be provided an opportunity to explain the evidence against it; (ii) be informed of the proposed action, and (iii) be allowed to represent why the proposed action should not be taken. Hence, the mere participation of the borrower during the course of the preparation of a forensic audit report would not fulfil the requirements of natural justice. The decision to classify an account as fraud involves due application of mind to the facts and law by the lender banks. The lender banks, either individually or through a JLF, have to decide whether a borrower has breached the terms and conditions of a loan agreement, and based upon such determination the lender banks can seek appropriate remedies. Therefore, principles of natural justice demand that the borrowers must be served a notice, given an opportunity to explain the findings in the forensic audit report, and to represent before the account is classified as fraud under the Master Directions on Frauds.*"

57. The law laid down by the Supreme Court in ***Rajesh Agarwal (supra)*** if applied to the issue placed before us can only lead to an inevitable

conclusion that the Revenue Authorities cannot be permitted to unilaterally decide as to whether an occupier/possessor has a bonafide claim of right involved inasmuch as it would require adjudication of both law and facts and without providing an opportunity to the occupier/possessor would be in violation of the principles of the natural justice which in turn would violate Article 14, 19, and 21 of the Constitution. We therefore are of the opinion that prior notice to the occupier/possessor before initiation of proceedings under Rule 18(2) of the Settlement Rules is the mandate of law in order to save Rule 18(2) of the Settlement Rules from being constitutionally invalid on procedural grounds.

58. In the above backdrop, let us test the submissions of the learned Advocate General. It was submitted that Rule 18(2) is silent on the question of the issuance of notice, but the use of the word "forthwith" makes it clear that issuance of notice has been dispensed with. In our opinion, the said contentions seems to be contrary to the settled principles of law inasmuch as the Supreme Court in the case of ***Swadeshi Cotton Mills (supra)*** categorically observed in paragraph No.77 of the said judgment that the expression "immediate action" does not necessarily and absolutely exclude the prior application of the *audi alteram partem* Rule inasmuch as immediacy or urgency requiring swift action is a situational fact having a direct nexus with the likelihood of adverse affect on fall in production. We also find it relevant to take note of the observations of the Supreme Court in the case of ***Mangilal Vs. State of M.P*** *reported in* ***(2004) 2 SCC 447*** wherein the Supreme Court observed that when the statute is silent about the observance of the principles of natural justice, such statutory silence is taken to imply compliance with the principles of natural justice where substantial rights of

the parties are considerably affected. Paragraph No.10 of the said judgment being relevant is quoted herein below:

> "*10. Even if a statute is silent and there are no positive words in the Act or the Rules made thereunder, there could be nothing wrong in spelling out the need to hear the parties whose rights and interest are likely to be affected by the orders that may be passed, and making it a requirement to follow a fair procedure before taking a decision, unless the statute provides otherwise. The principles of natural justice must be read into unoccupied interstices of the statute, unless there is a clear mandate to the contrary. No form or procedure should ever be permitted to exclude the presentation of a litigant's defence or stand. Even in the absence of a provision in procedural laws, power inheres in every tribunal/court of a judicial or quasi-judicial character, to adopt modalities necessary to achieve requirements of natural justice and fair play to ensure better and proper discharge of their duties. Procedure is mainly grounded on the principles of natural justice irrespective of the extent of its application by express provision in that regard in a given situation. It has always been a cherished principle. Where the statute is silent about the observance of the principles of natural justice, such statutory silence is taken to imply compliance with the principles of natural justice where substantial rights of parties are considerably affected. The application of natural justice becomes presumptive, unless found excluded by express words of statute or necessary intendment. ... Its aim is to secure justice or to prevent miscarriage of justice. Principles of natural justice do not supplant the law, but supplement it. These rules operate only in areas not covered by any law validly made. They are a means to an end and not an end in themselves.*"
>
> *(emphasis supplied on the underlined portion)*

59. The next submission made by the learned Advocate General is to the effect that a conjoint reading of Rule 5, 15 and 16 of the Settlement Rules

would show that there is no requirement of issuance of notice. To recapitulate the said submission, the learned Advocate General submitted that Rule 5 stipulates an application for lease. Rule 15 stipulates that no person shall have a right to settlement merely because he is in occupation of the land not included in any lease granted by the State Government either to himself or to any other person and Rule 16 prohibits any person from entering into possession of waste land in any area unless a lease have been issued to him or otherwise a written permission have been given by the Deputy Commissioner pending issuance of such lease to enter into possession. The learned Advocate General therefore submitted that when there is an express bar from entering into possession of the waste land unless there is a lease or a written permission from the Deputy Commissioner, the occupant/possessor therefore has no bonafide right of claim involved. Moreover, the person(s) who file application for settlement, the records of which the revenue authorities would possess and as such the question of issuing notice does not arise.

60. We have already dealt with Rule 5, 8, 15, 16 as well as Land Policy, 2019 hereinabove. We have noticed that there is a bar upon a person to enter into the possession of waste land in an area until lease or a written permission is granted by the Deputy Commissioner. But at the same breath, there is no bar by the State to grant settlement if a person has entered into possession of waste land without a lease or a written permission from the Deputy Commissioner. In fact, a perusal of Clause 14.3 of the Land Policy, 2019 clearly states that it depends upon the discretion of the State Government either to evict the person or to grant settlement. If there is a discretion available still upon the State Government even in respect to a

person who has been in possession of Government waste land without issuance of a lease or a written permission from the Deputy Commissioner, then in such a case, a person who is in occupation would have a bonafide claim of right involved as he would have a legitimate expectation as already opined above. We would further like to add neither the Settlement Rules nor the Land Policy, 2019 stipulate that if an application is filed for Settlement, the summary eviction proceedings under Rule 18 of the Settlement Rules would not be resorted to. The learned Advocate General is also not conceding to that stand that if any application is filed for Settlement, the State would not resort to Rule 18 of the Settlement Rules. Under such circumstances, merely because the occupier had filed an application for Settlement and such application is with the Revenue Authorities cannot be a ground to deprive the occupier of his right to claim that he has a bonafide claim of right involved.

61. Let us consider the said submission from another angle. It is very relevant to take note of that an indigenous landless person may have a right for settlement but as per Clause 14.3 read with Rule 15 of the Settlement Rules, he may not be entitled to settlement over the land he is in possession though the State Government still has a discretion to allot or evict. Under such circumstances, can it be said that the occupier would not have a bonafide claim of right involved or for that matter would not have a say before he being evicted. We are of the opinion that the principle of proportionality comes into play whereby the Court can assess the validity of the decision of the State Government to evict the occupant/possessor of the land on the touchstone of the nature of the right infringed, the underline purpose of the restriction imposed, the extent and urgency sought to be

remedied thereby, the disproportion of the imposition, the prevailing conditions at the time so that a Court can adjudge the reasonableness of the actions. Be that as it may, a person who claims a right to be granted, a settlement in view of the possession of the Government land has also a legitimate right to know the rejection of his application taking into account the State has the authority to grant him the settlement or evict him. Under such circumstances for the purpose of just, fair and transparent procedure, the occupier/possessor has to be put to notice as to whether he has a bonafide claim of right involved. Moreover, if the stand of the occupier/possessor is known and thereupon the Revenue Authorities decide, it would not only be fair but also appear to be fair. Further, the Courts/Authorities adjudicating such claim would be in know of the stand taken by the occupant/possessor.

62. In addition to that, Clause 14.4 also stipulates that the Government would consider granting settlement to those indigenous landless persons who have been in continuous occupation of Government lands since or prior to 28.06.2001. Under such circumstances, a person who is in continuous occupation of Government land since 28.06.2001 or even prior thereto, would have a bonafide claim of right involved. The question as to whether the revenue authorities would be able to decide the said aspect sans an opportunity being given to the occupant/possessor in our opinion would amount to allowing the revenue authority to be a judge of its own cause which again violates the principles of natural justice. It is under such circumstances, the Supreme Court in the case of ***Rajesh Agarwal (supra)*** at paragraph No.81 had duly observed so which has already been quoted hereinabove.

63. We further find it very pertinent herein to observe that taking into account Rule 18 of the Settlement Rules which deals with all kinds of lands post 1997 Amendment, the bonafide claim of right involved may be different in all such cases. In the case of Government khas land or waste land, an occupant/possessor may have a bonafide claim of right involved to claim settlement over the land on the basis of the Settlement Rules and extant Land Policy of the Government of Assam. In respect to other lands i.e. lands previously reserved for roads or roadside lands, or for grazing of village cattle or for other public purposes or the occupant had entered into possession of land from which he has been excluded by general or special order such lands are outside the purview of settlement. There is a complete bar in respect to granting settlements pertaining to lands reserved for roads or roadside lands or for grazing of village cattle. As regards land previously reserved for public purposes, it is outside the scheme of granting settlement. Under such circumstances, the question arises as to whether there is a requirement of issuance of any notice for adjudging as to whether there is a bonafide claim of right involved. In our opinion there might be various situations wherein there may be question of disputes pertaining to the boundary or there may be disputes pertaining to reservations or de-reservation for grazing of village cattle or for that matter, there may be a dispute that the persons who have been granted the settlement in respect of a land even prior to being previously reserved for public purposes. The above examples are illustrative and there might be varied circumstances depending on situational variations. Under such circumstances, issuance of a notice in the opinion of this Court to form the subjective satisfaction would be inconsonance with the principles of natural justice and just fair,

transparent procedure which are facets of Article 14, 19 and 21 of the Constitution.

64. We accordingly answer the reference holding that prior to initiation of proceedings under Rule 18(2) of the Settlement Rules, the occupant/possessor of Government lands have to be issued notice.

65. We appreciate the valuable assistance received from Mr. B. D. Deka.

66. We direct the Registry to place the instant writ petition before the learned Single Judge for the disposal.

JUDGE **JUDGE**

Comparing Assistant