

GAHC010258022017



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

Case No. : WP(C)/1092/2017

KHANINDRA NATH GAYAN and ANR.
SON OF LT. SANKAR CHARAN GAYAN
R/O SUNDARDIY
BARPETA
PROPRIETOR OF RUPKONWAR ITA UDYOG
VILL- BHATKUCHI
P.O. BHATKUCHI
DIST. BARPETA
ASSAM

2: SRI PABITRA KUMAR DAS
S/O LT. JAGANNATH DAS R/O DAKHINHATI
BARPETA
VERSUS

THE STATE OF ASSAM and 3 ORS.
REP. BY THE SECRETARY TO THE GOVT. OF ASSAM
REVENUE DEPARTMENT
DISPUR
GUWAHATI - 781006

2:THE CHAIRMAN

POLLUTION CONTROL BOARD
ASSA
BAMUNIMAIDAM
GUWAHATI - 781021

3:THE DEPUTY COMMISSIONER

BARPETA
DIST. BARPETA

4:THE CIRCLE OFFICER

BAGHBOR REVENUE CIRCLE
BAGHBOR
DIST. BARPETA
ASSAM.

For the Petitioner(s) : Mr. K. N. Choudhury, Sr. Advocate
: Mr. N. Bharali, Advocate

For the Respondent(s) : Mr. H. Sarma, Government Advocate
: Mr. A. Bhattacharjee, SC, Revenue

Date of Hearing : **06.11.2024**
Date of Judgment : **06.11.2024**

BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH

JUDGMENT AND ORDER (ORAL)

Heard Mr. K. N. Choudhury, the learned Senior counsel assisted by Mr. N. Bharali, the learned counsel appearing on behalf of the Petitioners. I have also heard Mr. A. Bhattacharjee, the learned Standing counsel appearing on behalf of the Respondent No.1 and Mr. H. Sarma, the learned Government Advocate appearing on behalf of the Respondent Nos. 3 and 4.

2. The materials on record reveals that the Petitioners herein were allotted a plot of land admeasuring 20 Bighas covered by Dag No.4(Ta) in Part-I of Bhatkuchi VGR under Jania Mouza for manufacturing brick for a temporary period of 3 (three) years on realization of royalty @ Rs.2.50 per cubic metre and land revenue of 10 times of the highest rented class of land in that village. Pursuant to the said communication issued by the Deputy Secretary to the Government of Assam, Revenue (Settlement) Department,

an agreement was entered into by and between the Governor of Assam through the Additional Deputy Commissioner, Barpeta as well as the Petitioners wherein it was agreed that the land described in Schedule-A to the said agreement was allotted for brick industry subject to various conditions mentioned therein. It is pertinent herein to mention that the said allotment for temporary purpose was on the basis of the Assam Land Policy, 1989 and more particularly Clause-8.

3. It further reveals that in terms with the said agreement, the Petitioners had to pay the surface rent for the area at such rate as may be fixed by the Government from time to time the land revenue and the local rate as fixed. Thereupon, the possession of the land was handed over to the Petitioners. At this stage it is however very pertinent to mention that in terms of Clause-9 of the said agreement, the DC/SDO concerned reserved the right to evict the Petitioners, if the Petitioners violated any of the stipulated conditions in the said agreement.

4. The record further reveals that the Petitioners set up their brick industry and thereupon continued to function since therefrom. All of a sudden, the Petitioners were issued a notice on 24.01.2017 under the provisions of Rule 18 of the Settlement Rules framed under the Assam Land and Revenue Regulation, 1886 whereby the Petitioners were asked to vacate within 15 days from the date of receipt of the said notice. The Petitioners thereupon submitted representation to the Deputy Commissioner, Barpeta as well as the Circle Officer, Baghbar Revenue Circle as the latter had issued the notice. However, as nothing fructified on such representation and the Petitioners apprehended that action would be taken to dispossess the

Petitioners for which the Petitioners approached this Court by filing this writ petition.

5. The record reveals that pursuant to the filing of the writ petition, this Court had issued notice and stayed the impugned notice dated 24.01.2017 on the basis of which the Petitioners were sought to be evicted. The record reveals that no affidavit has been filed in the instant writ proceedings however, in a similarly connected writ petition, an affidavit has been filed by the Deputy Commissioner, Barpeta stating inter alia that the Petitioners were temporarily permitted by the Revenue Authority for manufacturing bricks and tiles for a period of 3 (three) years subject to payment of royalty and Bedakhali Jarimana. It was however admitted that there was a written agreement executed with the Petitioners containing certain terms and conditions. In addition to that, it was mentioned that as per Clause-11 of the agreement, the Petitioners have to vacate the possession of the land after expiry of the term of the agreement without any objection. Further to that, it was mentioned that on the expiry of the term of the agreement, there was no fresh agreement executed with the Petitioners and as such, after the expiry of the term of the agreement, the Petitioners were treated and considered as stranger and unauthorized occupants of the Government PGR land. It was further mentioned that the eviction proceedings was initiated taking into account the judgment passed by the Supreme Court in the case

Jagpal Singh and Others Vs. State of Punjab and Others reported in (2011) 11 SCC 396.

6. A perusal of the stand taken by the District Administration appears to be that as the period in terms with the agreement was over, the Petitioners

had no right to remain in possession and accordingly summary proceedings under Rule 18 of the Settlement Rules framed under the Land and Revenue Regulation, 1886 have been initiated more particularly, taking into account the judgment of the Supreme Court in the case of ***Jagpal Singh (supra)***.

7. In the backdrop of the above pleadings, this Court has heard the learned counsels appearing on behalf of the parties.

8. Mr. K. N. Choudhury, the learned Senior Counsel appearing on behalf of the Petitioners submitted that the present case relates to an action where the Petitioners were initially allotted a plot land for establishment of a brick kiln industry and pursuant thereto, an agreement was entered into. The said agreement though specially not extended but by accepting the rent which have been duly paid by the Petitioners from time to time and thereby permitting the Petitioners to continue to remain in possession without any interruption, a bona fide claim of right is involved in the instant proceedings. He further submitted that if it was an agreement entered to between the Petitioners and the Governor of Assam which is duly admitted, then in such cases, without the cancellation of the agreement and following the due process of law, the eviction sought to be carried out taking recourse to a summary procedure as envisaged under Rule 18 of the Settlement Rules is totally illegal and arbitrary and accordingly liable to be interfered with.

9. Mr. H. Sharma, the learned Government Advocate appearing on behalf of the District Administration submitted that the agreement which was entered into between the Petitioners as well as the Governor of Assam was for a period of 3 (three) years from the date of handing over the possession and the period of 3 (three) years have already elapsed and as such by virtue

of Clause-11 of the Agreement, the Petitioners were obligated to hand over the possession of the land in question. The period expired in the year 1995 and thereupon the Petitioners having not handed over the possession and more particularly taking into account that the VGR lands cannot be permitted to be used for any other purpose other than the reason why it was reserved as per the judgment of the Supreme Court in *Jagpal Singh (supra)*, the proceedings for eviction was initiated under Rule 18 of the Settlement Rules. He therefore submitted that the Petitioners have no semblance of right taking into account that under no circumstances, the Petitioners can granted settlement over the land in question and as such, the initiation of proceedings under Rule 18 of the Settlement Rules is in accordance with the well settled principles of law.

10. Mr. A. Bhattacharjee, the learned Standing counsel appearing on behalf of the Revenue Department submitted that though the Revenue Department have not filed any affidavit but the Revenue Department also adopts the same stand as has been taken by the District Administration and as such, the writ petition is devoid of any merits, the same is liable to be dismissed.

11. This Court has given due consideration to the respective submissions made by the learned counsels for the parties and had also perused the materials on record. The question which arises in the instant proceedings is as to whether the Respondents can take recourse to the summary procedure of eviction by applying Rule 18 of the Settlement Rules.

12. From the materials on record, it is apparent that the Petitioners were allotted a plot of land for a period of 3 (three) years on payment of

consideration for establishment of a brick manufacturing industry. Pursuant thereto, an agreement was entered into wherein it was categorically mentioned that the Petitioners were allotted the land for a period of 3 (three) years and the Petitioners had to pay the dead rent or the royalty as may be fixed by the DC/SDO. It is also seen from a perusal of the agreement in question that it is only when the conditions mentioned in the agreement are violated, then the DC/SDO could evict the Petitioners forthwith.

13. This Court has also taken note of Clause-11 of the agreement which stipulates that after the period of 3 (three) years being over, the Petitioners had to hand over the possession to the authorities concerned. Be that as it may, even after the expiry in the year 1995, the Petitioners continued to remain in possession and the Petitioners also continued to pay the rent as is evidenced from the materials on record. There is no steps taken for the purpose of cancellation of the agreement or informing the Petitioners that the agreement no longer holds the field. What has been done in the instant proceedings is that the Circle Officer, Baghbar Revenue Circle had exercised the power under Rule 18 of the Settlement Rules that too without issuance of notice.

14. It is true that the land in question apparently is a VGR land which as per the prevalent land policy is not capable of being settled without the land being de-reserved. Be that as it may, the question, however arises that if there is an agreement on the basis of which the Petitioners allowed to carry on the business and on the basis thereof, the Petitioners started their industry and is presently carrying on, it is the opinion of this Court that the power for summary eviction as envisaged under Rule 18 of the Settlement

Rules could not have been pressed to service. It is also the opinion of this Court that the Petitioners having been permitted to establish their industry, a bonafide claim of right is involved. Under such circumstances, the recourse to Rule 18 of the Settlement Rules is not permissible.

15. Accordingly, this instant writ petition stands allowed thereby setting aside and quashing the impugned notice dated 24.01.2017.

16. Before parting with the records, this Court however observes that the observations so made hereinabove would not preclude the State Government to take appropriate action as envisaged under law as well as evict the Petitioners by following the due process.

17. Interim order passed earlier stands vacated.

JUDGE

Comparing Assistant