

GAHC010032822024



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

Case No. : WP(C)/970/2024

NATHMAL SHARMA FOUNDATION
A RELIGIOUS TRUST HAVING ITS REGISTERED OFFICE AT KHANDAL
WAREHOUSING COMPLEX, PAMOHI ROAD, MAGHAWAPARA, PO
GUWAHATI 781034, ASSAM

VERSUS

THE STATE OF ASSAM AND 4 ORS
REPRESENTED BY THE PRINCIPAL SECRETARY TO THE GOVT. OF ASSAM,
REVENUE AND DISASTER MANAGEMENT DEPARTMENT, DISPUR PO
GUWAHATI ASSAM 781006

2:THE DEPUTY COMMISSIONER
KAMRUP M HENGRABARI
PO GUWAHATI

3:THE CIRCLE OFFICER
AZARA REVENUE CIRCLE
PO AZARA
781014
DIST KAMRUP M ASSAM

4:THE LOT MANDAL
REVENUE VILLAGE PAMOHI
MOUZA RAMCHARANI
C/O O/O CIRCLE OFFICER
AZARA REVENUE CIRCLE
PO AZARA
781014
DIST KAMRUP M ASSAM

5:SHRI NATHMAL SHARMA
S/O LATE MANGAL CHAND SHARMA
RESIDENT OF RADHIKA APARTMENT

FIRST FLOOR
S.C ROAD
ATHGAON
PO GUWAHATI 78100

Advocate for the Petitioner : MR J C GAUR

Advocate for the Respondent : GA, ASSAM

**BEFORE
HONOURABLE MR. JUSTICE MANISH CHOUDHURY**

ORDER

Date : 26-02-2024

Heard Mr. J.C. Gaur, learned counsel for the petitioner; Ms. N. Bordoloi, learned Standing Counsel, Revenue Department for the respondent no. 1; and Mr. S. Baruah, learned Junior Government Advocate, Assam for the respondent nos. 2 – 4.

2. The case of the petitioner, projected in this writ petition, is that the petitioner purchased a plot of land, measuring 6 Bighas 1 Katha 18.5 Lessas in total, covered by [i] Dag no. 18 [*kha*] & K.P. Patta no. 1; and [ii] Dag no. 687 & K.P. Patta no. 111, situate at Village – Pamohi, Mouza – Ramcharani, Azara Revenue Circle, Kamrup [Metro] ['the subject-plot', for short]. After purchase of the subject-plot, the petitioner submitted two applications for the service, '*mutation after deed registration*', a notified public service under the Right to Public Services Act, 2012. The receipt of the said two applications were acknowledged vide Acknowledgement no. RTPS/MUTD/2023/886414 and Acknowledgement no. RTPS/MUTD/2023/886471 on 23.02.2023. After receipt of the said two applications, the respondent no. 3 registered two cases, [i] Case no. MET/AZA/2022-23/84150/OMUT; and [ii] Case no. MET/AZA/2022-23/84151/OMUT and thereafter, initiated proceedings under Section 52 of the Assam Land and Revenue Regulation, 1886 by issuing notices to the general public inviting objections. As per the notice, the next date of the proceedings was on 09.08.2023. As the service, '*mutation after deed registration*', has not been extended to the petitioner till date, the petitioner has preferred the instant writ petition under Article 226 of the Constitution of India.

3. The learned Standing Counsel, Revenue Department and the learned Junior Government Advocate, Assam have submitted, in unison, that the service, '*mutation after deed registration*' is a notified public service under the provisions of the Assam Right to Public Services Act, 2012. If the notified public service sought for is not delivered within the time period prescribed, an applicant can prefer an appeal under the provisions of the Right to Public Services Act, 2012.

4. The case of the petitioner is that after submission of the applications seeking the notified public service, '*mutation after deed registration*' on 23.02.2023, the said service has not been delivered till date. It has been informed to the petitioner in the application acknowledgment itself that if the service is not delivered within a period of 60 days, the petitioner can prefer an appeal at the website, mentioned therein.

5. The State Government by a Notification no. AR.69/2011/Pt-II/98 dated 10.04.2013 has notified the Designated Public Servant, the Appellate Authority, Reviewing Authority, stipulated time limit, user charge for delivery of notified services, which includes the Registration [Mutation] as a notified service, etc. as under :-

Serial No.	25
Notified public service	Office mutation [Registration] If no objection is filed.
Stipulated time limit for providing the service [Days]	60 days, if no objection from any person is filed during the proceeding.
Designation of Designated Public Servant	Circle Officer/ Circle Officer [Attached]
Designation of Appellate Authority	Deputy Commissioner or Additional Deputy Commissioner nominated by Deputy Commissioner [wherever applicable]
Time limit for disposal by Appellate Authority [Days]	30 days
Designation of Reviewing Authority	Commissioner of Divisions
Time limit for disposal by Reviewing Authority [Days]	30 days
Documents to be enclosed with the application	A. In case Mutation [Registration] is sought on the basis of transfer of land by way of purchase, gift, Mortgage or inheritance along with the specified form

	<p>with required court fee:-</p> <ol style="list-style-type: none"> 1. Photocopy the Original Registered Deed/ certified copy of the deed of transfer. 2. Photocopy of up to date land revenue receipt/land revenue clearance receipt of the land for which the Mutation [Registration] is sought. 3. A declaration stating that the Applicant does not possess land in excess of the limit laid down under the Assam Fixation of Ceiling on Land Holding Act, 1956. <p>B. If mutation [Registration] is sought by way of inheritance.</p> <ol style="list-style-type: none"> 1. Proof of death of the deceased Pattadar in whose place Mutation [Registration] is sought. 2. An affidavit [a] Swearing that the Applicant/applicants is/are the son/daughter/wife/legal heirs of the deceased pattadar. [b] Swearing that the Applicant/Applicants have not transferred the property to any one earlier nor mortgaged/nor created any charge over the property to be mutated. [c] Swearing that the person to whom the Applicants applied as successor had not transferred the property during his/her life time. 3. Copy of NOC obtained from D.C. in case of transfer of land. [Not applicable in case of prayer of mutation by inheritance].
User charge, if any [in Rupees]	Rs. 200/- in urban areas and Rs. 50/- in rural areas. [nil in case of mutation sought by way of inheritance in rural areas.]
Eligibility criteria to obtain service	Prior to land holder succeeding to any estate whether by transfer or inheritance and obtaining possession of the same, and every joint proprietor or joint land holder assuming charge of a estate or every person assuming charge of any estate of a proprietor or land holder or of any share herein as manager and every mortgagee obtaining possession of any estate of a proprietor or land holder or of any share therein shall within six months from the date of his taking possession or assumption of charge apply to the Deputy Commissioner of the district on the General Registers of which the estate is borne for registration of his name as such land-holder, proprietor, manager or mortgagee and of the nature and extend of the interest in respect of which the application is made.

6. The Assam Right to Public Services Act, 2012 ['the ARTPS Act', for short] has been enacted by the Assam Legislative Assembly in order to provide for delivery of notified public services to the people of the State of Assam within the stipulated time limit and for matters

connected therewith and incidental thereto. The Act received the assent of the Governor of Assam on 27.04.2012 and was notified by a notification dated 02.05.2012. The Act has been published in the Assam Gazette in its issue dated 02.05.2012. As per Section 2[h], "Right to Public Service" means right to obtain the notified service under the Act from time to time within the stipulated time limit as described under Section 5 and as per Section 2[i], "notified service" means any service notified by the State Government under Section 4. Section 5 of the Act has laid down that every eligible person shall have the right to obtain the services in accordance with the Act within the time bound period as notified under Section 4. It is liability of the Government Servant to deliver services, under Section 6 of the Act, within the stipulated period. The stipulated time limit, as per Section 7[1], starts from the date when the application for obtaining a required notified service is submitted to the Designated Public Servant or to a person subordinate to him authorized to receive the application. Such application shall be duly acknowledged. As per Section 7[2], the Designated Public Servant on receipt of an application under sub-section [1] shall, within the stipulated time limit, provide the notified service or reject the application and in case of rejection of application, he shall record the reasons in writing and communicate to the person making the application,- [i] the reasons for such rejection; [ii] the period within which an appeal against such rejection may be preferred; and [iii] the particulars of the Appellate Authority. Section 8 of the Act has provided for an appeal before the Appellate Authority and also for a review before the Reviewing Authority.

7. It is a settled position of law that when there is an alternative and equally efficacious statutory remedy available for relief the exercise of jurisdiction under Article 226 of the Constitution of India which jurisdiction is discretionary and extra-ordinary in nature, is ordinarily not to be exercised by bypassing the machinery created under the statute for the same remedy. In this connection, following observations made by the Constitution Bench of the Hon'ble Supreme Court of India in **Thansing Nathmal and others vs. Superintendent of Taxes, Dhubri and others**, reported in AIR 1964 SC 1419 can be referred to : -

"7. The jurisdiction of the High Court under Article 226 of the Constitution is couched in wide terms and the exercise thereof is not subject to any restrictions except

the territorial restrictions which are expressly provided in the Articles. But the exercise of the jurisdiction is discretionary : it is not exercised merely because it is lawful to do so. The very amplitude of the jurisdiction demands that it will ordinarily be exercised subject to certain self-imposed limitations. Resort to that jurisdiction is not intended as an alternative remedy for relief which may be obtained in a suit or other mode prescribed by statute. Ordinarily the Court will not entertain a petition for a writ under Article 226, where the petitioner has an alternative remedy, which without being unduly onerous, provides an equally efficacious remedy. Again the High Court does not generally enter upon a determination of questions which demand an elaborate examination of evidence to establish the right to enforce which the writ is claimed. The High Court does not therefore act as a court of appeal against the decision of a court or tribunal, to correct errors of fact, and does not by assuming jurisdiction under Article 226 trench upon an alternative remedy provided by statute for obtaining relief. Where it is open to the aggrieved petitioner to move another tribunal, or even itself in another jurisdiction for obtaining redress in the manner provided by a statute, the High Court normally will not permit by entertaining a petition under Article 226 of the Constitution the machinery created under the statute to be bypassed, and will leave the party applying to it to seek resort to the machinery so set up.

8. The Hon'ble Supreme Court of India in **Baburam Prakash Chandra Maheshwari vs. Antarim Zila Parish Ad Now Zila Parishad [three judges Bench]**, reported in AIR 1969 SC 556, has held it as a well-established proposition of law that when an alternative and equally efficacious remedy is open to a litigant he should be required to pursue that remedy and not to invoke the special jurisdiction of the High Court to issue a prerogative writ. It is true that the existence of a statutory remedy does not affect the jurisdiction of the High Court to issue a writ. But, it is observed by a five-Bench Judge decision of the Hon'ble Supreme Court of India in **Rashid Ahmed v. Municipal Board, Kairana**, AIR 1950 SC 163, that 'the existence of an adequate legal remedy is a thing to be taken into consideration in the matter of granting writs' and where such a remedy exists it will be a sound exercise of discretion to refuse to interfere in a writ petition unless there are good grounds therefor.

9. In the light of the above discussion as regards exercise of the extra-ordinary and discretionary jurisdiction under Article 226 of the Constitution of India, this Court on analysis of the provisions of the alternative statutory remedy available to the petitioner, is of the considered view that such remedy is an efficacious and adequate one providing also for an appeal and a second appeal as well as imposition of penalty in the event the provisions provided in the statute, that is, the ARTPS Act and the rules framed thereunder are not followed in extending the notified public service. In such view of the matter, this Court finds that this writ petition is not to be entertained. As it is open to the petitioner to have recourse to the remedy under the ARTPS Act by filing an appropriate appeal under the provisions of the said Act to pursue the notified service, '*mutation after deed registration*' in accordance with the procedure laid down therein, the petitioner is to pursue the said statutory remedy of appeal.

10. This order with the observations made and direction given above, disposes of the writ petition. No cost.

JUDGE

Comparing Assistant