

GAHC010006762019



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

Case No. : WP(C)/200/2019

VARUN AGARWAL AND ANR.
S/O. LT. HANUMAN PRASAD AGARWAL JAWAHAR NAGAR, MAIDAM
GAON, NH-37 NEAR HANUMAN WEIGH BRIDGE, BELTOLA, GUWAHATI-
781022, KAMRUP (M), ASSAM.

2: SMT. MANOHARI DEVI GOYAL
W/O. LT. BHIM RAJ GOYAL
JAWAHAR NAGAR
MAIDAM GAON
NH-37 NEAR HANUMAN WEIGH BRIDGE
BELTOLA
GUWAHATI-781022
KAMRUP (M)
ASSAM

VERSUS

THE STATE OF ASSAM AND 4 ORS.
REP. BY THE ADDL. CHIEF SECRETARY TO THE TO GOVT. OF ASSAM,
REVENUE AND DISASTER MANAGEMENT DEPTT., DISPUR, GUWAHATI-
781006.

2: THE DY. SECRETARY
GOVT. OF ASSAM
REVENUE AND DISASTER MANAGEMENT DEPTT.
DISPUR
GUWAHATI-781006.

3: THE DY. COMMISSIONER
KAMRUP (M)
PANBAZAR
GUWAHATI-781001.

4: THE ADDL. DY. COMMISSIONER

KAMRUP (M)
LAND SETTLEMENT BRANCH
PANBAZAR
GUWAHATI-781001.

5:THE CIRCLE OFFICER

DISPUR REVENUE CIRCLE BASISTHA
GUWAHATI-781029

Advocate for the Petitioner : MR. S SARMA, MR. J DEKA,MR. T K BHUYAN,MR. S K DEKA

Advocate for the Respondent : GA, ASSAM, SC, REVENUE

BEFORE
HONOURABLE MR. JUSTICE N. UNNI KRISHNAN NAIR

JUDGMENT & ORDER (ORAL)

Date : 16-08-2024

Heard Mr. S. Sharma, learned Senior Counsel assisted by Mr. A. Gautam, learned counsel appearing for the petitioners. Also heard Ms. N. Bordoloi, learned Standing Counsel appearing for the Revenue and Disaster Management Department representing the respondents no. 1 & 2 and Mr. N. Goswami, learned Government Advocate appearing for the respondents no. 3, 4 & 5.

2. The challenge made in the present proceeding is to an eviction notice dated 20.12.2018, issued by the Circle Officer, Dispur Revenue Circle, requiring the petitioners to vacate the Government land possessed by them within 15 days from receipt of the said notice.

3. The facts requisite for adjudication of the issue arising in the present proceeding are noticed as under:

4. It is projected in the writ petition that the father of the petitioner had

brought the Possessory Right of a Government land, measuring 03 Katha, 11 Lechas, covered by Dag No. 1289 in the year 1982 from one Nayan Lingdo, whose father possessed the said land since 1973. On the said transaction so occasioning, the father of the petitioners possessed the land in question and renovated the existing room, while also constructing new rooms. It is projected that the said land and houses constructed thereon, were earlier assessed by the Guwahati Municipal Corporation (GMC) in the name of Nayan Lingdo and after the possession thereof, by the father of the petitioners, such Holding No. 56 of Ward No. 33(old)/56(new) was so issued in his favour. After the death of the father of the petitioners, the mother of the petitioners possessed the said land along with the petitioners, herein, continuously. Accordingly, the Holding No. 56 being assessed in the name of the mother of the petitioners, the taxes so working out were being regularly paid in the matter. The GMC Holding Nos. pertaining to the houses so constructed over the said plot of land, as on today, is 10272120 of Ward No. 30.

5. The petitioners, who are siblings, contend that neither their parents nor they, have no landed property other than the said plot of land so possessed by them. Accordingly, the petitioners contended that being landless persons, they have filed separate applications, being applications No. 330 and 331, both dated 04.11.2006 respectively; for settlement of the said plot of land, measuring 01 Katha, 10 Lechas each; totaling 03 Kathas before the District Commissioner, Kamrup. It is contended by the petitioners that the said applications as submitted by them, was duly processed by the authorities and necessary clarifications with regard to the land possessed by the petitioners were also received from the Guwahati Metropolitan Developmental Authority.

6. The petitioners contend that their claim for settlement of the land in question under their possession is being currently considered by the respondent

authorities in Case No. KRS-1036/2006 and KRS-1037/2006. It is contended that a final decision thereon, has not been arrived at, till date.

7. Poised thus, the petitioners received an eviction notice dated 20.12.2018, issued by the Circle Officer, Dispur Revenue Circle; wherein they were contended to be occupying Government land by constructing concrete wall and tin roof houses and accordingly, they were asked to vacate the said Government land within a period of 15 days from the date of receipt of the notice, failing which, it was provided that eviction proceeding under the provisions of Rule 18(2) of the **Assam Land and Revenue Regulations, 1886**, (hereinafter referred to as "the Regulations of 1886") would be so carried out.

8. On receipt of the said eviction notice dated 20.12.2018; the petitioners submitted a representation before the Circle Officer, Dispur Revenue Circle and inter-alia, contended therein, that they had submitted applications praying for settlement of the land under their possession with them and the same is under process for being placed before the jurisdictional Land Advisory Committee for necessary approval and accordingly, they have prayed that the eviction notice so issued, is clearly unjustified. However, no response having been so received and there being a threat of eviction in pursuance to the eviction notice dated 20.12.2018, the petitioners had instituted the present proceeding.

9. Mr. S. Sharma, learned Senior Counsel assisted by Mr. A. Gautam, learned counsel appearing for the petitioners, at the outset, had submitted that the impugned eviction noticed dated 20.12.2018, was issued by the Circle Officer, Dispur Revenue Circle, clearly without any jurisdiction. Mr. Sharma, has submitted that although by way of an amendment of the Rules under the Regulations of 1886, were amended, more particularly, the provisions of Rule 3(ii) and it was made permissible for the jurisdictional District Commissioner to delegate the power to undertake eviction processes to a Circle Officer or, Circle Officer

attached; and such amended provisions of the Rules had come into force with effect from 06.02.2010, the delegation, insofar as the Kamrup Metro District is so concerned, had occasioned only on 26.01.2019. Accordingly, he submits that the eviction notice so issued by the Circle Officer, on 20.12.2018 was issued without jurisdiction.

10. Mr. Sharma, learned Senior Counsel further submits that although the power to carry out an eviction process was also permissible to be delegated by the jurisdictional District Commissioner, upon a Circle Officer/Circle Officer (Attached); the delegation so permitted, has to be done in express terms by the District Commissioner concerned. In the case on hand, he submits that the concerned Circle Officer, not having been so empowered to carry out processes of eviction under the rules holding the field, the impugned eviction notice, dated 20.12.2018 would call for an interference by this Court.

11. Mr. Sharma, learned Senior Counsel has placed reliance on the decision of a Co-ordinate Bench of this Court in the case of **Mrinal Hazarika and Ors., Vs State of Assam**, reported in **2020 SCC Online 1991**, to contend that the claim as made by a possessor of a Government land for settlement of the same with such person, would require a due consideration by the concerned authorities and a finalization therein, being arrived, further process as may be called for is permissible under Rule 18(2) of the provisions of the Regulations of 1886.

12. Mr. Sharma, learned Senior Counsel had further relied upon a decision of a Division Bench of this Court in the case of **In re-Removal of Encroachers**, reported in **2023 SCC Online Gau 3551**, to contend that the right of a possessor of a Government land to have his case considered under the land policy holding the field for settlement of the land was further recognized.

13. Mr. Sharma, learned Senior Counsel had further placed on record, a communication dated 25.02.2021, issued by the Addl. Deputy Commissioner,

Kamrup Metropolitan District, wherein the Circle Officer, Dispur Revenue Circle, in reference to the applications submitted by the petitioners was required to submit allotment proposal in favour of Chief Executive Counselor, Mishing Autonomous Council for construction of Mishing Autonomous Bhavan after deducting the land measuring 01 Katha, 05 Lechas land each, possessed by the petitioners and also to submit a present status Report along with Check-list against the petitioners for settlement of the land to them, at the earliest.

14. Mr. Sharma, learned counsel had contended that in response to the said communication dated 25.02.2021, the Circle Officer, Dispur Revenue Circle, vide his communication dated 19.07.2021 had submitted the requisite proposal. It is the contention of Mr. Sharma, that in the said communication dated 19.07.2021, the Circle Officer, Dispur Revenue Circle had brought on record the fact that the land so possessed by the petitioners, respectively, were not under the possession of the Mishing Autonomous Council and accordingly, submitted the requisite particulars for processing the case of the petitioners for settlement of the land under possession with them along with the requisite Trace Map of the area where the said land, possessed by the petitioners was situated.

15. Ms. N. Bordoloi, learned Standing Counsel for the Land and Revenue Department had submitted that the processing with regard to the claim of the petitioners for settlement of the land under their possession, is now required to be further processed by the District Commissioner, Kamrup Metro, strictly, in terms of the land policy as presently holding the field.

16. Mr. N. Goswami, learned Government Advocate representing the State respondents submits that the eviction notice dated 20.12.2018, issued by the Circle Officer, Dispur Revenue Circle was so issued in terms of the powers conferred upon him, in pursuance to the amendment of the provisions of Rule 3(ii) of the Settlement Rules, which had come into force w.e.f., 06.02.2010.

17. On a pointed query made by this Court, as to the further delegation by the District Commissioner, Kamrup Metro to the Circle Officer so functioning under him, including the Circle Officer, Dispur Revenue Circle to issue eviction notices, Mr. Goswami, has fairly submitted that no such notification was furnished to him by the office of the District Commissioner, Kamrup Metropolitan district.

18. I have heard the learned counsel for the petitioners and also perused the materials available on record.

19. The facts as noticed herein above are not in dispute. It is also not disputed that the petitioners on submission of applications, complete in all respects, praying for settlement of the land so possessed by them, Case Nos. KRS-1036/2006 and KRS-1037/2006 respectively came to be so registered and the matter was being processed. It is during the pendency of the processing as being made in connection with the said cases for arriving at a decision with regard to the prayer of the petitioners for being settled with the Government land so possessed by them in terms of the land policy holding the field that they had received the impugned eviction notice dated 20.12.2018.

20. The said eviction notice dated 20.12.2018, was admittedly, issued by the Circle Officer, Dispur Revenue Circle, requiring the petitioners to vacate the Government land, with further direction that in the event the petitioners fail to vacate the land within the time frame prescribed, therein, eviction proceedings as would be mandated as per the provisions of Rule 18(2) of the Rules under the provisions of the said Regulations of 1886, would be so initiated.

21. The Settlement Rule, more particularly, Rule 3(ii) as it stood before the Assam Land and Revenue Regulations (Amendment Rules) 2009, came into effect, the power to initiate eviction proceedings was only vested with the jurisdictional District Commissioner, which was further permissible to be delegated to a Sub-Divisional Officer. The powers of carrying out evictions were not

delegated to the Circle Officers. It is only vide the said amendment rules of 2009 that such power was also made permissible to be so delegated to a Circle Officer or a Circle Officer (Attached). The said amendment so effected had come into force w.e.f., 06.02.2010.

22. In the affidavit so filed on behalf of the respondents no. 3 & 4, herein, a contention was raised to the effect that the power to remove encroachments was already delegated to the Circle Officers vide Government notification dated 06.02.2010 and reference in this connection is also made to a communication dated 26.01.2019. The provisions of the Rules, required the District Commissioner to take steps for removal of encroachments from Government land, however, such power is permissible to be so delegated to a Sub-Divisional Officer and after the coming into force of the said amended Rules of 2009 even to a Circle Officer/Circle Officer (Attached). What is of necessity is that there has to be an order delegating such power vested with the jurisdictional District Commissioner under the provisions of the said Rules, but, no order, delegating such power by the jurisdictional District Commissioner came to be placed before this Court in spite of repeated queries made in this connection, during the proceedings of the present matter. Even if such delegation is treated to have been so done vide a communication dated 26.01.2019, as per the disclosure made in the affidavit filed by the respondents no. 3 & 4, the impugned eviction notice issued by the Circle Officer, Dispur Revenue Circle on 20.12.2018, would go to reveal that the same was issued before he was so empowered by the jurisdictional District Commissioner to take steps under the provisions of Rules holding the field to remove encroachments from Government land and accordingly, it can be safely construed that the eviction notice dated 20.12.2018 was so issued by the Circle Officer, Dispur Revenue Circle without being so authorized and the same is without jurisdiction.

23. Having reached the above conclusions, this Court is of the considered view that the eviction notice dated 20.12.2018, which is already under an order of stay by this Court in the present proceeding cannot be sustained and would require an interference. Accordingly, the eviction notice dated 20.12.2018 is set aside.

24. Having set aside the eviction notice dated 20.12.2018, this Court by relying upon the decision of this Court in the case of **Mrinal Hazarika (supra)** and in the case of **In-re Removal of Encroachers (supra)** would direct the District Commissioner, Kamrup Metro to further process the applications submitted by the petitioners and pending before the authorities in Case Nos. KRS-1036/2006 and KRS-1037/2006, in terms of the land policy holding the field as on date and a decision thereon be arrived at after having the cases of the petitioners considered by the committees so authorized to consider such applications.

25. At this stage, this Court would refer to the decision of the Division Bench of this Court in the case of **In-re Removal of Encroachers (supra)**, wherein, in Paragraph-24; the following observations were so made: -

"We also clarify that in the event, the authorities arrive at any conclusion that any of the persons have right for allotment of land, it is not to be construed by virtue of his order that such allotment would have to be only in respect of the land which are already under their occupation/encroachment, and as already clarified the entitlement for allotment of land and the liability to be evicted from the encroached land, are two separate and distinct issues. The land if allotted to any person would be as per discretion of the Deputy Commissioner as to where would be the location of such land to be allotted, and no right exists in favour of the encroachers that the land if allotted would have to be the same and which they are illegally occupying."

26. The observations as made in the above quoted Paragraph-24 of the said

decision would also be applicable to the present proceeding and the same is also to be noted by the District Commissioner, Kamrup Metro, while considering the applications as submitted in the matter by the petitioners.

27. The decision now required to be arrived at with regard to the applications so submitted by the petitioners and presently, pending consideration in Case No. KRS-1036/2006 and KRS-1037/2006 shall be so arrived at by the District Commissioner, Kamrup Metro, after having the matter considered by the authorities so required to consider the same, within a period of 06(Six) months from the date of receipt of a certified copy of this order. The jurisdictional District Commissioner, shall on such decision being arrived at, pass a reasoned order in this matter. It is further provided that till a reasoned order is so passed, on the applications submitted by the petitioners in the matter, praying for settlement of the land under their possession, no further proceeding of eviction shall be so initiated against the petitioners, herein.

28. The above directions are also being passed considering the communication dated 19.07.2021, issued by the Circle Officer, Dispur Revenue Circle, Dispur and brought on record by the learned Senior Counsel for the petitioners and wherein, in response to the requirements as made by the office of the District Commissioner, Kamrup Metropolitan District, vide communication dated 25.02.2021, the requisite proposals in respect of the applications made individually by the petitioners, were so submitted.

29. With the above observations and directions, the present writ petition stands disposed of.

JUDGE

Comparing Assistant