

GAHC010023052024



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

Case No. : WP(C)/781/2024

BADAL KALITA
S/O- LT HAREN KALITA, R/O- VILL.- SIVPUR WARD NO. 7, P.O.
ABHAYAPURI, P.S. ABHAYAPURI, DIST.- BONGAIGAON, ASSAM

VERSUS

THE STATE OF ASSAM AND 6 ORS
THROUGH THE SECRETARY TO THE GOVERNMENT OF ASSAM, REVENUE
DEPARTMENT, DISPUR, GUWAHATI- 781006

2:THE COMMISSIONER AND SECRETARY
TO THE GOVERNMENT OF ASSAM
REVENUE DEPARTMENT
DISPUR
GUWAHATI- 781006

3:THE SETTLEMENT OFFICER
GOALPARA P.O. GOALPARA
DISTRICT- GOALPARA
ASSAM

4:THE DEPUTY COMMISSIONER
BONGAIGAON
P.O. BONGAIGAON
DISTRICT- BONGAIGAON
ASSAM

5:THE ADDITIONAL DEPUTY COMMISSIONER
BONGAIGAON
P.O. BONGAIGAON
DISTRICT- BONGAIGAON
ASSAM

6:THE SUB-DIVISIONAL OFFICER
NORTH SALMARA
DISTRICT BONGAIGAON
ASSAM

7:THE ASSISTANT SETTLEMENT OFFICER
SRIJANGRAM CIRCLE
ABHAYAPURI
DISTRICT BONGAIGAON
ASSA

Advocate for the Petitioner : MR H DAS

Advocate for the Respondent : GA, ASSAM

BEFORE
HONOURABLE MR. JUSTICE SOUMITRA SAIKIA

ORDER

14.06.2024

Heard Mr. H. Das, learned counsel for the petitioner. Also heard Ms. S. Baruah, learned Government Advocate, Assam and Ms. G. Hazarika, learned Standing Counsel, Revenue & Disaster Management Department

2. It is claimed in this writ petition by the writ petitioner that the petitioner got allotment of a plot of land measuring 2 Katha 18 Lechas situated at village Abhayapuri and the said land was mutated in his favour by order dated 25.08.1998 passed by the Assistant Settlement Officer, Srijangram Revenue Circle and also by an order dated 25.08.1998 passed by Addl. Deputy Commissioner, Bongaigaon district bearing No. BRKG/Cor/11 dated 25.08.1998 and accordingly, the land revenue records were collected. However, the

Commissioner and Secretary to the Govt. of Assam, Revenue Department vide order no. RLR-49/99/10 dated 16.07.1999 directed the Settlement Officer, Srijangram Revenue Circle to take immediate steps for cancellation of the corrections of the records in respect of 38 nos. of letters at an early date and correct the land records bringing the land to the Khas status. The land of the petitioner is at Sl. No.19 in the list appended to the letter/ communication dated 16.07.1999 referred above. Being aggrieved the petitioner has approached this Court.

3. I have heard learned counsel for the parties and perused the case records.

4. The issue which has arisen in the instant writ petition pertains to not granting of mutation to the Petitioner in spite of the Petitioner having a registered Sale of Deed. Various litigations in the meantime had happened in respect thereto and from the said it appears that the land in question was initially of the Bijni Raj Estate under Srijan Gram Revenue Circle. It further reveals from the records that after the enactment of the Abolition of Zamindari Act, 1954 and the subsequent preparation of the land records, the land under their occupation have been shown as the Government lands though the petitioner remained in continuous possession of the land since before. It further appears that the Deputy Secretary, Revenue (Settlement) Department,

Government of Assam had issued an Office Memorandum dated 16.07.1988 informing to the Deputy Commissioner, Sub-Divisional Officer, Settlement Officer, and Assistant Settlement Officer of the respective Circles directing them to make necessary corrections of the revenue records by recording the names of the persons who are in possession of the lands since the time of the Zamindari system which lands has been recorded as Government Khas land in such revenue records. It was also directed that such correction is required to be made after making necessary enquiry and at the time of re-settlement on the basis of the concerned documents and records and after keeping in view that nobody should derive undue advantage on the basis of forged documents. It further appears from the records that pursuant to the said Office Memorandum, the Additional Deputy Commissioner, Bongaigaon vide order dated 17.08.1998 directed the Assistant Settlement Officer, Srijangram Circle, Abhayapuri to correct the revenue records by recording the names of the tenants instead of Government Khas land and accordingly in terms with the said direction of the Additional Deputy Commissioner, Bongaigaon, the revenue records were corrected. Consequent thereupon the Commissioner & Secretary to the Government of Assam, Revenue (LR) Department vide the communication dated 16.07.1999 directed that the Settlement Officer, Goalpara and Bongaigaon to take immediate steps for cancellation of the corrections effected on the strength

of the said order passed by the Additional Deputy Commissioner on the ground that the same was done bypassing the Settlement Officer. This communication was put to challenge before this Court in WP(C) No.5063/1999. This Court vide an order dated 15.12.2005 after hearing the parties observed as follows :

“

I have considered the submissions of the learned counsel for the parties and also perused the contents of the writ petition as well as the annexures appended thereto. There is no dispute regarding issuance of the office memorandum dated 16.7.88 by the Government of Assam, Revenue Department, asking the revenue authorities to make necessary enquiry about the claim of the petitioners over the land in the erstwhile Estate upon production of written convincing documents. It appears from the order dated 17.8.98 of the learned Additional Deputy Commissioner that the corrections of the revenue record the names of the petitioners were allowed, but said order does not reflect making any enquiry by the revenue authority, namely, Settlement Officer or by Assistant Settlement officer. Therefore, no fault can be found in issuing the order dated 16.7.88 of the Commissioner & Secretary, Revenue Department but at the same time the office memorandum dated 16.7.88 impose a duty on the Revenue authority to make an enquiry about the claim of the petitioners, wherein the revenue authorities are to verify the documents to be produced by the petitioners in support of their claim. In view of the aforesaid position, I dispose of this writ petition with a direction to the Settlement Officer, Bongaigaon to make an enquiry about the claim of the petitioners in terms of the office memorandum dated 16.7.88 or any other office memorandum issued for that purpose and if upon enquiry they are found to be entitled to any benefit under the

said office memorandums the same shall be given to them. The said exercise is directed to be completed within a period of 6 (six) months from the date of receipt of the certified copy of this order. Since this Court by order dated 4.10.99 while issuing notice of motion has already directed the respondents not to disturb the possession of the petitioners in respect of the land in question, the said possession shall continue till such enquiry is made and completed and the final order is passed by the competent revenue authority.

.....”

5. From a perusal of the said directions given by this Court on 15.12.2005, it appears that Settlement Officer, Bongaigaon was directed to make an enquiry about the claim of the Petitioners in WP(C) No.5063/1999 in terms of the Office Memorandum dated 16.07.1988 or any other Office Memorandum issued for that purpose and if upon enquiry they are found to be entitled to any benefit under the said Office Memorandum the same shall be given to them. This exercise was directed to be done within a period of 6 (six) months from the date of receipt of the certified copy of this order.

6. This Court vide order dated 15.12.2005 had directed the concerned respondent authorities to make an enquiry about the claim of the Petitioners in WP(C) 5063/1999 in terms with the Office Memorandum dated 16.07.1988 or any other office memorandum issued for that purpose and if upon enquiry they were found to be entitled to any benefit under the said office memorandums the

said should be given to them. It further appears that initially the Additional Deputy Commissioner vide various orders including the order bearing no. No.BRS-86/95/16 dated 29.11.1995 granted the entitlement to the vendor of the Petitioners and thereby recording their name in terms with the Office Memorandum dated 16.07.1988. On the basis thereof a Patta was granted to the petitioners being Periodic Patta No.126 and on the basis thereof the Assistant Settlement Officer also passed an order dated 30.02.1997 whereby the dag number was renumbered as Dag No.2203 and the Patta Number was 126 which was recorded in the name of the vendor of the Petitioners.

7. Subsequent thereto it reveals that without issuing any notice or giving any opportunity of hearing to the Pattadars who have been allotted the new Pattas on the basis of the Memorandum dated 16.07.1988, the Commissioner & Secretary issued the communication dated 16.07.1999 whereby directed the Settlement Officer, Goalpara for cancellation of all the Pattas issued to 38 numbers of Pattadars including the vendor of the Petitioners. It needs to be taken note of that on the basis of the Patta being issued after necessary verification being conducted by the Office of the Additional Deputy Commissioner a right had accrued upon the vendor of the Petitioners and the cancellation which have been done without affording any opportunity of hearing or even without any show-cause-notice is not only in violation to the principles

of natural justice but also it violates the very tenets of Article 14 of the Constitution of India. Under such circumstances this Court interferes with the communication no. RLR-49/99/70-A dated 16.07.1999 issued by the Commissioner & Secretary to the Government of Assam, Revenue Department and accordingly the same is set aside. Infact a perusal of the order dated 15/12/2005 passed in W.P.(C) No. 5063/1999 wherein communication dated 16/7/1999 was put to challenge, it would show that this Court had inspite of the communication dated 16/7/1999 directed that Settlement Officer, Bongaigaon to make an enquiry as regards the claim of the Petitioners on the basis of the Office Memorandum dated 16/7/1988 and if entitled on the basis thereof or any other Office Memorandum, benefit was directed to be given. The record reveals that it was only on account of the communication dated 16/7/1999 such benefit has not been restored to the petitioners herein. In view of setting aside and quashing of the communication dated 16/7/1999 by this court, the Respondent Authorities shall proceed purely on the entitlement on the basis of the Office Memorandum dated 16/7/1988 and the directions contained in the said communication dated 16/9/1999 should be treated as nonest.

8. In view of the above, the petitioner herein may approach the concerned Respondent No.4, namely, the Deputy Commissioner, Bongaigaon seeking mutation of his name on the basis of the Deed of Sale executed on 25.08.1998

and the Respondent No. 4 shall deal with such application in terms with the observations made herein above.

9. In terms of the above, the writ petition stands disposed of.

JUDGE

Comparing Assistant