

(2023) 12 GAU CK 0040

In the Gauhati High Court

Case No : Writ Petition (Civil) No. 7551 Of 2019

Anima Gogoi

APPELLANT

Vs

State Of Assam And 3 Ors

RESPONDENT

Date of Decision : 19-12-2023

Acts Referred:

Constitution Of India, 1950 — Article 226

Citation : (2023) 12 GAU CK 0040

Hon'ble Judges : Manish Choudhury, J

Bench : Single Bench

Advocate : S N Sarma

Final Decision : Dismissed

Judgement

1. The present writ petition under Article 226 of the Constitution of India has been preferred by the petitioner to assail a speaking order dated 24.07.2019 passed by the respondent no. 3 whereby the petitioner's prayer for settlement of a plot of land measuring 15 Lessas, covered by Government Dag no. 5072, situate at Sivasagar Town [Part-II], Mouza – Nagarmohol, District – Sivasagar ['the subject-plot', for short] has been rejected.

2. I have heard Mr. P.K. Gogoi, learned counsel for the petitioner; Mr. B. Goswami, learned Additional Advocate General, Assam assisted by Mr. R. Borpujari, learned Standing Counsel, Revenue & Disaster Management Department and Mr. R.R. Kakoti, learned counsel for all the respondents.

3. The petitioner claims to be an indigenous person. It transpires from the impugned speaking order that the petitioner submitted applications, dated 05.11.2015 & 23.11.2015, before the respondent authorities with a prayer to accord approval for settlement of the subject-plot.

4. The petitioner has stated that the petitioner had been in possession of a plot of land since a long period of time. The petitioner had earlier approached this Court by way of a writ petition, W.P.[C] no. 5731/2013. While issuing notices to

the respondents by order dated 07.10.2013, the Court had directed, as an interim measure, that possession of the petitioner in respect of a parcel of land measuring 2 Kathas 8 Lessas situate at Ward no. 9, Mouza – Nagarmohol, District - Sivasagar should not be disturbed. The subject-plot is part of the said 2 Kathas 8 Lessas in respect of which the said interim order was passed on 07.10.2013.

4.1. On the basis of the application of the petitioner seeking settlement of the subject-plot, the Circle Office, Sivasagar Revenue Circle prepared a proposal for allotment/settlement of the subject-plot and the said proposal came to be placed before the Sub-Divisional Land Advisory Committee [SDLAC], Sivasagar Sub-Division in its Meeting, held on 12.01.2015, under the chairmanship of the Deputy Commissioner, Sivasagar being the Chairman of the SDLAC. The SDLAC discussed the proposal for settlement of the subject-plot in favour of the petitioner and had thereafter, approved the same subject to realization of due premium.

4.2. Alleging that the proposal regarding settlement of the subject-plot in favour of the petitioner was not considered with due earnestness, the petitioner preferred the writ petition, W.P.[C] no. 5731/2013. The writ petition was finally disposed of by an Order dated 22.04.2015 observing inter alia to the effect that whether the particular land should be allotted to the petitioner or not, was a matter to be decided by the appropriate department of the State Government. Having regard to the nature of the grievance raised, the writ petition was disposed of by directing the State Government to examine the feasibility or otherwise of the case of the petitioner for settlement of the subject-plot and after taking such decision, to communicate the decision to the petitioner.

4.3. After disposal of the writ petition, W.P.[C] no. 5731/2013 by the Order dated 22.04.2015, a proposal was forwarded by the Circle Officer, Sivasagar Revenue Circle to the Deputy Commissioner, Sivasagar on 15.06.2015 indicating the premium amount that was required to be collected in the event of settlement of the subject-plot was made in favour of the petitioner. The proposal for settlement of the subject-plot was thereafter, forwarded to the Revenue & Disaster Management Department from the office of the Deputy Commissioner, Sivasagar on 20.06.2015 and the Revenue & Disaster Management Department had, in turn, wrote to the Deputy Commissioner, Sivasagar on 04.11.2015 to abide the direction made in the Order dated 22.04.2015 passed in the writ petition, W.P.[C] no. 5731/2013. It was thereafter, the impugned speaking order came to be passed on 24.07.2019.

5. The main ground on which the proposal for settlement of the subject-plot in favour of the petitioner has been rejected is that the petitioner has a periodic patta land measuring 1 Katha 5 Lessas at Sivasagar Town at Mouza – Nagarmohol, District – Sivasagar.

6. It has been clarified by the learned counsel for the parties that the petitioner

sought allotment of 15 Lessas of land out of Government Dag no. 5072.

7. In the counter affidavit filed by the respondent no. 3, it has been categorically asserted that the petitioner had already been allotted/settled with a plot of land measuring 1 katha 5 Lessas under new Dag no. 3083 [carved out of original Government Dag no. 5072] and Periodic Patta no. 3208 at Sivasagar Town, Mouza – Nagarmohol, District - Sivasagar and accordingly, possession of the said plot of land measuring 1 Katha 5 Lessas was also handed over to the petitioner. It has further been averred that the petitioner after taking over possession of the said plot of land settled in her favour, has been in its possession and she has been running a hotel therefrom. It has been asserted that after settlement of the plot of land measuring 1 Katha 5 Lessas in her favour, the petitioner had again applied for settlement of the subject-plot measuring 15 Lessas. It has been stated that the petitioner is in unauthorized occupation of the subject-plot since long.

8. In view of such categorical assertion from the State respondents, it is also apposite to find out the stand of the petitioner taken in the affidavit-in-reply. In the affidavit-in-reply, the petitioner has admitted that a plot of land measuring 1 katha 5 Lessas at Sivasagar Town [Part-II], Mouza – Nagarmohol, District - Sivasagar had already been settled in favour of the petitioner by carving out a new Dag no. 3083 under Periodic Patta no. 3208. It has also been admitted by the petitioner that the said settlement had been made in favour of the petitioner on 20.05.1998.

9. The matter of allotment/settlement of land – both rural and urban – are to be considered in terms of the land policies framed by the Government of Assam from time to time. At the time of passing the impugned Order dated 24.07.2019, the prevailing land policy was the Land Policy of 1989. Clause 14 of the Land Policy, 1989 has provided for 'Settlement and Reservation of Land in Towns'. Clause 14.3 are of import and relevance for the purpose of the case in hand and the contents of Clause 14.3 are extracted hereinbelow in extensor :-

14.3.Land within Greater Guwahati notified under Government Notification no. RSR. 21/59/126 dated 1st October, 1966 and in any other Towns may be settled on payment of due premium with the indigenous persons of the State in order of preference as follows :-

[i] An indigenous person, who has no land in his name or in the name of any member of his family and who has been in occupation of Government land with members of his family for last 15 years or more.

[ii] An indigenous person, who has land in rural area of the State, but has no land in City or Town in his name or in the name of any member of his family and has been in occupation of Government land with members of his family for last 15 years or more.

[iii] An indigenous person, who has no land in rural areas or in City or Town in

the State either in his name or in the name of any member of his family, and has been staying in urban area for last 15 years or more with the members of his family.

[iv] An indigenous person, who has land in rural areas, but has no land in any urban areas either in his name or in the name of any member of his family, and who has been residing in urban area for last 15 years or more with members of his family :

Provided that such person is required to reside in urban area permanently by very nature of his service/profession and who has not been able to purchase land in urban area on account of poor pecuniary conditions.

[v] Other indigenous landless persons of the State.

10. As per sub-clause [i] of Clause 14.3, an indigenous person to be eligible for settlement of any plot of land in a town has to meet the twin conditions of eligibility, firstly, such person shall have no land in her/his name or in the name of any member of her/his family and secondly, such person shall be in possession of Government land with the member of her/his family for last 15 years or more. Though it is claimed that the petitioner has fulfilled the second condition of eligibility, the petitioner is found ineligible in view of the fact that the petitioner has already been settled with a plot of land measuring 1 Katha 15 Lessas in the year 1998 and as such, the petitioner is not an indigenous person who has no land in her name. The petitioner is also found to be ineligible to get settlement of any Government land in Sivasagar in terms of Clause 14.3 of the Land Policy of 1989.

11. The petitioner is found to have not fulfilling the conditions of eligibility under Clause 14.3 of the Land Policy of 1989. The reason assigned in the impugned Order to reject the claim of the petitioner and from the admitted facts emerging from the pleadings of the parties including the admission made by the petitioner herself, this Court does not find any good and sufficient reason to interfere with the impugned Order dated 24.07.2019 passed by the Deputy Commissioner, Sivasagar as the competent authority to take the final decision as regards the matter of settlement. As the writ petition is found not merited, the same is accordingly dismissed. The interim order passed earlier stands recalled. There shall, however, be no order as to cost.