
(2010) 08 GAU CK 0083
In the Gauhati High Court

Arati Bora

APPELLANT

Vs

State of Assam

RESPONDENT

Date of Decision : 26-08-2010

Acts Referred:

Citation : (2010) 08 GAU CK 0083

Hon'ble Judges : Hrishikesh Roy, J

Bench : Single Bench

Advocate : S.Das, C.Baruah,Senior, A.K.Sarma, Advocates appearing for Parties

Judgement

1. Heard Mr. C Baruah, learned senior counsel appearing for the petitioner. Also heard Mr. S Das, learned Government Advocate representing the official respondent Nos.1 to 5. The private respondents against whom notices were deemed to be served by order recorded on 26.9.2005 are not participating in the proceeding.

2. This application is filed to challenge the order dated 16.10.1992 (AnnexureXI), whereby a portion of the land in unauthorized occupation of the petitioner is ordered to be vacated for handing over the said land to the respondent No.6 Smti Mrinalini Baruah and her husband Golap Ch. Baruah (now deceased) as 1 Katha 4 Lechas of ceiling surplus land from Dag No.1756 of village Japorigog of Beltola Mouza has been settled in favour of the respondent No.6 and her husband.

3. The petitioner claims that following an application made by her and her husband late Durga Bora for settlement of land, the Government by order dated 25.6.1992 (AnnexureI) settled 1 Katha 4 Lechas of Urban Ceiling Surplus land covered by Dag No.1756(pt) of village Japorigog under Beltola Mouza. After the requisite premium was paid, the petitioner took possession of the settled land and thereafter she has constructed residential house over the said land after obtaining necessary permission from the Gauhati Municipal Development Authority (GMDA). The petitioner has filed an additional affidavit to show that

after the recent resettlement operation, the allotted land measuring 1 Katha 4 Lechas (3.21 Aar) has been converted to New Dag No.344 and Patta No.161 covering was issued in October 2009 in respect of the aforesaid land. The petitioner makes a prayer for protection of their land possession.

4. In so far the impugned order dated 16.10.1992 granting settlement of 1 Katha 4 Lechas of land to Smti Mrinalini Baruah (Respondent No.6), the Civil Rule No.1939/94 was filed by the allottee Smti Mrinalini Baruah and her husband Golap Ch. Baruah (later substituted by her 3 sons) seeking direction to handover possession of the allotted land in terms of the settlement order dated 16.10.1992.

5. This Court by judgment and order dated 20.8.1999 disposed of the Civil Rule No.1939/94 wherein it was recorded that the present petitioner is in unauthorized occupation of 6 Lechas of land which land has been allotted to Smti Mrinalini Baruah and her husband Golap Ch. Baruah. Accordingly Court directed the official respondents to recover the land under unauthorized occupation from Smti Arati Bora and handover the said land to the allottee, in terms for the settlement order dated 16.10.1992.

6. The petitioner who was arrayed as respondent No.6 and her deceased husband who was arrayed as respondent No.7 in Civil Rule No.1939/94, did not appear in the proceeding. But subsequently they filed applications seeking review of the judgment and order passed against them on 20.8.1999 in Civil Rule No.1939/94 filed by Smti Mrinalini Baruah.

7. The review application was filed along with application(s) for condonation of delay as well as stay application and this Court by an order dated 8.5.2001, dismissed all the Misc. Applications i.e. Misc. Case No.1262/2000; Misc. Case No.1261/2000; Misc. Case No.1263/2000 and Misc. Case No.572/2001, as no merit was found by the learned Judge in any of those Misc. Cases filed by the present petitioner.

8. Mr. C Baruah, learned senior counsel appearing for the petitioner argues that since the petitioner has been in occupation of the allotted 1 Katha 4 Lechas of land since the year 1992 and had also applied for settlement of the additional 6 Lechas of land under her possession, the possession of the petitioner should be protected and should not be permitted to be disturbed on the strength of the impugned order dated 16.10.1992 (AnnexureXI). The learned counsel also points out that the petitioner has constructed her residential house over the land after obtaining requisite building construction permission from the GMD Authorities and therefore, her right over the land should be protected.

9. Mr. S Das, learned Govt. Advocate on the other hand refers to the counter affidavit filed by the Dy. Commissioner, Kamrup (M), Guwahati (Respondent No.4). In this affidavit it is averred that the land measuring 1 Katha 4 Lechas allotted to the respondent No.6 Smti Mrinalini Baruah and her husband Golap Ch. Baruah could not be handed over to the allottee although premium was

deposited by them, because the allotted land was in unauthorized occupation of Smti Arati Bora (present petitioner) and one Smti Anima Kakati Hazarika.

10. In the affidavit it is also stated that although Smti Arati Kakati Hazarika was initially settled with 1 Katha 4 Lechas land in Dag No.1756(pt) by the Government Order No.RSS.912/97/17 dated 16.1.1998, the said settlement was subsequently cancelled by the Government Order No.RSS.912/97/19 dated 12.3.1999.

11. Referring to the Court's direction in Civil Rule No.1939/94 and the fact that requisite land premium has already paid by the allottee Smti Mrinalini Baruah and her husband, it is averred by the Dy. Commissioner that possession of the land allotted to the respondent No.6 has to be given in terms of the Court's order dated 20.8.1999, by clearing the encroachment over the allotted land made by the petitioner to the extent of 6 Lechas and by Smti Anima Kakati Hazarika in respect of the remainder of the allotted land.

12. I find from the pleadings on record that the petitioner was allotted land measuring 1 Katha 4 Lechas only on 25.6.1992 and after the recent resettlement exercises new Dag number and Patta number has been issued in her favour in respect of the land allotted to her. But it further appears that the petitioner is occupying additional land beyond the allotted land of 1 Katha 4 Lechas. This is found established in view of the fact that the petitioner on the basis of her possession of additional land, has approached the Government for settlement of 6 Lechas land under her occupation in Dag No.1756 (pt) (old) of Japorigog village. It is also apparent that the respondent No.6 and her deceased husband who had paid the land premium in pursuant to the allotment order granted to them on 16.10.1992 are yet to be given possession of their allotted 1 Katha 4 Lechas land because of the encroachment by the petitioner over a portion of the said land and by another encroacher Smti Anima Kakati Hazarika.

13. Since this Court by judgment and order dated 20.8.1999 in Civil Rule No.1939/94, which has attained finality, directed recovery of the land allotted to the respondent No.6 Smti Mrinalini Baruah by freeing it from unauthorized occupation, the said Court order has to be respected and no right of the petitioner beyond 1 Katha 4 Lechas of land, can be declared in her favour. Only to the extent of 1 Katha 4 Lechas of land, the occupation of the petitioner can be declared as authorized occupation and any land beyond 1 Katha 4 Lechas under occupation of the petitioner is declared as unauthorized occupation.

14. In view of the fact that the applications filed by the petitioner to seek review of the judgment and order dated 20.8.1999 in Civil Rule No.1939/94 came to be dismissed by this Court on 8.5.2001 the said orders have now attained finality.

15. Accordingly in view of the above conclusion, I see no reason to interfere with the impugned order dated 16.10.1992 (AnnexureXI), whereby possession is ordered to be handed over to the respondent No.6 Smti Mrinalini Baruah and her husband Golap Ch. Baruah (now deceased), by removing the unauthorized

encroacher from the said land.

16. In view of above, the official respondents may now proceed to handover possession of the allotted land to the respondent No.6 in terms of the allotment order dated 16.10.1999 and the Court order dated 10.8.1999 in Civil Rule No.1939/94.

17. A copy of this order be furnished to Mr. S Das, learned Govt. Advocate for necessary compliance.