
(2018) 01 GAU CK 0095
In the Gauhati High Court
Case No : 3503 of 2010

DHARMA DUTTA UPADHAYA	Vs	APPELLANT
THE STATE OF ASSAM AND ORS		RESPONDENT

Date of Decision : 04-01-2018

Acts Referred:

Citation : (2018) 01 GAU CK 0095

Hon'ble Judges : Suman Shyam

Bench : Single Bench

Advocate : A DAS, H.K. Baishya, M. Bhattacharjee

Final Decision : Disposed

Judgement

1. Heard Mr. H.K. Baishya, learned counsel for the writ petitioner. I have also heard Ms. M. Bhattacharjee, learned Govt. Advocate, Assam

appearing for the respondent Nos. 1 to 3.

2. By filing this writ petition, the eviction notice issued by the Addl. Deputy Commissioner, Kamrup (Metro) Mouza under Section 18(2) of the

Assam Land Revenue Regulation in connection with Encroachment Case No. 36/2008 has been put to challenge.

3. The petitioner's case, in brief, is that his father late Pasupati Upadhyay during his lifetime, came to possess a plot of "sarkari" land situated in

Mouza- Guwahati under Village- Part- II Guwahati Town covered by Dag No. 1312. The aforesaid plot of land has been in possession of

Pasupati Upadhyay since the year 1959, and after the demise of his father, the possession of the land continued with the petitioner. The petitioner's

case is that his deceased father and later on he himself had been possessing the land by paying Touzi Bahira revenue and the petitioner has been

living with his family over the said plot of land in a kachcha house constructed by his father. The Gauhati Municipal Corporation (GMC) authorities

have issued a holding number and electricity connection to the aforesaid dwelling house has also been granted by the competent authority. It is also

the case of the petitioner that since his father was a landless person, hence, on 26-03-1993 Pasupati Upadhyay had filed an application in the

prescribed format seeking allotment of the aforesaid plot of land. The grievance of the petitioner is that notwithstanding the receipt of the said

application filed by his father, no action has been taken on the prayer for granting settlement of the "sarkari" land. On the contrary, the respondent

No. 3 has issued the impugned eviction notice seeking to evict the petitioner from the aforementioned plot of land which has been under their

possession since the year 1959. When the appeal preferred by the petitioner before the respondent No. 2 was rejected by the order dated 20-05-

2010 on the ground that the petitioner did not have title over the aforesaid plot of land, the present writ petition has been filed.

4. Mr. Baishya, learned counsel for the petitioner submits that due to long and continuous possession of the "sarkari" land and the development

made therein by the petitioner's father late Pasupati Upadhyay, they are entitled to consideration of the prayer made for settlement of the plot of

land more so, since the petitioner is a landless person. Notwithstanding the same, the respondents have ignored the bonafide prayer made in the

application dated 26-03-1993 with the sole intent and purpose of throwing the petitioners out of the said plot of land wherein he has been residing

with his family since past several years. Contending that the possession of the petitioner is with the tacit approval of the various authorities, Mr.

Baishya has invited the attention of this Court to the revenue paying receipt, electricity connection document as well as the document to show that

the GMC has also assigned a holding number in favour of the petitioner's father to buttress his submission.

5. Ms. Bhattacharjee, learned Govt. Advocate submits that the petitioner cannot occupy a sarkari land unless the same is settled in his favour and

that the eviction notice has been issued by the authorities by following the prescribed procedure of law.

6. From the perusal of the materials available on record, more particularly, the application dated 26-03-1993 (Annexure-A) it is apparent that the

late father of the petitioner, viz. Pasupati Upadhyay had submitted an application seeking allotment of the plot of land under his possession by furnishing all necessary particulars. It is not in dispute that no action has been taken by the respondent No. 3 on the said application. Since it is the admitted position of fact that the application made by the petitioner's father was as per the requirement of law, the said application ought to have been considered on its merit and disposed of by the competent authority. But the same has admittedly not been done in this case. On the contrary, during the pendency of the application, an attempt has been made to evict the petitioner from the plot of land under his occupation.

7. Having regard to the facts and circumstances of the case, I dispose of this writ petition by directing respondent No. 3 to consider the application dated 26-03-1993 filed by the petitioner's father on its merit and to dispose of the same by issuing a speaking order. In doing so, if it is found that for any technical reason, the petitioner's prayer in respect of the particular plot of land cannot be considered, it would be open to the authorities to consider granting settlement to the petitioner in respect of any alternative plot by taking note of the long and continuous possession of the "sarkari" land by the petitioner's family.

8. To facilitate the above exercise, the petitioner would produce a copy of this order along with the copy of the application dated 26-03-1993 before the respondent No. 3 within a period of 04 weeks from today. Until such time an order is passed by the respondent No. 3 in the light and observation made hereinabove, the possession of the petitioner in respect of the plot of land in question shall not be disturbed. Writ petition stands disposed of.