

(2023) 08 GAU CK 0002

In the Gauhati High Court

Case No : Writ Petition (Civil) No. 3824 Of 2017

Girish Nath

APPELLANT

Vs

State Of Assam And 4 Ors..

RESPONDENT

Date of Decision : 02-08-2023

Acts Referred:

Constitution Of India, 1950 — Article 14

Citation : (2023) 08 GAU CK 0002

Hon'ble Judges : Devashis Baruah, J

Bench : Single Bench

Advocate : R. Phukan, N. Goswami, S. Dutta

Final Decision : Disposed Of

Judgement

1. The petitioner herein has approached this Court being aggrieved by the inaction on the part of the respondent authorities in not granting settlement of the land to the petitioner, and on the other hand, threatening to evict the petitioner from the said land.

2. The case of the petitioner herein is that he is in possession of a plot of land measuring 1 katha 5 lechas covered by Dag No.132 situated at Village-Sarumataria under Beltola Mouza by constructing dwelling houses since the year 1980.

3. The petitioner submitted an application for settlement of the said land in the month of January, 1995 which was duly received by the respondent authorities. Pursuant thereto, the Assistant Settlement Officer vide the letter dated 06.01.1995 submitted a report to the Deputy Commissioner, Kamrup (Metro), Guwahati for necessary action. In the said letter, it was stated that the land as applied by the petitioner for settlement is a Government land reserved for construction of temporary 'Capital' proposed to be constructed over the land covered by Dag No.132 of Village-Sarumataria, under Beltola Mouza. In continuation to the said letter, the Deputy Commissioner, Kamrup (Metro),

Guwahati vide the another letter dated 10.01.1995, submitted a report before the Secretary to the Government of Assam, Revenue (Settlement) Branch for necessary action. In the said letter, it was stated that the petitioner applied for settlement of land measuring 1 katha 5 lechas covered by Dag No.132 of Village-Sarumataria under Beltola Mouza.

4. It transpires that the Land Advisory Committee held a meeting on 24.10.2005, i.e. almost after 10 years from the date of application so filed by the petitioner. In the said meeting of Land Advisory Committee, the proposal for settlement of land in favour of the petitioner was discussed and it was recommended that the plot of land measuring 1 katha 5 lechas covered by Dag No.132 for settlement vide the Resolution No.28. This aspect of the matter would be seen from the communication issued by the Deputy Commissioner, Kamrup (Metro), Guwahati dated 17.01.2006 to the Secretary to the Government of Assam, Revenue (Settlement) Department.

5. It is the further case of the petitioner that his settlement application continued to be pending in spite of recommendation given by the Land Advisory Committee. But in respect to the same Dag Number, there has been certain settlement issued in favour of various persons of land measuring around 18 lechas. The petitioner along with others thereafter submitted a representation for consideration of their settlement proposal vide the representation dated 26.12.2016. However, neither the representation was considered nor the settlement proposal of the petitioner was allowed for which the petitioner has approached this Court by filing the instant writ petition.

6. It is the further case of the petitioner that on one hand the respondent authorities are not taking steps for granting settlement to the petitioner though 22 years have passed by pursuant to the submission of the application, and on the other hand, the petitioner was under threat of being evicted from the said land.

7. It appears from the record that this Court vide an order dated 22.06.2017 had issued notice, and in the interim, it was directed that the petitioner shall not be evicted from the land in question. The said order continued to be holding the field till date.

8. It is also relevant to take note of that an affidavit-in-opposition was filed by the respondent No.4, i.e. the Additional Deputy Commissioner, Kamrup (Metro), Guwahati. Surprisingly nothing has been stated in the said affidavit-in-opposition save and except stating that in the remark column of the 'Chitha' it is written "as reserved for 'Capital' in favour of the GAD in Dag No.132 (old)/35 (new) of Village-Sarumataria under Beltola Mouza". It was further mentioned that the petitioner has been illegally occupying the land in Dag No.132(old)/35 (new) by surrounding boundary pucca wall and constructing RCC building. There is not a single whisper in the said affidavit-in-opposition as regards the settlement proposal of the petitioner.

9. I have heard the learned counsel for the parties and perused the materials on record. It transpires from the above that the petitioner had submitted an application for settlement in the month of January, 1995 itself. The said application was submitted upon proper verification through the Lat Mondal wherein it has been mentioned that the petitioner has been in occupation over the said land from the year 1980. It further transpires that the petitioner's application was taken up by the Land Advisory Committee after the period of 10 years in the year 2005 and there was a recommendation being made as could be seen from the communication issued by the Deputy Commissioner, Kamrup (metro), Guwahati to the Secretary to the Government of Assam, Revenue (Settlement) Department dated 17.01.2006 enclosed as Annexure-5 to the effect that the plot of land measuring 1 katha 5 lechas was recommended to be settled in favour of the petitioner. In spite of that, the respondent authorities did not decide the settlement application of the petitioner whereas it is also seen from the record, more particularly, from Annexure-9 that the Additional Deputy Commissioner, Kamrup (Metro) Guwahati had also written to the Settlement Authority, Guwahati regarding issuance of land patta in respect to the same Dag being Dag No.132 in respect to other persons.

10. This Court also finds it relevant that there has been no denial by the respondent authorities to all these documents save and except only stating in the affidavit-in-opposition that the said land has been mentioned in the Remark Column of the 'Chitha' as "reserved for 'Capital' in favour of the GAD" and the petitioner was illegally occupying the land in question by surrounding boundary pucca wall and constructing RCC building.

11. Taking into account the above, this Court is of the firm view that the petitioner has a legitimate expectation for consideration of his application for settlement and the non-consideration of the petitioner's application by the concerned respondent authorities violates the mandate of Article 14 of the Constitution.

12. It further transpires from the present land policy of the year 2019 as has been pointed out by Mr. S. Dutta, the learned counsel appearing on behalf of the Revenue and Disaster Management that it is also the policy of the Government of Assam to settle land in favour of landless people of an area measuring 1 katha 5 lechas. That being the policy and the application of the petitioner being pending since the year 1995, this Court directs the respondent authorities and more particularly the Commissioner & Secretary to the Government of Assam, Revenue and Disaster Management Department as well as to the Deputy Commissioner, Kamrup (Metro), Guwahati to take a decision on the application filed by the petitioner seeking settlement of a plot of land measuring 1 katha 5 lechas in Dag No.132 as per the extant policy. The said decision be taken within a period of 6 (six) months from the date a certified copy of the instant order is served upon the Commissioner & Secretary to the Government of Assam, Revenue and Disaster Management Department as well as the Deputy Commissioner, Kamrup

(Metro), Guwahati.

13. Mr. R. Phukan, the learned counsel appearing on behalf of the petitioner submits that if the petitioner is not in the meantime protected, the respondent authorities would evict the petitioner.

14. Taking into account that there is a specific direction by this Court to the concerned respondent authorities to consider and decide the settlement application of the petitioner, this Court directs the respondent authorities not to take any coercive action against the petitioner till the outcome of the settlement application is duly intimated to the petitioner.

15. In view of the above observation and direction, the instant writ petition stands disposed of.