

(2023) 05 GAU CK 0057

In the Gauhati High Court

Case No : Writ Petition (Civil) No. 6820 Of 2021

Innach Ali And 243 Ors

APPELLANT

Vs

State Of Assam And 3 Ors

RESPONDENT

Date of Decision : 23-05-2023

Acts Referred:

Citation : (2023) 05 GAU CK 0057

Hon'ble Judges : Devashis Baruah, J

Bench : Single Bench

Advocate : S. Borthakur, R. Borpujari, N. Goswami

Final Decision : Disposed Of

Judgement

1. Heard Mr. S. Borthakur, the learned counsel for the petitioners and Mr. R. Borpujari, the learned counsel appearing on behalf of the respondent No.1 as well as Mr. N. Goswami, the learned counsel appearing on behalf of the respondent Nos.2 to 4.

2. The writ petition is taken up for disposal at the motion stage taking into account the various orders passed and the records being made available during the course of hearing.

3. The petitioners herein claim that their predecessors-in-interest have been in possession of certain Government land. There were various eviction proceedings initiated against the predecessors-in-interest of the petitioners for which a challenge was made before this Court in Civil Rule No.867/1982. It appears from the record that the learned Division Bench of this Court vide the judgment and order dated 21.07.1989 disposed of the said writ petition. While disposing of the said writ petition, the learned Division Bench of this Court took into account the submission so made by the learned counsel appearing on behalf of the petitioners in the said writ petition to the effect that those eviction notices have been issued to the petitioners therein without considering that their case were covered by the policy decision relating to settlement of agricultural land in the

State of Assam which was made a part of the said writ petition as Annexure-3. The learned Division Bench of this Court taking into account that as to whether the petitioners in the said writ petition would come within the ambit of the said policy decision of the Government of Assam cannot be decided in the said proceedings gave the liberty to the respondents to take a decision as regards the question of settlement of the petitioners therein pursuant to the said policy decision. It was further made clear that if the cases of the petitioners therein did not fall within the ambit of the policy decision, the petitioners shall have to vacate the land under their possession for which such steps would be taken against them as is permissible under law. It was further made clear that till a decision is taken by the authorities relating to the question of settlement on the basis of the policy decision, the possession of the petitioners therein should not be affected. Paragraph No.2 of the said judgment is reproduced herein under:

"2. Shri Sen submits that though eviction notices have been issued to the petitioner their case is covered by the policy decision relating to settlement of agricultural land in the State of Assam, vide Annexure 3 which is a copy of letter No.RSS.96/71/25 dated 29th November,1978. From the | materials on record we are not in a position to conclude whether the case of the petitioners is covered by the policy decision referred in the aforesaid Annexure. All that we would like to state is that if the case of the petitioners be covered by the policy decision as aforesaid their cases would be considered in the Light of the policy decision. If, however, their cases were not to fall within the ambit of the policy decision the petitioners shall have to vacate the land under their possession for which such steps would be taken against them as is permissible by law. The petitioners would not, however, be evicted till the question of settlement of the land with them as per the policy decision referred above is decided by the appropriate authority if they are as on today possessing the land in question."

4. It is the case of the petitioner in the present writ petition that pursuant to that decision rendered by the learned Division Bench, some of the petitioners in the said writ petition, i.e. Civil Rule No.867/1982 were granted settlement/allotment. However in respect to the other petitioners whose successors-in-interest are the present petitioners, no information was available as regards their claim for settlement from the respondent authorities and the petitioners herein continued to reside over their land in their respective possession. It further appears on record that the Circle Officer, Dhekiajuli Revenue Circle on 15.11.2021 issued various notices directing the petitioners to vacate the encroached land within 15.12.2021. The petitioners thereupon collectively submitted a representation before the Minister, Revenue and Disaster Management Department, Government of Assam through the Circle Officer, Dhekiajuli Revenue Circle which was duly received on 03.12.2021 by the Office of the Circle Officer, Dhekiajuli Revenue Circle.

5. From a perusal of the said representation it can be seen that the claim of the petitioners is on the basis of the judgment dated 21.07.1989 in Civil Rule

No.867/1982. In paragraph No.9 of the said representation, it was the categorical case of the petitioners herein that the Government has allotted land to families of some of the petitioners in Civil Rule No.867/1982 as well as Civil Appeal No.509/1983. However, the Government have not allotted the land to the families of the petitioners including their parents and their families. It was also mentioned that the petitioners' parents and their families were also before this Court as well as in the Supreme Court, and therefore, it was the prayer of the petitioners herein in the said representation that they should also be granted allotment/settlement as has been given to other similarly situated persons pursuant to the judgment dated 21.07.1989 in Civil Rule No.867/1982.

6. It further appears that the petitioners filed the instant writ petition on 10.12.2021. When the instant writ petition was listed, this Court vide an order dated 15.12.2021, after recording the submissions of the petitioners, in the interim, directed that the respondents shall not take any coercive measures against the petitioners in terms with the eviction notices dated 15.11.2021 issued by the Circle Officer, Dhekiajuli Revenue Circle without disposing of the said representation of the petitioners that was received by the Circle Officer, Dhekiajuli Revenue Circle on 03.12.2021. It further appears that this Court vide an order dated 15.12.2021 again fixed the matter on 02.02.2022. Thereupon, the interim order was extended and the writ petition was directed to be listed after two weeks. However, the matter has been listed today before this Court.

7. The learned counsel for the petitioners submitted that in view of the judgment dated 21.07.1989 passed in Civil Rule No.867/1982, the petitioners herein who are the successors-in-interest of the petitioners in Civil Rule No.867/1982 cannot be evicted without compliance to the directions so passed in the said judgment dated 21.07.1989 as to whether the predecessor-in-interest of the petitioners or the petitioners would be entitled to settlement/allotment in terms with the policy decision of the year 1978. The learned counsel for the petitioners' further submitted that the respondent authorities though had granted some allotment or settlement in respect to some of the petitioners in Civil Rule No.867/1982 but did not pass any order in favour of the predecessors of the petitioners or the petitioners herein. However, the petitioners continued to reside and the respondent authorities also allowed the petitioners to reside since 1989 till 2021. It was only on 15.11.2021 that individual notices were issued to the petitioners asking them to vacate the land within one month. It is under such circumstances that the petitioners had submitted a representation before the Minister, Revenue and Disaster Management Department, Government of Assam. It is, therefore, the submission of the learned counsel for the petitioners that issuance of the impugned notices is in violation to the judgment passed by the learned Division Bench dated 21.07.1989 passed in Civil Rule No.867/1982, and as such, the impugned notices are nullity in the eye of law.

8. On the other hand, Mr. R. Borpujari, the learned counsel appearing on behalf of the Revenue and Disaster Management Department, Government of Assam

submitted that pursuant to the representation so submitted on 03.12.2021, a detail enquiry proceedings was conducted by the Office of the Circle Officer, Dhekiajuli Revenue Circle as well as the Deputy Commissioner, Sonitpur and in pursuance thereto, an order was passed on 18.01.2022.

9. From a perusal of the order dated 18.01.2022 which was placed by the learned counsel for the Revenue Department, it does not transpires that the Deputy Commissioner, Sonitpur had passed the order in the manner stated in the judgment dated 21.07.1989 in Civil Rule No.867/1982. The directions passed by the learned Division Bench in the judgment dated 21.07.1989 in Civil Rule No.867/1982 was clear and unambiguous to consider as to whether the petitioners therein would be entitled to their claim for allotment or settlement in terms with the land policy, 1978. The said aspect however was not taken into consideration in the order dated 18.01.2022.

10. It can be seen from the instructions which were placed by Mr. R. Borpujari, the learned counsel appearing on behalf of the Revenue and Disaster Management Department that only four petitioners, i.e. petitioner No.51; petitioner No. 216; petitioner No. 241; petitioner No.145 and petitioner No.224 could not show their linkage with the petitioners in Civil Rule No.867/1982. But, the question which ought to have been decided by the authorities concerned as to whether the petitioners herein would be entitled to in terms with the land policy of 1978. At this stage, this Court finds it relevant to take note of the submission of Mr. R. Borpujari, the learned Standing Counsel that presently, the State of Assam has a Land Policy, 2019 which hold the field for the purpose of ascertaining the entitlement for allotment/settlement and therefore the entitlement of the petitioners have to be considered in terms with the Land Policy, 2019. Taking into consideration that as the exercise by the Respondent Authorities is to be carried out now and the prevalent Land Policy, 2019 is holding the field, the exercise have to be carried out as per the Land Policy, 2019.

11. Be that as it may, it is relevant to take note of that as on the date of issuance of the impugned notices, i.e. 15.11.2021 there was no compliance to the judgment passed by the learned Division Bench in Civil Rule No.867/1982 dated 21.07.1989 in any manner whatsoever as can be discerned from the stand of the respondents itself in as much as it was only pursuant to the orders passed by this Court in the present proceedings that had resulted in the order dated 18.01.2022. Therefore, the said impugned notices dated 15.11.2021 being in contravention of the judgment dated 21.07.1989 passed by the learned Division Bench of this Court are therefore nullity in the eye of law, and accordingly, the said impugned notices are set aside and quashed.

12. As regards the order dated 18.01.2022, though there has been no challenge to the same as the same was passed after the filing of the instant writ petition, but the said order dated 18.01.2022 is not in conformity with the requirement of the judgment dated 21.07.1989 passed in Civil Rule No.867/1982 as already aforesaid.

13. Accordingly, the instant writ petition stands disposed of with the following observations and directions:-

(i) The impugned notices so issued dated 15.11.2021 against the petitioners enclosed as Annexure-F Series are interfered with and accordingly set aside and quashed.

(ii) The order dated 18.01.2022 is not in consonance with the judgment passed by the learned Division Bench dated 21.07.1989 passed in Civil Rule No.867/1982 for which the same solely cannot be made the basis for eviction of the petitioners.

(iii) This Court grants the liberty to the State respondents to take fresh decision on the representation so submitted taking into account the further materials if so required after the initial enquiry which was conducted and to decide whether the petitioners fall within the ambit of the policy decision of the Government of Assam for allotment/settlement of land in terms with the policy decision presently prevalent, i.e. the Land Policy, 2019.

(iv) It is made clear that the respondents shall not reject the representation on technical grounds, i.e. on the ground that applications have not been filed as per the Land Policy, 2019. The respondents shall give reasonable opportunity to file application, if so required. The petitioners are also directed to file the requisite applications as required for their entitlement under the Land Policy, 2019.

(v) It is made clear that till a decision is not taken by the respondent authorities in terms with the directions as given in clause (iii) & (iv) herein above, the respondent authorities shall not take any action of eviction against the petitioners.

(vi) It is, however, clarified that upon the decision so taken in terms of what has been mentioned in clause (iii) & (iv) herein above, the authorities shall be at liberty to such action as deem fit in accordance with law.

14. Mr. S. Borthakur, the learned counsel for the petitioners undertakes to pay the deficit court fee within 7 (seven) days from today.