

GAHC010159012026



2026:GAU-AS:11017

THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/4089/2026

KHORSED ALI AND 3 ORS
S/O LATE ABUAL HUSSAIN SARKAR

2: ATAUR RAHMAN
S/O- LT. ABUAL HUSSAIN SARKAR

3: ISRAFIL HOQUE
S/O- LT. SOLEMAN ALI

4: ZAKIR HUSSAIN
S/O- ABU BAKKAR SIDDIQUE
ALL ARE RESIDENTS OF- VILL- ADABARI PT-II
P.O.- SAGOLCHARA
P.S. AND DIST.- DHUBRI
ASSAM
PIN-78332

VERSUS

THE STATE OF ASSAM AND 5 ORS
REPRESENTED BY THE CHIEF SECRETARY TO THE GOVERNMENT OF
ASSAM, DISPUR, GUWAHATI-06.

2:THE SECRETARY TO THE GOVERNMENT OF ASSAM
REVENUE AND DISASTER MANAGEMENT DEPARTMENT
DISPUR
GUWAHATI-06.

3:THE DISTRICT COMMISSIONER
DHUBRI
ASSAM
PIN-783301

4:THE ADDITIONAL DISTRICT COMMISSIONER (REVENUE)

DHUBRI
ASSAM.

5:THE CIRCLE OFFICER
DHUBRI REVENUE CIRCLE
DISTRICT DHUBRI
ASSAM
PIN-783301.

6:THE DIRECTOR OF LAND RECORDS AND SURVEYS
RUPNAGAR
GUWAHATI-32
KAMRUP METRO
ASSAM

Advocate for the Petitioner : MR. M U MONDAL, MR K ISLAM,MD. I H KHAN,MR A ALIM SK,MR. A W MONDAL

Advocate for the Respondent : GA, ASSAM, SC, REVENUE

BEFORE
HONOURABLE MR. JUSTICE MANISH CHOUDHURY

JUDGMENT

Date : 04.08.2026

Heard Mr. M.U. Mondal, learned counsel for the petitioners; Mr. H. Sarma, learned Additional Senior Government Advocate, Assam for the respondent nos. 1, 3, 4 & 5; and Mr. A. Bhattacharyya, learned Standing Counsel, Revenue & Disaster Management Department, Government of Assam for the respondent nos. 2 & 6.

2. The petitioners, 4 [four] in nos., have joined together to institute the instant writ petition under Article 226 of the Constitution of India. The petitioners have stated that the petitioner nos. 1 & 2 are sons of one Late Abual Hussain Sarkar. The names of the fathers of the petitioner no. 3 and the petitioner no. 4 are Late Soleman Ali and Late Abu Bakkar Siddique respectively. The petitioners have stated that their fathers' names were recorded in the Chithas, dated 28.08.1989 & dated 20.03.2001, pertaining to a parcel of land, covered by Dag nos. 947 [old]/473 [new], at Village – Adabari Part-II, Dhubri Revenue Circle, District – Dhubri, Assam. A Kutcha Patta bearing no. 121 [old]/97 [new] in relation to Dag nos. 947

[old]/473 [new] for the parcel of land measuring 2 Kathas and 1 Lessa, was issued in favour of the predecessors-in-interest of the petitioners by an Order dated 08.07.1992 [14.08.1992] of the Assistant Settlement Officer, Dhubri Revenue Circle, District – Dhubri [Assam].

3. It has been stated that though the petitioners submitted a number of applications earlier for settlement of the parcel of land, no action was taken by the respondent authorities on those applications. When Mission Basundhara 2.0 was notified by the State Government, the petitioners decided to file applications for the notified public service, 'Settlement of Khas & Ceiling Surplus Land' under Mission Basundhara 2.0 for settlement of the parcel of land, measuring 2 Kathas 1 Lessa in favour of the four petitioners on the basis of the historical records like Chitha, Kutcha Patta, etc. pertaining to the parcel of land.

4. In so far as the petitioner nos. 1 & 2 are concerned, they submitted their application on 03.12.2022 and the application was registered under Reference no. RTPS/SKCSL/2022/67217 dated 03.12.2022. The applications of the petitioner no. 3 and the petitioner no. 4 were registered under Reference nos. RTPS/SKCSL/2025/2252716 dated 07.01.2025 and RTPS/SKCSL/ 2025/2252316 dated 07.01.2025.

5. After submission of the applications, the petitioners waited for consideration of the applications. It is when the petitioners tracked their applications status in the designated portal, 'Sewa Setu', they came to learn that their applications were rejected on 09.08.2023, 16.08.2025 and 16.08.2025 respectively for the following reasons :-

Reference no. RTPS/SKCSL/2022/67217		
Date & Time	Task details	Remarks
2023.08.09 19:49:22	Rejected, CO	Rejected by CO : On field inquiry, the land is found to have been encroached in recent years in organised basis and is therefore excluded from the Mission Basundhara 2.0

Reference no. RTPS/SKCSL/2025/2252716

Date & Time	Task details	Remarks
2025.08.16 13:28:01	Rejected, CO	Rejected by CO : Not sufficient evidence that the applicant fulfils the criteria of an indigenous person as per the definition of an indigenous person in Mission Basundhara 2.0 i.e. a person whose family has been residing in the state continuously for the last three generations or more as on 1 st January, 2022, as per 'Explanation 3' in Land Policy, 2019 under clause 1.7

Reference no. RTPS/SKCSL/2025/2252316		
Date & Time	Task details	Remarks
2025.08.16 13:28:10	Rejected, CO	Rejected by CO : Not sufficient evidence that the applicant fulfils the criteria of an indigenous person as per the definition of an indigenous person in Mission Basundhara 2.0 i.e. a person whose family has been residing in the state continuously for the last three generations or more as on 1 st January, 2022, as per 'Explanation 3' in Land Policy, 2019 under clause 1.7

6. It is stated that aggrieved by rejection of their applications in such manner by the Designated Public Servant, the petitioners have preferred a 1st appeal under Section 8[1] of the Assam Right to Public Services [ARTPS] Act, 2012 before the 1st Appellate Authority. According to the petitioners, the appeal is preferred before the Director of Land Records and Surveys, Assam as the 1st Appellate Authority and the office of the Director of Land Records and Surveys, etc., Assam had also acknowledged the receipt of the appeal on 20.07.2026 under its official seal.

7. With the above projection, the petitioners have preferred the instant writ petition seeking a direction to the Director of Land Records and Surveys, Assam to take the appeal preferred under Section 8[1] of the Assam Right to Public Services [ARTPS] Act, 2012 on board for consideration, expeditiously after condoning the period of delay that had occurred in filing the appeal, and thereafter, dispose of the same on merits.

8. In response, Mr. Sarma and Mr. Bhattacharyya, learned counsel appearing for the State respondents have submitted, in unison, that as per a Notification dated 11.11.2022 published by the Revenue & Disaster Management Department, Government of Assam under Section 4 of the ARTPS Act for the notified public service, 'Settlement of Khas & Ceiling Surplus Land', the Designated Public Servant is the District Commissioner. As per the Citizen Charter annexed to the said Notification, the Commissioner and Secretary to the Government of Assam, Revenue & Disaster Management Department is the 1st Appellate Authority for the notified public service, 'Settlement of Khas & Ceiling Surplus Land'. They have submitted that the Director of Land Records and Surveys, Assam does not have the authority and jurisdiction to consider the 1st appeal, stated to have preferred by the petitioners before him on 20.07.2026. Therefore, the direction sought for by the petitioners in this writ petition to the Director of Land Records and Surveys, etc. Assam to dispose of the appeal as 1st Appellate Authority cannot be made due to want of authority and jurisdiction on his part. In support of their submission, a copy of the Notification dated 11.11.2022 of the Revenue & Disaster Management Department, Government of Assam is placed before the Court.

9. By the Notification dated 11.11.2022 issued by the Revenue & Disaster Management Department, Government of Assam, 'Settlement of Khas & Ceiling Surplus Land' has been notified as a public service under Assam Right to Public Services [ARTPS] Act, 2012. It is mentioned that the Government Khas & Ceiling Surplus Land in occupation of indigenous landless people can be settled in accordance with the Land Policy, 2019, Section 1 [sub-section (1.1 to 1.10)], Section 3 [sub-section (3.1 to 3.4)]. The settlement of Khas and Ceiling Surplus land is carried out by Circle Officers with the approval from Deputy Commissioner, Sub-Divisional Land Advisory Committee [SDLAC] & Department [in case of Urban area land].

10. As per the Citizen Charter annexed to the said Notification, the Designated Public Servant is the District Commissioner and 1st Appellate Authority under Section 8[1] of the ARTPS Act is the Commissioner and Secretary to the Government of Assam, Revenue &

Disaster Management Department.

11. An authority cannot be directed to do an act if the authority and jurisdiction to do such an act. Therefore, a direction in the nature of mandamus cannot be made to such an authority in exercise of the power of judicial review under Article 226 of the Constitution of India. As it is found out that the Director of Land Records and Surveys, Assam is not the 1st Appellate Authority under Section 8[1] of the ARTPS Act to entertain an appeal in case of non-delivery of the notified public service, 'Settlement of Khas & Ceiling Surplus Land' by way of refusal, a direction to the said authority to entertain and consider the appeal, stated to have preferred by the petitioners on 20.07.2026 before him, is therefore, not called for.

12. The petitioners have canvassed that they have all the eligibility to be delivered the notified public service, 'Settlement of Khas & Ceiling Surplus Land'. According to them, they are in possession of the concerned parcel of land since the time of their predecessors-in-interest for a number of decades and the findings recorded in the Rejection Order are contrary to records. Therefore, the petitioners if they want delivery of the notified public service, 'Settlement of Khas & Ceiling Surplus Land' and are aggrieved by findings recorded in the Rejection Orders, which they have termed as non-reasoned orders, the petitioners can still prefer an appeal before the 1st Appellate Authority notified under Section 8[1] of the ARTPS Act, that is, the Commissioner and Secretary to the Government of Assam, Revenue & Disaster Management Department, by seeking condonation of the period of delay which had occurred in the meantime, in view of the fact that the period of limitation for filing the 1st Appeal has already expired. As per the proviso to sub-section [1] of Section 8 of the ARTPS Act, 1st Appellate Authority can admit an appeal after expiry of the period of limitation of filing an appeal if he is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time. Therefore, the petitioners while filing the appeal before the 1st Appellate Authority, shall also file an application seeking condonation of the period of delay that had occurred by showing the causes which had prevented them from filing the appeal in time, and if such an application is filed by the petitioners, the 1st Appellate Authority shall consider the application for condonation of the period of delay to arrive at satisfaction

whether the appellants have been able to show sufficient cause or not, and thereafter, based on the decision taken on that application, shall proceed to consider the appeal in accordance with law.

13. With the observations made and the directions given above, the writ petition is disposed of. No cost.

**Ananta
Konwar**

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JUDGE

Comparing Assistant