

(2020) 05 GAU CK 0030
In the Gauhati High Court
Case No : Writ Petition (C) No. 962 Of 2020

Mrinal Hazarika And 19 Ors

APPELLANT

Vs

State Of Assam And 2 Ors

RESPONDENT

Date of Decision : 28-05-2020

Acts Referred:

Assam Land And Revenue Regulation 1886 — Section 18(2)
Assam Land And Revenue Regulation 1886 — Rule 18(2)

Citation : (2020) 05 GAU CK 0030

Hon'ble Judges : Achintya Malla Bujor Barua, J

Bench : Single Bench

Advocate : Md. A Matlib

Final Decision : Partly Allowed

Judgement

1. Heard Mr. R. Dhar, learned counsel for the petitioner. Also heard Mr. J. Handique, learned counsel for the authorities in the Revenue Department as well as Ms. M. Bhattacharjee, learned Additional Senior Govt. Advocate for the Deputy Commissioner and Circle Officer being the respondents No.2 and 3.

2. All the petitioners herein claim that they are indigenous people of the State and they do not have any land of their own in the urban area of Guwahati. In the circumstance, the petitioners are occupying various government lands in various locations and all of them have made applications for settlement of their respective plots of land by filing application in the prescribed format before the concerned authority in the Office of the Deputy Commissioner, Kamrup (M). In this writ petition, the petitioners are jointly aggrieved by the various notices all dated 07.01.2020 issued by the Circle Officer, Guwahati Revenue Circle. A reading of the notice would show that it is a notice issued under Rule 18(2) of the Rules under the Assam Land and Revenue Regulation 1886. Rule 18(2) of the Rules under the Assam Land and Revenue Regulation, 1886 is extracted below:-

"18. (2) When such person has entered into possession of Government khas

land, or waste land or estate over which no person has acquired the rights of a proprietor, land - holder or Settlement-holder or any land that has previously been reserved roads or roadside land or for the grazing of village cattle or for other public purposes, or has entered into possession of land from which he has been excluded by general or special orders and when further, there is no bonafide claim of right involved he may be ejected or ordered to vacate the land forthwith, and the Deputy Commissioner may sell, confiscate or destroy any crop raised, or any building or other construction erected without authority on the land."

3. A reading of the Rule would show that any such person who had entered into possession of government khas land, or waste land or estate over which no person has acquired the rights of a proprietor, land holder or settlement-holder or any land that has previously been reserved roads or roadside land or for grazing of village cattle or for other public purposes, or has entered into possession of land from which he has been excluded by general or special orders and when further there is no bonafide claim of right being involved, he may be ejected or ordered to vacate the land forthwith.

4. It is noticed that in order to invoke the provision of Rule 18(2) the condition precedent is that no bonafide claim of any right may be involved in respect of the person who had entered into possession of the aforesaid classes of land.

5. In the instant case, a claim has been made by the petitioners that they have all submitted applications for settlement of their respective plots of land as per the legal right they have acquired under Clause 14.3 of the Land Policy of the Govt. of Assam, 1989. Accordingly, it is the contention that by making such application where a legal right has been provided under the Land Policy, the petitioners make a bonafide claim of a right in respect of the land under their occupation. From the said point of view, we are of the opinion that once a bonafide claim of a right had been made, the condition precedent of issuing a notice under Section 18(2) is not satisfied and therefore, ex- facie the notice of eviction under Rule 18(2) of the Rules under the Assam Land and Revenue Regulation, 1886 would not be sustainable. But however we are also conscious of the fact that it is the claim of the petitioners that they have a right under Clause 14.3 of the Land Policy 1989 which is infact merely a claim and unless the appropriate authorities gives a consideration and passes a reasoned order on such claim, it can neither be said with certainty that the petitioners have a bonafide claim of a right nor it can be said that they do not have any such right.

6. Accordingly, we are of the view that it would be appropriate for the authorities in the Office of the Deputy Commissioner, Kamrup(M) to give a consideration and pass a reasoned order as to whether the petitioners do have a bonafide and acceptable legal right to be settled with the land under Clause 14.3 of the Land Policy 1989. Only when a reasoned order thereof is passed, we can say with certainty whether the condition precedent of having a bonafide claim of right as provided under Rule 18(2) of the Assam Land and Revenue Regulation, 1886 do

exist or not.

7. It is stated that in the meantime, the Land Policy of 1989 had been replaced by the Land Policy of 2019. It is further stated that the claim of the petitioners for a settlement would now be covered by the Clauses 14.2 and 14.4 of the Land Policy of 2019. Accordingly, in order to ascertain whether the petitioners have a bonafide claim of right in order to meet the condition precedent of Rule 18(2) of the Rules under the Assam Land and Revenue Regulation, 1886, it would be appropriate for the petitioners to file a fresh application in the prescribed format before the authorities in the Office of the Deputy Commissioner, Kamrup(M) claiming their right of a settlement under Clauses 14(2) and 14(4) of the Land Policy 2019.

8. Upon such application being submitted, the authorities in the Office of the Deputy Commissioner, Kamrup (M) shall give a consideration to such application within a period of 6 (six) months from the date of submission of such application and in doing so, the authorities in the Office of the Deputy Commissioner, Kamrup(M) may require the petitioners to provide with any such information, document etc. in order to substantiate that they satisfy all the requirements of Clauses 14.2 and 14.4 of the Land Policy 2019. Upon such consideration, a reasoned order be passed by the authorities in the Office of the Deputy Commissioner, Kamrup(M). Based upon such reasoned order to be passed, if a conclusion is arrived that a legal right exists in favour of the petitioners for a settlement, appropriate orders be passed for the purpose and if the conclusion arrived is that they do not have any such legal right, the respondents in the Office of the Deputy Commissioner, Kamrup or its subordinate officer shall be at liberty to proceed against the petitioners as per the notices dated 07.01.2020 which was issued under Rule 18(2) of the Rules under the Assam Land and Revenue Regulation, 1886. Till such reasoned order is passed, the notices dated 07.01.2020 of the Circle Officer, Guwahati Revenue Circle issued against the petitioners shall kept in abeyance. In the event, the petitioners do not submit their applications within a period of 1 month from today, the interim order of keeping the notices under Rule 18(2) in abeyance shall automatically stand withdrawn.

9. Writ petition is partly allowed.