

(2021) 08 GAU CK 0031

In the Gauhati High Court

Case No : Writ Petition (Civil) No. 7332, 7370 Of 2019

Pratichhe Bhuyan

APPELLANT

Vs

State Of Assam And 2 Ors.

RESPONDENT

Date of Decision : 09-08-2021

Acts Referred:

Constitution Of India, 1950 — Article 226

Settlement Rules framed under the Assam Land and Revenue Regulation, 1886 — Rule 5, 6, 8

Citation : (2021) 08 GAU CK 0031

Hon'ble Judges : Manish Choudhury, J

Bench : Single Bench

Advocate : P K Gogoi

Final Decision : Disposed Of

Judgement

1. The Court proceedings have been conducted through online court proceeding services.

2. Both the writ petitions have been filed under Article 226 of the Constitution of India seeking, inter-alia, a direction to the respondent authorities for

settlement of a plot of land each, referred therein, and issuance of patta each in respect of the said two plots of land in their favour.

3. As the learned counsel for the parties have submitted that the issues involved and raised in the two writ petitions are inter-related, both the writ

petitions are taken up together for adjudication.

4. Heard Mr. P.K. Gogoi, learned counsel for the petitioners in both the two writ petitions, W.P.(C) no. 7332/2019 and W.P.(C) no. 7370/2019. Also

heard Mr. R. Borpujari, learned Standing Counsel, Revenue Department for respondent no. 1 and Mr. K. Gogoi, learned Senior Government

Advocate for respondent nos. 2 and 3.

5. The petitioner in W.P.(C) no. 7332/2019 has sought settlement of a plot of Government land measuring 1 katha and 10 lessas, covered by Dag no.

22, located in Village - Melachakar, Mouza â?" Nagar Mahal, Sivasagar Revenue Circle, District â?" Sivasagar (â??Plot no. 1â?, for short). The

petitioner in W.P.(C) no. 7370/2019 has sought for settlement of another plot of Government land measuring 1 katha and 10 lessas, covered by Dag

no. 22, also located in Village - Melachakar, Mouza â?" Nagar Mahal, Sivasagar Revenue Circle, District â?" Sivasagar and adjacent to the Plot no. 1

(â??Plot no. 2â?, for short). Both the petitioners have claimed that they are landless persons and they are occupying the said two plots for a number

of years. They have further claimed that they have been paying land revenues for the said plots of land up to 2019/2020. It is the common case of the

two petitioners that they had filed separate Kabula applications in the prescribed form under Rule 5 of the Settlement Rules framed under Assam

Land and Revenue Regulation, 1886 before the respondent no. 2 i.e. the Deputy Commissioner, Sivasagar on 14.08.2019 seeking settlement of the

said two plots of land in their individual names respectively. When no action was found to be taken in connection with those applications seeking

settlement of Plot no. 1 and Plot no. 2, the petitioners have filed these writ petitions seeking the direction, mentioned above.

6. The learned counsel for the State respondents have, in unison, submitted that affidavits-in-opposition and additional affidavits have been filed on

behalf of the respondent no. 2 in both the writ petitions. An affidavit-in-opposition has also been filed on behalf of the respondent no. 1 in the writ

petition, W.P.(C) no. 7370/2019, which also covers the case of the petitioner in W.P.(C) no. 7370/2019. Referring to the averments made therein, it is

submitted that both the plots in respect of which settlement have been sought for i.e. Plot no. 1 and Plot no. 2 fall under Dag no. 4625, Part - 10,

Sivasagar town. It has been averred that as per office records, Dag no. 4625 is recorded as Moribeel which is a wet land.

7. It is further submitted that the petitioner in W.P.(C) no. 7332/2019 is daughter of one Sri Simanta Bhuyan and the petitioner in W.P.(C) no.

7370/2019 is the mother of said Sri Simanta Bhuyan. Sri Simanta Bhuyan is an Associate Professor of Sivasagar College, Joysagar. Pursuant to

receipts of the applications for settlement, the respondent no. 2 had forwarded the same vide letter no. SVRS.14/2018/104 dated 26.08.2020 to the respondent no. 3 i.e. the Circle Officer, Sivasagar Revenue Circle to submit a report/proposal. After institution of the present two writ petitions, the respondent no. 3 has submitted a report dated 19.11.2020 to the respondent no. 2 after making necessary enquiry and the said enquiry report is made part of the additional affidavit filed by the respondent no. 2 as well as in the affidavit filed by the respondent no. 1 (supra). The respondent no. 3 by the report, has reported that the names of the two petitioners are not found in any land records in Sivasagar town, Mouza â?" Nagar Mahal, Sivasagar Revenue Circle. Upon enquiry, it has been found that Sri Simanta Bhuyan has a plot of land measuring 2 Kathas and 10 Lessas, covered by Dag no. 4604 & Periodic Patta no. 1234, at Part-10, Sivasagar town, Mouza â?" Nagar Mahal, Sivasagar. On enquiry, it is further found that the two petitioners along with Sri Simanta Bhuyan are encroaching both the plots of land i.e. Plot no. 1 and Plot no. 2 by constructing a two storey RCC building. The ground floor of the building is used for commercial purpose by running a junior college viz. Sivasagar Junior College and the first floor is used as their dwelling house by the two petitioners jointly with Sri Simanta Bhuyan. Referring to Clause 14.2 of the Land Policy, 2019, the learned counsel for the State respondents have submitted that only an indigenous person who has no homestead land in his name or in the name of his family in the State may be eligible to get land in an urban area, provided that such person is required to reside in that urban area by very nature of his occupation/service and he has sufficient ground to justify that he has not been able to purchase land in such urban areas. Admittedly, both the plots of land â?" Plot no. 1 and Plot no. 2 - are located in Sivasagar town areas and any application for settlement has to be considered in that light. It is further submitted that both the plots of land are declared wetlands and, as such, under the Land Policy, 2019, these two plots of land cannot be settled in view of Clause 1.15 thereof.

8. It is further submitted that the definition of â?"familyâ?" has been provided in the Land Policy, 2019 and while considering the applications made by these two petitioners, the same are required to be considered by taking into account the definition provided for the family. By referring to Clause 1.14,

the learned counsel for the State respondents have submitted that mere possession by way of encroachment shall not be a criteria for entitlement to get settlement of Government land. Referring to the report of the respondent no. 3 dated 19.11.2020 as well as averments made in the pleadings

submitted by the State respondents it has been asserted that both the petitioners are found to be encroachers of Government land.

9. From the submission of the pleadings of the parties, as have been referred to herein above, it is noticed that both the petitioners have submitted

applications under Rule 5 of the Settlement Rules framed under the Assam Land and Revenue Regulation, 1886 seeking settlement before the

respondent no. 2 i.e. the Deputy Commissioner, Sivasagar. It is further noticed that those applications were received at the end of the respondent no.

2 and thereafter, a report was sought for in respect of the two plots of land from the respondent no. 3, who has, in turn, already submitted an enquiry

report dated 19.11.2020.

10. As per the Settlement Rules framed under the Assam Land and Revenue Regulation, 1886, on receipt of such an application seeking settlement

of land, the Deputy Commissioner has to proceed in accordance with Rule 6 of the said Settlement Rules. The State Government has also framed

Land Policies from time to time and presently, the Land Policy, 2019 is in vogue. Any application for settlement will have to be considered in terms of

the Land Policy, 2019. A duty is cast upon the Deputy Commissioner under Rule 8 of the Settlement Rules to dispose of an application seeking

settlement of land by allowing the application either, fully or partly, or by rejecting the application.

11. In the above view of the matter, this Court is of the considered view that the respondent no. 2 is required to consider the applications filed by the

two petitioners seeking settlement of the two plots of land i.e. Plot no. 1 and Plot no. 2 in terms of the provisions of the Settlement Rules, framed

under the provisions of the Assam Land and Revenue Regulation, 1886 and the Land Policy, 2019. While considering the applications, the issues

whether the two petitioners are eligible or not for settlement of the said two plots and whether the said two plots can be considered for settlement are

also to be examined by the respondent no. 2. Accordingly, both these writ petitions are disposed of directing the respondent no. 2 to consider the two

applications submitted by the two petitioners seeking settlement of Plot no. 1 and Plot no. 2 and after such consideration, the same shall be disposed of either by allowing the applications, fully or partly, or by rejecting the applications with a speaking order. The entire exercise shall be completed as expeditiously as possible, within an outer limit of 4 (four) months from the date of receipt of a certified copy of this order along with the copies of the two writ petitions and all other pleadings filed in connection therewith, from the petitioners. It is made clear that this Court has not expressed any view on merits of the respective claims of either the two petitioners or the respondent authorities, and thus, the respondent no. 2 is at liberty to consider the applications in accordance with law and with reference to the facts and circumstances of the case.

12. The two writ petitions stand disposed of in the afore-mentioned terms.