
(2016) 04 GAU CK 0027
In the Gauhati High Court
Case No : WP(C) No. 5729 of 2009

Shri Manik Uddin and Ors.

APPELLANT

Vs

State of Assam

RESPONDENT

Date of Decision : 19-04-2016

Acts Referred:

Assam Fixation on Ceiling of Land Holdings Act, 1956 — Section 17
Constitution of India, 1950 — Article 226

Citation : (2016) 4 GauLJ 290 : (2016) 4 GauLR 77 : (2016) 3 GauLT 122 :
(2016) 2 NEJ 480

Hon'ble Judges : Hrishikesh Roy, J.

Bench : Single Bench

Advocate : Mr. N. Dhar, Mr. S. Chakraborty, Mr. B. Malakar, Advocates, for the Appellant; Mr. P.S. Deka, GA, Assam, Mr. I. Alam, Advocates, for the Respondent

Final Decision : Disposed Off

Judgement

Hrishikesh Roy, J. (Oral) - Heard Mr. N. Dhar, the learned counsel appearing for the petitioners. The State authorities (respondent Nos.1 to 4) are represented by the learned Govt. advocate Mr. P.S. Deka. The impleaded private respondents (respondent Nos.7 to 12) are unrepresented today and Mr. I. Alam, the learned counsel submits that the case brief was taken away by these clients and therefore at the present stage of the proceeding, he has no instruction to represent the private respondents.

2. The petitioners are claiming settlement of ceiling surplus land measuring 13 bighas, 9 kathas and 5 chataks under Dag No.336(Part), Mouza-Kitte Uttar Bandarkuna in Karimganj district. They also seek protection from eviction from the occupied area. The occupiers had applied for settlement of those land and the Sub-Divisional Land Advisory Committee, Karimganj in their meeting held on 05.12.2008, under resolution No.30, approved the proposal to settle a portion of the ceiling surplus land in the L.C. Case No.14/1973, with Manik Uddin and 12 others and six of those beneficiaries seek direction for enforcement of the land

settlement decision taken in their favour.

3. The learned counsel for the petitioners submits that the land in question was originally under possession of Smt. Rida Rambai and from her, one Md. Ajir Uddin secured possession of the land from the original occupier, through the unregistered deed dated 04.06.2001 (Annexure-2). Subsequently under another agreement dated 22.08.2008 (Annexure-4), the possessory right over the said land was transferred by Md. Ajir Uddin in favour of the petitioners and since then, they are in occupation of the ceiling surplus land, for which they applied for allotment.

4. The Circle Officer, Nilambazar under his communication dated 22.10.2008 recommended settlement of the ceiling surplus land in favour of Manik Uddin and 12 others and accordingly the Sub-Divisional Land Advisory Committee, Karimganj under resolution No.30, approved the land allotment proposal on 05.12.2008. Consequential direction was then issued on 01.07.2009 (Annexure-6) by the Karimganj D.C., whereby the Circle Officer, Nilambazar was directed to prepare allotment certificate, Touji Bahira Register for approval and counter signature of the Deputy Commissioner. The petitioners contend that although administrative approval was accorded for allotment, the formal settlement of the land has not been granted on account of the biased approach of the Circle Officer, who wanted to allot the same land to the private respondents.

5. On the other hand, Mr. P.S. Deka, the learned Govt. advocate refers to the counter affidavit filed on behalf of the Karimganj D.C. on 29.04.2010 to project that the petitioners are neither of the landless category nor they are in possession of the ceiling surplus land in question. In paragraph 6 of the counter it is projected that, each of the 6 petitioners have homestead lands at Mouza-Nabipur, Serpur and Baraigram respectively and therefore the Govt. advocate submits that the claim made by the petitioners for allotment of the ceiling surplus land is not permitted by law or the applicable policy of the Govt.

6. In his reply, Mr. N. Dhar, the learned counsel submits that ownership of some homestead land is not a disqualification for allotment of govt. land. He further submits that the petitioners are in possession of the land and a biased report was given by the Nilambazar Circle Officer on 07.10.2009, where it is wrongly projected that the 13 identified beneficiaries are not in physical possession. In fact, the concerned land is said to be in possession of the seven landless persons (private respondents), whose names are reflected in the Circle Officer's communication dated 07.10.2009, addressed to the D.C., Karimganj.

7. The power of disposal of ceiling surplus land vests on the Government under the Assam Fixation of Ceiling on Land Holdings Act, 1956 (hereinafter referred to as the "Ceiling Act"). Under Chapter-III of the Ceiling Act the cultivating tenants are the first category upon whom, the excess land can be settled under Section 16 of the Ceiling Act. When land is not settled with cultivating tenants, the

Government under Section 17, can give settlement to landless cultivators who are victims of natural calamities. However, it is explained in Section 17 itself that landless cultivator shall mean a person who does not hold land either as an owner or tenant, exceeding 3 bighas and whose only livelihood is cultivation.

8. The Settlement Rules framed under the Assam Land Revenue Regulation provides for prioritizing the settlement application, received from landless people. Under Rule 8 of the Settlement Rules, those who are rendered landless due to flood, erosion or earthquake or whose lands were acquired by the Government, are to be preferred for allotment. But actual cultivators having less than 8 bighas of land may also eligible for settlement under the Government policy and the Settlement Rules.

9. The above legal provisions indicate that being landless in absolute terms, is not a pre-requisite for allotment either under Section 17(3) of the Ceiling Act or under Rule 8 of the Settlement Rules. The Govt. Policy of 1989 also provides for settlement of land to actual cultivators in occupation of land measuring less than 3 bighas, as they are treated as landless category. Thus an applicant need not be a person with nil ownership/possession of land and cultivators whose ownership/possession is limited to the permissible extent and whose means of livelihood is cultivation, are categorized as landless cultivators, to make them eligible for allotment of ceiling surplus land.

10. In the above circumstances, it is necessary to determine first as to whether the petitioners can be categorized as "landless cultivators" within the meaning of Section 17(3) of the Ceiling Act or under the Government policy. Since the petitioners have expressed reservation on the neutrality of the Circle Officer, Nilambazar, who has given contradictory views, I deem it appropriate to direct the Deputy Commissioner, Karimganj to verify whether the petitioners are actual cultivators of landless category. It must also be ascertained by site visit as to whether, the petitioners or the private respondents are in possession of the concerned land. Since the petitioners and the respondents are claiming settlement of the same parcel of ceiling surplus land, the verification should be done through a participatory exercise, after affording hearing to all parties. Consequent upon the resultant finding, the settlement of the ceiling surplus land upon the eligible claimants should be considered by the Government. Thus the resolution No.30 adopted on 05.12.2008 in the meeting of the Sub-Divisional Land Advisory Committee, Karimganj and the D.C.'s order dated 01.07.2009 are made subject to the outcome of the ordered exercise.

11. With the above order, the case stands disposed of in the manner indicated. No cost.