



GAHC010236262013

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

Case No. : WP(C)/6491/2013

SMTI ANJALI DEVI and ANR.
W/O SRIRAM SINGH

2: BIJAY KR. SINGH
S/O LT. SRIRAM SINGH
BOTH R/O W/O NO.6
NEAR COMMERCE COLLEGE
NORTH LAKHIMPUR
DIST- LAKHIMPUR
ASSA

VERSUS

THE STATE OF ASSAM AND 3 ORS
REPRESENTED BY THE SECRETARY, REVENUE DEPARTMENT GOVT. OF
ASSAM, DISPUR, GHY-6

2:THE DY. COMMISSIONER
NORTH LAKHIMPUR
LAKHIMPUR
ASSAM

3:THE ADDL. DY. COMMISSIONER
NORTH LAKHIMPUR
LAKHIMPUR
ASSAM

4:THE ALL ASSAM CHAH MAZDOOR SANGHA
NORTH LAKHIMPUR BRANCH
P.O. NORTH LAKHIMPUR
DIST- LAKHIMPUR
PIN-787001
ASSA



For the Petitioner(s) : Mr. S. Dutta, Sr. Advocate
: Mr. P. Kataki, Advocate

For the Respondent(s) : Mr. R. Borpujari, Standing Counsel
: Mr. B. K. Bhagawati, Advocate

**BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH**

JUDGMENT AND ORDER (ORAL)

Date : 19-09-2023

1. The instant writ petition has been filed by the Petitioners challenging the notice dated 28.10.2013 issued by the Additional Deputy Commissioner, North Lakhimpur whereby the Petitioners were directed to vacate their possession over the land belonging to the Respondent No.4 on the basis that the said land was allotted in the name of the Respondent No.4 by virtue of the Government Letter No.RSS/102/2012/34 dated 12.06.2013.

2. The facts which has arisen for consideration before this Court is that the Petitioners herein alleged that the father of the Petitioner No.2 - Late Sriram Singh was working at Ananda Tea Estate, P.O. Pathaliapar in the year 1960. He occupied a Government land measuring 18 Lechas by erecting a thatch house. The said land was situated within the North Lakhimpur Town, Ward No.6. On 01.06.1970, Late Sriram Singh was appointed as the Organizer of Assam Chah Mazdoor Sangha i.e. the Respondent No.4. Thereupon, Late Sriram Singh constructed the Office of the Respondent No.4 in the adjacent land covering 3 Kathas and the said office was functioning under the guidance of Late Sriram Singh. On 17.05.2010, Late Sriram Singh expired. On 20.11.2010, the President as well as the Secretary of the Respondent No.4 issued a notice to the Petitioner



No.1 to vacate the premises. The Petitioner No.1 submitted her reply on 01.12.2010 stating that the said land which was occupied by the Petitioners do not belong to the Respondent No.4 and the construction was made by her husband i.e. Late Sriram Singh and the land was never allotted to the Respondent No.4. It further reveals from the allegations in the writ petition that on account of various disturbances being caused by the members of the Respondent No.4, a proceeding under Section 107 of the Code of Criminal Procedure, 1973 (for short "Cr.P.C.") was initiated against the members of the Respondent No.4. Finally, the said proceedings was brought to the notice of the Respondent No.3 i.e. the Additional Deputy Commissioner, North Lakhimpur, Lakhimpur as the Respondent No.4 had filed an application for allotment of the land in their favour. The Petitioners also approached the Additional Deputy Commissioner i.e. the Respondent No.3 for adjudication and the Respondent No.3 visited the disputed land and asked the Executive members of the Respondent No.4 for relinquishment of the demand of 18 Lechas of land which was under the occupation of the Petitioners. It is the further case of the Petitioners that the members of the Respondent No.4 went on causing disturbance in the peaceful enjoyment of the Petitioners in the said 18 Lechas of land. Finding no other alternative, a legal notice dated 13.09.2011 was issued to the President and Secretary of the Respondent No.4 for not causing any disturbance to the peaceful possession of the Petitioners in respect to the 18 Lechas of land. The Petitioners had also averred that they had been regularly paying the land revenue for the period 2012-2013 to the Mouzadar of Lakhimpur Mouza. The Circle Officer, North Lakhimpur Circle had also issued a certificate certifying that the Petitioner No.1 was occupying 18 Lechas of land covered by Dag No.275 under BDJ No.357, Lakhimpur Town, 1st Part under



North Lakhimpur Revenue Circle. These documents are made part of the records as Annexure V & VI to the writ petition.

3. It further reveals from the records that the Petitioner No.2 submitted an application under Right to Information Act, 2005 regarding allotment of the Government land in favour of the Respondent No.4. The Respondent No.3 vide a communication dated 28.05.2012 informed the Petitioner No.2 that the proposal has been received from the Circle Officer, North Lakhimpur Revenue Circle for reservation of a plot of land measuring 0 Bigha 3 Katha 0 Lecha covered by Dag No.275 and 276 of North Lakhimpur 1st part Map under Lakhimpur Mouza in favour of the Respondent No.4. This document has relevance taking into account that the proposal was only in respect of 3 Kathas of land and the said proposal has been approved by the S.D.L.A.C., North Lakhimpur in its meeting held on 27.02.2012.

4. Subsequent thereto, on 19.10.2013, the Respondent No.3 issued a notice to the Petitioner No.1 to appear before him on 28.10.2013 in view of the complaint lodged by the members of the Respondent No.4 regarding encroachment of land. Thereafter, the Petitioner No.1 appeared before the Respondent No.3 but it was alleged that no hearing took place. However, the Respondent No.3 vide a letter dated 28.10.2013 informed the Petitioners that they were illegally possessing the land belonging to the Respondent No.4 as the land has already been allotted to the Respondent No.4 vide letter dated 12.06.2013 and therefore, they were required to vacate the said premises within 7 (seven) days. The said notice was received on 04.11.2013 by the Petitioners. It is under such circumstances, that the Petitioners have approached this Court with a prayer for setting aside the impugned notice dated 28.10.2013 as well as the order of allotment dated 12.06.2013 issued in favour of the Respondent



No.4. The Petitioners have also sought for the relief that the impugned notice dated 28.10.2013 issued by the Respondent No.3 should not be given effect to and to enable the Petitioners to stay in the said 18 Lechas of land possessed by them covered under Dag No.275 under BDJ No.337 North Lakhimpur 1st Part Town under North Lakhimpur Mouza.

5. The instant writ petition was filed on 07.11.2013. This Court vide an order dated 11.11.2013 issued Rule and directed that the impugned notice dated 28.10.2013 issued by the Additional Deputy Commissioner, North Lakhimpur be stayed. The said interim order had been continuing since then.

6. Before taking into account the pleadings of the Respondents, this Court however finds it relevant that an application was filed by one Sanjit Tanti representing the Respondent No.4 with a prayer to vacate the interim order dated 11.11.2013. This Court disposed of the said Interlocutory Application vide an order dated 14.06.2017 thereby modifying the order dated 11.11.2013 to the extent that the applicant was allowed to carry out the required construction over the remaining portion of the land by leaving aside the 18 Lechas of land under the occupation of the writ petitioners.

7. The Respondent No.4 i.e. the Assam Chah Mazdoor Sangha filed an affidavit-in-opposition on 12.02.2014. The said affidavit-in-opposition was filed through the Secretary, North Lakhimpur Branch of the Respondent No.4. In the said affidavit, it was mentioned that the house in which the Petitioners claim to be theirs had always been used as the Office by the Respondent No.4 who had been in possession, use and enjoyment of the same and the adjoining lands surrounding it since the year 1959. The father of the Petitioner No.2 Late Sriram Singh was serving as an employee of Ananda Tea Estate which is situated at a



distance of about 30 KM away from North Lakhimpur till the year 1970. The said Late Sriram Singh was living in a quarter provided by the said Tea Estate. Late Sriram Singh was appointed as an organizer of the Assam Chah Mazdoor Sangha, North Lakhimpur Branch from the 01.06.1970 by an office letter dated 28.05.1970 in which letter, the address of Late Sriram Singh appears as Ananda Tea Estate, P.O Pathaliapar which is 30 KM away from the current place of residence of the Petitioners which they claim as their own. The said letter was duly received by Late Sriram Singh and as such it was the contention of the Respondent No.4 that the claim of the Petitioners was unfounded inasmuch admittedly they are occupiers of Government land measuring 18 Lechas by erecting a thatch house.

8. Further to that, it was mentioned that the father of the Petitioner No.2 after being appointed as an organizer by the Office of the Respondent No.4 stayed in a rented house in Ward No. 7 of North Lakhimpur Town. It was also stated that the Office of the Respondent No.4 existed in the house situated on the western side of the plot of land measuring approximately 12 Lechas where the petitioners are now claiming as their own. Further to that, it was also stated that the new Assam Type building was constructed on the eastern side of the plot of land whereupon the office of the ACMS, North Lakhimpur Branch was shifted there in the year 1985. It is the specific case of the Respondent No.4 as would transpire from paragraph No.5 of the affidavit-in-opposition that the Petitioner No.2's father was allowed to live in the old Assam Type house which was also built by the Respondent No.4. The further statements made in the affidavit-in-opposition filed by the Respondent No.4 shows that after the death of Late Sriram Singh in the year 2010, his family members were allowed to stay in the old Assam Type structure of the Respondent No.4 for 6 (six) months and



only after the expiry of the 6 (six) months, they were asked to vacate the said premises. It was further mentioned that the plot of land measuring 3 Kathas 12½ Lechas was allotted by the Government in favour of the Respondent No.4 on 12.06.2013. Possession thereof was duly handed over to the Respondent No.4 on 02.07.2013 as reflected in the Handing Over/Taking Over Report dated 02.07.2013 issued by the Circle Officer, North Lakhimpur Revenue Circle.

9. The Respondent No.4 enclosed various documents to the Affidavit-in-Opposition. From a perusal of Annexure-B, it reveals that the Deputy Secretary to the Government of Assam, Revenue and Disaster Management Department had issued a communication on 12.06.2013 informing that the Governor of Assam was pleased to order for allotment of sarkari land measuring 3 Kathas 12½ Lechas covered by Dag No.275 (Part Kha) and 276 (Part Kha) of North Lakhimpur Town, 1st Part under Lakhimpur Mouza in favour of the Respondent No.4 subject to utilization for the specific purpose within 3 (three) years failing which the land so allotted would automatically stand cancelled and reverted to Government in the Revenue and Disaster Management Department. The land records were directed to be corrected accordingly after handing over the possession of the land to the concerned authority. Pursuant to the said communication dated 12.06.2013, the Additional Deputy Commissioner, Revenue, Lakhimpur, North Lakhimpur issued a communication to the Circle Officer enclosing the communication dated 12.06.2013 with a direction to correct the land records accordingly at the earliest. The Circle Officer, North Lakhimpur Revenue Circle was also requested to submit a copy of the Handing Over/Taking Over certificate to the Additional Deputy Commissioner, (Revenue) Lakhimpur, North Lakhimpur. On 02.07.2013, the Circle Officer, North Lakhimpur Revenue Circle handed over the possession of 3 Kathas 12½ Lechas of land



covered by Dag No. 275 (Part Kha) and 276 (Part Kha) of North Lakhimpur Town, 1st Part Map under Lakhimpur Mouza on 02.07.2013 to the President/Secretary of the Respondent No.4. It also reveals from the said document that the President/Secretary of the Respondent No.4 have also categorically mentioned therein that they had taken over the possession of 3 Kathas 12½ Lechas of land covered by the said Dags above mentioned.

10. This Court further finds it relevant to take note of an affidavit-in-opposition filed by the Respondent Nos. 2 and 3. In the said affidavit-in-opposition, it was mentioned that the father of the Petitioner No.2 did not occupy the land in question in the year 1960. It was categorically stated by the Additional Deputy Commissioner that the father of the Petitioner No.2 encroached upon after the allotment proposal was made in the name of the Respondent No.4. It is however pertinent herein to mention that the father of the Petitioner No.2 admittedly expired in the year 2010 and it is not known on what basis, the Additional Deputy Commissioner, Revenue, North Lakhimpur had made that statement. It is further seen from paragraph No.6 of the said affidavit-in-opposition that the Respondent No.4 had submitted a Petition No.24.BC/2012/140-3 dated Nil for allotment of a plot of land in the name of their institution. On the basis of their application, the Circle Officer, North Lakhimpur Revenue Circle submitted a proposal for allotment of a plot of land measuring 3 Kathas covered by Dag Nos. 275 and 276 of North Lakhimpur Town, 1st Part Map in the name of the Respondent No.4 vide a communication dated 07.02.2012. The said proposal for allotment of the plot of land measuring 3 Katha was received in the Office of the Additional Deputy Commissioner, Revenue from the Office of the Circle Officer, North Lakhimpur Revenue Circle by way of a communication dated 27.02.2012 which was approved by the Sub-



Divisional Land Allotment Committee Meeting held on 27.02.2012 itself and was submitted to the Government for necessary approval. It was further mentioned that the Respondent No.4 again submitted a petition for revision of the proposal made in favour of the Respondent No.4 in respect of the land in question and accordingly, the Circle Officer, North Lakhimpur Revenue Circle was directed to verify the matter and submit a revised proposal accordingly. The Circle Officer, North Lakhimpur Revenue Circle thereafter submitted a proposal for allotment of a plot of land measuring 3 Kathas 12½ Lechas covered by Dag Nos. 275 and 276 of North Lakhimpur Town, 1st Part Map in the name of the Respondent No.4 vide a letter dated 10.09.2012 which was approved by the Sub-Divisional Land Allotment Committee meeting held on 19.10.2012 and was submitted to the Government for according the necessary approval. The Government approved the revised proposal for the said plot of land measuring 3 Kathas 12½ Lechas of the land in favour of the Respondent No.4 vide a communication dated 12.06.2013.

11. It was also mentioned in the said Affidavit-in-Opposition that the Additional Deputy Commissioner Revenue upon receiving a complaint from the Respondent No.4 that a part of the land which was allotted to the Respondent No.4 was encroached by the Petitioners, a meeting was called wherein the Petitioners as well as the Respondent No.4 were present on 28.10.2013. In the said meeting, the Petitioners agreed to vacate the encroached land within 7 (seven) days from the date of the said meeting. It was under such circumstances, notice was formally issued to the Petitioners as per the Minutes of the said meeting dated 28.10.2013 to vacate within 7 (seven) days.

12. The Petitioners had filed affidavits-in-reply to the affidavit-in-opposition filed by the Respondent No.2 as well as the Respondent No.4. In the affidavit-



in-reply filed to the affidavit-in-opposition of Respondent No.4, the statements made therein were denied. It was reiterated that Late Sriram Singh had constructed the office of the Respondent No.4 and also had constructed the residential house by erecting a thatch house initially which was later on converted to Assam Type House. The statements made in the affidavit-in-opposition to the effect that the plot of land which houses the offices/structures, meeting hall, garage, guest house, well etc. of the Respondent No.4 are bounded by brick wall with grills of iron gate on the southern side built about 18 to 19 years ago and further in the middle of the campus, there is a big olive tree were denied. It was denied that the land measuring 12½ Lechas which the Petitioners claim as their own falls within the area.

13. In the affidavit-in-reply filed by the Petitioner against the affidavit-in-opposition filed by the Respondent No.2, the undated communication issued by the President as well as the In-charge Secretary of the Respondent No.4 was enclosed. It appears from the said communication that the Respondent No.4 applied for allotment of 1 Bigha 1 katha 5 Lechas of land of Dag No. 275 and 276 but expressed their displeasure that only 3 Kathas of land was allotted to the Respondent No.4. The communication dated 10.09.2012 issued by the Circle Officer, North Lakhimpur Revenue Circle to the Deputy Commissioner, Lakhimpur, North Lakhimpur for correction of the land allotment proposal was also enclosed to the said affidavit-in-reply. Further to that, another communication issued by the Additional Deputy Commissioner (Revenue), Lakhimpur, North Lakhimpur to the Deputy Secretary to the Government of Assam, Revenue and Disaster Management Department was enclosed whereby the corrected proposal for reservation of land measuring 3 Kathas 12¾ Lechas covered by Dag Nos. 275 (Part Kha) and 276 (Part Kha) of North Lakhimpur



Town, 1st Part Map under Lakhimpur Mouza in the name of the Respondent No.4 was submitted.

14. This Court has duly perused the pleadings as well as the materials on record. In the backdrop of the above, let this court therefore take note of the respective submissions made by the learned counsels appearing on behalf of the parties.

15. Mr. S. Dutta, the learned Senior counsel appearing on behalf of the Petitioners submits that the Respondent No.3 had no authority or jurisdiction to issue the impugned communication inasmuch as it being a private dispute between the Petitioners and the Respondent No.4, the Respondent No.3 could not have entered into such private disputes and as such, the issuance of the said impugned notice is an abuse of the powers conferred by law. The learned Senior counsel for the Petitioners submits that as the Petitioners' predecessor in interest as well as the Petitioners presently have been occupying the land measuring 18 Lechas, the Petitioners have a right to seek settlement in terms with the then existing Land Policy of 1989 as well as the present Land Policy of 2019. He further submits that from the materials on record, the Respondent No.4 have only been allotted a plot of land measuring 3 Katha 12³/₄ Lechas. As per the provisions of the Assam Land and Revenue Regulation, 1886 (for short "the Regulations of 1886") allotment is nothing but an approval of the Government to a land allotment proposal and as such no rights stand vested or conferred upon the Respondent No.4 on the basis of the said allotment unless the said allotment is followed by a settlement order as well as correction of the record of rights which have admittedly not been done in the case of the Respondent No.4. It is therefore the case of the Petitioners as per the learned Senior counsel that as it is a private dispute between the Petitioners and the



Respondent No.4, the Respondent No.3 could not have issued the impugned notice or even interfered by exercising his powers.

16. Mr. R. Borpujari, the learned Standing counsel of the Revenue Department drawing the attention of this Court to the provisions of Section 6, 9 and 11 of the Regulations of 1886 submits that it is only the landholder, settlement holder, proprietor of a land who has a right over the land. Referring to Sub-Clauses (a), (b), (c) and (d) of Section 6 of the Regulation of 1886, Mr. R. Borpujari submits that to have a right over the land, the Respondent No.4 has to come within the ambit of them. The learned Standing counsel further referring to the power of the State Government in terms with Section 12, 13 and 14 read with Section 27 and 29 of the Regulations of 1886 submits that the Settlement Rules have been framed. He further drawing the attention of this Court to Rule 15 of the Settlement Rules submits that merely on the basis of a possession, a person has no right over the land. The learned Standing counsel further drawing the attention to Rule 16 of the Regulations of 1886 submits that unless and until a lease which is in the form of a patta have not been issued to the Respondent No.4, the Respondent No.4 has no right over the land and has no right to remain in possession. The learned Standing counsel however submits that in view of the communication issued by the Additional Deputy Commissioner to the Circle Officer on 01.07.2013 and the possession on the basis being handed over on 02.07.2013 shows that the Respondent No.4 have been permitted to remain in possession of the land pending issuance of the lease. The learned Standing counsel therefore submitted that taking into account Section 6 and the other provisions, the Respondent No.4's right at present is only a right to occupy the land in question and nothing beyond that.

17. Mr. B. K. Bhagawati, the learned counsel appearing on behalf of the

Respondent No.4 also endorses the fact that the Respondent No.4 have only been allotted the said land and there has been no settlement made till date in favour of the Respondent No.4. He therefore submitted that as for the present, the Respondent No.4's right is limited to remain in possession pending issuance of lease pursuant to the approval so granted by the Government in the form of an allotment dated 12.06.2013. The learned counsel for the Respondent No.4 therefore submitted that as the settlement has not yet been granted to the Respondent No.4, the land in question still continues to be a Government land and as such, the Respondent No.3 was within his jurisdiction to issue the impugned notice dated 28.10.2013.

18. Upon hearing the learned counsels for the parties, three points for determination arises for consideration which are :-

- (i) Whether the Respondent No.3 was within his jurisdiction to issue the impugned communication dated 28.10.2013?
- (ii) What rights had accrued upon the Respondent No.4 on the basis of the order of allotment dated 12.06.2013 and the possession being handed over on 02.07.2013?
- (iii) What relief(s) the parties herein are entitled to on the facts of the instant case?

19. The point of determination Nos. 1 and 2 as framed hereinabove are interlinked. Under such circumstances, this Court finds it relevant to take note of some of the provisions of the Regulations of 1886 and the Settlement Rules framed thereunder. Chapter-II of the Regulations of 1886 stipulates the rights over the land. Section 6 of the Regulations of 1886 stipulates the rights which may be acquired over the land. In terms with Section 6, no right of any description shall be deemed to have been or shall be acquired by any person



over any land in which Chapter-II applies except what has been mentioned in the Sub-Clauses to Section 6. Rights of the proprietor, landholders and settlement holders other than landholders as defined in the Regulation and other rights acquired in the manner provided by the Regulation [Sub-Clause (a)]; Rights legally derived from any right mentioned in Sub-Clause (a) [Sub-Clause (b)]; Rights acquired under Section 26 and 27 of the Indian Limitation Act, 1877 [Sub-Clause (c)]; and Rights acquired by any person as tenant under the Rent Laws for the time being in force [Sub-Clause (d)]. The proviso to Section 6 stipulates that nothing contained in the said Section shall be held to derogate from the terms of any lease granted by or on behalf of the Government.

20. Sections 7, 8 and 9 relates to the rights of the proprietor, status of the landholders how acquired and the rights of the landholders respectively. Before further proceeding, this Court finds it relevant that for the purpose of acquiring a right of a landholder, a lease has to be granted by or on behalf of the Government in terms with Section 8(b) of the Regulations of 1886. Section 12, 13 and 14 relates to the powers conferred upon the State Government to frame Rules for the purpose of disposal of Government lands and ejectment therefrom of unauthorized occupiers; for allotment of grazing grounds and for allotment of lands for tribes practicing jhum or migratory cultivation respectively. Section 15 of the Regulation of 1886 stipulates that no person shall acquire, by length of possession or otherwise any right over lands disposed of or allotted under Sections 12, 13, and 14 beyond that which is given by the Rules made under the Section.

21. This Court further finds it relevant to take note of Section 27 and 29 which empowers the State Government to frame Rules. On the basis of the powers



conferred upon the State Government by virtue of Section 12, 13 and 14 read with Section 27 and 29 and other provisions of the Regulations of 1886, the Settlement Rules have been framed. Rule 1 of the Settlement Rules stipulates that all powers of the Deputy Commissioner under this Rules shall be exercised subject to any general or special orders issued from time to time by the State Government. This Court finds it relevant to take note of Rule 1(2)(c) which relates to annual lease meaning thereby a lease granted for 1 year only and confers no right in the soil beyond a right of user for the year for which it is given. Rule 1(2)(d) defines a "periodic lease", in the case of lands other than town lands, a lease granted for a period longer than 1 year and in the case of town lands, a lease for a period of longer than three years. Rule 1(2)(f) defines "settlement" to mean the leasing of the land at the disposal of the Government and includes the operation of survey, classification and report, preliminary to such leasing.

22. Rule 2 confers powers upon the Deputy Commissioner for disposal of the waste lands required for ordinary or special cultivation or for building purpose. The Deputy Commissioner as per the said Rule 2 has the power to dispose of such land by grant, lease or otherwise in the manner and subject to the conditions setforth in the Settlement Rules provided that the Deputy Commissioner may expressly reserve any such land from settlement.

23. Rule 3 relates to delegation of the powers of the Deputy Commissioners and in terms with Sub-Clause (i) of Rule 3, no officer of lower status than a Sub-Deputy Collector shall pass final orders to issue a periodic lease or to grant settlement of land and provided that the Sub-Deputy Collector may not exercise such powers if the land in question exceeds 12 Bighas or such other area as may be prescribed by the State Government by general or special orders from



time to time.

24. Rule 15 of the Settlement Rules is very pertinent inasmuch as it stipulates that no person shall have any right to settlement merely because he is in occupation of land not included in any lease granted by the State Government either to himself or to any other person. Rule 16 prohibits any person to enter into possession of waste land in any area until a lease has been issued to him or otherwise a written permission by the Deputy Commissioner had been granted to him pending issuance of such lease to enter into possession.

25. Rule 18 empowers the Deputy Commissioner to eject any person from the land over which no person has acquired the rights of the proprietor, landholder or settlement holder. A perusal of Rule 18(2) stipulates that when such person has entered into possession of Government khas land or waste land or estate over which no person has acquired the right of a proprietor, landholder or settlement holder or any land that has been previously been reserved for roads or roadside land or for grazing of village cattle or for other public purposes, or had entered into possession of land from which he has been excluded by general or special orders and when further there is no bona fide claim of right involved such person 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 created without authority on the land. Rule 18(3)(a) relates to other cases of ejectment which shall be preceded by a publication of notice in the manner prescribed requiring the occupant generally to vacate the land specified in the notice within 15 days from the date of publication of notice on the land concerned or in a prominent place in the vicinity thereof and to remove any buildings, houses, fences of crops etc. which may have been raised on such land. A joint reading of Rule 18(2) and Rule



18(3) shows that in a case where there is an existence of bona fide claim of right, Rule 18(2) cannot be exercised.

26. From a perusal of the above provisions, it is not seen under what provisions of the Regulations of 1886 or the Rules framed thereunder, the requirement of an approval from the State Government or allotment by the State Government is required unless there are executive orders supplementing the Settlement Rules making it a condition precedent for approval or allotment by the State Government prior to the settlement. This opinion of this Court is based upon a reading of Rule 2 of the Settlement Rules which empowers the Deputy Commissioner on its own to grant lease or otherwise disposal of waste lands in the manner and subject to the conditions set forth in the settlement rules. The proviso to Rule 2 only requires previous approval of the State Government in respect to lands in an unclassified State forest containing trees as declared as reserved trees under Section 32 of the Assam Forest Regulation, 1891. Therefore, the allotment which had been made as conveyed vide the communication dated 12.06.2013 in favour of the Respondent No.4 sans any settlement being made by the Deputy Commissioner or his delegatee in terms with Rule 3 does not confer any rights upon the Respondent No.4 over the land measuring 3 Katha 12³/₄ Lechas covered by Dag No.275 (Part Kha) and 276 (Part Kha) of North Lakhimpur Town, 1st part under Lakhimpur Mouza. The only right that the Respondent No.4 has is a right to occupy/possess the said land on the basis of the communication issued by the Additional Deputy Commissioner (Revenue) to the Circle Officer, North Lakhimpur Revenue Circle and the subsequent handing over of the possession of the said land to the Respondent No.4 by the Circle Officer, North Lakhimpur Revenue Circle.

27. The above aspect of the matter would also be clear from the query made



by this Court upon the learned counsel appearing on behalf of the Respondent No.4 as to whether the Respondent No.4 had all these years pursuant to the allotment in the year 2013 paid the land revenue. The learned counsel appearing on behalf of the Respondent No.4 submitted that the Respondent No.4 have not paid land revenue inasmuch as the settlement is yet to be made by issuance of a periodic lease in the form of a patta in favour of the Respondent No.4.

28. Therefore, from the above, it is seen that the right of the Respondent No.4 over the land in question is simply a right to remain in possession till a lease is issued to the Respondent No.4 by the Deputy Commissioner or till such time the permission to occupy the land is revoked.

29. The next question which arises is could the Respondent No.3 issue the impugned notice dated 28.10.2013 to the Petitioners in the present facts? A perusal of the said impugned notice which has already been referred to supra shows that that impugned notice was issued informing the Petitioners that the Petitioners are illegally occupying the residential premises of the Respondent No.4 and the Petitioners were directed to vacate within 7 days. The prelude to the said impugned notice can be seen from the affidavit-in-opposition filed by the Respondent No.3 at paragraph No.9 wherein it has been mentioned that on the basis of a complaint from the Respondent No.4, the Respondent No.3 called for a meeting on 28.10.2013 and on the basis of some agreement, the impugned notice dated 28.10.2013 was issued. Therefore, it would be seen that the said notice was issued at the behest of the Respondent No.4.

30. Now the question arises as to whether the Respondent No.3 could have exercised his statutory powers to do so at the instance of the Respondent No.4 that too directing the Petitioners to vacate from the residential accommodation



of the Respondent No.4. To ascertain the same, this Court finds it again relevant to take note of the affidavit-in-opposition filed by the Respondent No.4 wherein it has been specifically mentioned that the Petitioner No.2's father was permitted to stay in the house of the Respondent No.4 when he was the organizing Secretary of the Respondent No.4 and thereupon, in the year 2010, after six months from the death of the Petitioner No.2's father, the Respondent No.4 requested the Petitioners to vacate the residential quarter. Further to that, if the stand taken by the Petitioners are looked into, it would show that the Petitioners claims that their predecessor in interest had encroached upon Government land and constructed initially a thatched house which was subsequently converted in an A.T. House upon the 18 Lechas of land. Therefore, the dispute between the Petitioners and the Respondent No.4 relates to who had constructed the Assam Type House wherein the Petitioners are occupying. This is purely a private dispute between the Petitioners and the Respondent No.4 and the Respondent No.3 could under no circumstances intermediate in the said dispute by exercising his statutory powers.

31. Apart from the above, this Court also finds it relevant to take note of that on 02.07.2013, the possession of the land measuring 3 Kathas $12\frac{3}{4}$ covered by Dag No.275 (Part Kha) and 276 (Part Kha) of North Lakhimpur Town, 1st part under Lakhimpur Mouza was handed over to the Respondent No.4 which was also taken by the Respondent No.4 through its President/Secretary under their signatures. Under such circumstances, if there is any dispute as regards the possession of the land which has been handed over to the Respondent No.4 can only be a private dispute as regards the possession between the Petitioners and the Respondent No.4 and the Respondent No.3 being a statutory authority ought not to have interfered into the said private dispute in exercise of the

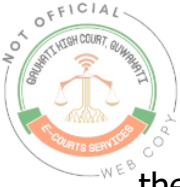


powers conferred upon him. Such exercise of powers by the Respondent No.3 in the opinion of this Court amounts to abuse of the positional powers by the Respondent No.3.

32. The above analysis and findings decides the first two points for determination. Let this Court therefore take into consideration the third point for determination formulated as to what relief(s) the parties herein are entitled to. In view of the decision in Point Nos. 1 and 2 so formulated, the impugned notice dated 28.10.2013 being not tenable is set aside and quashed.

33. The dispute between the Petitioners and the Respondent No.4 is whether the Petitioners are gratuitous possessors of the Assam Type House which both the Petitioners and the Respondent No.4 claims to be theirs. The said dispute can only be decided by a competent Civil Court and not by the Revenue Authority as well as this Court while exercising the jurisdiction under Article 226 of the Constitution. Be that as it may, this dispute has been pending before this Court since 2013 and each of the parties have been pursuing their rights. Under such circumstances, the period during which the instant writ petition has been pending before this Court is required to be excluded while computing the period of limitation.

34. The Petitioners have also challenged the allotment dated 12.06.2013 made in favour of the Respondent No.4. As already stated that the allotment made in favour of the Respondent No.4 till granting of the settlement by issuance of periodic lease in favour of the Respondent No.4 do not create any rights in favour of the Respondent No.4 over the land in question. Under such circumstances, as the rights of the Respondent No.4 over the land measuring 3 Kathas $12\frac{3}{4}$ lechas is still in the embryo, this Court is not interfering with the said allotment order. However, grants the liberty to the Petitioners to approach



the Respondent Authorities to seek settlement over the land under their occupation, provided till such time, the settlement is not made in favour of the Respondent No.4. The above direction has been issued taking into consideration that the Government had already taken a decision to allot the land in question. This Court further directs that in the eventuality, the Petitioners seek settlement of the land under their occupation prior to the settlement granted in favour of the Respondent No.4, the Deputy Commissioner, North Lakhimpur and the Revenue Department shall duly consider the same as per the extant Land Policy and the Regulations.

35. Accordingly, this Court sets aside the impugned notice dated 28.10.2013 issued by the Respondent No.3 by reserving the liberty to the parties herein to avail remedies before the competent Civil Court. As stated above, this Court had not interfered with the allotment order dated 12.06.2013 but grants liberty to the Petitioners as stated in paragraph No.34 hereinabove.

36. With above observations and directions, the instant writ petition stands disposed of.

JUDGE

Comparing Assistant