



GAHC010019782014

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

Case No. : WP(C)/6656/2014

SARKAR NAZRUL ISLAM and 36 ORS
S/O ABDUL JALIL

2: MD. SURUJ ALI
S/O LT. BASIR UDDIN

3: MD. MOFIDUL ISLAM
S/O LT. NAZIRUDDIN AHMED

4: MD. MAINUL HOQUE
S/O D. IDRISH ALI

5: MD. HABIBAR RAHMAN
S/O LT. ALIMUDDIN

6: MD. MAQSUD ALI
S/OLT. JUNAB

7: ABDUL KASEM
S/O LT. KURBAN ALI

8: KUTUBUDDIN AHMED
S/O LT. FARAZ

9: FAKARUDDIN AHMED @FAKARUDDIN ALI AHMED
S/O JAHIRUDDIN

10: NUR ISLAM
S/O LT. MASUR MANDAL

11: JILLUL HOQUE
S/O LT. JALIL

12: RAHMAN ALI



S/O MAFIZUDDIN

13: JABED ALI
S/O ABDUL SATTAR

14: ABDUL WAHED
S/O ABDUL JALIL

15: GAZIBAR RAHMAN
S/O LT. KHABIBAR RAHMAN

16: JAINAL ABEDIN
S/O LT. SAMSUDDIN

17: NABIR ALI
S/O LT. ABED ALI

18: ABDUL ADUD
S/O LT. ABDUL JUBBAR

19: MAJIBAR RAHMAN
S/O LT. HANIFUDDIN

20: ISLAMUDDIN
S/O LT. MAFIZ

21: AMILA BEWA
W/O LT. KHALILUR RAHMAN

22: MISIR ALI
S/O LT. SIRAJ

23: ABDUR RAHIM
S/O LT. MATU MANDAL

24: MISSION ALI
S/O LT. ABUL KASEM

25: MAJIBUR RAHMAN
S/O LT. GANDA SHEIKH

26: SAMSUL HOQUE
S/O LT. SHAH ALOM

27: JILAP ALI
S/O LT. MAFIZUDDIN

28: AHELA KHATUN



W/O GULAP ALI

29: GAHAR ALI
S/O LT. MAFIZUDDIN

30: ABDUL MAJID
S/O JALI MONDOL

31: KHAIRUL HOQUE @ HUSSAIN
S/O LT. SAMIR MUNSHI

32: ADUL SATTAR
S/O LT. MALEK AKANDA

33: NURUL ISLAM
S/O LT. NABU MULLAH

34: MANJURUL KABIR
S/O SURUJ ALI

35: KUDDUSH ALI
S/O LT. MAFIZUDDIN

36: ASHAD ALI
S/O KADER ALI

37: HUSSAIN ALI
S/O LT. HAKIMUDDIN
ALL ARE R/O BANDIA
P.O. and P.S. MANGALDOI
MOUZA- CHAPAI
DIST- DARRANG
ASSA

VERSUS

THE STATE OF ASSAM AND 4 ORS
REP. BY ITS COMMISSIONER AND SECY. TO THE GOVT. OF ASSAM,
REVENUE SETTLEMENT DEPTT., DISPUR, GHY-6

2:THE DY. COMMISSIONER
DARRANG
MANGALDOI
ASSAM

3:THE ADDL. DY. COMMISSIONER REVENUE
DARRANG
MANGALDOI



4:LAND ADVISORY COMMITTEE
DARRANG
MANGALDOI
REP. BY ITS CHAIRMAN THE D.C. DARRANG
MANGALDOI

5:THE CIRCLE OFFICER
MANGALDOI REVENUE CIRCLE
DARRANG
MANGALDOI
ASSA

Advocate for the Petitioners : Mr. M. H. Choudhury,
Senior, Advocate
Mr. S. U. Ahmed, Advocate

Advocate for the Respondents : Mr. R. Borpujari, Standing Counsel,
Revenue Department
Ms. M. Barman, Govt. Advocate.

BEFORE

HONOURABLE MR. JUSTICE DEVASHIS BARUAH

Date of Hearing : 16.11.2022

Date of Judgment : 16.11.2022

JUDGMENT AND ORDER (ORAL)

Heard Mr. M. H. Choudhury, the learned senior counsel assisted by Mr. S. U. Ahmed, the learned counsel for the petitioners. Also heard Mr. R. Borpujari, the learned Standing Counsel, Revenue Department for the respondent No.1 as well as Ms. M. Barman, the learned Junior Government Advocate, Assam for the respondent Nos. 2 to 5.

2. The instant writ petition is filed by 37 petitioners alleging the inaction of the respondent authorities in granting allotment to the petitioners in

spite of the fact that the District Level Scrutiny Committee, Mangaldai by its Resolution Nos.30 & 31 adopted in its meeting dated 20.12.2005 have recommended of granting allotment of Village Grazing Reserve (for short, VGR) land to the petitioners. For the sake of convenience, it would be relevant to take note of the Resolution Nos.30 & 31 of the Land Advisory Committee, Mangaldai held on 20.12.2005 which are quoted herein below:

Resolution No.30: The committee recommended the proposal for settlement of VGR land measuring 4B-1K-5L out of 21B-4K-10L covered by Dag No.5 (PT) of Bandi Chapari under Chapai Mouza in favour of Md. Khalilur Rahman & 16 others @ 1K-5L land each. However, towards the end of the meeting few members raised objection on the recommendation and demanded to recommend at least one bigha of land to each on the ground that the incumbent are erosion affected families and are cultivators by profession, for which 1K-5L of land is too less. The committee then authorized the Deputy Commissioner to verify the matter further.

Resolution No.31: The committee recommended the proposal for settlement of VGR land measuring 5B out of 27B-2K-4L covered by Dag No.5 (PT) of Bandi Chapari under Chapai Mouza in favour of Md. Mainul Hoque & 19 others @ 1K-5L land each. However, towards the end of the meeting few members raised objection on the recommendation and demanded to recommend at least one bigha of land to each on the ground that the incumbent are erosion affected families and are cultivators by profession, for which 1K-5L of land is too less. The committee then authorized the Deputy Commissioner to verify the matter further.

3. From a fair reading of the said resolutions it is apparent that the District Level Committee has recommended the proposal for settlement of



VGR land measuring 4B-1K-5L out of 21B-4K-10L as well as 5B out of 27B-2K-4L to 37 petitioners. It is also relevant to take note of that in the said resolutions it has been mentioned that the petitioners' are erosion affected families and are cultivators by profession, and as such, allotment of land should be more than 1K-5L, for which the Committee authorized the Deputy Commissioner, Darrang to verify the matter further.

4. A perusal of the writ petition reveals that the file pertaining to settlement of land to the petitioners moved from one table to the other for years giving hope to the petitioners that one day they would be granted the allotment as per the State Government policy of allotment of land. However, nothing has happened for a period of 9 years and the petitioners have run from pillar to post and the State Authorities, on one ground or the other, deferred any decision in the said matter. Under such circumstances the petitioners have been constrained to file the instant writ petition in the year 2014.

5. It appears on record that on 17.12.2014, this Court had issued notice making it returnable by 4 (four) weeks and in the said order itself this Court duly recorded the case of the petitioners. The record further reveals that since 2014, almost 8 years have passed by but the respondent authorities have not filed their affidavit-in-opposition thereby bringing on record their stand as to why the allotment has not been made in favour of the petitioners although the above recommendations were made in favour of the petitioners.

6. Mr. R. Borpujari, the learned Standing Counsel for the Revenue Department submitted that the reason behind non-granting the allotment of land to the petitioners is that the land in question is a VGR land and in

view of the judgment of the Supreme Court in the case of ***Jagpal Singh and Others vs. State of Punjab and Others***, reported in ***(2011) 11 SCC 396***, there is a ban in allotment of the VGR land. On the specific query being made to the learned Standing Counsel as to whether the facts of the said case has any application to the facts involved in the instant case, nothing forthcoming came from the respondent Revenue Authority. Further to that, upon drawing the attention to the learned Standing Counsel as regards the last portion of the paragraph No.23 of the said judgment where the Supreme Court has categorically mentioned that under exceptional circumstances settlement granted should not be disturbed in respect to persons who are landless labourers or members of the Schedule Castes and Schedule Tribes or where there is already a school, dispensary or other public utility on the land and in the present case that the petitioners herein are admittedly erosion affected people, Mr. R. Borpujari, the learned Standing Counsel, Revenue Department submitted that the respondent authorities have not taken any decision in respect to whether the exception mentioned in the said judgment would apply to the case of the petitioners.

7. Taking into consideration that there was no affidavit, this Court put a further query upon the learned Standing Counsel, Revenue Department as to whether there has been an amendment of the Settlement Rules pursuant to the judgment, the learned Standing Counsel, Revenue Department submitted that there has been no amendment to the Settlement Rules framed under the Assam Land and Revenue Regulation, 1886 (for short, the Regulation).

8. Ms. M. Barman, the learned Junior Government Advocate appearing on behalf of the respondent Nos.2 to 5 submitted that though the District

Level Committee had made recommendation on 20.12.2005, there has been no instructions forthcoming from the respondents as to why allotment has not yet been done till date.

9. Upon hearing the learned counsel for the parties and perusal of the materials on record, it transpires that the petitioners are admittedly the erosion affected people who have been residing over their respective plot of land and accordingly filed applications seeking allotment as per the State policy of a plot of land measuring 1 katha 5 lechas. The Sub-Divisional Land Advisory Committee had duly recommended allotment of land in favour of the petitioners on the basis of the Resolution Nos.30 & 31 as quoted herein above. The resolutions further show that the Committee also entrusted the Deputy Commissioner, Darrang to look into as to whether a larger area than 1K-5L can be allotted to the petitioners taking into consideration that the petitioners are landless people and they are cultivators. It is not known as to whether the Deputy Commissioner had carried out the exercise as entrusted by the Committee on the ground that there is no affidavit or instructions forthcoming on behalf of the respondents. In consequence to the Resolution Nos.30 & 31 dated 20.12.2005, there has been various correspondences exchanged between the Revenue Authorities but noting fruitful has been forthcoming in favour of the petitioners which had resulted in filing of the instant writ petition.

10. This Court upon a perusal of the Regulation and the Settlement Rules framed therein under is of the opinion that the Respondent Authorities have not applied their mind to the issue in the proper perspective in as much as the Respondent Authorities have not taken into consideration how land specifically notified as Village Grazing Reserve can

be allotted. This aspect can be seen from a perusal of the relevant provisions of the Regulation and the Settlement Rules framed thereunder.

11. In the backdrop of the above, this Court finds it relevant to take note of Section 32 of the regulation which is reproduced herein below:

“32. To Whom Settlement Is To Be Offered :-

- (1) *The Settlement-officer shall offer the settlement to such persons (if any) as he finds be in possession of the estate and to have a permanent heritable and transferable right of use and occupancy in the same or to be in possession as mortgages of persons having such a right.*
- (2) *If the Settlement-officer finds no person in possession as aforesaid, it shall be in his discretion, subject to such rules as the State Government may make under Section 12, to offer the settlement to any person he thinks fit.”*

12. A conjoint reading of Section 32 would show that Sub-Section (1) of Section 32 of the Regulation stipulates that the Settlement Officer shall offer the settlement to such persons, if any, as he finds to be in possession of the estate. The said settlement shall be made in favour of the person(s) to have a permanent, heritable and transferable right of use and occupancy of the same or to be in possession as mortgages of persons having such a right. Sub-Section (2) of the Regulation relates to a situation where the Settlement Officer do not find any person in possession as mentioned in Sub-Section (1) of Section 32 and in that case the Settlement Officer in his discretion subject to such Rules, as the State Government may make under Section 12, offer the settlement to any person he thinks fit.

13. Now, if this Court refers to Section 12 of the Regulation it would

show that the State Government is empowered to make Rules for the disposal of Government lands and ejectment therefrom of unauthorized occupiers. It is on the basis of Section 12 of the Regulation that the Settlement Rules have been enacted.

14. The Settlement Rules has various Chapters and in those Chapters there are various Sections. The various Sections of the Settlement Rules in turn contain various Rules. Taking into consideration the Resolution Nos.30 & 31 of the Sub-Divisional Land Advisory Committee dated 20.12.2005 which admittedly stipulates that the land to be Village Grazing Reserve, Chapter II of the Settlement Rules assumes importance in as much as Chapter II relates to Rules for Allotment of grazing ground.

15. A perusal of the Rules 83, 84, 85, 86, 87, 88, 89, 90 & 91 of the Settlement Rules under the Regulation stipulate the manner in which a particular land can be allotted as a grazing ground. Relevant to mention that Rule 83 relates to how the survey and demarcation are to be made in respect to grazing grounds. By dint of Rule 84, a notice has to be issued in respect to the proposal to allot a particular land as grazing ground. Relevant herein to mention that such notice is required to be issued upon the land proposed to be allotted as grazing ground is temporarily demarcated and the map, if required, is prepared. Rule 85 relates to how a notice in respect to the proposal to allot the grazing ground is to be published and Rule 86 mentions the manner in which the Deputy Commissioner shall receive and hear the objections pursuant to the notice issued under Rule 85. Rule 87 empowers the Deputy Commissioner after carrying out the hearing to alter the area and boundaries of the grazing ground and thereupon in terms with Rule 88 to confirm the said

proceedings. Rule 90 relates to extinction of the rights of the persons which existed prior to the land being allotted and confirmed as a grazing ground and by virtue of Rule 91, there would be a declaration that the land is a grazing ground.

16. Rules 92, 93, 94 & 95 relate to how the grazing ground is to be used or the condition for using the grazing ground and the rate of fees which is to be paid for use of the grazing ground. Rule 95 is a penal provision whereby penalty is imposed upon a person who occupies any part of the grazing land for the purpose other than for grazing. At this stage, this Court finds it relevant to quote Rule 92 of the Settlement Rules as the same has vital relevance involved in the issue pending herein.

“92. Use of grazing ground free of charge after issue of final notice: *After the issue of the final notice declaring any land to be allotted as grazing ground, such land may be used as a grazing ground free of charge by persons other than professional graziers, and shall not be occupied or disposed of for any other purpose unless the State Government shall so direct.”*

17. A perusal of the said Rule clearly shows that upon the declaration so made, the grazing ground shall be used as grazing ground free of charge by persons other than professional graziers and such grazing ground shall not be occupied or disposed of for any other purpose unless the State government directs.

18. Therefore in the light of the above scheme, Rule 95 A assumes relevance. This Rule empowers the Deputy Commissioner to make recommendation to the State Government to the effect that the grazing land in question wholly or any part is not needed for the purpose of being

retained as a grazing ground. Taking into account that the lands in question which were proposed to be settled upon the petitioners is admittedly VGR land meaning thereby that the said land has been allotted, demarcated and confirmed to be a grazing ground. Rule 95 A of the Settlement Rules is quoted herein below:-

“95A. – *If at any time the Deputy Commissioner is of opinion that a village Grazing Ground constituted under the foregoing rules is wholly or in part not needed for the purpose for which it was allotted, he shall publish a notice regarding the proposed cancellation of the allotment, hear objections and forward his proceedings together with his recommendation to Government for final orders. The manner of publication of notice and hearing objections shall be the same as in the foregoing rules. In making his recommendation the Deputy Commissioner shall consider if any payment is to be made to the villages as a body for the cost of demarcation if any borne by them originally and whether the claims of persons who may have surrendered land for the purpose of constituting the reserve should revive on cancellation of the reserve or part thereof. The Government will pass orders either accepting, rejecting or modifying the recommendation of the Deputy Commissioner.”*

19. A reading of the above Rule would show that the Deputy Commissioner if at any time is of the opinion that the grazing ground constitutes under Rules 83 to 91 is wholly or any part not needed for the purpose for which it was allotted, he has to publish a notice regarding the proposed cancellation of the allotment and thereupon hear objections and forward his proceedings together with his recommendation to the Government for final order. The manner of objection of the notice and the hearing has to be done in terms with Rules 85 and 86 of the Settlement Rules. Further to that, the Deputy Commissioner while making the recommendation has also to consider if any payment is to be made to the village as a body for the cost of demarcation, if any, borne by them originally and also the claims of the persons who may have surrendered

the land for the purpose of constituting the reserve should revive on cancellation of the reserve or part thereof. Thereupon the State Government has to take a call either to accept, reject or modify the recommendations of the Deputy Commissioner. Therefore, it would be seen from a conjoint reading of Rule 92 with Rule 95 A of the Settlement Rules, that the State Government has to pass orders denotifying the whole or part of the grazing grounds before any disposal of the allotted grazing grounds. At this stage, it would be relevant to take note of the judgment of the Supreme Court in **Jagpal Singh** (supra) wherein the Supreme Court while taking into consideration the rampant alteration of public utility lands had passed directions to all State Governments which can be seen in paragraph No.23 of the said judgment which is quoted herein below:-

“23. Before parting with this case we give directions to all the State Governments in the country that they should prepare schemes for eviction of illegal/unauthorised occupants of the Gram Sabha/Gram Panchayat/ poramboke/shamlat land and these must be restored to the Gram Sabha/Gram Panchayat for the common use of villagers of the village. For this purpose the Chief Secretaries of all State Governments/Union Territories in India are directed to do the needful, taking the help of other senior officers of the Governments. The said scheme should provide for the speedy eviction of such illegal occupant, after giving him a show-cause notice and a brief hearing. Long duration of such illegal occupation or huge expenditure in making constructions thereon or political connections must not be treated as a justification for condoning this illegal act or for regularising the illegal possession. Regularisation should only be permitted in exceptional cases e.g. where lease has been granted under some government notification to landless labourers or members of the Scheduled Castes/Scheduled Tribes, or

where there is already a school, dispensary or other public utility on the land."

20. From the above quoted paragraph, it would be seen that public utility land which includes land for grazing cattle cannot be alienated or disposed of subject to the exceptions mentioned therein. It would be relevant to mention herein that the Settlement Rules framed under the Regulation as discussed above duly takes care of how grazing grounds can be disposed of in as much as the said Rules specify that unless there is no compliance to Rule 95 A read with Rule 92, the grazing grounds cannot be used for any other purpose or disposed of.

21. In the instant case, from the perusal of the materials on record it would not show that any steps have been taken in consonance with Rule 95 A of the Settlement Rules. What has been carried out by the Revenue Authorities including the Office of the Deputy Commissioner in question is to look into the measurement of the land, the value of the land etc., which are only incidental pursuant to the acceptance of the recommendation of the Deputy Commissioner by the Government to denotify Village Grazing Reserve lands.

22. Under such circumstances, this Court disposes of the instant writ petition with a direction to the Deputy Commissioner, Darrang to take a call in terms with Rule 95 A of the Settlement Rules as to whether in his opinion the VGR land is required to be wholly or any part of it is to be denotified as a VGR land and if in his opinion it is required to be done, he shall carry out the formalities as is required under Rule 95 A read with Rule 85 & 86 of the Settlement Rules. The Deputy Commissioner is directed to carry out the said exercise within a period of 60 (sixty) days



from a certified copy of this judgment and order is served upon the Deputy Commissioner.

23. In the circumstance, the Deputy Commissioner makes a recommendation for de-notifying the land as mentioned in the recommendation made on 20.12.2005 by the Sub-Divisional Land Advisory Committee (Resolution Nos.30 & 31), the Commissioner and Secretary to the Government of Assam, Revenue Department shall pass an appropriate order of accepting, rejecting or modifying the recommendation, if so made, within a period of 2 (two) months from receipt of the said recommendation from the Deputy Commissioner.

24. It is further clarified that in the circumstance the land in question is de-notified, the respondent authorities shall pass appropriate orders for allotment of the land to the petitioners within 2 (two) months therefrom.

25. In view of the above, the instant writ petition stands disposed of.

JUDGE

Comparing Assistant