



GAHC010176612015

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

Case No. : WP(C)/2668/2015

CACHAR TRANSPORT VEHICLE OWNERS ASSOCIATION and ANR
A SOCIETY REGD. UNDER SOCIETIES REGISTRATION ACT.
HAVING ITS HEAD OFFICE AT TRUNK ROAD
SILCHAR TOWN
SILCHAR-1
DIST- CACHAR
ASSAM

2: KISHORE KUMAR BHATTACHARJEE
S/O LT. KETAKI RANJAN BHATTACHARJEE
MALUGRAM
MELA ROAD
SILCHAR-02
DIST- CACHAR
ASSAM
VERSUS

THE STATE OF ASSAM AND 4 ORS
THROUGH THE SECY. TO THE GOVT. OF ASSAM
DEPTT. OF TRANSPORT
DISPUR
GHY-6

2: THE SECY. TO THE GOVT. OF ASSAM
REVENUE AND DISASTER MANAGEMENT DEPTT.
DISPUR
GHY-6
ASSAM

3: THE DY. SECY. TO THE GOVT. OF ASSAM
REVENUE AND DISASTER MANAGEMENT DEPTT.
DISPUR
GHY-6
ASSAM

4: THE DY. COMMISSIONER



CACHAR
DIST- CACHAR
ASSAM
PIN-788001

**BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH**

Date of Hearing & Judgment : 21.12.2023

JUDGMENT AND ORDER (ORAL)

Heard Mr. B.C. Das, learned senior counsel, assisted by Mr. S. Nath, learned counsel appearing on behalf of the petitioners. Also heard Mr. R. Borpujari, learned Standing Counsel, Revenue and Disaster Management Department; Ms. U. Das, learned Additional Senior Government Advocate, Assam and Ms. M.D. Bora, learned Standing Counsel, Transport Department, Assam.

2. The instant writ petition is filed challenging the orders dated 28.04.2015 and 29.04.2015, issued by the Deputy Secretary to the Government of Assam, Revenue and Disaster Management Department and the Deputy Commissioner, Cachar, respectively, and the subsequent actions taken pursuant thereto.

3. From a perusal of the writ petition, it reveals that the petitioner No. 1 herein is a society registered under the Societies Registration Act, 1860, having its Registration No. 54/1945-46. In the year 1977, witnessing speedy and sudden growth of urban area within the Silchar Town due to the increase of population and, resultantly, the number of buses increasing substantially, the Government, vide order dated SRS.118/77-78/8-A dated 09.10.1977 allotted the petitioner association a fallow, deep, marshy plot of Government land near BRTF Camp at Trunk Road, Silchar Town, to use initially for a period of 6 months. The



said right given to the petitioner association to use the land was extended from time to time till the year 1985. It is also seen from the perusal of the writ petition that the petitioner association had developed the land by earth filling and had also made constructions not only for the purpose of ticket counter but also for garage and other commercial shops necessary to cater to the needs of the passengers.

4. In the year 1985, at the request and advice of the Transport Department, Government of Assam, the Land Advisory Committee allotted a plot of land measuring 3 Bighas 15 Kathas 12 Chattaks, covered by Dag No. 2678(A) and 2678(B) on certain conditions to the effect that the petitioner association should provide employment to local unemployed youths. In compliance of the said requirement, the petitioner association constructed boundary wall on all the three sides of the said land by further developing it and also made construction of a 3,500 Sq. ft. building over the said land for passenger shed, canteen, office of the petitioner association, ticket counter etc. after taking due permission from the Silchar Development Authority on 05.07.1993. The record further reveals that vide a communication dated 10.01.2006, the Joint Secretary, Government of Assam, Revenue (Settlement) Department, informed the Deputy Commissioner, Cachar, Silchar, that in view of the letter of the Deputy Commissioner, Cachar, Silchar, dated 17.12.2005, the Governor of Assam was pleased to order for settlement of Sarkari land measuring 3 Bighas 14 Kathas covered by Dag No. 2678(A) and 2678(B) under Silchar Town Mouza, Porbonah Barakpur, with the petitioner association for "trade purpose" subject to payment of 150% of the land value as premium on the condition that the petitioner association will have to arrange proper accommodation on the waiting of passenger by constructing all-weather structure. It was further mentioned in the



said communication that the value of the aforesaid land was fixed at Rs. 4.00 Lakhs per Bigha.

5. Before proceeding further, this Court finds it pertinent to observe that in the said communication it was duly mentioned that the Governor of Assam had ordered for settlement of the said Government land in favour of the petitioner association and, therefore, it was not merely a recommendation for settlement of the land. Further, it was mentioned that the land may be handed over to the petitioner association and the concerned land records may also be corrected and patta be issued after realization of the premium in full. The record further reveals that the petitioner association had paid the entire premium in seven instalments which the respondent authorities, more particularly, the Deputy Commissioner, Silchar had duly accepted without any objection.

6. The records of the writ petition also reveal that there were various litigations filed by some third parties on the aspect of shifting of the parking stand outside the town. It is also relevant to take note that this Court, vide order dated 20.06.2023 had dismissed the writ petition, being WP(C) 3020/2012 along with other connected writ petitions by observing that the shifting of the parking stand does not mean putting an embargo or restriction on plying of city buses, taxis etc. on the roads of Silchar town. It is further pertinent to take note of another development, i.e. the respondent No. 4, who is the Deputy Commissioner, Cachar, had denied the entry of city buses into Silchar town vide Office Memo. dated 30.06.2014. This Memo was challenged by the petitioners by filing a writ petition, which was registered and numbered as WP(C) 5059/2014. This Court, vide order dated 26.09.2014 had directed the respondent authorities not to put any restriction on the entry of city buses into Silchar town. It has been submitted at the Bar that such litigation however

culminated without interference to the communication dated 30.06.2014, issued by the respondent No. 4.

7. Be that as it may, taking into account the order passed by this Court on 26.09.2014 in WP(C) 5059/2014, whereby a direction was issued upon the respondents, more particularly, the Transport Department not to put any restrictions on the entry of city buses into Silchar town, the respondent authorities, more particularly, the Revenue Department as well as the Office of the Deputy Commissioner, Cachar, Silchar, in order to circumvent the aforesaid order passed by this Court, passed the impugned orders. The first of such orders was passed by the Deputy Secretary to the Government of Assam, Revenue & Disaster Management Department, on 28.04.2015. The contents of the said order being pertinent for the purpose of adjudication of the writ petition, are quoted herein-under:

“Sir,

I am directed to refer to your letter under reference and to convey the approval of the State Government for reversion of the land measuring 3 Bigha 14 Katha which was settled in favour of Cachar Transport Vehicle Owners' Association, Silchar to its original status as Government land as the purpose for which the land was allotted and subsequently settled with the Association does no longer exist. You may take necessary steps for record correction and take over the possession of the land.

You are, further, requested to consult/discuss with the Association regarding terms and conditions/compensation to be paid to them and premium to be refunded on reversion of the land.”

8. From the above quoted letter, it would be seen that there was an approval by the State Government for reversion of the land measuring 3 Bigha 14 Katha, which was admittedly settled in favour of the petitioners, to its original status of

Khas Land, as the purpose for which the land had been allotted and subsequently settled with the petitioner association, did no longer exist. Accordingly, the Deputy Commissioner, Cachar, was directed to take necessary steps for record correction and taking over the possession of the land. It was also mentioned that consultation be carried out with the petitioner association regarding the terms and conditions/compensation to be paid to them and that premium be refunded on conversion of land.

9. Immediately thereupon the Deputy Commissioner, Cachar, passed the second impugned order dated 29.04.2015, i.e. just one day after the order dated 28.04.2015 had been issued, stating about the contents of the order dated 28.04.2015 and further directing the Assistant Settlement Officer, Sadar Circle, Silchar to take over the possession of the said land and to correct the land record accordingly. It is also relevant to mention that in the said order dated 29.04.2015, the Superintendent of Police, Cachar, Silchar, was requested to provide adequate police force at the time of taking possession of the land to maintain law and order. The petitioner association thereupon submitted representation. However, the respondent authorities turned deaf ear towards the same. Being aggrieved, the petitioners herein were compelled to institute the instant writ petition on 07.05.2015.

10. Records further reveal that this Court, vide order dated 11.05.2015 issued notice to the respondents and further directed that *status quo* be maintained as on 11.05.2015 as regards the land involved in the instant case. An affidavit-in-opposition was filed by one Additional Deputy Commissioner, Cachar, Silchar, stating that he had been authorised by the respondent No. 4. This Court finds it relevant to take note of paragraph 5 of the said affidavit, wherein the said Additional Deputy Commissioner, Cachar, had mentioned about the order dated



17.07.1985 regarding allotment of the plot of land measuring 3 Bigha 15 Katha 15 Chatak, covered by Dag Nos. 2678(A) and 2678(B), under Silchar Town Mouza, Porbonah Barakpur, in favour of the petitioner association on the conditions mentioned in the said order. It was also mentioned that the said allotment was made in the year 1985, but possession of the land was given only on 05.06.2010 in pursuance of the Government letter dated 10.01.2006. This Court finds it pertinent to reflect at this stage the communication dated 10.01.2006, wherein the condition incorporated for the purpose of settlement of the land in favour of the petitioners was to arrange for proper accommodation of waiting of the passengers by constructing all-weather structure. In the perception thereof, if this Court now again takes note of the said affidavit filed by the Additional Deputy Commissioner, it would be seen that it was admitted that the petitioners were utilising the aforesaid land as a bus stand and other connected activities like ticket counter, shelter for passengers etc. till the policy decision was taken by the Government (Transport Department) in 2008 to shift all the parking stands of commercial vehicles from within the Silchar town to outside Silchar town in order to ease traffic congestions and for larger public interest as well as for installation of ISBT, Ramnagar. Therefore, a conjoint reading of paragraph 5 of the affidavit filed by the Additional Deputy Commissioner, Cachar, with the communication dated 10.01.2006 would clearly show that the petitioners herein had been utilising the said land in terms with the conditions prescribed in the communication dated 10.01.2006, i.e. to arrange for proper accommodation for waiting of the passengers by constructing all-weather structure. It, however, surprises this Court to note that the concerned respondent had laid emphasis on the allotment made in the year 1985 and the condition prescribed therein but did not take note of the

settlement granted vide the communication dated 10.01.2006 and the condition prescribed therein.

11. The record further reveals that an affidavit-in-opposition was also filed by the respondent No. 2 through the Joint Secretary to the Government of Assam, Revenue and Disaster Management Department. In paragraph 9 of the said affidavit, it was mentioned that in view of the decision taken by the Government to shift the parking stand etc. outside the Silchar town, the land owned and possessed by the petitioners appeared to have been rendered unused and the land was also lying vacant and therefore, the Deputy Commissioner, Cachar, requested the Government to revert the periodic patta of the land to its original status. It is under such circumstances the Government in the Revenue and Disaster Management Department, vide the letter No. RSS.1224/ 2005/82 dated 28.04.2015, conveyed its approval to the proposal of the Deputy Commissioner for reversion of the land measuring 3 Bigha 14 Katha, which was settled in favour of the petitioner association, to its original status as government land, since the purpose for which the land had been allotted and subsequently settled with the petitioner association did no longer exist. Under such circumstances, vide the letter dated 28.04.2015, as already noted above, the Government directed the Deputy Commissioner, Cachar, to consult/discuss with the petitioner association regarding the terms and conditions/compensation to be paid to them and the premium to be refunded on reversion of the land. It is further very pertinent to mention that though both the affidavits-in-opposition were filed by the respondents in the year 2015, there is no mention whatsoever as regards any consultation or discussion made with the petitioners, as was directed in the communication dated 28.04.2015. In the above backdrop, let this Court, therefore, take note of the submissions of the learned counsel for the

parties.

12. Mr. B.C. Das, learned senior counsel appearing on behalf of the petitioners submitted that the land was settled by the Governor of Assam in favour of the petitioner association vide communication dated 10.01.2006 on the condition that the petitioner association would be required to arrange proper accommodation on the waiting of passengers by constructing all-weather structures. He submitted that from a perusal of the affidavit filed by the Additional Deputy Commissioner, Cachar, it would be clear that it was admitted that the petitioners had constructed shelters for the passengers, amongst others. Further to that, the learned senior counsel submitted that this action on the part of the respondent authorities to pass the orders dated 28.04.2015 and 29.04.2015 is nothing but a vindictive attitude adopted against the petitioner association on account of the order dated 26.09.2014 passed by this Court in WP(C) 5059/2014, whereby a direction was issued by this Court not to put any restrictions on the entry of city buses into Silchar town. Learned senior counsel further submitted that as the respondent authorities were not in a position to get the order vacated by taking recourse to appropriate legal proceedings, they resorted to such unlawful actions thereby obstructing the cause of justice. He further submitted that such action on the part of the respondent authorities is not only absolutely illegal and beyond the scheme of the Assam Land and Revenue Regulation, 1886 as well as the Constitutional framework but it also strikes against the Rule of law and this very aspect exemplifies the high handedness on the part of the concerned respondent authorities. The learned senior counsel further submitted that a perusal of the affidavit filed by the respondent No. 2 would show the reason as to why the order dated 28.04.2015 was passed inasmuch as the affidavit reflects that the decision of the district

administration to direct the bus owners to move the parking area outside Silchar town has rendered the land vacant and, as such, a proposal was sent by the Deputy Commissioner, Cachar, requesting reversion of the periodic patta land to its original status. He therefore submitted that once the land had been settled, the settlement cannot be cancelled unless and until the settlement was found to have been contrary to the Assam Land and Revenue Regulations, 1886, which is not the case of the respondents and, as such, the actions of the respondent authorities not only suffers from malice in fact but also from malice in law. In this regard, the senior counsel has referred to the case of **Smt. S.R. Venkataraman vs. Union of India & Anr.**, reported in **(1979) 2 SCC 491**, wherein, while interpreting the word "malice", the Apex Court held that "*.....malice in its legal sense means malice such as may be assumed from the doing of a wrongful act intentionally but without just cause or excuse or for want of reasonable or probable cause*". The Apex Court further held that "*.....it is trite law that if a discretionary power has been exercised for an unauthorised purpose, it is generally immaterial whether its repository was acting in good faith or in bad faith.*"

13. Mr. R. Borpujari, learned counsel appearing on behalf of the Revenue & Disaster Management Department had referred to the affidavit filed by the Additional Deputy Commissioner, more particularly, to paragraph 5 thereof. He submitted that as on date the petitioners have not been issued the periodic patta and as such the petitioners had no rights over the land in question. His specific submission was that even though the Governor had settled the land in question in favour of the petitioner No. 1 vide the communication dated 10.01.2006, no right had accrued on the petitioner No. 1 sans the periodic patta is issued. At the outset this Court finds it relevant to observe that the said

submission is contrary to the stand of the respondents in their pleadings as it is nobody's case that no right had accrued upon the petitioners upon the land settled by the Governor of Assam, as conveyed vide the order dated 10.01.2006. In fact, a perusal of the order dated 28.04.2015 which the learned Standing counsel was defending also mentions about payment of compensation to the Petitioner No.1 for reversion of the land.

14. Ms. U. Das, learned Additional Senior Government Advocate, Assam, appearing on behalf of the Deputy Commissioner, Cachar, has advanced her submission in line with the contentions in the affidavit filed by the Additional Deputy Commissioner, Cachar, dated 09.09.2015.

15. Ms. M. D. Borah, the learned counsel appearing on behalf of the Transport Department had submitted that though the Transport Department was earlier a party to the instant writ proceedings, subsequently the Transport Department was struck off from the array of parties and, as such, she has nothing to submit.

16. Having heard the learned counsel for the parties and having carefully perused the materials on record, the issue which arises herein is whether the respondent authorities could have, under the aforesaid circumstances, cancelled the settlement made in favour of the petitioner association in the manner in which it had been done by issuing the impugned orders.

17. This Court, while narrating the case supra, had categorically observed that in the communication dated 10.01.2006, issued by the Revenue & Disaster Management Department, it was clearly mentioned that the Governor had settled the land in favour of the petitioner association and the only condition for settlement was that the petitioner association would have to arrange for proper accommodation for the waiting passengers by constructing all-weather

structures. From a perusal of the impugned communication dated 28.04.2015, it would be seen that the reason for cancelling the settlement was that the purpose, for which the land had been allotted and subsequently settled, did no longer exist. Now the question arises as to whether such a course can be adopted by the Respondent Authorities.

18. For deciding the said question, this Court finds it relevant to quote Annexure-6 of the writ petition i.e. the communication dated 10.01.2006 wherein it was informed to the Deputy Commissioner, Cachar, Silchar that the Governor of Assam was pleased to order for settlement of Sarkari land measuring 3 Bighas 14 Kathas covered by Dag No.2678-A and 2678-B under Silchar Town Mouza, Porgonah Barakpur, with the Petitioner No.1 Association for trade purpose subject to payment of 50% of the land value as premium on the condition that the Association will have to arrange proper accommodation constructing all weather structures. The said communication is reproduced as hereinunder:

**“GOVERNMENT OF ASSAM
REVENUE (SETTLEMENT) DEPARTMENT
SETTLEMENT BRANCH**

No.RSS.1224/2005/36

Dated : Dispur the 10th January, 2006

From : Shri K. Kalita, ACS

*Joint Secretary to the Govt. of Assam,
Revenue (Settlement) Department*

*To : The Deputy Commissioner,
Cachar, Silchar.*

Subject: Settlement of land with Cachar Transport Vehicle Owner's Association, Silchar.

Reference :- Your Letter No.CRS/27/2005/24, dated 17.12.05

Sir,

With reference to your letter on the subject cited above, I am directed to say that the Governor of Assam is pleased to order for settlement of Sarkari land measuring 3 (three) Bighas 14 (fourteen) Kathas covered by Dag No. 2678-A and 2678-B under Silchar Town Mouza, Porgonah Barakpur, with Cachar Transport Vehicle Owner's Association, and for trade purpose subject to payment of 50% land value as premium on condition that Association will have to arrange proper accommodation on the waiting of passenger by constructing all weather structure.

The land value is fixed at Rs.4.00 (Rupees four lakhs) per bigha.

The possession of the land may be handed over to the person concerned and land records may be got corrected and patta issue after realization of the premium in full.

One copy of the trace maps and chithas of land received with your letter under reference are returned herewith for necessary action.

Yours faithfully,

Sd/- A.C. Sarmah,

Under Secretary to the Government of Assam

Revenue (S) Department"

19. It is an admitted fact as would be seen from a perusal of the affidavit filed by the Respondents that the Petitioner Association had constructed appropriate accommodation for the waiting of the passengers by constructing all weather structure. Now the question therefore arises as to whether the said settlement could have been cancelled by the authorities in the manner in which it has been done. The answer to the same can be found from a perusal of Rule 26 of the Settlement Rules framed under the Assam Land and Revenue Regulation, 1886 (for short "the Regulation"). Rule 26 of the Settlement Rules being relevant is reproduced hereinunder:

“26. Confirmation and cancellation of settlements – *Subject to the general control of the State Government, the Commissioner shall have power to confirm all settlements, and also to cancel any settlement made in contravention of these rules,*

[after giving the lease-holder an opportunity of being heard].”

20. From a perusal of the above quoted Rule, it would be seen that the Commissioner subject to the general control of the State Government has the power to confirm all settlements and also to cancel any settlement made in violation of the Settlement Rules after giving the lease-holder an opportunity of being heard. The Division Bench of this Court in the case of ***The State of Assam Vs. Sifat Ali and Others*** reported in ***AIR 1967 Assam & Ngld 3 (1965 SCC OnLine Gau 28)*** has dealt with Rule 26 of the Settlement Rules and it was observed that Rule 26 makes it clear that the power exercised by the Commissioner is neither an appellate nor a revisional power. It is only an administrative power and further that, it only gives him jurisdiction to confirm or to cancel settlement and not to cancel a periodic patta issued in pursuance of the order of settlement. However, this issue was taken up by the Full Bench of this Court in the case of ***Jiban Chandra Deka and Others Vs The State of Assam and Others*** reported in ***(1994) 1 GLR 268***. In the said judgment, the Full Bench of this Court observed that the power of the Commissioner under Rule 26 of the Settlement Rules can be exercised if there has been violation of the Rules while granting or issuing the periodic patta. It was further observed that for confirming or cancelling a settlement, the Commissioner has to apply his mind and look into the provisions contained in the Regulations and Rules framed thereunder and if the Commissioner is satisfied that the settlement was given in contravention of the Rules, he can cancel it only after giving an opportunity of hearing to the person concerned. Paragraph No.18 of the said judgment in the case of ***Jiban Chandra Deka (supra)*** being relevant is quoted hereinunder:

“18. *In State of Assam v. Sifat Ali (supra) the Division Bench of this Court also held that the power conferred on the Commissioner under Rule 26 neither appellate nor*

revisional, but is only gives him jurisdiction to confirm or to cancel settlement but not to cancel periodic patta issued in pursuance of the order of settlement and that once patta has been issued it can only be cancelled for violated of the terms embodied patta. As indicated already, Rule 26 empowers the Commissioner to confirm all settlements and cancel any settlements made in contravention of the Rules. Therefore, it cannot be said that the patta once granted can be: cancelled only on violation of terms and conditions embodied in the patta. If it is found that the settlement given by the Authority concerned is in contravention of the Rules, the patta can be cancelled, in this case this Court observed thus:

It is also clear from the foot-note that the jurisdiction of the Commissioner is only in the cases where there has been an obvious contravention of the rules. If there is no dispute with regard to the violation or otherwise of the Rules, Rule 26 does not authorise the Commissioner to cancel the patta in his administrative capacity.

Therefore, the decision in this case is founded on the footnote to Rule 26. In other words, if there has been violation of the Rules while granting or issuing periodic patta, the Commissioner has jurisdiction to exercise his power under Rule 26. We respectfully agree with the decision. For confirming or cancelling a settlement the Commissioner has to apply his mind and look into the provisions contained in the Regulations and the Rules, framed thereunder and if the Commissioner is satisfied that the settlement was given in contravention of the Rules, he can cancel it only after giving an opportunity of hearing to the person concerned. We, however, do not express our opinion as to whether the power under Rule 26 is administrative or quasi-judicial. We hold that a patta issued by the Competent Authority in contravention of Rules made under the Regulations can be cancelled at any time even if the patta-holder may have a heritable and transferable right over the land."

21. In the instant case, if this Court takes note of the impugned order dated 28.04.2015, there is nothing mentioned that the settlement so granted to the

Petitioner No.1 was in contravention of the Settlement Rules or the Regulations. The only reason assigned was that the reason for granting the settlement originally did no longer exists. In the opinion of this Court taking into account the Rule 26 of the Settlement Rules as well as the judgment passed by the Full Bench of this Court in the case of **Jiban Chandra Deka (supra)**, such cancellation which have been done vide the impugned order dated 28.04.2015 was contrary to the Settlement Rules for which the same is required to be set aside and quashed.

22. Moving forward, it is also pertinent to mention that when the settlement is granted in respect to a land as has been done in the present case, a constitutional right akin to human right accrues upon the settlement holder under Article 300A of the Constitution. This right cannot be taken away sans by authority of law. The manner in which the impugned order dated 28.04.2015 was passed and consequently, the action so taken on 29.04.2015 on the face of it appears that the same has been done so by trammeling upon the rights under Article 300A of the Constitution more so when a Settlement so granted, cannot be cancelled unless the settlement so granted was in contravention of the Rules and the Regulations.

23. Another very important aspect of the matter pertains to the manner in which the impugned orders have been passed. First, the impugned order dated 28.04.2015 had taken into consideration certain aspects which had no relevance for the purpose of cancellation of the settlement so made. Secondly, it shocks and surprises this Court that the manner in which the Deputy Commissioner, Cachar had passed the impugned order dated 29.04.2015 which not only was contrary to the impugned order dated 28.04.2015 but was also

contrary to the Settlement Rules inasmuch as the Deputy Commissioner, Cachar had issued directions to the concerned Assistant Settlement Officer, Sadar, Circle Silchar to take possession and the Superintendent of Police was directed to provide security in that regard. This aspect clearly shows the high-handedness on the part of the Respondent Authorities which results in arbitrariness. Thirdly, the submissions so made by the learned Senior counsel for the Petitioner to the effect that the Respondent Authorities have resorted to passing of the impugned orders in order to circumvent the order passed by this Court dated 26.09.2014 in WP(C) No.5059/2014 cannot be said to be out of place in the extant facts. In this regard, this Court finds it relevant to take note of the judgment of the Supreme Court in the case of **S.R. Venkatraman (supra)** and more particularly to paragraph Nos. 5 to 9 which are quoted herein below:

“5. We have made a mention of the plea of malice which the appellant had taken in her writ petition. Although she made an allegation of malice against V. D. Vyas under whom she served for a very short period and got an adverse report, there is nothing on the record to show that Vyas was able to influence the Central Government in making the order of premature retirement dated March 26. 1976. It is not therefore the case of the appellant that there was actual malicious intention on the part of the Government in making the alleged wrongful order of her premature retirement so as to amount to malice in fact. Malice in law is, however, quite different. Viscount Haldane described it as follows in Shearer v. Shieclds :

A person who inflicts an injury upon another person in contravention of the law is not allowed to say that he did so with an innocent mind; he is taken to know the law, and he must act within the law. He may, therefore, be guilty of malice in law, although, so far the state of his mind is concerned, he acts ignorantly, and in that sense innocently.

Thus malice in its legal sense means malice such as may be assumed from the doing

of a wrongful act intentionally but without just cause or excuse, or for want of reasonable or probable cause.

6. *It is however not necessary to examine the question of malice in law in this case, for it is trite law that if a discretionary power has been exercised for an unauthorised purpose, it is generally immaterial whether its repository was acting in good faith or in bad faith. As was stated by Lord Goddard. C.J. in Pilling v. Abergele Urban District Council, where a duty to determine a question is conferred on an authority which state their reasons for the decision, and the reasons which they state show that they have taken into account matters which they ought not to have taken into account, or that they have failed to take matters into account which they ought to have taken into account, the court to which an appeal lies can and ought to adjudicate on the matter.*

7. *The principle which is applicable in such cases has thus been stated by Lord Esher, M.R. in The Queen on the Prosecution of Richard Westbrook v. The Vestry of St. Pancras :*

If people who have to exercise a public duty by exercising their discretion take into account matters which the Courts consider not to be proper for the guidance of their discretion, then in the eye of the law they have not exercised their discretion.

This view has been followed in Sadler v. Sheffield Corporation.

8. *We are in agreement with this view. It is equally true that there will be an error of fact when a public body is prompted by a mistaken belief in the existence of a non-existing fact or circumstance. This is so clearly unreasonable that what is done under such a mistaken belief might almost be said to have been done in bad faith; and in actual experience, and as things go, these may well be said to run into one another.*

9. *The influence of extraneous matters will be undoubted where the authority*

making the order has admitted their influence. It will therefore be a gross abuse of legal power to punish a person or destroy her service career in a manner not warranted by law by putting a rule which makes a useful provision for the premature retirement of government servants only in the "public interest", to a purpose wholly unwarranted by it, and to arrive at quite a contradictory result. An administrative order which is based on reasons of fact which do not exist must therefore be held to be infected with an abuse of power."

24. Taking into account the above propositions of law as settled by the Supreme Court and applying to the facts of the instant case, it would therefore be seen that the impugned orders have been passed for an unauthorized purpose and based on reasons which do not exist and therefore has to be opined to be an abusive exercise of power. It is for the above reasons, this Court sets aside the orders dated 28.04.2015 as well as 29.04.2015 and all subsequent actions taken thereafter in pursuance to those impugned orders.

25. Before concluding on the merits, this Court finds it relevant to deal with the submissions made by Mr. R. Borpujari, the learned Standing counsel appearing on behalf of the Revenue and Disaster Management Department to the effect that even though there is a settlement being made but without the periodic patta being issued, no right has been conferred upon the Petitioners. The said submission in the opinion of this Court is totally misconceived for the simple reason that the periodic patta is only a follow up document which the Deputy Commissioner was bound to issue in view of Rule 1 of the Settlement Rules which categorically mandates that the Deputy Commissioner would be bound by any general or special order of the Government. In the instant case, the highest authority of the Executive i.e. the Governor of Assam had granted settlement in favour of the Petitioner and there was a direction to issue the

periodic patta. Non-issuance of the periodic patta in the instant case by the Deputy Commissioner would be contravening Rule 1 of the Settlement Rules which resultantly shows that there was dereliction of the duty by the concerned Deputy Commissioner. Furthermore, the right is conferred on the basis of the settlement and periodic lease only regulates how the rights of the settlement holder is to be exercised.

26. This Court further finds it relevant to again refer to paragraph No.18 of the judgment in the case of **Jiban Chandra Deka (supra)** wherein it was observed that the corollary to the cancellation of a settlement would lead to cancellation of the patta.

27. This Court takes note of another vital aspect of the matter, which is that the petitioners have been unnecessarily dragged before this Court on account of the high handedness on the part of the respondent authorities, more particularly, the Deputy Secretary, Revenue & Disaster Management Department, Government of Assam, as well as the Deputy Commissioner, Cachar, who issued the impugned orders dated 28.04.2015 and 29.04.2015, respectively. This Court, in the facts and circumstances of this case, imposes cost of Rs. 10,000/- upon the respondent authorities, to be paid jointly by the Revenue & Disaster Management Department, Government of Assam, and the Deputy Commissioner, Cachar, Silchar, to the petitioner association within a period of four weeks from the date of receipt of a certified copy of this order.

28. Let a copy of this order be furnished to Mr. R. Borpujari, learned counsel appearing for the Revenue & Disaster Management Department, Government of Assam, as well as to Ms. U. Das, learned Additional Senior Government Advocate, Assam, appearing for the Deputy Commissioner, Cachar, Silchar, for



effective compliance as regards the payment of cost, as directed hereinabove.

29. Before parting with the records, this Court makes it clear that this Court has not expressed any opinion on the aspect of plying of commercial vehicles/city buses in the Silchar town, or as regards the decision of the respondent authorities to shift the parking area of the city buses/commercial vehicles outside Silchar town.

30. With the above observations and directions the instant writ petition stands allowed. Costs as above stated.

JUDGE

Comparing Assistant