



GAHC010143822019

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

Case No. : WP(C)/4783/2019

SRI MADHAB BARHAJARA GAON PATHAR PARISALANA SOMMITTEE AND ANR.

A SOCIETY AFFILIATED TO SADOU ASOM PATHAR PARISALANA SOMMITTEE (REGISTRATION NO. 145/3/283 OF 1996) AND FORMED BY THE VILLAGERS OF BARHAJARA, VILLAGE- BARHAJARA, P.O. BHOMOLAHATI, DIST.- KAMRUP, ASSAM, PIN- 781121, REP. BY ITS PRESIDENT, SRI MADAN DEKA, AGE- 46 YEARS.

2: MADAN DEKA
S/O LT. KAMALA KANTA DEKA
PRESIDENT OF SRI MADHAB BARHAJARA PATHAR PARISALANA SOMMITTEE
VILL.- BARHAJARA
P.O.- BHOMOLAHATI
DIST.- KAMRUP
ASSAM
PIN- 781121

VERSUS

THE STATE OF ASSAM AND 6 ORS.
REP. BY THE ADDITIONAL CHIEF SECRETARY TO GOVT. OF ASSAM,
REVENUE AND DISASTER MANAGEMENT DEPTT., DISPUR, GHY- 781006.

2:THE PRINCIPAL SECRETARY
GOVT. OF ASSAM
REVENUE (REFORMS) AND DISASTER MANAGEMENT DEPTT.
DISPUR
GHY.- 781006.

3:THE SECRETARY
GOVT. OF ASSAM
REVENUE AND DISASTER MANAGEMENT DEPTT.
DISPUR
GHY.- 781006.



4:THE COMMISSIONER
LOWER ASSAM DIVISION
GHY.- 781001.

5:THE DEPUTY SECRETARY
GOVT. OF ASSAM
REVENUE AND DISASTER MANAGEMENT DEPTT.
DISPUR
GHY.-6.

6:THE DEPUTY COMMISSIONER
KAMRUP
AMINGAON- 781031.

7:THE SUB-DIVISIONAL OFFICER (CIVIL)
LAND SETTLEMENT BRANCH
RANGIA- 781354

Advocate for the Petitioner : MR. S SARMA

Advocate for the Respondent : GA, ASSAM

**BEFORE
HONOURABLE MR. JUSTICE ARUN DEV CHOUDHURY**

JUDGMENT

Date : 19-03-2024

1. Heard Mr. S. Sarma, learned senior counsel assisted by Mr. T.K. Bhuyan, learned counsel for the petitioner; Mr. J. Handique, learned Standing Counsel, Revenue Department for the respondent nos. 1 – 3 & 5; and Mr. K. Gogoi, learned Additional Senior Government Advocate, Assam for the respondent nos. 4, 6 & 7.

2. The case of the petitioner society is that an area of 8 Bighas of land was settled in its favour pursuant to a resolution taken by the Sub-Divisional Land Advisory Committee, Rangia in its meeting dated 18.07.2000. The petitioner society thereafter, deposited the premium

and the plot of land was mutated in its favour on 14.03.2012. Thereafter, the petitioner society had paid the land revenues fixed for the plot of land till the year 2018. The respondent authorities have, thereafter, undertaken a process for cancellation of patta with regard to the plot of land measuring 8 Bighas and the impugned Order dated 20.09.2018 had been passed by the respondent no. 4 cancelling such settlement.

3. The respondent State has filed an affidavit and has admitted the factum of allotment of land in favour of the petitioner. They have also admitted the receipt of premium paid by the petitioner and that they have issued patta and corrected the land record.

4. The impugned order dated 20.09.2018 reflects that the settlement has been cancelled for violation of Rule 4.1 of the Land Policy. Though the impugned order dated 20.09.2018 reflects that there is violation of rule 4.1 of the land policy such order lacks details of such violation. However, the minutes of the meeting annexed as annexure 10 reflect that due to the allotment of land, there are blockages of natural water channels resulting in artificial flooding.

5. Now the question therefore arises as to whether the said settlement could have been cancelled by the authorities in the manner it has been done. Rule 26 of the Settlement Rules framed under the Assam Land and Revenue Regulation, 1886 (for short "the Regulation") prescribes that subject to the general control of the State Government, the Commissioner shall have the 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.

6. A Division Bench of this Court in the case of ***The State of Assam Vs. Sifat Ali and Others*** reported in **(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.

7. This issue was further 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 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 hereunder:

“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 can 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.”

8. Exercise of power by the Deputy Commissioner under the settlement Rules is subject to general or special orders issued from time to time by the State Government. The land policy of the State, therefore, shall come within the purview of such general or special orders envisaged under Rule 1(1) of the Settlement Rules and therefore, there is no doubt that settlement in violation of land policy can also be a ground of cancellation of settlement.

9. Having said so, now this court is to determine the legality and validity of the impugned cancellation of settlement. In the case in hand the order reflects that the settlement has been cancelled for the reason that the order of settlement was made in violation of 4.1 of the Land Policy. Paragraph 4.1 of the land policy relates to allotment of land for allied agricultural purpose in rural areas, more particularly, for Pisciculture, Dairy, Poultry etc.,

10. Thus, while cancelling a settlement the Commissioner is to record under what circumstances the Commissioner had a satisfaction that the settlement was given in contravention of the rules. The mandate of notice and of giving a reasonable opportunity of hearing, in the opinion of this court, is founded on the doctrine of *audi alteram partem*, which requires that the authority concerned must apply its mind and dispose of the matter by a reasoned or speaking order. A reason rationalizes an action. Such action can also be judged as well grounded in reason, if there are reasons for performing the action. It can also be assessed if reasons are briefly recorded.

11. In the case in hand, the impugned order clearly reveals that the Commissioner has not given any reason for its determination

except stating violation of Paragraph 4.1 of the Land Policy in as much as such paragraph is having many conditions, such as quantum of land, approval of concerned Department, purpose of settlement etc. There is no whisper or independent analysis, even brief, as regards the specific violation. No reason, not to say any brief reason has been recorded by the Commissioner as regards its satisfaction to the findings of violation of Paragraph 4.1 or the reason of rejection of the contentions raised by the petitioner. Therefore, the impugned order is an order which lacks reason. This Court also cannot be unmindful of the settled proposition of law that every state action must be supported by reason, more particularly when by such an action, a valuable right already granted is being taken away and therefore, in the considered opinion of this court the impugned order of cancellation dtd. 20.09.2018 is in violation of Article 14 of the Constitution of India.

12. Accordingly, the impugned order dtd. 20.09.2018 is set aside and quashed.

13. However, the present order shall not bar the Commissioner from initiating a de-novo proceeding under rule 26 of the Settlement Rules for cancellation of the settlement made in favour of the petitioner. The competent authority shall also be at liberty to exercise its power against the petitioner as per law in the event the petitioner has blocked natural water channels resulting in artificial flood.

JUDGE

Comparing Assistant