

GAHC010021132019



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

Case No. : WP(C)/723/2019

MONMOTH KUMAR PAUL AND 6 ORS.
S/O. LT. CHITTA RANJAN PAUL, R/O. VILL. MAKUNDARBOND (PRESENTLY SRINAGAR), P.O. BAZARICHERRA-788723, DIST. KARIMGANJ, ASSAM.

2: SUROTH KUMAR PAUL

S/O. LT. CHITTA RANJAN PAUL
R/O. VILL. MAKUNDARBOND (PRESENTLY SRINAGAR)
P.O. BAZARICHERRA-788723
DIST. KARIMGANJ
ASSAM.

3: PROMOTH KUMAR PAUL

S/O. LT. CHITTA RANJAN PAUL
R/O. VILL. MAKUNDARBOND (PRESENTLY SRINAGAR)
P.O. BAZARICHERRA-788723
DIST. KARIMGANJ
ASSAM.

4: PANNALAL PAUL

S/O. LT. MANIK CHANDRA PAUL
R/O. VILL. MAKUNDARBOND (PRESENTLY SRINAGAR)
P.O. BAZARICHERRA-788723
DIST. KARIMGANJ
ASSAM.

5: SANJIT KUMAR PAUL

S/O. LT. SUNIL CHANDRA PAUL
R/O. VILL. MAKUNDARBOND (PRESENTLY SRINAGAR)
P.O. BAZARICHERRA-788723
DIST. KARIMGANJ

ASSAM.

6: INDRAJEET KUMAR PAUL

S/O. LT. SUNIL CHANDRA PAUL
R/O. VILL. MAKUNDARBOND (PRESENTLY SRINAGAR)
P.O. BAZARICHERRA-788723
DIST. KARIMGANJ
ASSAM.

7: RANJIT KUMAR PAUL

S/O. LT. SUNIL CHANDRA PAUL
R/O. VILL. MAKUNDARBOND (PRESENTLY SRINAGAR)
P.O. BAZARICHERRA-788723
DIST. KARIMGANJ
ASSAM

VERSUS

THE STATE OF ASSAM AND 4 ORS.
REP. BY THE PRINCIPAL SECRETARY TO THE GOVT. OF ASSAM, REVENUE
DEPTT., DISPUR, GUWAHATI-781006.

2:THE COMMISSIONER AND SECRETARY
TO THE GOVT. OF ASSAM
REVENUE (SETTLEMENT) DEPTT.
DISPUR
GUWAHATI-781006.

3:THE DIRECTOR OF HIGHER EDUCATION

ASSAM
KAHILIPARA
GUWAHATI-781019
ASSAM.

4:THE DY. COMMISSIONER

KARIMGANJ DISTRICT
P.O. KARIMGANJ-788710
ASSAM.

5:THE CIRCLE OFFICER

PATHARKANDI REVENUE CIRCLE
P.O. PATHARKANDI-7886724
DIST. KARIMGANJ

ASSAM.

6:BAPTIST MID-MISSION TRUSTEES INDIA
A REGISTERED SOCIETY HAVING ITS REGISTERED OFFICE AT SILCHAR-
788001
DIST- CACHAR
ASSAM ALONG WITH ITS OFFICE AT PATHARKANDI
DISTRICT - KARIMGANJ

Advocate for the Petitioner : MR. N DHAR

Advocate for the Respondent : GA, ASSAM

BEFORE
HONOURABLE MR. JUSTICE MICHAEL ZOTHANKHUMA

ORDER

Date : 10.11.2022

Heard Mr. N. Dhar, learned counsel for the petitioners. Also heard Mr. D.K. Sarma, learned counsel for the respondent Nos. 4 & 5, Ms. N. Bordoloi, learned counsel for the respondent Nos. 1 & 2 and Mr. S. Bhuyan, learned counsel for the respondent No. 3. No one appears for the respondent No. 6. It is also seen that vide Order dated 05.08.2022, service of notice was deemed to be complete upon the respondent No. 6.

2. The petitioners have challenged the letter dated 26.10.2018 issued by the Deputy Commissioner, Karimganj requesting approval to the proposal for allotment of Government Khas land, for establishment of Govt. Model College at Bazaricherra under Patharkandi Revenue Circle.

3. The petitioners case is that the land in question, mentioned in the impugned letter dated 26.10.2018, originally belonged to the Baptist Mission, Karimganj, in which the petitioners are tenants. The said land was acquired by

the Government of Assam in terms of the Assam State Acquisition of Lands belonging to Religious or Charitable Institution of Public Nature Act, 1959, herein after referred to as the '1959 Act'.

4. The petitioners' counsel submits that as the petitioners are tenants of parts of the land acquired under the 1959 Act, which is in their possession, the said occupied lands have to be settled with the petitioners, in terms of Section 15 of the 1959 Act.

5. The learned counsels for the respondents, on the other hand submit that the land was acquired in the year 1977 and was mutated in the year 30.08.2001 in the name of the Government. They submit that as an alternative remedy is available in terms of Section 14 of the 1959 Act, the petitioners should have filed an appeal against the impugned letter dated 26.10.2018 issued by the Deputy Commissioner to the District Judge. They further submit that in terms of the proviso to Section 15 of the 1959 Act, the right of transfer of such acquired lands can extend only to persons belonging to the same religion as the Institution in which the land of the ownership was vested, before the notification under Section 3 of the 1959 Act was issued. They also submit that as a College is being proposed to be established in the acquired lands, this Court may not interfere with the impugned letter dated 26.10.2018 issued by the Deputy Commissioner, Karimganj.

6. To adjudicate the present issue, Section 3, 14 and 15 of the 1959 Act are reproduced below as follows:-

“3. Notification of acquisition.(1) The State Government may, from time to time, by notification in the Official Gazette declare that all rights in land

belonging to a Religious or Charitable Institution of Public Nature shall vest in the State free from all encumbrances, with effect from the first day of the agricultural year next following the date of publication of such notification.

(2) A copy of the aforesaid notification shall be served on the Head of the Religious or Charitable Institution in the manner prescribed and further, it shall be published in the offices of the Deputy Commissioner, Sub Divisional Officer and the Circle Officers within whose jurisdiction the lands are situated and also in the premises of the Religious and the Charitable Institution concerned.

(3) The publication of the notification in the Official Gazette and the service of the saints as provided under sub-sections (1) and (2) respectively shall be conclusive evidence of due publication thereof and of notice to all persons affected by such notification.

14. Appeal.-An appeal against the order of the Deputy Commissioner or any other officer authorized in this behalf under Sections 11 and 13, shall, if preferred within 30 days of the order, excluding the period required for obtaining the copies of the said order, lie to the District Judge. The decision of the District Judge or the order of the Deputy Commissioner or any other officer authorized in this behalf, when no appeal is preferred, shall be final.

15. Settlement of acquired land with persons in occupation.- Subject to the limitation prescribed under Section 4 of the Assam Fixation of Ceiling on Land Holdings Act, 1956 (Assam Act I of 1957), where the land acquired under this Act is in occupation of a Raiyat on the date of notification under Section 3, it shall be settled with him, with the following status

a) if he has acquired the status of an occupancy tenant under the Assam (Temporarily Settled Areas) Tenancy Act, 1971 (Assam Act XXIII of 1971), then the land in his holding shall be settled with him with the status of a lands-holder as defined in the Assam Land and Revenue Regulation, 1886 (Regulation I of 1886), and he shall upon such settlement be absolved from the obligation if any, of rendering services or making payment of 'bhog' to the institution concerned in respect of his holding and if he has not acquired the status of an occupancy tenants, then the land shall be settled with him

with the status of a settlement holder (other than the landholder) as defined in the Assam Land and Revenue Regulation, 1886 :

Provided however, that notwithstanding anything contained in the Assam Land and Revenue Regulation, 1886 the right of transfer of such holding shall extend only to persons belonging to the same religion as the institution in which the ownership of the land was vested before the date of notification under Section 3 of the Act."

7. Section 3 of the 1959 Act provides that the State Government may, by notification in the Official Gazette, declare that all rights in land belonging to a Religious or Charitable Institution of Public Nature shall vest in the State free from all encumbrances, with effect from the first day of the agricultural year next following the date of publication of such notification.

Section 7 of the 1959 Act provides that compensation should be paid to every Religious or Charitable Institution, whose lands have been acquired under the 1959 Act.

Section 14 provides that an appeal against the order of the Deputy Commissioner or any of the other officer authorized in this behalf under Sections 11 & 13, shall, if preferred within 30 days of the order, excluding the period required for obtaining the copies of the said order, lie to the District Judge.

8. In the present case, the petitioners have not preferred any appeal against the impugned letter dated 26.10.2018 issued by the Deputy Commissioner and 30 days have elapsed from the date of the impugned letter. As there is an alternative remedy available, this Court is of the view that the issue regarding the maintainability of this case would have to be considered.

9. Section 15 of the 1959 Act provides that where the land acquired under the 1959 Act is in occupation of tenants on the date of the notification under Section 3, it shall be settled with the said tenants, provided certain conditions are fulfilled. The proviso to Section 15 of the 1959 Act specifically provides that the right of transfer of such holding shall extend only to persons belonging to the same religion, as the Institution in which the ownership of the land was originally vested with, before the notification was issued under Section 3 of the 1959 Act.

In the present case, there is nothing stated by the petitioners as to whether they belong to the Christian religion and whether they are Baptist Christians.

List the matter on **14.02.2023**.

JUDGE

Comparing Assistant