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 MANISH CHOUDHURY

ORDER

Date : 09.05.2023

Heard Mr. P.K. Roy, learned Senior Counsel assisted by Ms. S. Dasgupta, learned counsel for the petitioners; Mr. A. Bhattacharjee, learned Standing Counsel, Revenue Department for the respondent nos. 1 & 2; Ms. P.R. Mahanta, learned Standing Counsel, Higher Education Department for the respondent nos. 3; and Ms. S. Sharma, learned Junior Government Advocate, Assam for the respondent nos. 4 & 5.

2. The petitioners have claimed that they acquired the status of occupancy tenants under the respondent no. 6 and as they satisfied the conditions prescribed in Section 5 of the Assam [Temporarily Settled Areas] Tenancy Act, 1971, their names stood included in the Khatians issued vide Form no. 19 read with Rule 31 [1] of the Assam [Temporarily Settled Areas] Tenancy Rules, 1972. The petitioners have annexed those Khatians as annexures to the writ petition in support of their such claims.

3. From the case records, it transpires that few parcels of land belonging to the respondent no. 6, a religious institution, were acquired by the State Government under the provisions of the Assam State Acquisition of Land Belonging to Religious or Charitable Institution of Public Nature Act, 1959 ['the 1959 Act', for short]. For the purpose of such acquisition, proceedings were initiated by drawing up a case being RAC Case no. 02/1977-1979. It is the

contention of the State respondents that those parcels of land, belonging to the respondent no. 6, were acquired by the State Government vide an order dated 07.02.2001 and accordingly, relevant revenue records were corrected by the Circle Officer, Patharkandi Revenue Circle, District - Hailakandi on 09.02.2001.

4. Ms. Sharma, learned Junior Government Advocate, Assam has submitted that the possession of those parcels of land were handed over to the Circle Officer, Patharkandi Revenue Circle by one Sri C. Wellington, the then Administrator of the respondent no. 6 on 07.03.2001.

5. Section 15 of the 1959 Act reads as under :

> "Settlement of acquired land with persons in occupation: - Subject to the limitation prescribed under Section 4 of the Assam Fixation of Celling on Land Holdings Act, 1956, 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 land-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 land-holder] 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."

6. From the provisions of Section 15, quoted above, it appears that the matter

of settlement of the parcels of land, so acquired, in favour of the petitioners as occupancy tenants is dependent upon the date of notification issued under Section 3 of the 1959 Act.

7. The party-respondent no. 5 in this writ petition is the Circle Officer, Patharkandi Revenue Circle. It is noticed that an affidavit-in-opposition has been filed on behalf of the respondent no. 5 through an Amin on 07.01.2020, who had sworn the affidavit on behalf of the Circle Officer, Hailakandi Revenue Circle and the statements made therein were only on the basis of his knowledge, without any reference to any revenue records.

8. In the above fact situation obtained in the case, this Court is of the view that for appreciation of the issues raised in this writ petition, it is necessary to have the responses in the form of affidavits from the competent authorities in the Revenue Department, Government of Assam as well as the jurisdictional Deputy Commissioner [respondent no. 4] or the jurisdictional Circle Officer [respondent no. 5] within a period of 3 [three] weeks from today considering the fact that the writ petition is pending since the year 2019. Such affidavits should be based on the relevant revenue records.

9. List the case on 13.06.2023.

JUDGE

Comparing Assistant