

Assam Schedule VII, Form No- 132
HIGH COURT FORM NO (j) 2.
HEADING OF JUDGMENT IN ORIGINAL SUIT

IN THE COURT OF MUNSIFF NO- 1 AT NALBARI

DISTRICT- NALBARI

Present: Dr. Nabanita Kalita
Munsiff No- 1, Nalbari

Title Suit case No- 114 of 2017

On this 10th day of January, 2022

1. Sri Mukunda Barman

.....Plaintiff

-Versus-

1. State of Assam

Through the Deputy Collector, Nalbari District

2. Deputy Collector, (Deputy Commissioner)

Nalbari District, Nalbari

..... Defendants

3. President, Basudeb Dewalaya Parichalana
Samittee, Balikaria

4. Secretary, Basudeb Dewalaya Parichalana
Samittee, Balikaria

..... Prof. Defendants

This suit coming on for final hearing on 13/12/2021 in the presence of:

Mr. Champak Kumar Dutta Advocate for the
plaintiff(s)

Mr. Dwijen Deka (G.P.) Advocate of the
defendant(s)

And having stood for consideration on this day, the court delivered the following judgment:-

JUDGMENT

This is a suit for declaration, mandatory injunction and ancillary reliefs.

The case of the plaintiff

1. The case of the plaintiff in brief is that plaintiff has been possessing the land mentioned in the schedule of the plaint that is a plot of land measuring cut 1 Bigha 8 lechas under NK patta no. 53 dag no. 642 and a plot of land measuring 12 lechas covered by dag no. 642/2004 total land measuring 1 bigha 1 katha under Basudev Devalaya situated in the village Balikaria, Mouza-

Batahgila, PS & Dist.- Nalbari as rayat. It is stated that earlier that land was under the ownership and possession of Balikaria Basudev Devalaya and plaintiff has been possessing the land given in the schedule as rayat under Basudev Devalaya. It is further contended that the pattadars of the Devalaya were conducting the affairs of the land through Basudev Janakalyan Kala-Krishti Bikash Samiti (at present Balikaria Basudev Devalaya Parichalana Samiti) and were collecting value of the land either in terms of paddy or in cash otherwise from the plaintiff. Averment of the plaintiff is that on 27.11.1990 Assam Govt. acquired land of the Devalaya as per Provision of Assam State Acquisition of Land belonging of Religious or Charitable Institution of Public Nature Act, 1959 (to be referred to the Act of 1959 hereinafter) and accordingly corrected the revenue records. The plaintiff has averred that plaintiff is a occupancy rayat of the schedule land mentioned in the plaint u/s 3(17) and 5 of Assam (Temporarily Settled Areas) Tenancy Act 1971 and he is entitled to get patta u/s 15 of Assam State Acquisition of Land belonging of Religious or Charitable Institution of Public Nature Act, 1959. It is contended that in this regard, though plaintiff has made application but Government has not given

him settlement yet. Therefore, on 18.5.17 he has sent a Pleader notice u/s 80 of CPC to the Deputy Commissioner, Nalbari and thereby asked to give him permanent settlement over the schedule land as per section 15 of Assam State Acquisition of Land belonging of Religious or Charitable Institution of Public Nature Act, 1959. It is further stated that some rayats got patta as per judgment and decree passed in TS 42/1990, T.A. 4/1999 and TS 20/2006. The contention of the plaintiff is that plaintiff filed petition u/s 80 of CPC on the defendant through his advocate for granting patta over schedule land and after receiving notice on 19.5.17, District Collector has not taken any step for issuing patta to the plaintiff for which, he is compelled to institute the present suit.

Written statement of Defendant 1 & 2

2. Defendant no. 1 & 2 submitted written statement stating inter-alia that there is no cause of action for the suit. The suit is barred by jurisdiction u/s 22 of the Assam State Acquisition of Land belonging to Religious or Charitable Institution of Public Nature Act, 1959. The suit is bad for non-joinder of necessary party such as Harichandra

Sarma etc. It is stated that the plaintiff has failed to present any documents at the time of the presentation of plaint as per provision of Order 7 Rule 14 of CPC. The suit is not properly valued. It is further stated that the defendant acquired the land as per provision of Assam State Acquisition of Land belonging of Religious or Charitable Institution of Public Nature Act, 1959 after observing due process of law. It is averred that the plaintiff has instituted the suit for wrongful gain without showing any kind of possessory right in favour of the plaintiff. Therefore, defendant has prayed to dismiss the suit.

3. For determination of this suit, following points have been formulated by my Learned Predecessor.

ISSUES

1. Whether there is any cause of action for the suit?
2. Whether the suit is maintainable?
3. Whether suit is barred by jurisdiction u/s 22 of Assam State Acquisition of Land belonging to Religious or Charitable Institution of Public Nature Act, 1959?
4. Whether plaintiff is entitled to decree as prayed for in the plaint?

5. To what other relief(s) the parties are entitled to?

DISCUSSIONS, DECISIONS AND REASONS THEREFORE

4. I have carefully perused the pleadings of the parties and the evidence on record, also heard submissions of the learned counsel appearing for the parties. Having so heard and perused, I shall now discuss and decide the aforementioned issues accordingly.

5. The plaintiff side examined Mukunda Barman as PW1, Ananta Ballabh Sharma as PW2, Chakraram Malakar as PW3. The evidence of Govinda Barman has been expunged vide order dated 24/02/2020. Plaintiff side exhibited the following documents-

- i. Ext. 1- Certified copy of Jamabandi of NK patta no. 53 of village-Balikaria under Batahgila mouza.
- ii. Ext. 2- Copy of notice dtd. 18.05.2017 to Deputy Collector, Nalbari through the engaged Advocate Champak Kr. Dutta u/s 80 of CPC.

- iii. Ext. 3- True copy of postal receipt of sending notice dtd. 18.05.2017.
- iv. Ext. 4- True copy of certificate given by Post Master of Head Post Office, Nalbari to Advocate Champak Kr. Dutta certifying the receiving the notice dtd. 18.05.2017 on 19.05.2017.
- v. Ext. 5- Certified copy of Jamabandi of old NK patta no. 53 of village Balikaria under Batahgila mouza.
- vi. Ext. 6- Certified copy of judgment dtd. 08.02.1999 passed by Civil Judge(Jr. Divn.), Nalbari passed in TS 42/1990.
- vii. Ext. 7- Certified copy of judgment dtd. 20.07.1999 passed by District Judge, Nalbari in TA 4/1999.
- viii. Ext. 8- Certified copy of judgment dtd. 30.08.2007 passed by Munsiff No. 1, Nalbari in TS 20/2006.
- ix. Ext. 9- Certified copy of decree dtd. 30.08.2007 passed in TS 20/2006 of Munsiff No. 1, Nalbari.
- x. Ext. 10- Reciept dtd. 13.09.2018 receiving money from Mukunda

Barman against land by Basudev
Devalaya Parichalana Samittee.

xi. Ext. 10(1) Signatures of Secretary
cum Collector Ananta Ballav
Sharma.

6. Defendant side has neither examined any
witness nor exhibited any documents.

Decision on Issue no. 1 : Whether there is cause
of action for the suit?

7. The plaintiff has asserted that plaintiff has
been possessing the land mentioned in the
schedule of the plaint that is a plot of land
measuring cut 1 Bigha 8 lechas under NK patta no.
53 dag no. 642 and a plot of land measuring 12
lechas covered by dag no. 642/2004 total land
measuring 1 bigha 1 katha under Basudev
Devalaya situated in the village Balikaria, Mouza-
Batahgila, PS & Dist.- Nalbari as rayat. Thereafter,
on 27.11.1990 Assam Govt. acquired land of the
Develaya as per Provision of Assam State
Acquisition of Land belonging of Religious or
Charitable Institution of Public Nature Act, 1959.
Hence, the plaintiff has pleaded that he being an
occupancy rayat of the schedule land mentioned in
the plaint u/s 3(17) and 5 of Assam (Temporarily
Settled Areas) Tenancy Act 1971 is entitled to get

patta u/s 15 of Assam State Acquisition of Land belonging of Religious or Charitable Institution of Public Nature Act, 1959.

8. On the other hand, defendant has denied the claim of the plaintiff stating that the defendant acquired the land as per provision of Assam State Acquisition of Land belonging of Religious or Charitable Institution of Public Nature Act, 1959 after observing due process of law and the plaintiff has instituted the suit for wrongful gain without showing any kind of possessory right in his favour. A cause of action is bundle of facts affirmed by one party and denied by the other and such assertion and denial is already found from the pleadings of both the parties in their plaint and written statement which shows that there is a cause of action for the suit.

Decision on Issue no. 2 and 3: Whether the suit is maintainable? Whether suit is barred by jurisdiction u/s 22 of Assam State Acquisition of Land belonging to Religious or Charitable Institution of Public Nature Act, 1959?

9. Though my learned predecessor has framed two separate issues however, I deem it fit to take up issue No. 2 and 3 together as both the issues are

interrelated. Issue No. 1 relates to the maintainability of the suit in its present form & manner. Order VIII rule 2 provides that the defendants must raise all the pleadings specifically regarding the non-maintainability of the suit. Issue no 3 has emerged from the pleading of the defendant in the WS that suit is barred by jurisdiction u/s 22 of Assam State Acquisition of Land belonging to Religious or Charitable Institution of Public Nature Act, 1959.

10. Plaintiff has claimed that he is an occupancy rayat of the suit schedule land which was acquired by Govt. u/s 15 of Assam State Acquisition of Land belonging to Religious or Charitable Institution of Public Nature Act, 1959. As such, he is entitled to the patta u/s 15 of the same Act. Learned Government Pleader on behalf of defendant no. 1 and 2 has argued that since it is explicitly mentioned in the section 22 of the Act hence, the suit is barred by limitation. On the contrary Learned Counsel for the plaintiff has argued that since after receipt of the notice u/s 80 of CPC, defendant no. 2 has not taken any action for issuing patta in favour of plaintiff, hence finding no other alternative, he was compelled to institute the suit before the court for declaration and mandatory injunction. Provision

of section 22 of Assam State Acquisition of Land belonging to Religious or Charitable Institution of Public Nature Act, 1959 provides- “except as otherwise expressly provided in this Act, no decision or order made in exercise of any power conferred by or under this Act shall be called in question.” Having gone through the facts and circumstances and statutory provision u/s 22 of Assam State Acquisition of Land belonging to Religious or Charitable Institution of Public Nature Act, 1959, it appears that section 22 bars a civil suit against any decision or order made in exercise of any power conferred by or under this Act except as otherwise expressly provided in the act. Here in the instant case plaintiff has not challenged any order or decision made in exercise of any power conferred by or under this act. Rather, Plaintiff has instituted the suit since he has not received any response from defendant no. 2 for the applications submitted by him and to the notice issued u/s 80 of CPC. Plaintiff instituted this suit for declaring him as rayat under the Basudev Devalaya and for mandatory injunction against the defendant no. 1 and 2 to settle the suit land with him with the status of landholder u/s 15 of the Assam State Acquisition

of Land belonging to Religious or Charitable Institution of Public Nature Act, 1959.

11. Section 9 of CPC reads as “The court shall (subject to the provisions herein contained) have jurisdiction to try all suits of a civil nature excepting suits of which their cognizance is either expressly or impliedly barred. Since plaintiff has not challenged any order passed by defendant in exercise of power conferred by Act of 1959 but has sought relief which comes under the purview of suit of Civil nature U/S 9 of CPC., As such, this court is of the considered opinion that this court has jurisdiction to decide this case and same is not barred by section 22 of the Act of 1959. Hence, issue no. 3 is decided negative and in favour of the plaintiff. Accordingly issue no.2 is decided in affirmative and in favour of the plaintiff.

Decision on Issue no. 4 : Whether plaintiff is entitled to decree as prayed for in the plaint?

12. The plaintiff has pleaded in the plaint that he is an occupancy rayat of the schedule land mentioned in the plaint under Basudev Devalaya as per section 3(17) and 5 of Assam (Temporarily Settled Areas) Tenancy Act 1971, and on 27.11.1990 Assam Govt. acquired land of the Devalaya as per Provision of

Assam State Acquisition of Land belonging of Religious or Charitable Institution of Public Nature Act, 1959 therefore he is entitled to get patta u/s 15 of that Act, 1959. On the other hand defendant has took defense that defendants acquired the land as per provision of Assam State Acquisition of Land belonging of Religious or Charitable Institution of Public Nature Act, 1959 and the plaintiff has instituted the suit for wrongful gain without showing any kind of possessory right in favour of the plaintiff.

13. Let us go through the evidence of plaintiff side to see whether plaintiff could substantiate his claim. PW1 who is the plaintiff in his evidence on affidavit reiterated the facts mentioned in the plaint. PW1 in his cross examination has confirmed that in the year 1971 the land of devalaya was surveyed. PW1 further affirmed that his land lord is Basudev Devalaya and in the year 1989 the land is transferred to Govt land. PW1 stated that exhibit 6, 7, 8, and 9 are not connected to the suit land. PW1 deposed in his cross that exhibit 10 is the money payment receipt and in the year 2017 the land has been acquired by Government. It is testified that on behalf of Basudev Ramani, Daibya, Harichandra, Saraswati, and Nipon are the owner. PW1 in his

cross examination further stated that they went to give khajana after the land was converted into Govt land but Mouzadar asked them to pay khajana to Basudev. PW1 denied the suggestion that he has not submitted any proof that he has been a rayat. PW1 denied the suggestion that he has instituted a false case.

14. PW2 Ananta Ballabh Sharma in his evidence on affidavit has stated that at present he is working as secretary of Basudev Debalaya parichalana samiti. It is stated that as Secretary of the Basudev Debalaya parichalana samittee he is impleaded as proforma defendant no. 4. But he has not contested the suit and the Basudev Debalaya parichalana samiti has not opposed to the claim of the Plaintiff. PW2 has deposed that earlier the duty of management was upon Basudev Janakalyan Kristi Bikash Samiti. From the year 2000 the above said samiti is known as Basudev Debalaya parichalana samiti. PW2 has been the Secretary of the above said samiti for a number of tenure. PW2 deposed that plaintiff has been possessing the land mentioned in the schedule of the plaint that is a plot of land measuring cut 1 Bigha 8 lechas under NK patta no. 53 dag no. 642 and a plot of land measuring 12 lechas covered by dag no. 642/2004

total land measuring 1 bigha 1 katha under Basudev Devalaya situated in the village Balikaria, Mouza- Batahgila, PS & Dist.- Nalbari as rayat. Plaintiff has been paying revenue to the Basudev Devalaya. Exhibit 10 is receipt given by PW2 showing payment of revenue. Exhibit (1) and Exhibit (2) are the signature of PW2. It is further stated by the PW2 that in old NK Patta No 53 some of the rayats has got patta under the section 15 of Assam State Acquisition of Land belonging of Religious or Charitable Institution of Public Nature Act, 1959 and Plaintiff is also entitled to get patta of the suit land due to his possession as rayat.

15. In his cross examination PW2 stated that he has been at home for 10/12 years. For that 10/12 years he has not gone to the court. PW2 stated that he cannot remember whether he has filed affidavit or not if it is signed then he has submitted. He stated that the land of Basudev Devalaya is transferred to Government land in the year 1990. Before 1990 the land of Basudev Devalaya was managed by committee. Before formation of the committee it was managed by Bamun Harichandra Sharma, Saraswati, Daivyaballav, Nripballav etc. The land of Basudev Devalaya is on two sides- one is industry side and another is in the west side of

their village. The distance of land of the Basudev Devalaya in the eastern and western side is 2-2_{1/2} k.m. The Patta of the land of both east and west side is same. PW2 does not know the rayats in the land of eastern side. There are many rayats in the land of the western side. He cannot remember among the rayats who is in the possession of how much land. PW2 stated that Mukunda Barman is known to him. As per exhibit 10 Basudev Parichalana committee took Rs. 200 from Mukunda Barman on 25/02/2017 as contribution. Those contribution was taken for the management of Basudev Devalaya. He cannot take any revenue as Basudev has no rayat. The writing on exhibit 10 is of PW2 . Exhibit 10 is measured by Parichalana Samiti. PW2 does not remember whether the names of the rayats have been included in the revenue records before acquisition of the land by the government. PW2 does not know whether same had been surveyed in the year 1971 or not. He has been the secretary of the Basudev Devalaya for 15/20 years. In the land of Basudev Devalaya there are 5/6 rayats since before 1971. Basudev Devalaya Parichalana Samiti was earlier Basudev Janakalyan Samiti. Basudev Devalaya Parichalana Samiti was constituted in the year 2001. In the year 2001 the

land was in the name of Basudev Devalaya. PW2 denied the suggestion that he has lied that in the year 2001 the land was in the name of the Basudev devalaya. PW2 was secretary in the earlier committee. He has taken the contribution from Mukunda Barman and others. In the exhibit 1 there is not any name of the members of Basudev Devalaya Parichalana Samiti. PW2 does not remember the name of present Secretary and President. As because now he is not the secretary hence he is not aware whether notice was served upon the present and secretary. It has not been passed one year since he is not the secretary. He does not remember whether notice of this suit was received when he was secretary. PW2 does not remember under patta no 53 who are the rayats and who has been possessing how much land. He does not know in patta no. 53 how many dags are there and in which dag how much land is there. PW2 stated that in Patta no,53 no one is illegally possessing the land. On Evidence on affidavit there is no resolution for filing evidence on affidavit on behalf of Basudev Devalaya. It is not true that even knowing the people who are possessing illegally he has given false evidence stating them as rayat.

16. PW3 Chakraram Malakar stated on his evidence on affidavit that Plaintiff is known to him and he knows the suit land. PW3 deposed that plaintiff has been possessing the land mentioned in the schedule of the plaint measuring cut 1 Bigha 8 lechas under NK patta no. 53 dag no. 642 and a plot of land measuring 12 lechas covered by dag no. 642/2004 total land measuring 1 bigha 1 katha under Basudev Devalaya situated in the village Balikaria, Mouza- Batahgila, PS & Dist.- Nalbari as rayat. PW2 stated that he was a rayat in the land under old NK patta no. 53. Government ordered for giving patta to him along with some other rayat under section 15 of Assam State Acquisition of Land belonging of Religious or Charitable Institution of Public Nature Act, 1959. But Secretary of Basudev Janakailyan Kala Krishti Bikash Samiti and some other people conspired for evicting him and other rayats, hence he as well as other rayats instituted TS 42/1990 in the court of Civil Judge (Jr. Divn.). In that case, court gave verdict in their favour. Ext. 6 is the certified copy of the judgment dtd. 08.02.1999 of TS 42/1990. Being dissatisfied the plaintiff again filed appeal against that judgment in the court of District Judge instituting TA 4/1999. In that appeal, Hon'ble District Judge amended the

judgment of the Civil Judge (Jr. Divn) and gave decree. Ext. 7 is the certified copy of decree dtd. 20.07.1999 of TA 4/1999. As per that judgment and decree, Govt. gave them Patta. PW3 stated that Plaintiff is also entitled to get patta over the suit land. PW 2 further stated that earlier the duty of managing Basudev Devalaya was under Basudev Janakailyan Kala Krishti Bikash Samiti. Later the name of that Samiti is changed to Basudev Devalaya Parichalana Samiti.

17. PW3 in his cross examination stated that he does not remember how much land Basudev Devalaya possesses and he does not remember how many rayats devalaya has. PW3 instituted a case TS 42/1990. He does not know how much land of Basudev was acquired and how much is retained by Basudev. He does not remember how much land and in whose name the patta no 53 is. The suit instituted by PW3 was on 53 but he can't remember the dag number and the suit was relating to land measuring 2 and 1/2 katha. It is testified by PW3 that the rayats of the Devalaya are entitled to the myadi patta as per provision mentioned in the 3rd paragraph of his examination on chief on affidavit. PW3 stated that the land of Basudev is not illegally possessed. PW3 further stated that the land of

Basudev is acquired and converted into govt land and in Govt land there is not rayat. PW3 has stated that in the year 1971 rayati survey was done. PW3 testified that it is known to him that rayats have to pay 1/5th portion of peddy to the land lord and land lord used to give receipt. PW3 stated that he has seen giving receipts to Mukunda for the peddy given by him. He denied the suggestion that exhibit 10 is not receipt given for delivery of peddy. He further denied the suggestion that Mukunda has been possessing the govt land.

18. Having gone through the evidence it is seen that all the PWs corroborated to the fact that Plaintiff has been possessing the suit land as rayat under Basudev Devalaya. There is no dispute as regards that the suit land measuring cut 1 Bigha 8 lechas under NK patta no. 53 dag no. 642 and a plot of land measuring 12 lechas covered by dag no. 642/2004 total land measuring 1 bigha 1 katha was under Basudev Devalaya situated in the village Balikaria, Mouza- Batahgila and on 27.11.1990 Assam Govt. acquired land of the Devalaya as per Provision of Assam State Acquisition of Land belonging of Religious or Charitable Institution of Public Nature Act, 1959. Exhibit 1 and 5 also proves the same. The defendant side has tried to establish

through cross examination that plaintiff is not in actual possession of the land as rayat but an illegal possessor of the land. The Secretary and President of Basudev Devalaya Parichalana Samiti had been made proforma defendant but they have not denied the claim of the plaintiff by contesting the suit that plaintiff is not possessing the land as rayat under Basudev. Rather Ananta Ballabh Sharma who was the Secretary of Basudev Devalaya Parichalana Samiti deposed as PW2 and testified that plaintiff has been possessing the suit land as rayat. PW3 is a rayat under Basudev and they he has got patta from the government as per Exhibit 6, 7 and 8. PW3 also confirmed that plaintiff has been possessing the suit land as rayat of Basudev. Though cross examined defendant could not shake the veracity of the PWs as regards that plaintiff is not a rayat under the Debalaya and it is established that plaintiff has been possessing the suit land under Basudeb Devalaya as rayat.

19. Learned Counsel for the defendant side argued that while cross examining the PWs it is brought out that no document or khatian showing plaintiff as a rayat under Basudev Debalaya is submitted in the suit. In this context Learned Counsel for the plaintiff put forward his argument that since after

1971 no survey is done for providing khatian hence names of all rayats under Basudev are not included in the land record of Basudev Devalaya but by operation of law plaintiff is a occupancy rayat of the schedule land mentioned in the plaint u/s 3(17) and 5 of Assam (Temporarily Settled Areas) Tenancy Act 1971 and he is entitled to get patta u/s 15 of Assam State Acquisition of Land belonging of Religious or Charitable Institution of Public Nature Act, 1959. In his cross examination PW1 i.e., plaintiff deposed that in the year 1971 there was survey for rayati.

20. Now Section 3(17) of Assam (Temporarily Settled Areas) Tenancy Act provides -“tenant means a person who cultivates or holds the land of another person, and is, or but for a special contract (express or implied) would be, liable to pay rent for that land to that other person, and includes a person who under system generally know as 'Adhi' (whether Guchiadhi or Gutiadhi), 'bagra', 'chukti', 'bhag' or chukani' cultivates the land of another person on condition of delivering a share or quantity of the produce of such land to that person :

Provided that a person who cultivates or holds land immediately under the State Government is

not a tenant within the meaning of this definition.

Explanation.- A person who holds land on condition of service to a temple or religious institution shall be deemed to be that tenant of the manager of such temple or religious institution.”

Again section 5 of the same act provides-“**Acquisition of occupancy rights.-** (1) A person who for a period of not less than 3 years has continuously held land as a tenant shall have a right of occupancy in that land.

1. The period of 3 years may be wholly or partly before or after the commencement of this Act.
2. A person shall be deemed, for the purposes of this section to have continuously held land under a landlord notwithstanding that the particular landlord under whom he held the land was different at different times, provided the land held by him was the same.
3. A person shall be deemed, for the purposes of this section, to have held as a tenant any land held as a tenant by a person whose heir he is.
4. If a tenant recovers possession of his holding under any law in force, any period during which he might have been out of possession, shall count towards the period specified in sub-

section(1).”

21. Thus having gone through the evidence on record it is evident that PWs have testified that being rayat plaintiff has been paying rent to Basudev in the form of either peddy or money. Thus plaintiff could discharge the burden that he has been possessing the suit land as rayat under Basudev Devalaya and burden shifted to defendant side to establish that plaintiff is not a rayat but an illegal possessor of the suit land. However defendant side did not adduce any evidence to establish their defence. Defendant only tried to demolish the claim of plaintiff through cross-examination of the plaintiff witnesses but the same has not become fatal to the case of the plaintiff.

22. Plaintiff has claimed his right under section 15 of Assam State Acquisition of Land belonging of Religious or Charitable Institution of Public Nature Act, 1959. Section 15 of that Act provides-

“Subject to the limitation prescribed under section 4 of the Assam Fixation of Ceiling on Land Holding 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, then the land in his holding shall be settled with him with the status of a landholder as defined in the Assam Land and Revenue Regulation, 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, the 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

vested before the date of notification under section 3 of the Act”

23. The above provision makes it amply clear that the person claiming right of settlement under this provision shall be in actual occupation of the land on the date of notification of acquisition. In *Prafulla Chandra Goswami v. M/s Natun Ashomia (P) Ltd.*, (1991) 2 GLR 281 : 1991 (2) GLJ 72 : 1991 (1) GHC 16 it was held that the government has the power to settle the land to any person for any purpose but for Sections 15 and 16(e). Provisions under Sections 15 and 16 relate to preference i.e. the persons mentioned in Sections 15 and 16 have the preferential rights to, or claim for, settlement of the land with them.

24. The Hon’ble Gauhati High Court has held in the case of *Rajendra Nath Sarma and ors V. Jogeswar Talukdar and ors*, 1977 ALR 136 (DB) that “The direction given in section 15 of the Act to the effect that if the land so acquired is in occupation of a Raiyat or tenant with whom only the settlement shall be made, if such a person is available. In the instant case it has been found that the petitioners though they claim to be Khatiandars under the temple have no actual occupation of the land in

question. Therefore, such persons are not entitled to settlement.”

25. From the foregoing discussion it is found that Plaintiff has been possessing the suit land as rayat hence, he is entitled to get settlement of the suit land as per section 15 of the Act of 1959. Moreover, defendant had not cross examined or adduced evidence to prove that at the time of acquisition of land by government in the year 1990 plaintiff was not a rayat under Basudev Debalaya.

Decision on Issue No. 5: To what other relief(s) the parties are entitled to?

26. In view of the discussion and decision arrived in issue no 4 it is held that plaintiff is entitled to a decree declaring him as rayat of the schedule land under Basudev Devalaya with a direction by way of mandatory injunction to defendant no. 1 and 2 to settle the schedule land with the plaintiff giving him the status of land holder as defined under the Assam Land and Revenue Regulation by granting patta.

ORDER

The suit is decreed without cost declaring that the plaintiff is rayat under Basudev Devalaya over the schedule land with a direction by way of mandatory injunction to defendant no. 1 & 2 to settle the schedule land with the plaintiff giving him the status of landholder as defined under the Assam Land and Revenue Regulation by granting patta.

Prepare the decree accordingly.

The judgment is written, signed, sealed, tagged with the case record, pronounced and delivered in the Open Court on this the 10th day of January 2022.

Dr. Nabanita Kalita
Munsiff No- 1, Nalbari

APPENDIX

Witnesses examined by the Plaintiff:

1. PW 1- Mukunda Barman
2. PW 2- Ananta Ballav Sharma
3. PW 3- Chakraram Malakar

Documents exhibited by the Plaintiff:

1. Ext. 1- Certified copy of Jamabandi of NK patta no. 53 of village- Balikaria under Batahgila mouza.
2. Ext. 2- Copy of notice dtd. 18.05.2017 to Deputy Collector, Nalbari through the engaged Advocate Champak Kr. Dutta u/s 80 of CPC.
3. Ext. 3- True copy of postal receipt of sending notice dtd. 18.05.2017.
4. Ext. 4- True copy of certificate given by Post Master of Head Post Office, Nalbari to Advocate Champak Kr. Dutta certifying the receiving the notice dtd. 18.05.2017 on 19.05.2017.
5. Ext. 5- Certified copy of Jamabandi of old NK patta no. 53 of village Balikaria under Batahgila mouza.
6. Ext. 6- Certified copy of judgment dtd. 08.02.1999 passed by Civil Judge(Jr. Divn.), Nalbari passed in TS 42/1990.

7. Ext. 7- Certified copy of judgment dtd. 20.07.1999 passed by District Judge, Nalbari in TA 4/1999.
8. Ext. 8- Certified copy of judgment dtd. 30.08.2007 passed by Munsiff No. 1, Nalbari in TS 20/2006.
9. Ext. 9- Certified copy of decree dtd. 30.08.2007 in TS 20/2006 of Munsiff No. 1, Nalbari.
10. Ext. 10- Reciept dtd. 13.09.2018 receiving money from Mukunda Barman against land by Basudev Dewalaya Parichalana Samittee.
11. Ext. 10(1) Signatures of Secretary cum Collector Ananta Ballav Sharma.

Witnesses examined by the Defendant:

Nil

Documents exhibited by the Defendant:

Nil

Dr. Nabanita Kalita
Munsiff No- 1, Nalbari
