

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- 118 of 2017**

On this 10<sup>th</sup> day of January, 2022

1. Upen 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 1 Bigha 4 kathas under NK patta no. 53  
dag no. 641 under Basudev Devalaya situated in  
the village Balikaria, Mouza- Batahgila, PS & Dist.-  
Nalbai 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 plaintiff Upen Barman as PW1, Ananta Ballabh Sharma as PW2, Chakraram Malakar as PW3, Govinda Barman as PW4. It is to be mentioned that cross examination of PW 4 Gobinda Barman has been recorded twice once by court and once by commissioner, hence I have considered both. 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- Receipt dtd. 06/02/2018 receiving money from Upen Barman against land by Basudev Dewalaya Parichalana Samittee.
- xi. Ext. 10(1) and 10(2) are Signatures of Secretary cum Collector Ananta Ballav Sharma.
- xii. Ext. 11 is the revenue paying receipt of the Bangla Year 1405 given by Mauzadar of Batahgila Mauza against the suit land.
- xiii. Ext. 12 is the revenue paying receipt of the Bangla Year 1407 given by Mauzadar of Batahgila Mauza against the suit land.
- xiv. Ext. 13 is the revenue paying receipt of the Bangla Year 1408 given by Mauzadar of Batahgila Mauza against the suit land.
- xv. Ext. 14 is the revenue paying receipt of the Bangla Year 1409 given by Mauzadar of Batahgila Mauza against the suit land.



- xvi. Ext. 15 is the revenue paying receipt of the Bangla Year 1411 given by Mauzadar of Batahgila Mauza against the suit land.
- xvii. Ext. 16 is the revenue paying receipt of the Bangla Year 1412 given by Mauzadar of Batahgila Mauza against the suit land.
- xviii. Ext. 17 is the revenue paying receipt of the Bangla Year 1415 given by Mauzadar of Batahgila Mauza against the suit land.
- xix. Ext. 18 is the revenue paying receipt of the Bangla Year 1421 given by Mauzadar of Batahgila Mauza against the suit land.

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 1 Bigha 4 kathas under NK patta no. 53 dag no. 641 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 Develaya 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 stated that he does not know whether in 1971 government did survey or not. It is

confirmed by him that he has been possessing the land of Basudev since the date of his father and grandfather. He does not know how much land Basudev had. He has stated that in the year 1990 the land of Basudev was acquired by government. PW 1 further stated that exhibit 6 to 9 is not related to this suit. He further stated that exhibits 11 to 18 are receipt for giving revenue on government land. It is not known to him if the revenue paid on illegally possessed land is called Touzi Bahira Khajana. He testified that exhibit 10 is the receipt of paying money to Basudev Devalaya. He stated that he did not know if Khatiyani was given on land.

14. PW2 Ananta Ballabh Sharma in his evidence on chief in 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 4 kathas under old NK patta no. 53 dag no. 641 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. PW 2 in his cross examination stated that he does not remember when the land of Basudev Devalaya was acquired by Government. He has been the Secretary of the Basudev Devalaya 8 years before. He does not remember since when he has been the Secretary. He stated that he does not remember when Basudev Janakalyan Samiti was formed. Basudev Devalaya Parichalana Samiti was formed later on and it was formed 5/6 years before.



As per the Assam State acquisition of land belonging to religious and Charitable Act, 1959 when the land of Basudev Devalaya was acquired by government he cannot remember. PW 2 ascertained that Ext. 10 is receipt given by him and it was given on 25.02.2017. Then he was Secretary. Ext. 10(1) was his signature. At the time of giving receipt, the land was under Basudev Devalaya. As per Ext. 5 the land might be acquired by government in 1990, but was under possession of the rayat. He does not know if there is rayat or pattadar in the government land. The land where his house is situated is not the land of Basudev Devalaya. When he was the Secretary, the land was under the possession of rayat. He has confirmed that Ramani Sarma, Hari Charan Sarma and Saraswati etc. having the ownership of the land on behalf of Basudev Devalaya and they are not possessing the land illegally. During his time, no notice was issued for evicting illegall possessors. He further confirmed that as mentioned in the evidence on affidavit, he has not contested the suit and he has not opposed the claim of the plaintiff.

16. PW3 Chakraram Malakar on his evidence in chief on affidavit stated that Plaintiff is known to him and he knows the suit land. PW2 deposed that

plaintiff has been possessing the land mentioned in the schedule of the plaint measuring cut 1 Bigha 4 kathas under old NK patta no. 53 dag no. 641 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 has stated that plaintiff is known to him. PW3 stated that the suit Patta is Patta no. 53 and the suit land is measuring 1 Bigha 4 Kathas, but the boundary of the suit land is not known to him. In the year 1990 the land was acquired by government. It is not known to him whether there was Rayat in the government land or not. He does not know how many Rayats are under Basudev. In the year 1990 they instituted suit against government but not against devalaya. They instituted TS 42/1990 and in that suit judgment was given in their favour. They preferred TS No. 4/1999. He denied the suggestion that he has given false evidence on behalf of plaintiff.

18. PW 4, Govinda Barman deposed in his evidence on affidavit that plaintiff has been possessing the land mentioned in the schedule of the plaint measuring 1 Bigha 4 kathas under old NK patta no. 53 dag no. 641 under Basudev Devalaya situated in the village Balikaria, Mouza- Batahgila as rayat. PW4 further stated that he was a rayat over

some plot of land under the suit patta i.e., old NK patta no. 53. They filed application before government for giving them patta over the land possessed as rayat. But as the government did not give them patta of land, therefore they filed T.S. 20/2006 before Civil Court, Nalbari and in that case, court passed order and decree in their favour. Ext. 8 is the certified copy of judgment dtd. 30.08.2007 in TS 20/2006 passed by Munsiff no. 1, Nalbari. As per that judgment and decree, government gave them Myadi patta of decreetal land. Plaintiff is also entitled to get myadi patta of disputed land over which he has possession as rayat. PW 4 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.

19. PW 4 Govinda Barman in his cross examination deposed that PW 4 in his cross examination stated that earlier Basudev Devalaya was managed by Mandir committee. Now it is managed separately as Devalaya. It has been 15 years since considered as Devalaya. PW 4 stated that measurement of suit land is 1 bigha 4 kathas of patta no. 53. He does not remember dag no. and boundary. It is not known to him how much land is in NK patta no. 53. His

mother instituted a case on 1 bigha 2 kathas land of that patta. Along with his mother Kailash Barman, Achyut Barman, Govinda Barman and Jatindra Barman instituted that suit. He does not remember on what number dag TS 20/06 was instituted. He does not remember if in the year 1971 there was survey for rayats. PW 4 stated that in the year 1990 the land of Basudev was acquired by government. PW 4 further stated that in patta no. 53 on behalf of Basudev, Ramani Sarma, Haricharan Sarma, Daibyabala and Nripa Sarma were owner.

20. 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 1 Bigha 4 kathas under old NK patta no. 53 dag no. 641 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 and PW4 are two rayats under Basudev and they have got patta from the government as per Exhibit 6, 7 and 8. PW3 and PW4 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 in that regard and it is established that plaintiff has been possessing the suit land under Basudev Devalaya as rayat.

21. 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.

22. 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 known 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).”
23. PWs have testified that being rayat plaintiff has been paying rent to Basudev in the form of



either peddy or money. Exhibit 11, 12, 13, 14, 15, 16 17 and 18 are the revenue paying receipts.

24. Thus having gone through the evidence on record it is evident that 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 documentary or oral evidence to establish their defence.

25. 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”

26. 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.

27. 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."

28. 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?

29. 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 10<sup>th</sup> day of January 2022.

Dr. Nabanita Kalita

Munsiff No- 1, Nalbari

**APPENDIX**

**Witnesses examined by the Plaintiff:**

1. PW 1- Upen Barman
2. PW 2- Ananta Ballav Sharma
3. PW 3- Chakraram Malakar
4. PW 4- Gobinda Barman

**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- Receipt dtd. 25/02/17 receiving money from Upen Barman against land by Basudev Dewalaya Parichalana Samittee.
11. Ext. 10(1) Signature of Secretary cum Collector Ananta Ballav Sharma.
12. Ext. 11 is the revenue paying receipt of the Bangla Year 1405 given by Mauzadar of Batahgila Mauza against the suit land.
13. Ext. 12 is the revenue paying receipt of the Bangla Year 1407 given by Mauzadar of Batahgila Mauza against the suit land.
14. Ext. 13 is the revenue paying receipt of the Bangla Year 1408 given by Mauzadar of Batahgila Mauza against the suit land.

15. Ext. 14 is the revenue paying receipt of the Bangla Year 1409 given by Mauzadar of Batahgila Mauza against the suit land.
16. Ext. 15 is the revenue paying receipt of the Bangla Year 1411 given by Mauzadar of Batahgila Mauza against the suit land.
17. Ext. 16 is the revenue paying receipt of the Bangla Year 1412 given by Mauzadar of Batahgila Mauza against the suit land.
18. Ext. 17 is the revenue paying receipt of the Bangla Year 1415 given by Mauzadar of Batahgila Mauza against the suit land.
19. Ext. 18 is the revenue paying receipt of the Bangla Year 1421 given by Mauzadar of Batahgila Mauza against the suit land.

**Witnesses examined by the Defendant:**

Nil

**Documents exhibited by the Defendant:**

Nil

Dr. Nabanita Kalita  
Munsiff No- 1, Nalbari

\*\*\*\*\*