GAHC010233202026

2026:GAU-AS:15696

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

Case No. : WP(C)/5771/2026

AKBAR ALI MOLLAH
SON OF BISHA MOLLAH, VILL- AMGURI, P.O- KALGACHIA, DIST- BARPETA , ASSAM, PIN - 781319.

2: KABBAT ALI MOLLAH
SON OF BISHA MOLLAH
VILL- AMGURI
P.O- KALGACHIA
DIST- BARPETA
ASSAM
PIN - 781319

VERSUS

THE STATE OF ASSAM AND 3 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE GOVERNMENT OF ASSAM REVENUE DEPARTMENT, DISPUR, GUWAHATI -6.

2:THE DEPUTY COMMISSIONER BARPETA
DISTRICT BARPETA ASSAM PIN 781301

3:THE ADDITIONAL DEPUTY COMMISSIONER (REVENUE) BARPETA
DISTRICT BARPETA ASSAM PIN 781301.

4:THE CIRCLE OFFICER KALGACHIA REVENUE
CIRCLE
KALGACHIA
DISTRICT
BARPETA
ASSAM
PIN- 781319

Advocate for the Petitioner : MR. M U MAHMUD, MR. M ALI,MR. J UDDIN

Advocate for the Respondent : GA, ASSAM, SC. REVENUE

BEFORE
HONOURABLE MR. JUSTICE MANISH CHOUDHURY

ORDER

Date : 14-10-2026

Heard Mr. M.U. Mahmud, learned counsel for the petitioner; Mr. A. Bhattacharyya, learned Standing counsel, Revenue & Disaster Management Department for the respondent no. 1; and Mr. H.K. Hazarika, learned Junior Government Advocate, Assam for the respondent nos. 2 – 4.

2. The petitioners have stated that they have been running a shop [books/newspapers/magazines/stationary items] from an area of land measuring 6 Lessas, covered by Government Dag no. 190, at Village – Kalgachia, Kalgachia Revenue Circle, District – Barpeta, Assam ['the subject-land', for short] since long.

3. The petitioners have stated that in respect of another area of land, measuring 16 Lessas, also within Government Dag no. 190, the petitioners were evicted on 23.07.2026.

4. A public notice has been issued by the respondent no. 4 on 30.09.2026 stating inter alia that the persons who have illegally encroached upon the parcel of land, covered by Government Dag no. 190, at Village – Kalgachia, which is reserved for Kalgachia Sub-Health Center, shall vacate the said parcel of land within a period of 15 days from 30.09.2026. It is further mentioned that in case

the said parcel of land is not vacated by the unauthorized encroachers, then action would be taken as per Rule 18[1] of the Settlement Rules framed under the Assam Land and Revenue Regulation, 1886.

5. It is the contention of the petitioners that the area of land measuring 6 Lessas is outside the area of land within Government Dag no. 190 reserved for Kalgachia Sub-Health Center and therefore, the provisions of Rule 18[1] and Rule 18[2] of the Settlement Rules framed under the Assam Land and Revenue Regulation, 1886 will not be applicable for the subject-plot.

6. As per Rule 18[1] of the Settlement Rules, the District Commissioner may eject any person from land over which no person has acquired the rights of a proprietor, landholder, or settlement-holder. As per Rule 3[ii], a Circle Officer, can be delegated the powers under Rule 18[1] and Rule 18[2].

7. Rule 18[2] has provided that when any person enters into possession of Government Khas land or waste land or estate over which no person has acquired the rights of proprietor, land-holder or settlement-holder or any land that has previously been reserved for roads or roadside land or for the grazing of village cattle or for other public purposes, or has entered into possession of land from which he has been excluded by general or special orders and when further, there is no bona fide claim of right involved he may be ejected or ordered to vacate the land forthwith, and the Deputy Commissioner may sell, confiscate or destroy any crop raised, or any building or other construction erected without authority on the land.

8. It is settled that before any action for eviction under Rule 18[2] is taken a notice has to be served upon the alleged encroacher to provide him an opportunity to submit a representation to contend that he has a bona fide right to continue with the occupation of the parcel of land for which he has been put on notice and also, to contend that the land under his occupation does not fall within the categories of land mentioned in Rule 18[2]. In the event such a representation is filed, the District Commissioner or, as the case may be, the Circle Officer as the delegate is required to give consideration to such a representation. The representation is to be disposed of by passing a speaking order on the basis of the relevant records and in accordance with law.

9. Since the Public notice dated 30.09.2026 has not mentioned about any opportunity of submitting a Representation and has directed the alleged unauthorized encroacher to vacate the parcel of land within Government Dag no. 190 at Village - Kalgachia within a period of fifteen days, this Court is of the considered view that in view of the settled position of law, the Public notice is to be treated as a show cause notice for the petitioners the limited purpose of submitting a Representation within a period of fifteen days from today to represent as regards the bona fide claim, if any, to be in occupation in the area of land measuring 6 Lessas within Government Dag no. 190 at Kalgachia.

10. It is observed that if such a Representation is submitted by the petitioners within such period of fifteen days, the respondent no. 4 shall give due consideration to such representation and shall examine whether the subject-land measuring 6 Lessas within Government Dag no. 190 falls within or outside the area of land reserved for Kalgachia Sub-Health Center on the basis of

revenue records and under Rule 18[2] of the Settlement Rules and thereafter, dispose of the Representation by way of a speaking order as expeditiously as possible, preferably within a period of 4 [four] weeks from the date of receipt of such Representation. The speaking order to be passed on the Representation is to be communicated to the petitioners immediately thereafter.

11. It is further observed that in case the speaking order is adversial to the petitioners then the petitioners shall be given at least a period of one month to vacate the subject-land measuring 6 Lessas within Government Dag no. 190. It is also observed that till the speaking order is passed, the status quo obtaining as on date, as regards the subject-land measuring 6 Lessas within Government Dag no. 190, Kalgachia shall be maintained by the parties.

12. This order disposes of the writ petition.

JUDGE

Comparing Assistant