GAHC020006822026 2026:GAU-NL:538-DB

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

Case No. : WA/40/2026

SHRI P. SHOKUM YIMCHUNGER
S/O R. PUNGKIU, R/O HOUSE NO. 127C, WARD - 16, NEW MINISTERS HILL, KOHIMA, NAGALAND

VERSUS

THE STATE OF NAGALAND AND 5 ORS
REPRESENTED BY THE CHIEF SECRETARY, GOVT. OF NAGALAND, KOHIMA

2:THE COMMISSIONER
NAGALAND
KOHIMA

3:THE DEPUTY COMMISSIONER AND DISTRICT MAGISTRATE
KOHIMA
NAGALAND

4:THE REVENUE CUM SETTLEMENT OFFICER
KOHIMA
NAGALAND

5:THE LAND RECORDS AND SURVEY OFFICER
KOHIMA
NAGALAND

6:THE GAUHATI HIGH COURT
REPRESENTED BY THE REGISTRAR
GAUHATI HIGH COURT
KOHIMA BENCH
KOHIMA

NAGALAND

Advocate for the Petitioner : , ,NONGOSA,NUKSUNGTILA,S. DUTTA, SR. ADV,IMLIRENLA

Advocate for the Respondent : GOVT ADV NL,

BEFORE

HON'BLE MR. JUSTICE N. UNNI KRISHNAN NAIR
HONBLE MR. JUSTICE NCHUMBEMO MOZHUI

Advocates for the Appellant(s) : Mr. S. Dutta, Sr. Adv.

Advocate for the Respondent(s) : Ms. V. Suokhrie, Addl. A.G (R/1-5)
: Mr. A. Zhimomi, SC, GHCKB

Date on which judgment is reserved : **30.09.2026**
Date of pronouncement of judgment : **09.10.2026**
Whether the pronouncement is of the operative part of the judgment : Full judgment.
Whether the full judgment has been pronounced : Yes.

JUDGEMENT AND ORDER (CAV)

(N. Mozhui, J)

Heard learned Senior Counsel, Mr. S. Dutta assisted by Mr. S. Chakraborty, learned counsel for the appellants.

Also heard Ms. V. Suokhrie, learned Additional Advocate General appearing for respondent Nos. 1 to 5 and Mr. A. Zhimomi, learned standing counsel, Gauhati High Court, Kohima Bench.

2. The appellants in the above noted writ petitions have challenged the Judgment and Order dated 12.12.2025 passed by the learned Single Judge in WP(C) No. 58 of 2024 and WP(C) No. 59 of 2024.

3. The facts leading to the institution of the writ petitions in brief can be noticed as under;

3.1 The appellant in Writ Appeal No. 41/2026 had claimed that he is the absolute owner of the plot of land identified as House No. C/109, Ward-16, New Ministers' Hill, Kohima, Nagaland, measuring 336x44 feet, which was brought from one Shri. Kevikhelie Sorhie of Kohima Village by way of execution of a sale deed on 28.09.2010. It is further projected by the said appellant that after the sale deed was executed, a land patta was issued in his favour by the Jurisdictional Deputy Commission. Accordingly, it was contended that the appellant in WA/41/2026 had clear title over the said plot of land. It was further projected on 17.10.2016, by way of executing a gift deed, a portion of the said land measuring about 3120 sq. feet was gifted by the appellant in WA/41/2026 to the appellant in WA/40/2026.

3.2 The appellant in WA/40/2026, thereafter, applied for issuance of separate land patta, which was also granted to the appellant in WA/40/2026. After the said developments had taken place, it is contended by the appellants that the office of the Deputy Commissioner, Kohima, First Class Magistrate had issued a restraining order dated 16.06.2023 to the petitioner under Section 5 (1) of the Nagaland Eviction of Persons in Unauthorized Occupation of Public Land Act, 1971. The said proceedings had, thereafter, reached the stage, wherein, the authorities had directed

for eviction of the appellants in the above noted writ appeals from the plot of land in question. Being aggrieved, the appellants instituted a writ petition being WP(C) No. 324/2023 before this Court assailing the eviction order dated 17.11.2023. This Court on considering the issues arising in the said writ petitions, proceed vide judgment and order dated 12.12.2023, to dispose of the said writ petition in WP(C) No. 324/2023, requiring the appellants, herein, to approach the Commissioner, State of Nagaland, invoking the provision of Section 12 of the said Act 1971. The appellants contend that they have in terms of the liberty granted to them, instituted proceedings before the Commissioner, State of Nagaland, Kohima, invoking the provisions of Section 12 of the said Act 1971. During the pendency of the said proceeding, a further development had taken place in the matter when the respondent authorities proceeded to cancel the patta issued in respect of the appellants. Being aggrieved the appellants in the above noted writ appeals had instituted WP(C) No. 58/2024 and WP(C) No. 59/2024, *inter alia* assailing the restraining order dated 16.06.2023, the eviction order dated 17.11.2023 and the order dated 16.03.2024 cancelling the patta.

4. The learned Single Judge on considering the issues arising in the above noted 2 (two) writ petitions, proceeded vide judgment and order dated 12.12.2025 to dismiss the said writ petitions.

Being aggrieved, the appellants have instituted the above noted writ petitions.

5. Mr. S. Dutta, learned Senior Counsel appearing for the appellant in the

above noted writ petitions has made the following submission, towards assailing the judgment and order dated 12.12.2025, passed by the learned Single Judge in WP(C) No. 58/2024 and WP(C) No. 59/2024;

5.1. It was submitted that this court in the earlier round of litigation i.e, in the proceedings of WP(C) No. 324/2023, appreciating the issues arising, therein, and also noticing that disputed question of fact had come on record, required the matter to be considered by the Commissioner, State of Nagaland, and the appellants herein were directed to institute appeals before the said authority by invoking the provision of Section 12 of the Act of 1971. He submits that the appellant having instituted proceeding before the Commissioner, State of Nagaland, in terms of the liberty passed by this Court and the Commissioner in the Appeal so filed, vide order dated 12.02.2024, for the purpose of determining the claims made by the appellants, having required the Jurisdictional Deputy Commissioner to place on record the requisite materials with further direction for maintenance of status quo, the respondent authorities could not have proceeded further in the matter, before completion of the said proceedings.

5.2 Mr. Dutta, submits that in spite of the order dated 12.02.2024 passed in the Commissioner, being in currency, the respondent authorities had proceeded to issue an order dated 16.03.2024, cancelling the patta allotted to the appellant in the above noted writ appeals. Mr. Dutta submits that such cancellation of the patta is permissible under the provision of Rule 26 of the Settlement Rules after an opportunity, is granted to the pattadar and such cancellation would be permissible to be

made only by the Government in the concerned department. Mr. Dutta submits that the respondent had projected that the Commissioner, State of Nagaland, had granted his approval for such cancellation of the patta of the appellants, vide a communication dated 01.03.2024.By referring to the said communication dated 01.03.2024, Mr. Dutta, submits that, therefrom, it is not apparent that any such approval was granted by the Commissioner and the said communication was infact signed by an authority otherwise not competent to issue such approval. Accordingly, Mr. Dutta submits that the purported approval conveyed by the communication dated 01.03.2020, is of no consequence and the same was not permissible to be acted upon by the Jurisdictional Deputy Commissioner and the patta issued in favour of the appellants would not have mandated a cancellation basing on the said purported approval. Mr. Dutta in support of his submission has referred to a decision of a full bench of this Court in the case of ***Jiban Chandra Deka Vs. State of Assam and Ors*** reported in ***1993 Supreme (Gau) (236)***.

5.3 . Mr. Dutta has further submitted that while the respondents have claimed that the land which was bought by the appellants and later against which a patta was issued to him, was not demonstrated by the respondent authorities to be Government land. Mr. Dutta submits that in absence of any such materials being brought on record by the Government before the writ court, it was not permissible for the writ to draw any adverse conclusion in this connection against the appellant, herein. Mr. Dutta submits that from the pleadings brought on record, it would be clear that the respondents had not placed on record any material to demonstrate that the plot of land in question, formed part of

the land acquired by the Government in the year 1972-82. Mr. Dutta submits that in absence of any such material being brought on record, it was not open to the respondent authority to invoke the Provisions of the Act of 1971, and accordingly, he submits that the eviction proceedings instituted against the appellants would mandate any interference from this Court.

5.4. Mr. Dutta by referring to an order dated 24.06.2026, passed by the Appellate Authority in the proceedings instituted by the appellants invoking the Provision of Section 12 of the Act of 1971, submits that in spite of categorical directions passed by this Court for a decision on merits by the Commissioner, in the appeal filed by the appellants, the Appellate Authority had abdicated his function in the matter and only by relying on the proceeding of writ petitions, had proceeded to reject the said appeal. Mr. Dutta submits that even if the patta issued to the petitioner is cancelled, the Commissioner was required to determine as to whether the land possessed by the petitioner, in dispute in the present proceeding, was actually public land. Mr. Dutta submits that in absence of a finding to the effect that the land in question was in fact public land, the Commissioner could not have rejected the appeals preferred by the appellants on a technicality, without first determining the issue arising, therein, on merits.

5.5 . Mr. Dutta by referring to the conclusions drawn by the learned Single Judge in the judgment and order dated 12.12.2025, has submitted that the conclusions so drawn are clearly perverse, inasmuch as, the same are not supported by materials coming on record. Mr. Dutta, submits that the learned Single Judge in the impugned judgment has proceeded only

to appreciate the contentions raised by the respondents, however the contentions raised by the appellants, was not given a consideration. Mr. Dutta, further submits that the learned Single Judge had placed much reliance on the fact that when the land in question was brought by the appellant in WA/41/2026, he was a minor and accordingly, the sale was *void ab initio*. Mr. Dutta submits the said conclusion is clearly perverse inasmuchas it is permissible for a land to be transferred in the name of a minor. Mr Dutta by drawing attention to the further conclusions by the writ court in the impugned judgment has submitted that all the said conclusions are clearly perverse and had been so drawn without appreciating the submissions made by the appellants before it.

5.6. In the above premises, Mr. Dutta submits that the impugned judgment and order dated 12.12.2025, would mandate an interference from this Court. He further submits that considering the nature of the dispute arising in the present proceedings, this Court would be pleased to reiterate the direction passed by the learned Single Judge, vide judgment and order dated 12.12.2023 in WP(C) No. 324/2023 and direct the Commissioner, State of Nagaland, to determine as to whether the plot of land, in dispute in the present proceedings, was actually a public land. Mr. Dutta has further submitted that from the report submitted by the land department, it is apparent that the plot of land in dispute in the present proceedings falls outside the land, which was acquired by the Government in the area.

6. Per contra, Ms. V. Suokhrie, learned Additional Advocate General has by drawing our attention to the sale agreement dated 28.09.2010, has

submitted that the appellant in WA/41/2026, had signed, therein, however on the said date he was admittedly a minor and accordingly, it was impermissible for him to sign and accordingly the said agreement must be held to be *void ab initio*. Ms. V. Suokhrie has drawn our attention to a note put up by the father of the appellant in WA/41/2026, wherein, he had required the Jurisdictional Deputy Commissioner to issue a site permit to the said appellant over a plot of land measuring 336x44 feet. She submits that the said plot of land forms part of the quarter bearing No. AH/44, which was allotted to the father of the appellant in WA/41/2026 on 2 (two) occasions i.e, vide order dated 13.03.2008 and 06.03.2013. She submits that the plot of land which has now been shown to have been brought by the appellant in WA/40/2026, is a part of the land on which the said quarter bearing No. AH/44 stands. Ms. V. Suokhrie has further submitted that the earlier report submitted by the official of the Land Department, was subsequently found to be false and on a further inquiry made, the land being found to be Government Land, the Commissioner, State of Nagaland had granted his approval for the cancellation of the pattas issued to the appellants in the above noted writ appeals, on the ground that the same were erroneously issued to them. She submits that the said approval was communicated to the Government by the District Land Records and Survey Officer, Kohima, vide a communication dated 01.03.2020. She further submits that a perusal of the said communication dated 01.03.2020, could go to reveal that the same was so issued after the approval from the Commissioner was received for cancellation of the pattasissued in favour of the appellants, and accordingly, she submits that the consequential order passed by the Deputy Commissioner cancelling

the patta, would not mandate an interference.

6.1. Ms. V. Suokhrie has further submitted that the appellants had not received any approval from the State Government prior to the allotment of the land in question being made in favour of the appellant in WA/40/2026.

6.2. Ms. V. Suokhrie, with regard to the contention of the learned Senior Counsel for the petitioner, based on the communication dated 20.12.2012, that the land in question falls outside the government acquired land, submits that the said position was further clarified after an inquiry, and vide a communication dated 13.11.2024, it was clarified that the earlier communication dated 20.12.2022, was issued erroneously and the land in question falls within the government acquired land.

6.3. Ms. V. Suokhrie, in the above view of the matter, has submitted that the plot of land admittedly being a public land, the same was not permissible to be possessed by a private individual and the manner in which the land was so possessed clearly not being in accordance with the procedure mandated, and accordingly, the eviction of the appellants, therefrom, would not mandate an interference from this Court. She has further submitted that the writ court had taken into consideration all relevant factors and had, thereafter, drawn its conclusion and accordingly, the impugned judgment, would not mandate any interference from this Court.

7. Mr. A. Zhimomi, learned counsel appearing for the respondent No. 6, reiterating the submission made by the learned Addl. Advocate General,

has further submitted that the land patta issued to the appellant in WA/40/2026, was not so issued on the ground of a mutation or a sale, but was so issued as an allotment made by the District Administration to him.He submits that the said position is clear from a bare perusal of the land patta.

7.1 Mr. A. Zhimomi further submits that no Government land can be allotted without the approval of the Government and the learned Single Judge had rightly set aside the said allotment. It is further the contention of the learned counsel for respondent No. 6, that the petitioner claim relying on the sale deed purportedly executed on 28.09.2010, does not have any legal basis as the same document is not registered and the same is not admissible in evidence as required by law. As such the appellant does not have any right title of interest over the said land. Further it is the contention of the respondent No. 6 that the Government of Nagaland, Department of Law and Justice had allotted the quarter No. AH/44 to the Registrar of Gauhati High Court, Kohima Bench for accommodation of the Hon'ble High Court Judges vide order dated 11.01.2022 and without a challenge to the same, the appellants cannot claim the said land.

7.2 Mr A. Zhimomi, further submits that apart from challenging the Order dated 16.03.2023 cancelling the pattas in WP (C) No. 58/2024, the appellant have not challenged the letter dated 01.03.2024 which is the approval for cancellation of the land pattas, moreover, the appellants has not challenged the order dated 11.01.2022 allotting the governmentquarter No. AH/44 to the respondent No. 6.

7.3. Mr. A. Zhimomi, further submits that the appellants had not filed any rejoinder to the contentions raised by the respondent No. 6 in its affidavit and contentions made in the affidavit-in-opposition, has to be held to have been admitted to by the respondents.

8. We have heard the learned counsel for the parties and perused the material available on record.

9. The main ground urged by the learned Senior Counsel of the appellants in these appeals is that Rule 26 of the Settlement Rules mandates an opportunity of hearing and that the said Rule has been violated. In this regard, he relies on the decision of the Full Bench of this Court in ***Jiban Chandra Deka****(Supra)*. To the query as to whether there are pleadings on this ground in the writ petition, the learned Senior Counsel submits that the ground urged is a point of law. The reliance on Rule 26 of the Settlement Rules cannot be considered in isolation. The appellant in Writ Appeal No.41/2026 claims that he purchased the land from the land owner by a Sale Deed dated 28.09.2010. The appellant in Writ Appeal No. 40/2026 derives her title from the appellant Mr. T. Akumba Yimchunger (WA No. 41/2026).

10. The learned Single Judge found that the appellant was a minor when he executed the Sale Deed dated 28.09.2010 and as such the same is *void ab initio*. The aforesaid Sale Deed is the foundation of the case of the appellants. Therefore, on account of the fact that the sale deed being executed by a minor and the same not being registered no rights flow from the said Sale Deed. That apart, the Patta dated 30.06.2014 which is annexed as Annexure-C to the Memo of Appeal indicates that, the plot

mentioned therein was allotted by the Deputy Commissioner, Kohima. It is not a Patta issued through the process of mutation, pursuant to transfer of land by way of sale. In so far as the allotment of Government land is concerned, there is a standing policy of not allowing such allotments without the express approval of the Government.

11. The notification in this regard has been upheld by the Division Bench of this Court in ***State of Nagaland & Anr-vs-Avio Naleo*** **& Ors** reported in ***2023 (1) GLT 634***. The learned Single Judge has also dealt with this aspect of the matter. In the conspectus of the facts, above referred, it is the opinion of this Court that the reliance on Rule 26 of the Settlement Rules by the appellants is misplaced. The prescriptions of the said Rule cannot be pressed into service to justify an illegality which renders actions taken void ab initio. In the instant case, the Sale Deed as well as the allotment to the appellants are void ab initio. The argument of the learned Senior Counsel in relation to Rule 26 is therefore untenable and rejected.

12. A perusal of the conclusions drawn by the learned Single Judge in the order, dated 16.05.2024, in WP(C)/956/2024, would go to reveal that the same was so drawn by the learned Single Judge relying upon the relevant provisions of law holding the field and there is no perversity, therein. Further, the view taken by the learned Single Judge being based on law holding the field; we are of the considered view that the same is a plausible view and hence, would not call for any interference in the present intra-Court appeal.

13. In this connection, reliance is placed on the decision of the Hon'ble Supreme Court in the case of ***Airport Authority of India v. Pradip***

Kumar Banerjee, reported in ***2025 SCC OnLine SC 232***, wherein, it has been held by the Hon'ble Supreme Court that in anintra-Court appeal, the finding of fact of the learned Single Judge, unless such finding is concluded by the appellate Bench to be perverse, would not be called to be disturbed. It has been further held that merely because another view or a better view is possible; there should be no interference with or disturbance of the order passed by the learned Single Judge unless both sides agree for a fairer approach on relief.

14. In view of the above position, we are of the considered view that the impugned order, dated 16.05.2024, passed by the learned Single Judge in WP(C)/956/2024, would not warrant any interference.

15. In view of the above discussions, the instant writ appeal is held to be devoid of any merit and accordingly, the same stands dismissed. However, there shall be no order as to costs.

16. In the light of the above observations, we are not inclined to interfere with the impugned Judgment and Order dated 12.12.2025 passed by the learned Single Judge in WP(C) No. 58/2024 and WP(C) No. 59/2024.

17. The appeal accordingly is dismissed, no order as to cost.

JUDGE **JUDGE**

Comparing Assistant

RAZOUV ONUO KHOUBVE

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