

By these writ petitions, the petitioners have challenged the common order dated 4th September, 2002 passed by the learned Member, Assam Board of Revenue in Appeal Case Nos.78RA(TIN)/2000 and 79RA(TIN)/2000, dismissing the said appeals on the grounds that the memorandum of appeals are incomplete, as no prayer claiming any relief has been made in such memorandums of appeal.

I have heard Mr. N.C. Das, the learned Sr. Counsel for the petitioners and Mrs. J. Borah, the learned State Counsel appearing for the respondents.

It is submitted by Mr. Das, the learned Sr. Counsel for the petitioners that the learned Member, Assam Board of Revenue ought not to have refused to decide the appeals preferred by them on merit on the ground that there are no formal prayer made in the memorandum of appeals filed claiming any relief and instead ought to have decided the appeals on merit, as in the said appeals, the petitioners have challenged the notices issued under Regulation 165 Chapter 10 of the Assam Land and Revenue Regulation, 1886 (in short, 1886 Regulation) seeking eviction of the petitioners from the land under their possession. According to the learned Sr. Counsel, the petitioners, who are tribals and as such entitled to occupy the land within the tribal belt, cannot be termed as unauthorized occupants as the Margherita Land Advisory Board in its meeting dated 7th January, 2000 approved the allotment of 325 Bighas of land covered by Dag No.789 (Part) of village No.3 Udaipur, Mouza- Tirap to 105 members of local tribal families including the petitioners, which is evident from the certificate dated 13th March, 2000 issued by the Sub-Divisional Officer, who is the Chairman of the Land and Advisory Committee, pursuant to which a further communication dated 21st March, 2000 was issued to the Circle Officer, Margherita to hand over the possession. The learned Sr. Counsel, therefore, submits that had the petitioners been given an opportunity to show cause, those materials could have been placed before the authority to demonstrate that they are not unauthorized occupant of the land within the tribal belt and, therefore, they cannot be evicted under the provisions of Chapter X of the 1886 Regulation.

No affidavit-in-opposition has been filed by the respondents despite pendency of the writ petitions for more than 7 (seven) years. Mrs. Bora, the learned State Counsel, however, has submitted that since the petitioners have not prayed for any relief in the memorandums of appeal filed before the Assam Board of Revenue, the said appeals have rightly been dismissed. Relating to the contention of the petitioners on merit, Mrs. Borah, the learned State Counsel has, however, submitted that the petitioners may now also approach the authority issuing the notice under Regulation 165 of Chapter X of 1886 Regulation and in the event any representation is filed, the same shall definitely be considered by the authority before carrying out the eviction operation.

It appears from the averments made in the writ petitions as well as the annexures appended thereto that the petitioners claimed to be tribals, and as such claimed to be entitled to occupy the land within the tribal belt. It is also the claim of the petitioners that the Land Advisory Board in its meeting dated 7th January, 2000 adopted a resolution for allotment of 325 Bighas of land covered by Dag No.789 (Part) of village Udaipur, Mouza- Tirap to 105 members of local tribal families, which includes the petitioners and the necessary direction, according to the petitioners, were issued by the Sub-Divisional Officer to the Circle Officer to hand over the possession.

Regulation 165 of Chapter X of the 1886 Regulation empowers the authority to carry out the eviction in case any person who without valid authority encroaches upon or occupy any unsettled land. The Sub-Divisional Officer by registering two encroachment cases being Encroachment Case Nos.23/2000 and 24/2000 issued the notices under Regulation 165 of the 1886 Regulation for eviction of the petitioners, however, without giving any opportunity to them to show cause why such eviction operation should not be carried out. The petitioners claim, as it appears from the averments made in the writ petitions, that the Lan

d Advisory Board had adopted the resolution for settlement of the land under the possession. Had the opportunity been given, the petitioners could have demonstrated before the authority that they are not the encroachers within the meaning of Regulation 165(1) of the 1886 Regulation, which opportunity has not been given.

In view of the above, without going into the legality and validity of the common order dated 4th September, 2002 passed by the learned Member, Assam Board of Revenue, the present writ petitions are disposed of with a direction to the petitioners to file representation before the Sub-Divisional Officer (Civil), Margherita within a period of 3 (three) weeks from today giving the details of their claim, which shall be considered by the said authority. The authority thereafter shall pass necessary order in the eviction proceeding Nos. 23/2000 and 24/2000 and carry out the eviction operation, if the petitioners are held to be not entitled to possess any land in the tribal belt under Chapter X of the 1886 Regulation. The said order shall be passed by the Sub-Divisional Officer within 2 (two) months thereafter. Till the aforesaid decision is taken, the status quo as regards the possession of the land in question, as on today, shall be maintained by the parties.

It is needless to say that in the event of failure of the petitioners to file such representation within the aforesaid period of 3 (three) weeks, the authority shall carry out the eviction initiated in eviction proceeding Nos. 23/2000 and 24/2000.

The writ petitions are accordingly disposed of. No cost.