

Heard Mr. Sanjoy Kr. Roy, learned counsel for the petitioner and Mr. M.K. Khatanar appearing for State respondent Nos. 1 to 6.

2) Though notices were issued upon the respondent Nos. 7 to 9, they did not appear and hence the matter proceeded ex parte against them.

3) The matter relates to the order dated 28.11.2008 passed by Special and Additional Deputy Commissioner, Dhubri cancelling the allotment letter No. 2463/1200 dated 23.04.1992 with regard to the land involved in the case and rejecting the proceeding under Section 144 Cr.P.C. by the learned Executive Magistrate pertaining to Golakganj Police Station Case No. 438/2008.

4) The Special and Additional Deputy Commissioner, Dhubri by his order dated 28.11.2008 cancelled the said allotment of land earlier allotted to him vide No. 148220 under Book No. 2463 dated 23.04.1992 to the petitioner. The petitioner submitted that he filed his objection on 20.11.2008 but the same was not considered by the Deputy Commissioner concerned while issuing the impugned order dated 28.11.2008. The petitioner also submitted that he earlier approached the Executive Magistrate/Additional District Magistrate, Dhubri on 20.08.2008 that some persons have taken over his said allotted land and that there is an apprehension of peace over the same and accordingly requested the Magistrate to initiate a proceeding under Section 144 Cr.P.C. with regard to the said allotted land.

5) The Court, in this proceeding, while issuing notice to the respondents on 04.02.2009 in the interim, suspended the impugned cancellation order dated 28.11.2008 which is still in force. The Deputy Commissioner, Dhubri for official respondents filed detail affidavit in the matter.

6) It is seen that as per the Government land allotment policy of Ceiling Surplus Government land, the Deputy Commissioner, Dhubri vide allotment certificate No. 148220 under Book No. 2463 dated 24.03.1992 allotted 2 Bighas - 4 Kathas - 8 Lechas under Dag No. 382 at village Sonakhuli, Part-I under Mouza - Mahamayahat of Agomoni Revenue Circle of Dhubri District in the name of the petitioner Aminur Rahman Sheikh, son of Yakub Ali of Dighaltary with the specific condition that he should be in possession of said allotted land and should enjoy its possession with the further observation made therein that if the land so allotted is for agriculture purpose, even in that case too, the allottee should possess the same by cultivating it and that in no case such allotted land should be handed over to the others or allowed to be possessed by someone, else the allottee would be considered as ineligible for such allotment and he should leave possession of the same and otherwise the allottee would be evicted from allotted land.

7) It is also seen that on proper enquiry, it was found that over the said allotted land of the petitioner, a Mosque was built on a part of it and the remaining part of the said allotted land was also not under the possession of the concerned allottee, the petitioner herein and it is found that the same is under the possession of his sister and brother-in-laws, namely, Mustt. Rejia Bibi, wife of Soban Ali; Abu Bakkar Ali, son of Gadu Sk and Abdul Maleque son of Jamiruddin Sk,.

8) The Deputy Commissioner, Dhubri in his affidavit filed in the case have also clarified that the said fact was duly confirmed by the Circle Officer of Agomani Circle in his report under Memo No. AMC-57/2004/2451 dated 02.09.2008 and by another report of the Assistant Settlement Officer of Agomani Circle under No. AMC(S)13/2006/4-240 dated 05.09.2008 and it is only after receipt of such reports, the Additional Deputy Commissioner, Dhubri by the impugned order dated 28.11.2008 cancelled the allotment certificate No. 148220 dated 24.03.1992 by which the aforementioned land was allotted to the petitioner, since he violated the terms and conditions of allotment and also the provisions of Section 2(4) of the Land Revenue Act, 1989 of the State Government.

9) With regard to the proceeding under Section 144/107 Cr.P.C. it is seen that on the basis of an application of the petitioner with regard to his said allotted land involved in the case, the Additional District Magistrate (Executive Magistrate), Dhubri on 20.08.2008 initially registered a case being Misc. Case No

.60/2008 and on the same day he sought for necessary enquiry report from the Officer-in-Charge of Golakganj Police Station and directed him to take necessary steps in that regard to keep peace and tranquility between the parties over the said land. Subsequently on 11.11.2008 by an ex-parte order, the said ADM, Dhubri promulgated Section 144 Cr.P.C. on said disputed land (allotted land to the petitioner) in said Misc. Case No. 60/2008 preventing entry of the opposite parties of said Misc. Case into the disputed land in question so that it may not lead to breach of peace and public tranquility in the locality with the observation that said opposite party is free to file objection, if any. Later, on 19.11.2008 after hearing both the parties, the said ADM, Dhubri stayed his earlier order dated 11.11.2008 passed in said Misc. Case No. 60/2008 fixing 01.12.2008 for hearing again. After hearing the parties again, said ADM, Dhubri by his order dated 03.12.2008 passed in said Misc. Case No. 60/2008 restricted both the parties to enter in to the disputed land in order to arrest breach of peace and public tranquility in the locality, barring the part on which the Mosque is located and directed the Officer-in-Charge of Golakganj Police Station to take necessary action. The Deputy Commissioner, Dhubri clarified that upon receipt of the necessary report and after hearing the parties, the said Additional District Magistrate, Dhubri on 11.01.2009 finally disposed of the said Misc Case No. 60/2008 by closing the same and cancelled the order invoking Section 144 Cr.P.C. earlier on 03.12.2008. It is seen that said order dated 11.01.2009 of the Additional District Magistrate, Dhubri passed in Misc. Case No. 60/2008 has not been challenged by the petitioner in any appropriate forum.

10) Records reflects that the respondent Nos. 7 to 9 on 19.08.2008 filed an application before the Deputy Commissioner, Dhubri through the Circle Officer, Agomani Revenue Circle praying before the authority that the land that was allotted to the petitioner earlier vide certificate No. 148220 under Book No. 2463 should in fact allotted to them since they are in actual possession of said land and not the allottee, i.e. the petitioner herein. On the other hand the petitioner submitted application before the said revenue authority praying for conversion of his said allotted land to periodic patta. For those purpose reports were sought for and in that regard initially the Circle Officer of Agomani Circle submitted his report on 02.09.2008, followed by the report dated 05.09.2008 of the Assistant Settlement Officer of Agomani Circle and it is only after receipt of such reports, finding that the petitioner is not in possession of his said allotted land, the Additional Deputy Commissioner, Dhubri by his No. DRL-961/GJ/ 75-76/32 dated 10.09.2008 issued show cause notice to the petitioner asking him to reply on or before 25.09.2008 as to why his allotment of said land should not be cancelled since the same has been handed over to others.

11) It is stated by the petitioner that he submitted show-cause reply stating that on a false petition made by said Mustt. Rejia Bibi, Abu Bakkar Ali and Abdul Maleque dated 19.08.2008 that they are in possession of the land in question, the enquiry was made behind him, where false report was submitted with regard to his land and also stated that there is nothing on record to show that the petitioner transferred his said allotted land to those persons. Petitioner further claimed that the petitioner possessed the said land for more than 16 year since March 1992 i.e. from the date of allotment of said land and that as per rule of settlement, he is entitled for periodic patta over said land in his name.

12) However, on being enquired the petitioner could not show anything before the Court that he actually submitted any such reply to the show-cause notice dated 10.09.2008 that was issued to him by the Additional Deputy Commissioner, Dhubri nor he did placed any receipt no. and date of said show-cause reply any a certified copy of the same.

13) Moreover, from the impugned order dated 28.11.2008 of the Special and Additional Deputy Commissioner, Dhubri it can be seen that in spite of giving three additional chances, the petitioner did not filed his show-cause reply pertaining to the show-cause notice dated 10.09.2008.

14) Even the police report dated 15.12.2008 filed in said Misc. Case No. 60/2008, annexed to the writ petition reflects that the family of husband of the respondent No. 7 is in possession of the land in question by constructing house over

er it and the said fact has not been denied by the petitioner.

15) It is a fact that the land involved in the case was allotted to the petitioner by the Government and periodic patta was not allotted to the petitioner for the said land and he just apply for it sometimes in August 2008 only. In the impugned order dated 28.11.2008 the Special and Additional Deputy Commissioner, Dhubri specifically observed that as per Rule, Patta for an allotted land cannot be given to the allottee, if possession of the same is handed over to others and the Special and ADC, Dhubri from the reports of the Circle Officer of Agomani Circle dated 02.09.2008 as well as that of the Assistant Settlement Officer of Agomani Circle dated 05.09.2008 found that the present respondent Nos. 7 to 9 are in possession of the said allotted land of the petitioner and finding the petitioner committing breach of the terms and conditions of the allotment of ceiling free Government land to him as specified in his allotment certificate No. vide No. 148220 under Book No. 2463 dated 23.04.1992, after issuing show-cause notice to the petitioner, to which he did not file any reply, passed the said impugned order dated 28.11.2008.

16) With regard to petitioner's prayer for his right title, interest and possession over his allotted land and for eviction of unauthorized encroachers from it, he can always approach the appropriate Civil Court.

17) From the above, the Court did not find any such illegality with regard to the impugned order dated 28.11.2008 passed under No. DRL-961/GJ/75-76/59 dated 28.11.2008 issued by the Special and Additional Deputy Commissioner, Dhubri cancelling the petitioner's allotment of land to interfere with.

18) Accordingly this petition being devoid of merit stands dismissed.

19) Interim order passed earlier on 04.02.2009 stands vacated.

20) Registry shall forward a copy of this order to the Deputy Commissioner, Dhubri, for his necessary action.