

Purbattar Yduog Handicraft Co-Operative Socieites Ltd. Vs State Of Assam And 5 Ors

Court: Gauhati High Court

Date of Decision: Feb. 6, 2024

Acts Referred: Constitution Of India, 1950 – Article 32, 226, 300A

Assam General Clauses Act, 1915 – Section 23

General Clauses Act, 1897 – Section 21

Hon'ble Judges: Devashis Baruah, J

Bench: Single Bench

Advocate: D. Das, D. P. Borah, R. Borpujari, U. Das

Final Decision: Dismissed

Judgement

1. Heard Mr. D. Das, the learned Senior counsel assisted by Mr. D. P. Borah, the learned counsel appearing on behalf of the Petitioner. I have also

heard Mr. R. Borpujari, the learned Standing counsel appearing on behalf of the Revenue and Disaster Management Department, Government of

Assam and Ms. U. Das, the learned Additional Senior Government Advocate appearing on behalf of the Deputy Commissioner, Kamrup (M) as well

as the Circle Officer, Guwahati Revenue Circle. None has appeared on behalf of the Guwahati Metropolitan Development Authority.

2. The present writ petition challenges the order bearing No.RSS.1418/2006/257 dated 25.04.2014 issued by the Additional Chief Secretary to the

Government of Assam, Revenue and Disaster Management Department (for short – “the impugned order”) and for a further direction that the

Respondent Authorities should not disturb the Petitioner’s rights over the land in question.

3. The facts as could be discerned from the pleadings are that the Petitioner herein is a Cooperative Society which was registered under the Assam

Co-operative Societies Act, 1949. The Petitioner Society was issued a Registration No.G-33/91/92 dated 19.03.1992. It is pertinent herein to mention

that at the time of filing of the writ petition, the Petitioner Society was represented by its then Secretary Shri Paresh Chandra Haloi. Although, the

Memorandum and the Articles of Association or for that matter the byelaws of the Petitioner society have not been enclosed to the writ petition but

from a perusal of the Paragraph No.2 of the writ petition, it reveals that the objectives of the said society was to provide succor and livelihood to the

unemployed youths, widows and distressed women. It was mentioned that the Petitioner society was set up to impart training and to undertake

activities for manufacture and sale of bamboo and cane products and also for imparting skilled training in embroidery and other designer items. It was

also mentioned that with a view to reach the stage of self-sufficiency, the Petitioner society undertook activities for expanding so as to be able to

manufacture products of high quality which can be exported and sold at reasonable prices within and outside the country and also to be able to

compete in the international market.

4. With the above aims and objectives, the Petitioner society made a request to the District Collector, Kamrup for allotment and settlement of land in

its favour to enable the petitioner society to construct permanent workshops for the benefit of the handicraft artisans. The said request made by the

Petitioner society was duly taken note of by the Authorities concerned as discernible from the communication dated 07.07.2004 issued by the Chief

Revenue Assistant of the Office of the Deputy Commissioner, Kamrup, Guwahati (Land Settlement Branch) to the Settlement Officer, Guwahati and

also to the Circle Officer, Guwahati Revenue Circle, requiring the said Authorities to submit reports on the applications for settlement of land made by

the Applicants whose names were mentioned in the said communication.

5. While the said process was ongoing, the Petitioner society also made a formal application to the Minister of Revenue highlighting the object and

benevolent activities of the petitioner society and made a request for allotment and settlement of at least 3 (three) Bighas of land which was lying

fallow under Sarkari Dag No 229 of Sahar Guwahati Part-II, Guwahati Revenue Circle, vide letter dated 07.04.2005. On the same date, the Revenue

(Settlement) Department, Government of Assam, issued an order asking the Deputy Commissioner, Kamrup (Metro) to furnish proposal observing all

formalities. Thereupon, the Office of the Deputy Commissioner, Kamrup (Metro) (Land Settlement Branch) vide a communication dated 07.05.2005

directed the Circle Officer, Guwahati Revenue Circle to make enquiries into the matter and submit report/proposal as per Land Policy after observing

all formalities at an early date.

6. The records reveal that, on 21.05.2005, a report/proposal was submitted to the Deputy Commissioner, Kamrup (Metro) by the concerned Circle

Officer stating about the history and the status of the land so applied for. In the said report of the Circle Officer, it was mentioned that the proposed

land was lying fallow as per the Chitha and that no proposal for settlement of the land in the name of the aforesaid organization had earlier been

submitted. It was also stated that there were no valuable trees and that the land was within the urban area.

7. On the basis of the above report and subsequent enquiries being conducted, vide a Letter No. RSS.307/2005/30 dated 13.09.2005 issued by the

Deputy Secretary to the Government of Assam, Revenue (Settlement) Department and addressed to the Deputy Commissioner, Kamrup

(Metropolitan), Guwahati, it was informed that the Governor of Assam was pleased to order for settlement of Sarkari land measuring 3 (three) Bighas

covered by Dag No. 1968 of Sahar Guwahati Pt-II under Guwahati Mouza (for short referred to as "the land in question") in favour of the

Petitioner society for establishment of modernized factory etc. subject to fulfillment of NGO status of the organization and subject to payment of 30%

of the land Value as premium. It was also mentioned that the land value was fixed at Rs.10 Lakhs per Katha. The Deputy Commissioner, Kamrup

(Metro) Guwahati was also directed to hand over the possession of the land to the person concerned and the land records were also directed to be

corrected and the patta be issued after realization of the premium in full.

8. The records reveals that thereupon, the Petitioner duly paid the premium of 45 lakhs in five installments which was duly accepted by the concerned

Respondent Authorities. It is also seen from the records and more particularly the affidavit-in-reply filed by the Petitioner on 03.03.2017 that the

periodic patta No.1180 was issued in favour of the Petitioner society for a period of 20 (twenty) years w.e.f 06.10.2005 to 06.10.2025 on 06.10.2005

itself. The record of rights were also duly corrected on 05.10.2005.

9. From a further perusal of the writ petition, it also transpires that though the settlement was made in favour of the Petitioner society; the premium

was duly received; the records of rights were corrected and the periodic patta was issued, the possession of the land in question was not immediately

handed over. It is stated in the writ petition that the Petitioner came to learn that there was a malicious design initiated by certain vested circles in

connivance with some officials of the Revenue (Settlement) Department to deny the legal and legitimate rights accrued upon the petitioner society in

respect to the land in question.

10. Before further deliberating on the facts as pleaded in the writ petition, this Court finds it very significant to take note of an important aspect. The

land in question was initially a part of the Guwahati Jail as it then existed and before carving out the same. A Public Interest Litigation was filed

challenging certain steps taken by the Respondent Authorities to allot the land to various persons/organizations. This PIL was registered as WP(C)

PIL No.8/2001. In the said PIL, the Division Bench of this Court had passed an order dated 28.02.2001 thereby inter alia directing that no allotment be

made in respect to the lands which were reserved out of jail land including the Guwahati Jail which included the land in question. The said interim

order was subsisting when the land was allotted and settled with the Petitioner society.

11. Now moving forward, the Petitioner apprehended that the settlement order dated 13.09.2005 may be cancelled by the Respondent Authorities that

too without any notice for which the Petitioner approached this Court by filing a writ petition on 31.08.2006. The said writ petition was registered and

numbered as WP(C) No.4369/2006. It is alleged in the instant writ petition that on 06.09.2006, an order issued by the Additional Chief Secretary to the

Government of Assam, Revenue Department bearing No. RSS.307/2005/Pt-I/12 dated 30.08.2006 was handed over the Petitioner. By the said order,

the settlement so made in favour of the Petitioner dated 13.09.2005 was cancelled and the status quo of the land prior to its settlement was directed to

be maintained. The justification so set forth in the said order behind the cancellation of the settlement was that the settlement made in favour of the

Petitioner was done when there was a restraining order in respect of any allotment/settlement of jail land in different district/towns/cities of Assam to

any person including Guwahati. It was also mentioned that since the restraining order passed in WP(C) PIL No.8/2001 was operative and that the

final decision of the High Court was awaited, therefore, in view of the same, the Settlement order dated 13.09.2005 was cancelled. Further to that, it

was mentioned that as the settlement dated 13.09.2005 was passed in clear violation of this Court's directions, the settlement order dated

13.09.2005 was void ab initio and as such there was no necessity of seeking any explanation from the Petitioner society.

12. The Petitioner being aggrieved by the cancellation order dated 30.08.2006, challenged the same by filing a writ petition which was registered as

WP(C) No.4551/2006. This writ petition filed by the Petitioner society was analogously heard with WP(C) PIL No.8/2001. Vide a common judgment

and order dated 27.07.2007, both the proceedings were disposed of. It is relevant to take note of that the learned Division Bench of this Court vide its

judgment dated 27.07.2007 interfered with the order of cancellation dated 30.08.2006. However, granted the liberty to the authorities concerned to

take appropriate action by issuing notice to the Petitioner in the event such authority proposes to cancel the order of settlement made in favour of the

Petitioner and to pass necessary orders thereafter in accordance with law. Paragraph Nos. 10 to 16 of the said judgment passed by the learned

Division Bench dated 27.07.2007 being relevant are quoted hereinbelow.

“10. The main contention of the learned counsel for the petitioner in the PIL is relating to the settlement of land kept reserved for Guwahati jail to

other persons or organization or agencies. The affidavits filed by the Inspector General of Prisons as well as by the Deputy Secretary to the Govt. of

Assam, Home (B) Department disclose that the Govt. took the decision to shift the jail from the existing place to a different place and some portion of

the land originally kept reserved for Guwahati jail have been settled with some other persons/organizations. The Govt. is the appropriate authority to

decide about the requirement of land for the jails. The Court cannot interfere with such decisions of the Govt. in settling the land with other persons

which was originally kept reserved for: Guwahati jail, unless such action is illegal, arbitrary and against public interest. The petitioner, however, has not

been able to demonstrate how such action of the Govt. is illegal, arbitrary or against public interest. It also appears from the affidavit filed by the

Deputy Secretary to the Govt. of Assam, Revenue (Settlement) Department in WP(C) No. 4551/2006 that though certain land was kept reserved for

Guwahati jail, a portion of it was resumed by the Govt. in Revenue Department on 29.12.1987. That being the position, we are unable to interfere with

the various orders settling the part of the land, in favour of private persons/organizations/agencies, which was originally kept reserved for Guwahati

jail.

11. As noticed above, the grievance of the petitioner in WP(C) 4551/2006 is that an order of settlement made in its favour settling 3 bighas of land on

13.9.2005 has been cancelled by the Addl. Chief Secretary vide order dated 30.8.2006 without issuing any notice and without giving any opportunity of

being heard.

12. From the order impugned in the said writ petition, i.e. order dated 30.8.2006, it is evident that no such notice was issued to the petitioner before

passing such order of cancellation of settlement though the Deputy Secretary in the affidavit dated 7.3.2007 has admitted that the order of settlement

can be cancelled after providing an opportunity of hearing to the aggrieved persons.

13. There is no dispute to the fact that the order of settlement was passed on 13.9.2005 in favour of the petitioner settling an area of 3 bighas of land

and the petitioner pursuant to such order of settlement has paid the premium fixed by the authority. Even the revenue records have been corrected

accordingly. A right has been accrued on the petitioner in WP(C) No. 4551/2006 by virtue of such order of allotment and on payment of the premium

fixed by the Govt. and such right cannot be taken away without hearing the petitioner and without issuing any notice, as has been done in the instant

case by the Addl. Chief Secretary, while cancelling the settlement made in favour of the petitioner.

14. That being the position, the order dated 30.8.2006 cannot stand the scrutiny of law, the same having been passed in violation of the principles of

natural justice. Hence the order dated 30.8.2006 is set aside.

15. It is, however, open to the authority concerned to issue notice to the petitioner, in the event such authority proposes to cancel the order of

settlement made in its favour and pass necessary order thereafter, in accordance with law.

16. The PIL No. 8/2001 and WP(C) No. 4551/2006 are accordingly disposed of with the aforesaid directions and observations. No costs.

13. From the above quoted paragraphs of the judgment dated 27.07.2007, it would reveal that the learned Division Bench of this Court had

categorically observed that the Government is the appropriate authority to decide about the requirement of the land for the jails and the Court cannot

interfere with such decision of the Government in settling the land with other persons which was originally kept reserved for Guwahati Jail, unless

such action was illegal, arbitrary and against public interest. It was also observed that the Petitioner of WP(C) PIL No.8/2001 failed to demonstrate as

to how the action of the Government in settling the land with other persons was illegal, arbitrary and against public interest. It is for that reason, the

learned Division Bench of this Court had categorically observed that the Court was not inclined to interfere with the various orders of settling the part

of the land in favour of the private persons/organizations/agencies which was originally kept reserved for Guwahati jail. As regards the writ petition so

filed by the Petitioner society, the learned Division Bench of this Court had observed that with the land being settled in favour of the Petitioner society

and the Petitioner society having paid the premium, a right had accrued upon the Petitioner society and the same cannot be taken away without

hearing the Petitioner and without issuing any notice. As the order dated 30.08.2006 by which the settlement dated 13.09.2005 was cancelled, was

without issuance of any notice, the order of cancellation dated 30.08.2006 was interfered with. However, liberty was given to the State Government, if

it proposes to cancel the order of settlement by issuing notice to the petitioner society.

14. Thereupon, the records of the writ petition reveals that in the year 2010, the Petitioner claims to have sought for permission for construction. There

were various reminders issued to the Commissioner of Guwahati Municipal Corporation requesting for granting of the permission. It is however very

significant to note from Annexure-19 and 20 to the writ petition which are two documents and they relate to communications issued to the

Commissioner, Guwahati Municipal Corporation and the Commissioner, Revenue Department, Government of Assam. In both the communications,

the Petitioner mentioned that the Petitioner applied for permission for construction and the details given therein were in respect to an application dated

29.07.2010 bearing Misc. Receipt Serial No.809629 in Book No.B-8097. The significance of these details would be seen in the later segments of the

instant judgment.

15. Be that as it may, after around 3½ years from the date of the judgment of the learned Division Bench of this Court, a show cause notice dated

18.01.2011 was issued by the Deputy Secretary to the Government of Assam, Revenue and Disaster Management Department. In the said Show

Cause notice, it was inter alia mentioned that the Petitioner society vide the letter dated 07.04.2005 had applied for settlement of land for establishment

of a training centre, residential accommodation for poor, widow and destitute women in order to make them self-sufficient by imparting training in

cane and bamboo industry. On the basis of the said letter, the Government settled 3 Bighas of land covered by Dag No.1968 of Sahar Guwahati Part-

II under Guwahati Mouza with the Petitioner society on realization of 30% of the land value fixed @Rs.10 Lakhs per Katha subject to the fulfillment

of the NGO status of the organization vide letter dated 13.09.2005. It was mentioned that in spite of so many years of settlement, the Petitioner

society having not created any of the structures for which the application for land settlement was made, the Petitioner society was asked to show

cause as to why the settlement of 3 Bighas of land covered by Dag No.1968 of Sahar Guwahati Part-II under Guwahati Mouza made vide

Government letter dated 13.09.2005 should not be cancelled for not using the land for the purpose for which the application was made. The Petitioner

society was asked to submit the reply within 15 days from the date of receipt of the letter.

16. The Petitioner society on receiving the said notice submitted a reply on 08.02.2011. In the said reply, the Petitioner society categorically mentioned

the difficulties faced for not being able to raise construction. It was mentioned that the GMC authority had also in spite of various requests, have not

issued the building permission. Further to that, it was also mentioned that the order of settlement dated 13.09.2005 did not impose any condition or limit

any time within which permanent structures were to be erected.

17. Pursuant to the reply so submitted by the Petitioner society on 08.02.2011, almost after one year nine months, an order was passed i.e. on

29.11.2012 wherein it was mentioned that from a report from the Commissioner, GMC, it could be learnt that the Petitioner society had sought for

permission for construction of a multistoried residential/commercial apartment, commercial shops over the settled land rather than handicraft

promotion activity centre. It was also mentioned that from the report of the Registrar of Cooperative Societies, the certificate of registration of the

Petitioner society showed that the area of operation of Petitioner society was at Salbari, Satgaon and Noonmati. But on the other hand, the society had

applied for land in Fancy Bazar, Guwahati which was outside the area of operation of the Petitioner society. It was also mentioned that the Petitioner

got the Government land settled by misrepresentation of facts and under such circumstances, the settlement order dated 13.09.2005 was cancelled

and the land records were directed to be corrected. It was also stated therein that the premium so paid by the Petitioner society be returned to the

Petitioner and the Deputy Commissioner was directed to move the Government for necessary refund of the amount.

18. Being aggrieved by the said order dated 29.11.2012, the Petitioner society filed a writ petition being WP(C) No.6190/2012. This Court vide an

order dated 19.12.2012 disposed of the said writ petition observing that in the order dated 29.11.2012 impugned in the writ proceedings, certain

additional facts were taken into consideration which were not a part of the show cause notice. Accordingly, this Court granted liberty to the Petitioner

to make appropriate representation against the said order dated 29.11.2012 treating the same to be a show cause notice and the authority was directed

to pass a speaking order thereupon. It was further directed that the order dated 29.11.2012 may not be given effect to till the passing of the speaking

order.

19. Pursuant to the said order passed by this Court on 19.12.2012 in WP(C) No.6190/2012, the Petitioner submitted a representation on 28.12.2012

stating inter alia that the additional grounds on which the order dated 29.11.2012 was passed, was without any basis. It was categorically mentioned

that the permission which was sought for construction was in strict compliance to the objects sought to be achieved and the Petitioner society never

contemplated to do anything otherwise than to promote its objectives i.e. promoting handicrafts activities over the land settled with it. At this stage, this

Court finds it very pertinent to take note of Paragraph Nos. 3(ii) and 3(iii) of the reply submitted by the Petitioner society on 28.12.2012 which are

quoted hereinunder:

“(ii) The application requesting permission for R.C.C. building construction for constructing Show Rooms, Exhibition Center, Modernization Factory

and residential units on the said land was made to the Guwahati Municipal Corporation, Guwahati on 29.07.2010 and, as required, the Society had also

paid the necessary processing fee for grant of the building permission together with the Plan and Estimates under the authority and signature of the

Secretary, Purbattar Udyog Handicraft Cooperative Societies Limited. A bare perusal of the proposed building plan will go to show that the same has

been designed only and only to promote and encourage handicraft activity. The proposed Plan envisaged 3 (Three) RCC Buildings over the settled

land as Building-1, Building-2 and Building-3. The proposed Building-1, which assumes top priority over the other two Buildings, is exclusively designed

to house the Handicraft Show Room for show-casing the locally manufactured/woven/produced handicrafts. It is designed to cover the entire

permissible Ground Floor area of 535.79 square metres. The Handicraft Exhibition Center/Modernization Factory, also to showcase the items and hold

Exhibitions will cover the entire permissible First Floor area of 434.82 square metres with the Second Floor to be utilized as the Society's Office-

cum-Hall covering the entire permissible area of 434.82 square metres. The proposed Building Nos. 2 and 3 have been designed to be set up as Car

Parking areas on the Ground Floors and residential units for the members and various staff/employees of the Society. The proposed Building No.2 will

consist of 4 (four) residential units on each floor whereas the proposed Building No.3 will consist of 3 (three) residential units on each floor, as detailed

in the Site Plan Map available with the GMC authority. To reiterate, the said residential units are only meant for use, occupation and utilization by the

members and staff/employees of the Society who are dedicated and integral to the promotion of the solemn objects of the Society.

(iii) The proposed building Plan is in strict compliance of the object sought to be achieved. The Society has never ever contemplated to do anything

otherwise than to promote its objectives of promoting handicraft activity over the land settled with it.

20. On the aspect pertaining to the area of the operation of the society, it was mentioned in the reply dated 28.12.2012 that though in terms with

Clause-3 of the byelaws of the Petitioner society, the area of operation was indicated as Salbari, Noonmati and Satgaon but the said Clause also

provided that as per the requirement, the territorial limit can be altered with the approval of the Registrar. It was mentioned that due steps were taken

for alteration of area of operation and the amendment of the byelaws of the society.

21. The record further reveals that while the proceedings was pending before the concerned authority in the Revenue and Disaster Management

Department, the Deputy Secretary of the said Department wrote a letter to the Chief Executive Officer of the Guwahati Metropolitan Development

Authority on 15.10.2013 asking about its views in respect to a letter submitted by the Petitioner pertaining to settlement of the Government land

measuring 3 (three) Bighas covered by Dag No.1968 of Sahar Guwahati Part-II under Guwahati Mouza with the Petitioner society. To the said

communication, the Chief Executive Officer of the Guwahati Metropolitan Development Authority had issued a communication dated 18.11.2013 to

the Deputy Secretary to the Government of Assam, Revenue and Disaster Management Department stating inter alia that the land settled with the

Petitioner society is in the prime location which is very important and is required by the GMDA for the proposed Multilevel Car Parking Project as

considered by the Ministry of Urban Development, Government of India under the JNNURM. It was also mentioned that the GMDA was very much

interested in availing the above 3 Bighas of land free of cost and if required, the GMDA is also ready to pay the actual premium paid to the

Government by the Petitioner society along with bank interest. Thereupon hearings were conducted and the impugned order was passed on

25.04.2014 whereby not only the settlement order dated 13.09.2005 was cancelled but the land which was settled with the Petitioner was resettled

with the GMDA for development of multistoried car parking and infrastructure facilities. Being aggrieved by the order dated 25.04.2014, the Petitioner

hence approached this Court by filing the instant writ petition on 02.05.2014. This Court vide an order dated 07.05.2014 issued notice and also directed

the parties to obtain instruction as to whether they would be willing to attempt mediation for resolving the dispute out of Court.

22. On 31.07.2014, an affidavit-in-opposition was filed by the Respondent No.3. In the said affidavit, it was mentioned that from the communication

received from the Commissioner, GMC dated 30.04.2011, it came to the knowledge of the Revenue and Disaster Management Department that the

Petitioner had sought permission for construction of a multistoried residential/commercial apartment, commercial shops over the settled land rather

than establishment of training centre, residential accommodation for poor, widow and destitute women in order to make themselves self-sufficient by

imparting training in cane and bamboo industry which the Petitioner society had stated in their application dated 07.04.2005. It was mentioned that the

plan so submitted by the Petitioner society to the GMC authority for construction of residential flats in the two 8 storied buildings (Building 2 and 3) do

not conform to the aims and objectives of the said society as intimated earlier to the State Government. It was further mentioned that from the report

of Registrar of Cooperative Society as well as the certificate of registration of the Petitioner society shows that the area of operation of the said

society was at Salbari, Satgaon and Noonmati. But the society had applied for land in Fancy Bazar, Guwahati which was outside the area of operation

of the Petitioner's society. In addition to the above, it was stated that as it appears that the Petitioner had proposed to use the land in question for

commercial purpose in violation of the terms and condition of the settlement by the State Government by changing the purpose of utilization of land

from the purpose for which it was applied for thereby concealing this fact from the Government at the time of settlement, it tantamounted to

misleading the Government and obtaining settlement by misrepresentation.

23. Pursuant to the filing of the said affidavit by the Respondent No.3, another additional affidavit was filed by the Respondent No.3 on 28.07.2015. In

the said additional affidavit, it was mentioned that the Additional Deputy Commissioner, Kamrup (M), Guwahati and the Senior Sub-Registrar, Kamrup

(M) had informed the deponent of the said additional affidavit that two registered deed bearing Serial No.18220 and Deed No.11903 (partition deed)

and Serial No.18223 and Deed No.11904 (Relinquishment Deed) were executed by the Secretary of the Petitioner society namely Shri Paresh

Chandra Haloi on 07.10.2005. It was mentioned that the original deeds could not be traced out but the records of registration were available in the fee

book of Sub-Registrar Office. Further to that, a letter dated 05.12.2014 was issued by Shri Putul Baishya, Inspector of Police, CID to the Sub-

Registrar from which it reveals that Shri Paresh Chandra Haloi, the Secretary of the Petitioner society reportedly partitioned and relinquished the land

in 2005 vide the Deed Nos. 11903/05 and 11904/05 in favour of Shri Manab Das and 6 others. It was further mentioned that the land was settled at a

concessional premium at the rate of 30% of the land value (applicable to NGOs and Trusts etc. devoted to public purposes, which yield no return to

private individuals) for establishment of training centre for poor, widow and destitute women in order to make them self-sufficient. It was not settled

for commercial purpose. It was therefore stated that as the Petitioner had proposed to use the land in question for commercial purpose in violation of

terms and conditions of settlement by the State Government by changing the purpose of utilization of land from the purpose for which it was applied

and it amounted to misleading the Government for their personal gain for which the Government of Assam had cancelled the land settlement vide the

impugned order dated 25.04.2014. In paragraph No.3 of the said additional affidavit, it was also mentioned that the petitioner by ignoring the very

purpose of using the land for poor and destitute woman and establishing the training centre had been partitioned and relinquished the land in 2005 by

way of Registered Deeds by keeping in dark the authorities concerned and has applied for multistoried construction for residential and commercial

flats.

24. To the said affidavit-in-opposition and the additional affidavit filed by the Respondent No.3, the Petitioner filed a common affidavit-in-reply on

03.03.2017. In the said reply, amongst denying the various statements and allegations made in the affidavit-in-opposition as well as in the additional

affidavit-in-opposition filed by the Respondent No.3, the Petitioner categorically mentioned in the Paragraph No.13 as regards what form of

construction the Petitioner proposed to make on the land for which the permission was sought for. It is however relevant to observe that the Petitioner

did not bring on record the application so filed by the petitioner seeking construction and also did not disclose who actually applied for the permission.

Rather, on oath, the Petitioner stated what type of construction the Petitioner sought permission to construct. The said paragraph No.13 of the

affidavit-in-reply is quoted herein under:

“13. That, in reply to the statements made in paragraph 15 of the affidavit-in-opposition, the deponent begs to refer to and reaffirm the statements

made in the other paragraphs of the writ petition, more particularly, paragraph 28 of the writ petition. It was clearly mentioned in the representations

dated 28.12.2012 and dated 11.09.2013 of the petitioner society that the proposed Building - 1 was exclusively designed to house Handicraft Show

Room for show-casing the locally manufactured/woven/produced handicrafts. It has been designed to cover the entire permissible Ground Floor area

of 557.79 square metres. The Handicraft Exhibition Center/Modernization Factory, also to show-case the items and hold Exhibitions would cover the

entire permissible First Floor area of 434.82 square metres with the Second Floor to be utilized as the Society's Office-cum-Hall covering the

entire permissible area of 434.82 square metres. The proposed Building - 2 and Building - 3 have been designed to be set up as car parking areas on

the Ground Floors and residential units for the members and various staff/employees of the Society. It transpires from the impugned Order dated

25.04.2014 that no fault was found with the proposed Building - 1, meaning thereby, the said Building - 1 was found to be in conformity with the object

and purpose for which the land was settled. It is stated that in the very first application dated 07.04.2005 of the petitioner society it was clearly

indicated that in the event of settlement of the plot of land under reference, the same would also be utilized for residences apart from training centre.

It is really preposterous on the part of the respondent authority to observe that the intended purpose of construction of residential flats in Building - 2

and Building - 3 was not in conformity with the aims and objectives of the petitioner society. It is emphatically stated once again, as in the writ petition,

that the petitioner society had never ever intended to use the land for commercial purposes in violation of the terms and conditions of settlement. It is

categorically stated that the petitioner society has never ever contemplated to do anything otherwise than to promote its objectives of promoting

handicraft activity. The deponent begs to refer to and rely upon the terms and conditions of settlement as embodied in the Khiraj Periodic Patta issued

in favour of the petitioner society. The deponent begs to state that the quoted portion of the representation dated 28.12.2012 is to be read in context

with the whole object made in the said representation and cannot be read in isolation for the purpose of twisting the real context.Ã¢â‚¬â€œ

25. As regards the Partition Deed bearing No.11903 and Relinquishment Deed No.11904, the Petitioner categorically denied that any such deed(s)

were executed by the Petitioner through its Secretary. Further to that, it was mentioned that the Secretary of the Petitioner had made applications

under the Right to Information Act, 2005 before the Public Information Officer of the Office of the Senior Sub-Registrar, Kamrup (M) on 10.08.2015

seeking the details of the persons with whom, it was alleged that the Secretary of the Petitioner had executed the two registered deeds. However, no

information was provided. On the aspect of granting settlement at the rate of 30% of the prevailing market price, it was stated that it was the norm

with all non-Government institution and other socio-cultural institution, trusts etc. of public nature. It was further mentioned that the impugned order

dated 25.04.2014 was in contravention of the Settlement Rules inasmuch as the Commissioner is empowered under Rule 26 of the Settlement Rules to

either confirm or cancel any settlement if it was made or issued in contravention of the Rules. It was stated that if there is no violation of the Rules

while granting or issuing of the settlement, the Commissioner has no jurisdiction to exercise his power under Rule 26 of the Settlement Rules.

26. Another additional affidavit was filed on 30.01.2018, this time by the Respondent No.1. This additional affidavit brings to light various aspects

which the Petitioner ought to have disclosed but were not disclosed. In the said additional affidavit, it was mentioned that the Petitioner society through

its Chairman as well as the Secretary had executed two registered Irrevocable Power of Attorneys thereby appointing/nominating/

constituting/authorizing M/s Bhuyan Projects Private Ltd. a company registered under the Companies Act, 1956 having registered office situated at

Raj Apartment, B.K. Kakoty Road, Ulubari, Guwahati Ã¢â‚¬â€œ 781007 and represented by its Director Shri Ripun Bhuyain, son of Late M.R. Bhuyan inter

alia for the purpose of applying before the GMDA/GMC or other connected authorities for obtaining permission to undertake construction of

multistoried R.C.C. Building over the said plot of land to construct/build multistoried commercial/residential building, modernized factory, residential

flat/flats, commercial shop/shops over the said plot of land as well as to raise, collect, receive the money/consideration from the prospective

parties/purchasers of residential flats and prospective tenants/buyers for the commercial portion as well as for the modernized factory of the proposed

building and acknowledge the same etc. It was further mentioned that on the basis of the said Power of Attorney, permission was duly applied for

commercial-cum-residential building for Himalayan Agency of M/s Bhuyan Projects Pvt. Ltd.

27. This Court had duly perused the documents which have been enclosed to the said additional affidavit filed by the Respondent No.1. As the said

documents are very pertinent to decide the dispute, this Court finds it apt to deal with the same in detail.

(i) Annexure-A to the said additional affidavit is the application form to erect, re-erect or to make material alteration in a building addressed to the

Commissioner, Guwahati Municipal Corporation and the number mentioned therein was GPL/29/346/29072010. The enclosure to the said document

are the receipts of the process fee of Rs.4,500/- and the Receipt No. therein was 809629 corresponding to Book No.8097 dated 29.07.2010. At this

stage, if this Court takes note of the communications enclosed as Annexure-19 and 20 to the writ petition, the details of which are mentioned in

Paragraph-14 herein above, it would show that the Chairman/Secretary of the Petitioner society referred to this very application and the receipt

bearing Serial No.809629 in Book No.B-8097. This application was signed by Shri Ripun Bhuyan, the attorney of the Petitioner society.

(ii) Annexure-B and Annexure-C are two registered irrevocable general Power of Attorneys bearing Deed Nos. 1891 and 3299 dated 25.05.2010 and

04.09.2010 respectively. By these two irrevocable general Power of Attorneys, the Chairman as well as the Secretary of the Petitioner society had

nominated M/s Bhuyan Projects Private Ltd. represented by its Director, Shri Ripun Bhuyan as the Attorney of the Petitioner society to carry out

various activities i.e. for making application before the concerned authority for permission and thereupon after obtaining permission, constructed

multistoried buildings. Clauses 8, 9 and 10 of the registered Power of Attorney bearing Deed No.1891 dated 25.05.2010 are very pertinent inasmuch

as the attorney not only has been permitted to raise construction but also to raise, collect, receive the money/consideration from prospective

parties/purchasers of residential flats and prospective tenant/buyers for the commercial portion as well as for the modernized factory of the proposed

building. Further to that, power was given to authorize the proposed buyers of the residential flats and the commercial shop/shops of the building to

mortgage their portion of the flat/flats/shop/shops to any financial institution/Bank/Banks or any financial authority/authorities for financial assistance

and to enter into agreement(s) with such proposed buyers of the flat/flats/shop/shops and also for the modernized factory. Clause 10 further seems to

be in complete conflict from the pleadings of the Petitioners in both the writ petition as well as in the affidavit-in-reply inasmuch as it empowers the

attorney holder to sell, resale, lease out, let out the flat/flats, shop/shops and spaces of the proposed multistoried buildings (parking space and utility

space) to the buyers of the flats and also to sell or transfer in any way partly or in full the commercial portions/modernized factory of the proposed

building. Clauses 8, 9 and 10 of the said Power of Attorney being relevant are quoted herein below:

8. To raise, collect, receive, the money/consideration, from, the prospective parties/purchasers of residential flats and

prospective tenants/buyers for the commercial portion as well as for the modernized factory of the proposed building and acknowledge the same.

9. To authorise the proposed buyers of the residential flats and commercial shop/shops of the building to mortgage their portion of flat/flats/shop/shops

to any financial institution/Bank/Banks or any financial authority/authorities for financial assistance and to enter into an agreement with such proposed

buyers of the flat/flats/shop/shops and also for the modernized factory.

10. To sell, resell, lease out, let out the flat/flats, shop/shops and spaces of the proposed multistoried building (parking space and utility space) for the

Buyers of the flats only and also our said attorney shall be entitled to sell or transfer in any way in part or in full of the commercial

portions/modernized factory of the proposed building.

(iii) Annexure-D to the said additional affidavit is the statement of the proposal and the certificate by the owner and the registered architect of the

proposed building which shows that the ground floor was proposed for parking and commercial. The first floor, second floor, third floor would be used

as residential and commercial whereas the fourth floor to the eighth floor would be used for residential purpose. The parking space available would be

77 of which 26 would be open and 51 would be stilt parking or ground floor covered parking. This statement of the proposal and the certificate

enclosed as Annexure-D to the additional affidavit is not only contrary to paragraph 3(ii) and (iii) of the representation submitted on 28.12.2012 as well

as the paragraph No.13 of the additional affidavit-in-reply which quoted hereinabove but also shows that the Petitioner made false statements on oath.

28. To that said additional affidavit filed by the Respondent No.1, the Petitioner through its Secretary filed an affidavit-in-reply on 09.02.2018. There is

no denial to those documents enclosed to the additional affidavit of the Respondent No.1. Rather, for the tenor of the affidavit-in-reply, it reveals that

the documents were rather admitted. In the said affidavit-in-reply, it was mentioned that the Power of Attorneys and the agreements entered into with

M/s Bhuyan Projects Private Ltd. were cancelled by the writ petitioner by execution of revocation of deed with due intimation to M/s Bhuyan Projects

Private Ltd. by notice sent through registered post which was duly received by M/s Bhuyan Projects Private Ltd. and the same was duly within the

knowledge of M/s Bhuyan Projects Private Ltd. To that said affidavit-in-reply, the revocation letter dated 16.02.2012 addressed to the Registrar,

Kamrup (M); copy of the revocation deed dated 12.01.2012; postal receipt dated 13.01.2012 and a letter dated 20.10.2012 to the Commissioner, GMC

were enclosed as Annexure-1, 2 and 3. This Court has duly perused the said communications and finds it relevant to take note of the enclosures in

detail as the same in the opinion of this Court are not a correct reflection to the contents of the affidavit-in-reply.

(i) Annexure-1 is a communication issued to the Registrar, Kamrup (M) dated 16.02.2012. In the said communication, it was stated that the former

Chairman of the Petitioner society along with the present Secretary made agreement with M/s Bhuyan Projects Private Ltd. on 25.05.2010 and also

executed registered Power of Attorney bearing Deed No.1891/2010 dated 26.05.2010 before the Office of the Sub-Registrar, Kamrup (M),

Guwahati. The Petitioner society had instructed M/s Bhuyan Projects Private Ltd. to do as per the development agreement but the said company

failed to do so. Subsequently, the said M/s Bhuyan Projects Private Ltd. insisted for a fresh agreement for which the previous agreement was

cancelled and a new agreement was signed which was registered on 06.09.2010 in spite of unwillingness of the Petitioner society. It was further

mentioned that the Petitioner society had decided to cancel all agreements between M/s Bhuyan Projects Private Ltd. and to revoke the Power of

Attorney bearing Deed No.1891 dated 26.05.2010 and had requested M/s Bhuyan Projects Private Ltd. to come to the Office of the Sub-Registrar,

Guwahati for execution of the Deed of Revocation in respect to the General Power of Attorney bearing Deed No.1891 dated 26.05.2010. It was also

mentioned that the representative of the Petitioner went to the Sub-Registrar's Office to revoke to Power of Attorney bearing Deed No.1891 but

the Sub-Registrar Office refused to do so and as such the Power of Attorney was revoked before the Notary Public on 12.01.2012. It is interesting to

note at this stage that it is well settled that a registered Power of Attorney can only be revoked by a Registered Deed of Revocation and not by

executing a Deed of Revocation before a Notary Public.

(ii) Annexure-2 is the Deed of revocation of Power of Attorney bearing Deed No.1891 dated 26.05.2010 executed before a Notary Public of the

Government of Assam.

(iii) Annexure-3 is the communication dated 20.10.2012 issued to the Commissioner, Guwahati Municipal Corporation intimating the Commissioner,

Guwahati Municipal Corporation that the agreement between the Petitioner society and Shri Ripun Bhuyan no longer subsists due to the failure of Shri

Ripun Bhuyan to stick to the terms and conditions of the agreement and the authority was requested to issue NOC to the Petitioner society only.

It is also relevant to take note of that in the said affidavit-in-reply filed on 09.02.2018, it was mentioned that the Petitioner society had also filed a suit

being Title Suit No.52/2018 along with Misc. Case No.109/2018 before the Court of the Civil Judge, Senior Division No.1, Kamrup (M) at Guwahati

for cancellation of all those deeds executed with M/s Bhuyan Projects Private Ltd. It is beyond comprehension of this Court why the Petitioner took 6

(six) long years to challenge the Deeds by filing a suit in the year 2018 just prior to filing of the affidavit-in-reply.

29. This Court however finds it very pertinent to observe that the agreements which were entered into by the Petitioner society with the M/s Bhuyan

Projects Private Ltd., the power of Attorneys, building permission application were not brought on record by the Petitioner society for the reasons best

known. Furthermore, if by way of the additional affidavit filed by the Respondent No.1, the Power of Attorneys as well as the application for building

permission were not brought on record, this Court would have been in complete darkness as regards these documents.

30. While the writ petition was pending, another very vital development had taken place. An application was filed by the Petitioner society before this

Court for deleting the name of the erstwhile Secretary Shri Paresh Chandra Haloi and allowing the Petitioner society to be represented by its

Chairman Shri Ripun Bhuyan. It is significant to note that this Chairman i.e. Mr. Ripun Bhuyan is the Director of M/S Bhuyan Projects Pvt. Ltd

against whom the suit was filed for cancellation of various deeds. The fate of the said suit need not therefore be further presumed. This application

was filed on 16.08.2021 and was registered and numbered as I.A.(Civil) No.1525/2021. In the said application, an additional affidavit was filed by the

petitioner bringing on record the copy of the proceedings of the Annual General Meeting dated 28.09.2020 and the Approval Letter dated 09.11.2020

as Annexure I and II respectively. In the minutes of the Annual General Meeting enclosed as Annexure-I to the said additional affidavit, it reveals

from resolution No.5 that the then Secretary of the Petitioner society who had initially filed the writ petition was dismissed from the post of the

Secretary and Member of the Board of Directors of the Cooperative Society on the ground of committing financial anomalies. Resolution 9 of the said

Meeting is very pertinent for the adjudication of the writ petition which is quoted herein below:

“Resolution 9: The house entrusts the President and Secretary to file case in Hon'ble Gauhati High Court for recovering the land of the

Cooperative Society measuring 3 Bighas from Government and decides that if the land is re-allotted in the name of the Cooperative Society, it will be

sold and the loan of the Cooperative Society will be repaid with the sale proceed.

31. From the above resolution, it would be seen that the Petitioner society now proposes to sell the land which is the subject matter of the dispute in

the instant proceedings. The application for substitution was allowed vide an order dated 16.02.2022 passed by this Court and accordingly, the records

were duly corrected.

32. In the backdrop of the above pleadings, let this Court take note of the respective submissions of the learned counsels for the parties.

33. Mr. D. Das, the learned Senior counsel appearing on behalf of the Petitioner submitted that a settlement was made in favour of the Petitioner

society on the orders of the Governor dated 13.09.2005. The conditions stipulated in the said settlement order were that the Petitioner society was

required to establish a modernized factory etc. subject to fulfillment of the NGO status of the organization and payment of 30% of the land value as

premium. The Petitioner society admittedly enjoys an NGO status and had duly paid the premium of Rs.45,00,000/-. In pursuance to the payment of

the said premium by the Petitioner society, the land records were duly corrected on 05.10.2005 and a periodic patta was issued on 06.10.2005 for a

period of 20 years w.e.f. 06.10.2005 to 06.10.2025. He further submitted that once the settlement has been made and the periodic patta was issued,

the recourse taken by the Respondent Authorities to cancel settlement is on the face of it amounts to arbitrariness and malicious actions on the part of

the Respondent Authorities to deprive the Petitioner of its constitutional right under Article 300A of the Constitution. He further submitted that it is an

established principle of law as settled by the Division Bench of this Court in its judgment rendered in the case of The State of Assam Vs. Sifat Ali and

Others reported in AIR 1967 Assam & Ngld 3 (1965 SCC OnLine Gau 28) wherein it was duly observed that though the settlement may be cancelled

under Rule 26 by the Commissioner but the Commissioner had no right to cancel the periodic patta issued in pursuance to the order of settlement. In

that regard, the learned Senior counsel referred to Paragraph Nos. 7, 8 and 9 of the said judgment and submitted that as the periodic patta has been

issued in the name of the Petitioner, a right accrues upon the Petitioner over the land and it cannot be cancelled under the provisions of Assam Land

and Revenue Regulation 1886 (for short "the Regulation"). The learned Senior counsel further submitted that the judgment of the Division Bench

in the case of Sifat Ali (supra) was approved by the Full Bench of this Court in the case of Jiban Chandra Deka and Others Vs. The State of Assam

and Others reported in (1994) 1 GLR 268. Referring to Section 11 of the Regulation, the learned Senior counsel submitted that the rights of the

Petitioner who is now a settlement holder has to be regulated in terms with the patta.

34. The learned Senior counsel further drew the attention of this Court to the Patta which have been issued to the Petitioner (enclosed as Annexure-1

to the Affidavit-in-Reply filed by the Petitioner) and submitted that the Petitioner now is being regulated by the terms in the said patta and the

Respondent Authorities cannot cancel this patta in the manner sought to be done. He further submitted that so long the patta remains, a constitutional

right accrues upon the Petitioner over the land in question in respect of which the patta has been issued and the same can only be taken away by

authority of law that would be either by way of outright purchase or by acquisition in accordance with law. The learned Senior counsel further

submitted that the two reasons for which the impugned order was passed are irrelevant for the purpose of cancellation of the settlement inasmuch as

the Petitioner society till date have not constructed any multistoried residential or commercial building and merely applying for the same, cannot be

held to be a violation of the settlement's prescription.

35. The learned Senior counsel appearing on behalf of the Petitioner further submitted that though the facts may not inspire the confidence of this

Court but the Petitioner's right which stood fructified on account of issuance of the settlement order as well as the issuance of the patta regulating

the settlement requires to be maintained by setting aside the impugned order and passing appropriate directions to the effect that the Petitioner cannot

use the said land for any other purpose other than for setting up the modernized factory and

36. Central Council for Research in Ayurvedic Sciences and Another Vs. also for the purpose of forwarding its objects for which the settlement was

applied for.

36. On the other hand, Mr. R. Borpujari, the learned Standing counsel appearing on behalf of the Revenue Department submitted that the impugned

order so passed calls for no interference by this Court under Article 226 of the Constitution on the ground that this Court while exercising the

jurisdiction under Article 226 for issuance of a writ in the nature of certiorari would not interfere with the order unless the order is palpably erroneous

or without jurisdiction. He submitted that there has to be an error of law which is apparent on the records which would justify interference. In that

regard, the learned Standing counsel referred to the judgment of the Supreme Court in the case of Bikartan Das and Others reported in (2023) SCC

Online SC 996.

37. The learned Standing counsel submitted that the facts in the present case would clearly show that the Petitioner society had played fraud upon the

Government by deceiving the Government and thereby obtained the settlement order and consequently patta was issued. The actions of the Petitioner

would clearly show that at no point of time, they were at all interested in establishment of a training centre, residential accommodation for poor,

widow, destitute women for which the application was submitted on 07.04.2005 citing these reasons. On the other hand, the Secretary of the

Petitioner society right from the time, the Petitioner was granted settlement, have been taking steps for constructions of multistoried residential and

commercial building in connivance with M/S Bhuyan Projects Private Ltd. The Registered Irrevocable Power of Attorneys which have been brought

on record by the Respondents clearly shows that the Petitioner society had granted all the rights to the M/S Bhuyan Projects Private Ltd. by

appointing them as Attorneys not only for construction but also for selling, leasing out the residential as well as the commercial flats including the

factory to be set up. He submitted that as the Respondent Authorities were hoodwinked and resultantly the settlement order was passed, the entire

settlement so granted stands vitiated by fraud. The learned Standing counsel further submitted that it is a well settled principle of law that fraud vitiates

all proceedings and consequently, the settlement order as well as the patta which have been issued in favour of the Petitioner stands vitiated. He

therefore submitted that the impugned order so passed requires no interference from this Court.

38. The learned Standing counsel further submitted that the State Government who have granted the settlement cannot be said to be powerless if at a

later stage it comes to light that the settlement so granted was on account of fraud and misrepresentation which is apparent from the facts of the

instant case. He submitted that if the State Government has the power to grant settlement, the State Government equally has the power to revoke or

cancel the settlement in view of the provisions of Section 23 of the Assam General Clauses Act, 1915 which is pari materia to Section 21 of the

General Clauses Act, 1897. He therefore submitted that the judgments in the case of Sifat Ali (supra) and Jiban Chandra Deka (supra) have no

application to the present case.

39. The learned Standing counsel further submitted that the instant writ petition should be discussed on the ground of suppression of material facts and

for misleading this Court. He submitted that proceedings under Article 226 of the Constitution of India are equitable proceedings for which a person

approaching the Court has to place all material facts. However, it would be seen that the Petitioner failed to do so and also suppressed material facts.

40. On the basis of the above pleadings and the contentions submitted by the learned counsels for the parties, the following points for determination

arises for consideration.

(i) Whether the Petitioner is guilty of suppression of material facts as well as misleading this Court?

(ii) Whether any right has been created in favour of the Petitioner society on the basis of the settlement being made and the consequent issuance of

the patta in favour of the Petitioner society?

(iii) Whether the Respondent Authorities had the authority to pass the impugned order and if so, whether the impugned order was justified in the facts

of the instant case?

(iv) Whether the writ petition is entitled to any relief in the facts and circumstances of the instant case?

41. This Court in detail has narrated the facts supra. From the said facts as already narrated, it would be seen that the Petitioner society is a society

registered under the provisions of Assam Cooperative Societies Act, 1949. The byelaws of the society as well as the certificate of registration of the

Petitioner society for the reasons best known were not placed by the Petitioner. However, the certificate of registration is enclosed as Annexure-II to

the affidavit-in-opposition filed by the Respondent No.3 on 31.07.2014. From the said certificate of registration, it is clear that the area of operation of

the Petitioner society was Salbari, Satgaon and Noonmati.

42. It is relevant to mention that the Petitioner submitted its initial application on 07.07.2004 to the District Collector for allotment and settlement of

land and subsequently, it was followed by another communication dated 07.04.2005. Interestingly, in the application dated 07.04.2005, the Petitioner

society had clearly identified the land wherein the Petitioner society was seeking settlement. However, the same was outside its area of operation as

could be seen from its certificate of registration. Thereupon, the record reveals that on 13.09.2005, settlement was granted in favour of the Petitioner

of a plot of land measuring 3 Bighas covered by Dag No.1968 of Sahar Guwahati Part II i.e. the land in question specifically for establishment of a

modernized factory etc. subject to fulfillment of NGO status of the organization and payment of 30% of the land value as premium. The Petitioner

though submitted the entire premium in five installments which were duly accepted by the Respondent Authorities and thereupon, the Patta was duly

issued but till 12.10.2011, the Petitioner did not take any steps for the purpose of amending its byelaws and changing its area of operation. It is further

seen from a perusal of Annexure-35 to the writ petition that on 09.11.2011, the Assistant Registrar of Cooperative Society was informed about the

Resolution dated 12.10.2011 in respect to the extension of territorial limits. It is however not known even after passage of a decade as to whether any

follow up steps were taken thereafter. The records further reveals that the Petitioner woke up to change the area of operation only just prior to the

order dated 29.11.2012 after submission of its reply on 08.02.2011.

43. This Court further finds it very pertinent to note that in the representation dated 07.04.2005 enclosed as Annexure-II to the writ petition, it was

specifically mentioned that the Petitioner society was engaged in providing livelihood to the unemployed youth, widows, and destitute women of

various parts of Assam to impart training and to undertake activities for manufacture and sale of bamboo and cane products and for that purpose there

was lack of training centre, residence, etc. and as such the application was filed specifically identifying the land in question for settlement. The

settlement order dated 13.09.2005 further makes it clear that the settlement was made in favour of the Petitioner society for establishment of a

modernized factory etc. subject to the NGO status of the organization and payment of 30% of the land value as premium. It is very pertinent to

mention that the land in question is situated in the heart of the city of Guwahati. The price of such land then and even today is beyond imagination.

However, as the settlement was given for a very noble cause i.e. for setting up a training centre and to construct permanent sheds for the benefit of

the handicraft artisans, destitute women, widows and unemployed youths, the usual premium of the said land was reduced by 70% and at a throw

away price, the premium was fixed.

44. It is also significant to note that the Respondent Authorities even after having notice of the order dated 28.02.2001 in WP(C) PIL No.08/2001 had

settled the said land in favour of the Petitioner. It is also pertinent to observe that the learned Division Bench of this Court in its judgment dated

27.07.2007 did not consider the said aspect but interfered with the order of cancellation dated 30.08.2006 on the ground that the order of cancellation

was passed without issuing any notice and giving an opportunity of hearing to the Petitioner.

45. The record further reveals and more particularly from Annexure-19 and 20 of the writ petition that the Petitioner society applied for permission for

construction of the building. Specific reference was given to the date of the application to be on 29.07.2010 and to Misc. Receipt Serial No.809629 in

Book No.B-8097. This aspect of the matter is very pertinent for adjudicating the instant writ petition taking into account that in the show cause notice

dated 18.01.2011, the Petitioner was specifically asked to show cause as to why the Petitioner society has not raised construction in spite of so many

years. This Court finds it pertinent to observe that the application so filed and the receipt so issued were material documents which ought to have been

enclosed by the Petitioner. However, the Petitioner neither enclosed those documents nor stated who actually applied and what was the content of the

application seeking permission. On the other hand in paragraph 3(ii) and 3(iii) of the reply dated 28.12.2012 and paragraph 13 of the affidavit-in-reply

filed by the Petitioner, a completely contrary picture to the application filed seeking permission to construct is projected.

46. The question therefore arises as to why the Petitioner did not enclose the application so filed on 29.07.2010 as well as the receipt. The reason that

any prudent person would reasonably arrive at is that if the said application was enclosed by the Petitioner, it would show that the application was not

filed by the Petitioner society rather it was filed by Shri Ripun Bhuyan for constructions of a multistoried residential and commercial complex. Not only

that, another very vital aspect would have come to light that the Petitioner had empowered the said Shri Ripun Bhuyan as its Attorney. Consequently,

questions would arise as to what powers have been conferred upon the Attorney. In addition to the above, it is also very pertinent to mention that it

was only at the final stages of the pleadings filed by the Petitioner i.e. in the year 2018 that the Petitioner duly admitted entering into an agreement for

development of land with M/S Bhuyan Projects Pvt. Ltd. as well as executing irrevocable General Power of Attorneys in favour of M/S Bhuyan

Projects Pvt. Ltd. This Court fails to understand that when the crux of the issue relates to the Petitioner entering into the agreement for construction

of multistoried building with M/S Bhuyan Projects Pvt. Ltd., why the Petitioner did not place before this Court the agreement entered into with M/S

Bhuyan Projects Pvt. Ltd. and there was no whisper in the writ petition about the same. Further to that, this Court is perturbed by the action of the

Petitioner in not disclosing at the first place about the execution of the Power of Attorneys.

47. In this regard, this Court finds it very pertinent to refer to the recent judgment of the Supreme Court in the case of K. Jayaram and Others Vs.

Bangalore Development Authority and Others reported in (2022) 12 SCC 815 wherein the Supreme Court categorically observed that it is imperative

that the Petitioner approaching the Writ Court must come with clean hands and put forward all facts before the Court without concealing or

suppressing anything. The law was discussed by the Supreme Court in paragraph Nos. 10 to 13 is quoted herein under:

“10. It is well-settled that the jurisdiction exercised by the High Court under Article 226 of the Constitution of India is extraordinary, equitable and

discretionary and it is imperative that the petitioner approaching the writ court must come with clean hands and put forward all facts before the court

without concealing or suppressing anything. A litigant is bound to state all facts which are relevant to the litigation. If he withholds some vital or

relevant material in order to gain advantage over the other side then he would be guilty of playing fraud with the court as well as with the law, opposite

parties which cannot be countenanced.

11. This Court in *Prestige Lights Ltd. v. SBI* has held that a prerogative remedy is not available as a matter of course. In exercising extraordinary

power, a writ court would indeed bear in mind the conduct of the party which is invoking such jurisdiction. If the applicant does not disclose full facts

or suppresses relevant materials or is otherwise guilty of misleading the court, the court may dismiss the action without adjudicating the matter. It was

held thus : (SCC p. 461, para 33)

“33. It is thus clear that though the appellant Company had approached the High Court under Article 226 of the Constitution, it had not candidly

stated all the facts to the Court. The High Court is exercising discretionary and extraordinary jurisdiction under Article 226 of the Constitution. Over

and above, a court of law is also a court of equity. It is, therefore, of utmost necessity that when a party approaches a High Court, he must place all

the facts before the Court without any reservation. If there is suppression of material facts on the part of the applicant or twisted facts have been

placed before the Court, the writ court may refuse to entertain the petition and dismiss it without entering into merits of the matter.”

12. In *Udyami Evam Khadi Gramodyog Welfare Sanstha v. State of U.P.*, this Court has reiterated that the writ remedy is an equitable one and a

person approaching a superior court must come with a pair of clean hands. Such person should not suppress any material fact but also should not take

recourse to legal proceedings over and over again which amounts to abuse of the process of law.

13. In *K.D. Sharma v. SAIL*, it was held thus : (SCC pp. 492-93, paras 34-39)

“34. The jurisdiction of the Supreme Court under Article 32 and of the High Court under Article 226 of the Constitution is extraordinary, equitable

and discretionary. Prerogative writs mentioned therein are issued for doing substantial justice. It is, therefore, of utmost necessity that the petitioner

approaching the writ court must come with clean hands, put forward all the facts before the court without concealing or suppressing anything and seek

an appropriate relief. If there is no candid disclosure of relevant and material facts or the petitioner is guilty of misleading the court, his petition may be

dismissed at the threshold without considering the merits of the claim.

35. The underlying object has been succinctly stated by Scrutton, L.J., in the leading case of *R. v. Kensington Income Tax Commissioners* in the

following words : (KB p. 514)

“it has been for many years the rule of the court, and one which it is of the greatest importance to maintain, that when an applicant comes to the

court to obtain relief on an ex parte statement he should make a full and fair disclosure of all the material facts. It says facts, not law. He must not

misstate the law if he can help it. The court is supposed to know the law. But it knows nothing about the facts, and the applicant must state fully and

fairly the facts; and the penalty by which the court enforces that obligation is that if it finds out that the facts have not been fully and fairly stated to it,

the court will set aside any action which it has taken on the faith of the imperfect statement. It is

36. A prerogative remedy is not a matter of course. While exercising extraordinary power a writ court would certainly bear in mind the conduct of the

party who invokes the jurisdiction of the court. If the applicant makes a false statement or suppresses material fact or attempts to mislead the court,

the court may dismiss the action on that ground alone and may refuse to enter into the merits of the case by stating, "We will not listen to your

application because of what you have done." The rule has been evolved in the larger public interest to deter unscrupulous litigants from abusing

the process of court by deceiving it.

37. In Kensington Income Tax Commissioners, Viscount Reading, C.J. observed : (KB pp. 495-96)

"Where an ex parte application has been made to this Court for a rule nisi or other process, if the Court comes to the conclusion that the

affidavit in support of the application was not candid and did not fairly state the facts, but stated them in such a way as to mislead the Court as to the

true facts, the Court ought, for its own protection and to prevent an abuse of its process, to refuse to proceed any further with the examination of the

merits. This is a power inherent in the Court, but one which should only be used in cases which bring conviction to the mind of the Court that it has

been deceived. Before coming to this conclusion a careful examination will be made of the facts as they are and as they have been stated in the

applicant's affidavit, and everything will be heard that can be urged to influence the view of the Court when it reads the affidavit and knows the

true facts. But if the result of this examination and hearing is to leave no doubt that the Court has been deceived, then it will refuse to hear anything

further from the applicant in a proceeding which has only been set in motion by means of a misleading affidavit. It is

38. The above principles have been accepted in our legal system also. As per settled law, the party who invokes the extraordinary jurisdiction of this

Court under Article 32 or of a High Court under Article 226 of the Constitution is supposed to be truthful, frank and open. He must disclose all

material facts without any reservation even if they are against him. He cannot be allowed to play "hide and seek" or to "pick and choose" the

facts he likes to disclose and to suppress (keep back) or not to disclose (conceal) other facts. The very basis of the writ jurisdiction rests in disclosure

of true and complete (correct) facts. If material facts are suppressed or distorted, the very functioning of writ courts and exercise would become

impossible. The petitioner must disclose all the facts having a bearing on the relief sought without any qualification. This is because "the court

knows law but not facts".

39. If the primary object as highlighted in Kensington Income Tax Commissioners is kept in mind, an applicant who does not come with candid facts

and "clean breast" cannot hold a writ of the court with "soiled hands". Suppression or concealment of material facts is not an advocacy. It is

a jugglery, manipulation, manoeuvring or misrepresentation, which has no place in equitable and prerogative jurisdiction. If the applicant does not

disclose all the material facts fairly and truly but states them in a distorted manner and misleads the court, the court has inherent power in order to

protect itself and to prevent an abuse of its process to discharge the rule nisi and refuse to proceed further with the examination of the case on merits.

If the court does not reject the petition on that ground, the court would be failing in its duty. In fact, such an applicant requires to be dealt with for

contempt of court for abusing the process of the court.

(emphasis in original)

48. In the opinion of this Court, if the above law declared by the Supreme Court is applied to the facts of the instant case, it would be seen that the

Petitioner is guilty of not approaching this Court with clean hands. The act(s) on the part of the writ petitioner as could be seen from the pleadings

would also show that the Petitioner is guilty of making false statements on oath with impunity as would be seen in paragraph No.13 of the affidavit-in-

reply filed by the Petitioner on 03.03.2017. The above discussion clearly shows that the Petitioner is guilty of misleading, misrepresentation,

suppression of material facts as well as concealment of material facts. On these ground alone, this Court would be justified in dismissing the writ

petition even without going into the merits.

49. Be that as it may, this Court having heard the learned counsels on merits also and having framed various points of determination deems it proper to

deal with the other points of determination. There is no quarrel with the proposition that a settlement so granted confers right upon the settlement

holder over the land and the issuance of patta regulates the said settlement. The law declared by the Full Bench of this Court in the case of Jiban

Chandra Deka (supra) categorically shows that a settlement as well as patta can be cancelled if it is granted in contravention of the Settlement Rules

after giving due opportunity to the lease holder of being heard. It is also well established that when a settlement is being granted and the consequential

patta is issued, the rights under Article 300A of the Constitution of India stands fructified and the same cannot be taken away without the authority of

law. Conversely, it is the opinion of this Court that the person is entitled to protection of his rights on his/her property if such property is

obtained/settled in accordance with law. In other words, if the rights upon the property accrue in accordance with law, then the person would be

entitled to the rights under Article 300A of the Constitution else not. In the said perspective, if this Court takes note of the facts involved, it would

show that the Petitioner society applied for settlement of the land in question representing before the State Authorities that if the settlement of the land

in question is granted to them, they would construct a training centre as well as residential accommodation for poor, widows and destitute women in

order to make them self-sufficient by imparting training in cane and bamboo industry. Paragraph No.2 of the writ petition clearly states as to why the

Petitioner society applied for the settlement of the land in question. On the other hand, the facts enumerated hereinabove would clearly show that the

Petitioner society had never any intention of setting up any training centre or for that matter, residential accommodation for poor, widow and destitute

women. By misrepresenting, the Petitioner society was able to deceive the Government in granting the land settlement in its favour that too at the

heart of the city of Guwahati with 70% discount on the premium. The question therefore arises as to whether the same amounts to fraud being played

upon the State Government for obtaining the settlement. At this stage, this Court finds it pertinent to refer to the judgment of the Supreme Court in the

case of Sukh Sagar Medical College and Hospital Vs. State of Madhya Pradesh and Others reported in (2021) 13 SCC 587 and more particularly

paragraph Nos. 20, 21, 22 and 23 which are quoted hereinbelow:

“20. As to when it would be a case of fraud played on the State Government, would depend on whether it was an attempt by the appellant to

present facts, so as to misrepresent the State. The fraud can either be actual or constructive fraud. The actual fraud is a concealment or false

representation through an intentional or reckless statement or conduct that injures another who relies on it in acting, whereas the constructive fraud is

unintentional deception or misrepresentation that causes injury to another. The actual or constructive fraud as predicated in Black’s Law

Dictionary, 11th Edn. is as follows:

“actual fraud. A concealment or false representation through an intentional or reckless statement or conduct that injures another who relies on it in

acting. Also termed fraud in fact; positive fraud; moral fraud.

constructive fraud. 1. Unintentional deception or misrepresentation that causes injury to another. 2. Fraud in law. Fraud that is presumed under the

circumstances, without regard to intent, usu. through statutorily created inference. Fraud may be presumed, for example, when a debtor transfers

assets and thereby impairs creditors' efforts to collect sums due. This type of fraud arises by operation of law, from conduct that, if sanctioned,

would (either in the particular circumstance or in common experience) secure an unconscionable advantage, irrespective of evidence of an actual

intent to defraud. - Also termed legal fraud; fraud in contemplation of law; equitable fraud; fraud in equity.

21. It may be also useful to advert to the meaning of "actionable fraud" in the Sixth Edn. of the same Law dictionary, as follows:

"Actionable fraud. Deception practiced in order to induce another to part with property or surrender some legal right. A false representation made

with an intention to deceive; such may be committed by stating what is known to be false or by professing knowledge of the truth of a statement

which is false, but in either case, the essential ingredient is a falsehood uttered with intent to deceive. "To constitute actionable fraud, it must

appear that defendant made a material representation, that it was false; that when he made it he knew it was false, or made it recklessly without any

knowledge of its truth and as a positive assertion; that he made it with intention that it should be acted on by plaintiff; that plaintiff acted in reliance on

it; and that plaintiff thereby suffered injury..... Essential elements are representation, falsity, scienter, deception, reliance and injury.

22. Indeed, in the present case, the State Government in its order dated 5-9-2019, has adverted to several aspects including the assessment report of

the MCI and inspection report of the Committee. The substance of the reason weighed with the State Government, as can be culled out from the

stated order, is that the appellant had failed to fulfil the commitment given to the State at the relevant time of providing minimum infrastructure and

fulfilment of the norms of MCI and appointing the staff as per norms of MCI for all this period and was incapable in doing so despite repeated

opportunities given since 2016 by the MCI. Further, even though the appellant was granted conditional letter of permission (LoP) for Academic Year

2016-2017, it had failed to remove the deficiencies, as a result of which not even the first batch could pursue or complete the medical course in the

appellant College. The students concerned kept on making earnest representation to the State authorities to rescue them from the hiatus situation in

which they were trapped. Indisputably, the students concerned (admitted in the first batch of 2016-2017) were eventually reallocated to another

recognised college after November 2019, as no renewal of permission to the appellant College was forthcoming for three successive academic

sessions i.e. 2017-2018, 2018-2019 and 2019-2020.

23. Such circumstances reckoned by the State, by no stretch of imagination, can be disregarded as irrelevant, intangible or imaginary. Rather, the

totality of the situation reinforces the fact that the appellant College had failed and neglected to discharge its commitment given to the State at the

relevant time; and is incapable of fulfilling the minimum norms specified by the MCI for starting and running a medical college. It had thus

misrepresented the State Government at the relevant time by giving a sanguine hope of ensuring installation of minimum infrastructure and setting up

of a robust organisational structure for running of a medical college “in a time-bound programme”. Therefore, it can be safely deduced that it is a

case of constructive fraud played upon the State Government. For, even after lapse of over five years from the date of issuance of essentiality

certificate (28-8-2014), the appellant College is not in a position to secure the requisite permission(s) from the MCI and the Central Government to run

a medical college as per the scheme.

50. The above proposition of law if applied to the facts of the instant case, it would be seen that the Petitioner society had never the intention of setting

up the training centres and the residential homes for the poor, widow and destitute women and for the purpose of imparting any training on cane and

bamboo industry. The Irrevocable General Power of Attorney which have been enclosed to the additional affidavit filed by the Respondent No.1

categorically shows that the Petitioner society permitted its Attorney holder to sell/lease out not only the residential and commercial building but also

the training centre. In fact, all the rights in respect to the land in question was given to the Attorney holders. The act on the part of the Petitioners not

to bring on record the agreement for development entered into with M/S Bhuyan Projects Private Ltd. also raises a presumption that if the said

agreement for development would have been placed before this Court, it would have further shown the illegality so committed by the Petitioner

society. The action on the part of the Petitioner society in the opinion of this Court constitutes an actionable fraud inasmuch as the Petitioner made

representation which were false and also knew that it would never be acted upon and made it recklessly in order to take the benefit of settlement from

the State Authorities that too at the 70% discount and then use it for commercial purposes. Not only that, the Resolution of the General Meeting of the

Petitioner held on 28.09.2020 also shows that the Petitioner would be transferring the land in question by way of sale upon the writ petition decided in

its favour. It is well established that fraud vitiates all proceedings and as in the instant case, the actions of the Petitioner amounts to fraud as well as

misrepresentation which induced the State Government to grant the settlement, it is the opinion of this Court that the settlement so granted was not in

accordance with law and as such, no right had accrued upon the Petitioner under Article 300A of the Constitution in respect to the land in question.

The above analysis therefore decides the second point of determination.

51. The third point for determination is as to whether the authority concerned had the jurisdiction to pass the impugned order and whether the

impugned order was justified in the facts of the present case. The above discussions already made clearly shows that the Petitioner herein had

obtained the settlement from the Respondent Authorities by playing fraud and by misrepresenting the State Government and as such, this Court had

52. Shree Sidhbal Steel Ltd. and others Vs. State of Uttar categorically held that there was no acquisition of right under Article 300A of the

Constitution. In order to decide as to whether the Respondent Authorities had the jurisdiction to cancel the said settlement, it is the opinion of this

Court that Section 23 of the Assam General Clauses Act, 1915 which is pari materia to Section 21 of the General Clauses Act, 1897 would be

applicable. It is a trite principle of law that if a power is conferred to create, it includes the power to destroy and also the power to alter what is

created. This is the principle upon which Section 23 of the Assam General Clauses Act, 1915 is based. In that regard, this Court finds it relevant to

refer to the judgment of the Supreme Court in the case of Pradesh and Others reported in (2011) 3 SCC 193 and more particularly to Paragraph Nos.

38 and 39 which are reproduced herein under:

“38. Section 21 is based on the principle that power to create includes the power to destroy and also the power to alter what is created. Section 21,

amongst other things, specifically deals with power to add to, amend, vary or rescind the notifications. The power to rescind a notification is inherent in

the power to issue the notification without any limitations or conditions. Section 21 embodies a rule of construction. The nature and extent of its

application must be governed by the relevant statute which confers the power to issue the notification, etc. However, there is no manner of doubt that

the exercise of power to make subordinate legislation includes the power to rescind the same. This is made clear by Section 21. On that analogy an

administrative decision is revocable while a judicial decision is not revocable except in special circumstances. Exercise of power of a subordinate

legislation will be prospective and cannot be retrospective unless the statute authorizes such an exercise expressly or by necessary implication.

39. The principle laid down in Section 21 is of general application. The power to rescind mentioned in Section 21 is without limitations or conditions. It

is not a power so limited as to be exercised only once. The power can be exercised from time to time having regard to the exigency of time. When by

a Central Act power is given to the State Government to give some relief by way of concession and/or rebate to newly-established industrial units by a

notification, the same can be curtailed and/or withdrawn by issuing another notification under the same provision and such exercise of power cannot

be faulted on the ground of promissory estoppel.

52. In view of the above proposition and the same being applied to the facts of the instant case, it would be seen that as the Government had the

power to grant the settlement, the Government also had the power to cancel the same if the settlement obtained is not in accordance with law.

53. In the backdrop of the above proposition, the question now arises as to whether the action of the Respondent Authorities in passing the impugned

order was justified. This Court cannot be unmindful of the fact that the relief which have been sought for is for grant of a writ in the nature of

certiorari. The Supreme Court in a recent judgment in the case of Central Council for Research in Ayurvedic Sciences and Another (supra) had

categorically held as to when a writ in the nature of certiorari is required to be issued by the Court. Paragraph Nos. 50, 51 and 52 of the said judgment

are quoted herein under:

“50. Before we close this matter, we would like to observe something important in the aforesaid context:

Two cardinal principles of law governing exercise of extraordinary jurisdiction under Article 226 of the Constitution more particularly when it comes to

issue of writ of certiorari.

51. The first cardinal principle of law that governs the exercise of extraordinary jurisdiction under Article 226 of the Constitution, more particularly

when it comes to the issue of a writ of certiorari is that in granting such a writ, the High Court does not exercise the powers of Appellate Tribunal. It

does not review or reweigh the evidence upon which the determination of the inferior tribunal purports to be based. It demolishes the order which it

considers to be without jurisdiction or palpably erroneous but does not substitute its own views for those of the inferior tribunal. The writ of certiorari

can be issued if an error of law is apparent on the face of the record. A writ of certiorari, being a high prerogative writ, should not be issued on mere

asking.

52. The second cardinal principle of exercise of extraordinary jurisdiction under Article 226 of the Constitution is that in a given case, even if some

action or order challenged in the writ petition is found to be illegal and invalid, the High Court while exercising its extraordinary jurisdiction thereunder

can refuse to upset it with a view to doing substantial justice between the parties. Article 226 of the Constitution grants an extraordinary remedy,

which is essentially discretionary, although founded on legal injury. It is perfectly open for the writ court, exercising this flexible power to pass such

orders as public interest dictates & equity projects. The legal formulations cannot be enforced divorced from the realities of the fact situation of the

case. While administering law, it is to be tempered with equity and if the equitable situation demands after setting right the legal formulations, not to

take it to the logical end, the High Court would be failing in its duty if it does not notice equitable consideration and mould the final order in exercise of

its extraordinary jurisdiction. Any other approach would render the High Court a normal court of appeal which it is not. 'not.'

54. In the instant facts, this Court have already held that the Petitioner society had obtained the settlement by playing fraud and misrepresentation

upon the Respondent State and under such circumstances, this Court had also held that the settlement which was granted was not in accordance with

law and consequently, no right under Article 300A of the Constitution therefore accrued upon the Petitioner. This Court had also held supra that the

State Government was within its jurisdiction to cancel the settlement in terms with Section 23 of the Assam General Clauses Act, 1915. This Court is

also of the opinion that there exists no error of law apparent on the face of the records. Further to that, it is also the opinion of this Court that the

Respondents in the present facts were justified in passing the impugned order. Under such circumstances, the question of issuance of a writ in the

nature of certiorari does not arise.

55. This Court also finds it pertinent to deal with the submission of Mr. D. Das, the learned Senior counsel appearing on behalf of the Petitioner that

this Court ought to set aside the impugned order and pass appropriate directions so that the Petitioner can only use the land settled in its favour for

which it was applied. The said submission in the opinion of this Court is misconceived inasmuch as this Court had already held that no right accrued

upon the Petitioner in respect to the land in question as the settlement was not granted in accordance with law and consequently, this Court found no

reason to interfere with the impugned order. Under such circumstances, any direction so passed, as sought for by the learned Senior counsel would

not only be contrary to the findings observed above but would amount to interfering with the impugned order which neither lacks jurisdiction nor

suffers from an error of law apparent on the records.

56. In view of the above discussions, the last point for determination is to be decided as to what relief(s) the Petitioner herein would be entitled to.

The Petitioner is not entitled for issuance of writ in the nature of certiorari for setting aside and quashing the impugned order.

57. Be that as it may, this Court duly takes note of the fact that the Petitioner society had paid an amount of Rs.45,00,000/- to the Respondent State as

a premium for the land in question. It is the opinion of this Court that the Petitioner society would be entitled to the refund of the said amount as the

settlement had been cancelled.

58. Accordingly, this Court therefore directs the Respondent State and more particularly the Commissioner and Secretary, Revenue and Disaster

Management Department of the Government of Assam as well as the Deputy Commissioner, Kamrup (M) to take appropriate steps for release and

payment of the amount of Rs.45,00,000/- to the Petitioner within a period of 4 (four) months from the date of the instant judgment. The Petitioner is

directed to furnish its bank details to the Deputy Commissioner, Kamrup (M) within 7 (seven) days from today. It is made clear that if within the said

period of 4 (four) months subject to furnishing the bank details, the said amount so directed is not paid to the Petitioner society, interest @7.5% per

annum shall accrue on the said amount from the date of the instant judgment.

59. The instant writ petition stands dismissed except what is observed in paragraph No.58 hereinabove.