

GAHC010146932026



2026:GAU-AS:10137

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

Case No. : WP(C)/3761/2026

KASHEM ALI SK AND ANR
S/O-Lt. UMAR UDDIN SK, R/O-GAURIPUR TOWN, WARD NO-10 P.O, P.S -
GAURIPUR, DIST. - DHUBRI, ASSAM PIN-783331 (PRESIDENT, GAURIPUR
TOWN KABORSTHAN COMMITTEE)

2: ASMAUL KHAN
S/O-SATTER KHAN R/O-TIAMARI PART-I
WARD NO-10 P.O AND P.S - GAURIPUR
DIST.-DHUBRI
ASSAM (SECRETARY
GAURIPUR TOWN KABORSTHAN COMMITTEE

VERSUS

THE STATE OF ASSAM AND 4 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE GOVT.
OF ASSAM, REVENUE AND DISASTER MANAGEMENT DEPARTMENT,
DISPUR, GUWAHATI-6.

2:THE DISTRICT COMMISSIONER
DHUBRI
P.O. AND DIST- DHUBRI
ASSAM
783301

3:THE CIRCLE OFFICER
GAURIPUR REVENUE CIRCLE
GAURIPUR P.O. AND P.S- GAURIPUR DIST- DHUBRI
ASSAM
783331

4:SUDARSHAN MISHRA
S/O- Lt. VODHOR MISHRA WARD NO-12

RABINDRA PATH
P.O. AND P.S DIST.- DHUBRI ASSAM. PIN-783301

5:DILIP KUMAR CHORARIA
S/O-LT. VIKRAM CHAND CHORARIA
R/O- R.K BOSE ROAD P.O. AND P.S DIST. - DHUBRI ASSAM. PIN-78330

Advocate for the Petitioner : MR A ISLAM, MR E HUSSAIN,MR A SHARMA

Advocate for the Respondent : GA, ASSAM,

BEFORE
HONOURABLE MR. JUSTICE MANISH CHOUDHURY

JUDGMENT

Date : 22.07.2026

Heard Mr. A. Islam, learned counsel for the petitioners; Ms. N. Bordoloi, learned Standing Counsel, Revenue Department for the respondent no. 1; and Mr. N. Goswami, learned Junior Government Advocate, Assam for the respondent nos. 2 & 3.

2. The petitioners are the President and the Secretary of one Gauripur Town Kaborsthan Committee [Graveyard]. The petitioners have projected that Gauripur Town Kaborsthan [Graveyard] was established in 1960s over a plot of land measuring 2 Bighas, 3 Kathas & 1 Lessa, covered by Dag no. 234 [old] / 1381[new] under Khatian no. 387 with a portion of Khas land measuring 1 Bigha, 4 Kathas & 19 Lessas, covered by Dag no. 1382, in Ward no. 4 of Gauripur Town. It is mentioned that with the passage of time, the Graveyard [Kaborsthan] became overcrowded and was unable to accommodate burial of corpses. Then, the Committee started using the adjacent plot of land measuring 11 Bighas, 2 Kathas & 3 Lessas, covered by old Dag no. 236 under Khatian no. 387 [‘the subject-land’, for short] also as burial ground finding it vacant. The then Circle Officer, Gauripur Revenue Circle vide an Order dated 30.11.2020 passed in Mutation Case no. DSU/GPR/2020-21/1537/FNUT mutated the subject-plot for Graveyard [Kaborsthan].

3. On 06.02.2026, the respondent nos. 4 & 5, claiming to be the power of attorney holders of the owners of the subject-land, filed an application before the Circle Officer,

Gauripur Revenue Circle, Gauripur [the respondent no. 3] seeking cancellation of the Mutation Order dated 30.11.2020. The respondent no. 3, despite submission of the said application after a long gap from 30.11.2020, entertained the application and issued notice to the petitioners on 06.03.2026 for their appearance and submission of written statements.

4. The respondent nos. 4 & 5 have also, in the meantime, instituted a title suit, Title Suit no. 35/2026 along with an application under Order 39, Rule 1 & 2, Civil Procedure Code [CPC] which has been registered as Misc.[J] Case no. 74/2026. It is stated that the hearing of Misc.[J] Case no. 74/2026 is scheduled on 31.07.2026.

5. Subsequent to institution of Title Suit no. 35/2026 and doubting the intention of the respondent no. 3 and the respondent nos. 4 & 5, the petitioners have instituted a title suit, Title Suit no. 71/2026 claiming title of the subject-plot on the basis of adverse possession and waqf by user. An application under Order 39, Rule 1 & 2, CPC was also filed along with the title suit and the said application has been registered as Misc.[J] no. 126/2026. The hearing of Misc.[J] no. 126/2026 is scheduled on 22.07.2026.

6. It is the grievance of the petitioners that without waiting for the outcome in the title suit, the respondent no. 3 has proceeded to pass an Order on 14.05.2026 in the application filed by the respondent nos. 4 & 5, which has been registered as Case no. GMC/Misc/2026/16. By the Order dated 14.05.2026, the respondent no. 3 has cancelled the Kaborsthan's name by setting aside the earlier Mutation Order dated 30.11.2020. The petitioners have contended that by virtue of the impugned Order, the respondent no. 3 has acted as an appellate authority and also, adjudicated on the title of the subject-land without jurisdiction. It is contended that Gauripur Town Kaborsthan Committee has acquired bona fide title on the subject-land by virtue of adverse possession and waqf by user. As such, the action of the respondent no. 3 in deciding the title of the subject-land is illegal, arbitrary and without jurisdiction, more so, when the matter pertaining to title of the subject-plot is pending adjudication before the competent civil court.

7. The contention advanced on behalf of the petitioners is that the respondent no. 3, by the impugned Order dated 14.05.2026, has adjudicated on the title of the subject-land,

without jurisdiction, is found to be misplaced. Mutation of a land in the revenue records does not create or extinguish the title over land. A Mutation Order does not have any presumptive value on the title and it only enables the person in whose favour mutation is granted, to pay the land revenue.

8. In the case of **Balwant Singh vs. Daulat Singh [D] By Lrs., reported in [1997] 7 SCC 137**, the Hon'ble Supreme Court had an occasion to consider the effect of mutation. It is observed and held that mutation of property in revenue records neither creates nor extinguishes title to the property nor has it any presumptive value on title. Such entries are relevant only for the purpose of collecting land revenue. Similar view has been expressed in the series of decisions thereafter.

8.1 In the case of **Suraj Bhan vs. Financial Commissioner, [2007] 6 SCC 186**, it is observed and held by the Hon'ble Supreme Court that an entry in revenue records does not confer title on a person whose name appears in record-of-rights. Entries in the revenue records or jamabandi have only 'fiscal purpose' i.e. payment of land revenue, and no ownership is conferred on the basis of such entries. It is further observed that so far as the title of the property is concerned, it can only be decided by a competent civil court. Similar view has been expressed in the cases of **Suman Verma vs. Union of India, [2004] 12 SCC 58; Faqrudin vs. Tajuddin [2008] 8 SCC 12; Rajinder Singh vs. State of J&K, [2008] 9 SCC 368; Municipal Corporation, Aurangabad vs. State of Maharashtra, [2015] 16 SCC 689; T. Ravi vs. B. Chinna Narasimha, [2017] 7 SCC 342; Bhimabai Mahadeo Kambekar vs. Arthur Import & Export Co., [2019] 3 SCC 191; Prahlad Pradhan vs. Sonu Kumhar, [2019] 10 SCC 259; and Ajit Kaur vs. Darshan Singh, [2019] 13 SCC 70.**

9. Whether Gauripur Town Kaborsthan has acquired title over the subject-land by adverse possession or not can only be adjudicated by the competent civil court and a title suit in that connection is stated to be pending as on date, with no final outcome yet. Thus, at this stage, the contention of the petitioners regarding acquiring title over the subject-land does not call for any kind of observation in the present proceeding.

10. As mentioned above, the contesting parties have already initiated two title suits, Title

Suit no. 71/2026 and Title Suit no. 35/2026 against each other in respect of the subject-plot and the proceedings of the said two title suits are presently pending.

11. On the issue of recalling the order dated 30.11.2020 by the respondent no. 4, passed earlier by him only, by the Order dated 14.05.2026, the learned counsel for the State respondents have contended that as the earlier Order dated 30.11.2020 was obtained by exercising fraud, as is evident from the Order dated 14.05.2026, such recall is permissible in law as an order obtained by fraud is void and non-est in law.

12. It is well settled principle of law that if an order is obtained by fraud, it cannot be said to be an order in law. An order obtained by fraud on an authority is a nullity and non-est in the eye of law. It can be challenged, at any time, in appeal, revision, writ or even in collateral proceedings. Be that as it may.

13. To decide on the rival contentions as regards obtaining the order by fraud or not, a number of questions of facts would fall for determination, on the basis of evidence placed by the contesting parties, for which the writ proceeding is not the proper remedy.

14. An appellate proceeding is continuation of the original proceeding where the appellate authority can proceed to determine questions of facts and law. The impugned Order dated 14.05.2026 has been passed after hearing both the parties and after directing both the parties to produce documents in support of their respective claim on the subject-land. The impugned Order dated 14.05.2026 besides being an inter-parte order, is an appealable order and against the Order, an appeal lies under Section 147 of the Assam Land and Revenue Regulation, 1886.

15. For the reasons assigned above and in view of availability of an efficacious, adequate and statutory remedy of appeal to the petitioners, this writ petition is not entertained, reserving the liberty to the petitioners to avail the appropriate remedy of appeal before the Appellate Authority.

JUDGE

Simanta Das

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