

GAHC010006372014



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

Case No. : WP(C)/961/2014

MD. ABDUL KAYUM TALUKDAR
S/O MD. I TALUKDAR, VILL. P.O. and P.S. KHATKHATI, DIST- KARBI
ANGLONG, ASSAM

VERSUS

THE STATE OF ASSAM AND 4 ORS
REPRESENTED BY THE SECRETARY TO THE KARBI ANGLONG
AUTONOMOUS COUNCIL, DEPARTMENT OF REVENUE, DIPHU, DIST-
KARBI ANGLONG, ASSAM

2:THE ASSTT. SETTLEMENT OFFICER
DIPHU REVENUE CIRCLE
DIPHU
DIST- KARBI ANGLONG
ASSAM

3:THE REVENUE OFFICER
DIPHU REVENUE CIRCLE
DIPHU
DIST- KARBI ANGLONG
ASSAM

4:MD. SAJU CHOUDHURY
S/O MANIK CHOUDHURY
VILL. KHARIA BASTI
P.O. and P.S. KHATKHATI
DIST- KARBI ANGLONG
ASSAM

5:MD MAFIJUDDIN AHMED
SON OF LATE FADDIN AHMED

CRPF CAMP
GROUP CENTRE
9TH MILE KHANAPARA
GUWAHATI ASSAM PIN 78102

Advocate for the Petitioner : MR.S ROY

Advocate for the Respondent : MRS.V L SINGH

BEFORE
HONOURABLE MR. JUSTICE MANISH CHOUDHURY

ORDER

Date : 12-05-2023

Heard Mr. M.H. Laskar, learned counsel for the petitioner; Mr. J. Chutia, learned Standing Counsel, Karbi Anglong Autonomous Council; and Ms. S. Kemprai, learned counsel for the respondent nos. 1, 2 & 3.

2. The office note dated 19.09.2022 has reflected that fresh service of notice upon the respondent nos. 4 & 5 by usual process were not taken by the petitioner despite previous orders and the said fact is reflected in the order dated 07.12.2022 as well.

3. The factual matrix of the case lies in a narrow compass : It is claimed that the respondent no. 5 was the owner of a plot of land measuring 4 Kathas & 7 Lessas, covered by Dag no. 195 & Patta no. 69, located in Village – Khatkhati Bongrum, Block no. 1, Mouza – Borjan, District – Karbi Anglong [hereinafter referred to as 'the subject-plot', for short].

3.1. According to the petitioner, the respondent no. 5 approached the petitioner

in the year 2010 with an offer to sell the subject-plot as at that time, the respondent no. 5 was in need of money and on receipt of the offer, the petitioner expressed his willingness to purchase the subject-plot at a consideration of Rs. 7,00,000/-. It is the case of the petitioner that the petitioner and the respondent no. 5 agreed orally and the petitioner as per the agreed terms, paid an amount of Rs. 2,00,000/- as advance on 14.09.2010. The petitioner has admitted that there is no written agreement executed between the petitioner and the respondent no. 5 with regard to the alleged sale and purchase of the subject-plot. However on 20.09.2010, the respondent no. 5 handed over vacant possession of the subject-plot to the petitioner and since then the petitioner is in peaceful possession of the subject-plot after developing the same and constructing houses thereon.

3.2. It is the further case of the petitioner that he approached the respondent no. 5 on several occasions to pay the balance amount of the agreed consideration but the respondent no. 5 evaded the petitioner and tried to evict the tenants of the petitioner from the subject-plot. Aggrieved by such action on the part of the respondent no. 5, the petitioner initiated a proceeding under Section 145/146, Code of Criminal Procedure, 1973 and the said proceeding is registered and numbered as M.R. Case no. 45/2012. By an order dated 23.08.2012, the learned Executive Magistrate, Bokajan attached the subject-plot.

3.3. Subsequently, the petitioner had also instituted a title suit in the Court of learned Deputy Commissioner, Karbi Anglong for specific performance of the contract and for permanent injunction. The said title suit had been registered

and numbered as Title Suit no. 4/2012. The title suit, Title Suit no. 4/2012 stood subsequently transferred to the Court of learned Sub-Divisional Magistrate, Diphu for disposal. The petitioner has alleged that subsequently, the respondent no. 5 in collusion with the respondent no. 4 had forcefully evicted the tenants of the petitioner from the subject-plot and transferred the possessory right of the subject-plot to the respondent no. 4 vide a declaration dated 14.02.2012. As a result, the subject-plot came under possession of the respondent no. 4. Though the petitioner approached Khatkhathi Police Station seeking relief, no assistance was rendered by the police personnel of Khatkhathi Police Station. The petitioner has stated that aggrieved by the inaction on the part of the police personnel, he has instituted a writ petition, W.P.[C] no. 1328/2013 and the Court on 15.03.2013 issued notices to the respondents. It is submitted by Mr. Laskar that the writ petition, W.P.[C] no. 1328/2013 is pending as on date.

3.4. The instant writ petition has been instituted by the petitioner with the grievance that the respondent no. 4 and the respondent no. 5 initiated a process for correction of the revenue records pertaining to the subject-plot by approaching the respondent authorities i.e. the respondent no. 1, respondent no. 2 and the respondent no. 3. Against such apprehension of illegal correction of revenue records, the petitioner submitted two representations, dated 23.04.2012 and dated 29.06.2012, before the respondent no. 3 with the prayer to stop any process of transfer of the subject-plot till disposal of the suit, Title Suit no. 4/2012 and M.R. Case no. 45/2012. When without considering the representations submitted by the petitioner, the respondent no. 3 had issued a Katcha Patta and Periodic Khiraj Patta in favour of the respondent no. 4 in respect of the subject-plot on 19.09.2012, the petitioner has instituted the

instant writ petition seeking *inter alia* setting aside of the Katcha Patta and Periodic Khiraj Patta issued in favour of the respondent no. 4 on 19.09.2012 by the respondent no. 3.

4. From the pleadings made in the writ petition, it has emerged that the petitioner had allegedly entered into an oral agreement with the respondent no. 5, purportedly the owner of the subject-plot and on the basis of the said oral agreement, a sum of Rs. 2,00,000/- was handed over by the petitioner to the respondent no. 5 as part-payment of the total agreement consideration for the subject-plot. Subsequently, the respondent no. 5 had allegedly entered into a written agreement with the respondent no. 4 for transfer of the subject-plot in favour of the respondent no. 4. It was on the basis of the written agreement executed between the respondent no. 5 as the seller and the respondent no. 4 as the purchaser, the Katcha Patta and Periodic Khiraj Patta were issued in favour of the respondent no. 4 by the respondent no. 3 on 19.09.2012. Seeking specific performance of the purported oral agreement executed between the petitioner and the respondent no. 5, the petitioner, as the plaintiff, had already instituted a title suit, Title Suit no. 4/2012 before the Civil Court. On query made by the Court, it is answered by Mr. Laskar that no temporary injunction was granted in Title Suit no. 4/2012. As on date, the said title suit, Title Suit no. 4/2012 is pending. If the petitioner who is the plaintiff, succeeds in Title Suit no. 4/2012, there will be a decree for specific performance of the purported oral agreement against the respondent no. 5 who is stated to be defendant therein. In the event of passing of such a decree, the petitioner would be entitled to all the consequential reliefs. The action on the part of the official respondents in issuance of the Katcha Patta and Periodic Khiraj Patta on 19.09.2012 on the

basis of the purported written agreement executed between the respondent no. 5 and the respondent no. 4 would be dependent upon the outcome of the pending title suit and cannot be a subject matter of a writ proceeding instituted under Article 226 of the Constitution of India which is a public law remedy. As the petitioner has already instituted the title suit, Title Suit no. 4/2012 and thus, pursuing civil remedy for specific performance of the purported oral agreement executed between him and the respondent no. 5, this Court does not find any good and sufficient reason to continue with the instant writ proceeding as in the considered view of the Court, resort to the instant writ petition by the petitioner is only for the purpose of multiplication of the proceedings.

5. Accordingly, the instant writ petition is dismissed. The dismissal of the writ petition shall not preclude the petitioner to seek and pursue appropriate relief before the appropriate forum in respect of the subject-plot. No cost.

JUDGE

Comparing Assistant