

GAHC010006572022



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

Case No. : WP(C)/455/2022

SAJALL SINGH
S/O- GURUDEV SINGH, R/O- C/O HOTEL PRINCE, K.C SEN ROAD, PALTAN
BAZAR,
P.S-PALTAN BAZAR, GUWAHATI-08, DIST- KAMRUP (M),
ASSAM,PH. NO-9864039518

VERSUS

THE STATE OF ASSAM AND 11 ORS
REP. BY THE COMMISSIONER AND SECRETARY , GOVT. OF ASSAM, THE
DEPARTMENT OF REVENUE, GUWAHATI-06, DIST- KAMRUP (M), ASSAM

2:THE COMMISSIONER AND SECRETARY
GOVT. OF ASSAM
THE DEPARTMENT OF HOME
GUWAHATI-06
DIST- KAMRUP (M)
ASSAM

3:THE DEPUTY COMMISSIONER
DIST- KAMRUP (M)
PANBAZAR
GUWAHATI-01
ASSAM

4:THE COMMISSIONER OF POLICE
GUWAHATI CITY
PANBAZAR
GUWAHATI-01
DIST- KAMRUP(M)
ASSAM

5:THE CIRCLE OFFICER
DISPUR REVENUE CIRCLE

BASISTHA CHARIALI
GUWAHATI-28
DIST- KAMRUP (M)
ASSAM

6:THE OFFICER IN CHARGE
DISPUR POLICE STATION
DISPUR
GUWAHATI-06
DIST- KAMRUP (M)
ASSAM

7:THE OFFICER IN CHARGE
UDALBAKRA POLICE OUTPOST
UNDER DISPUR POLICE STATION
GUWAHATI-34
DIST- KAMRUP (M)
ASSAM

8:AZIZUR RAHMAN
LAT MANFDAL
DAKHIN GAON REVENUE VILLAGE
LAT.
PRESENTLY SERVING AS LAT MANDAL OF DISPUR REVENUE CIRCLE
BASISTHA CHARIALI
GUWAHATI-29
PH NO- 7002465056

9:BIDHA RAM RABHA
GOVT. VILLAGE HEAD (GAON BURAH) OF LAT NO. 4 (DAKHIN GAON
UDALBAKRA NONKE
UDALBAKRA
UNDER MOUZA BELTOLA
DIST- KAMRUP(M) GUWAHATI-34
ASSAM
AND PRESENTLY RESIDING AT VILLAGE UDALBAKRA
P.O AND P.S- UDALBAKRA
DIST- KAMRUP (M)
ASSAM
PH NO-7638890023
7578813045)

10:SRI SATNAM SINGH
S/O- LATE NAGINA SINGH AND LATE ASHA SINGH
R/O- ADA GUDAM
SRI BHUMI NAGAR
DAKHIN GAON
P.O-UDALBAKRA

P.S- DISPUR
(POLICE OUTPOST UDALBAKRA)
DIST- KAMRUP(M) GUWAHATI-34
ASSAM
PH NO-9706047352

11: BABY KAUR
D/O- LATE NAGINA SINGH AND LATE ASHA SINGH
R/O- ADA GUDAM
SRI BHUMI NAGAR
DAKHIN GAON
P.O-UDALBAKRA
P.S- DISPUR
(POLICE OUTPOST UDALBAKRA)
DIST- KAMRUP(M) GUWAHATI-34
ASSAM
PH NO-9706047352

12: ANNU KAUR @ ANNU PRASAD
D/O- LATE NAGINA SINGH AND LATE ASHA SINGH
R/O- ADA GUDAM
SRI BHUMI NAGAR
DAKHIN GAON
P.O-UDALBAKRA
P.S- DISPUR
(POLICE OUTPOST UDALBAKRA)
DIST- KAMRUP(M) GUWAHATI-34
ASSAM
PH NO-970604735

Advocate for the Petitioner : MR. L K BORAH

Advocate for the Respondent : GA, ASSAM

BEFORE
HONOURABLE MR. JUSTICE MANISH CHOUDHURY

ORDER

Date : 15-03-2023

Heard Mr. L.K. Borah, learned counsel for the petitioner; Ms. P.R. Mahanta, learned Standing Counsel, Revenue Department for the respondent no. 1; Mr. C.K.S. Baruah, learned Junior Government Advocate, Assam for the respondent nos. 2, 3, 4, 5, 6 & 7; Mr. S. Sarma, learned Senior Counsel assisted by Mr. J. Deka, learned counsel for the respondent nos. 10,

11 & 12.

2. The petitioner has instituted the writ petition under Article 226 of the Constitution of India with the following prayers :-

[a] A writ of certiorari or Order or/and any other appropriate writ/order/direction shall not be issued to set aside, quash and cancel the Impugned Next of Kin Certificate no. 17112021-001-04130204 dated 17.11.2021 issued by the Respondent no. 3 in favour of private the Respondent no. 10;

[b] A writ or direction and/or any other appropriate order/direction to the respondents authority to dispose of the application cum complaint dated 27.12.2021 pending before the Respondent no. 3 authority regarding cancellation of impugned Next of Kin Certificate dated 17.11.2021 of issued by the Respondent no. 3 in favour of private the Respondent no. 10;

[c] A writ or direction and/or order to the Respondent nos. 4 and 6 to register an FIR dated 27.12.2021 and investigate the matter lodged by the petitioner against the Respondent no. 10 and others for taking appropriate criminal actions as per law in force;

[d] A writ of certiorari or any appropriate Order or/and any other appropriate writ/order/direction to take appropriate action as to why the service of the post of the Respondent no. 9 shall not be set aside and quashed for his illegal actions/activities for granting death certificate cum legal heir certificate;

[e] A writ of mandamus or Order or/and any other appropriate writ/order/direction to Respondent no. 3 to preserve the entire evidence on record and office file of the Respondent no. 3 in connection with Impugned Next of Kin Certificate no. 17112021-001-04130204 dated 17.11.2021 else the respondents in which Respondent no. 3 may not be destroyed the evidence for proper adjudication of the matter;

[f] A writ of mandamus or Order or/and any other appropriate writ/order/direction to respondent no. 3 as to why he has granted the Impugned Next of Kin Certificate no. 17112021-001-04130204 dated 17.11.2021 without any proper enquiry and also to pass a necessary order/direction to take an appropriate action against the Respondent no. 3 and its responsible persons who are involved in forgery and criminal conspiracy for

granting forged and manufactured Impugned Next of Kin Certificate no. 17112021-001-04130204 dated 17.11.2021;

[g] A writ of certiorari/mandamus or Order or/and any other appropriate writ/order/direction to respondent no. 3 to immediately suspend the Impugned Next of Kin Certificate no. 17112021-001-04130204 Dated 17.11.2021 issued by the Respondent no. 3 in favour of Respondent no. 10 till disposal of the writ petition for ends of justice; and

[h] A writ of certiorari/mandamus or Order or/and any other appropriate writ/order/direction after hearing both the parties the aforesaid payer may be made absolute as per law.”

3. On perusal of the prayers, it is noticed that prayer [a], prayer [b], prayer [d], prayer [f] and prayer [g] are relatable to a Next of Kin [NoK] Certificate bearing no. 17112021-001-04130204 dated 17.11.2021 issued by the respondent no. 3 [the Deputy Commissioner, Kamrup (Metro)] in favour of the respondent no. 10.

4. After considering the submissions advanced by the learned counsel for the petitioner, notices were issued to the respondents on 28.01.2022 with the observation that pendency of the writ petition shall not be a bar for the respondent no. 3 to consider and dispose of the complaint of the petitioner dated 27.12.2021 pending before the said authority as regards the Next of Kin [NoK] Certificate bearing no. 17112021-001-04130204 dated 17.11.2021 issued in favour of the respondent no. 10.

5. During the pendency of the writ petition, the respondent no. 3 has filed an affidavit-in-opposition on 16.03.2022 and in paragraph 3 thereof, the respondent no. 3 has averred that pursuant to the order dated 28.01.2022, a hearing was conducted in his office on 08.03.2022. After causing an enquiry and perusal of the enquiry report submitted thereto, the respondent no. 3 by an order bearing Memo no. AB-20/2022/168 dated 08.03.2022 had cancelled the Next of Kin [NoK] Certificate, assailed in the instant writ petition.

6. Mr. Borah, learned counsel for the petitioner has submitted that in view of the

cancellation of the Next of Kin [NoK] Certificate issued earlier in favour of the respondent no. 10, he has no further grievance as regards prayers [a], [b], [d], [f], [g] & [h], which are relatable to the Next of Kin [NoK] Certificate, since cancelled.

7. As regards the petitioner's prayer [c] is concerned, Mr. Borah, learned counsel for the petitioner has submitted that inaction on the part of the respondent nos. 4 & 6 in registering the First Information Report [FIR], stated to have been lodged by the petitioner on 27.12.2021, the petitioner has cause of action to pursue the writ petition.

8. This Court is of the view that the above submission of the learned counsel for the petitioner is not to be entertained in view of the decisions of the Hon'ble Supreme Court of India in **Sakiri Vasu vs. State of Uttar Pradesh**, reported in [2008] 2 SCC 409 and **Sudhir Bhaskarrao Tambe vs. Heman Yashwant Bhage and others**, reported in [2016] 6 SCC 277. It has been clearly held that a writ petition under Article 226 of the Constitution of India seeking a direction to register of a case is not to be ordinarily entertained.

9. Following the decision in **Sakiri Vasu** [supra], the Hon'ble Supreme Court of India in the subsequent decision in **Sudhir Bhaskarrao Tambe** [supra] has observed as under :-

“2. This Court has held in **Sakiri Vasu v. State of U.P. and Ors.**, reported in [2008] 2 SCC 409, that if a person has a grievance that his FIR has not been registered by the police, or having been registered, proper investigation is not being done, then the remedy of the aggrieved person is not to go to the High Court under Article 226 of the Constitution of India, but to approach the concerned Magistrate under Section 156[3], Code of Criminal Procedure. If such an application under Section 156[3], Code of Criminal Procedure is made and the Magistrate is, prima facie, satisfied, he can direct the FIR to be registered, or if it has already been registered, he can direct proper investigation to be done which includes in his discretion, if he deems it necessary, recommending change of the investigating officer, so that a proper investigation is done in the matter. We have said this in **Sakiri Vasu** [supra] because what we have

found in this country is that the High Courts have been flooded with writ petitions praying for registration of the first information report or praying for a proper investigation.

3. We are of the opinion that if the High Courts entertain such writ petitions, then they will be flooded with such writ petitions and will not be able to do any other work except dealing with such writ petitions. Hence, we have held that the complainant must avail of his alternate remedy to approach the concerned Magistrate under Section 156[3], Code of Criminal Procedure, and if he does so, the Magistrate will ensure, if prima facie he is satisfied, registration of the first information report and also ensure a proper investigation in the matter, and he can also monitor the investigation.

4. In view of the settled position in *Sakiri Vasu* [supra], the impugned judgment of the High Court cannot be sustained and is hereby set aside. The concerned Magistrate is directed to ensure proper investigation into the alleged offence under Section 156[3], Code of Criminal Procedure, and if he deems it necessary, he can also recommend to the SSP/SP concerned change of the investigating officer, so that a proper investigation is done. The Magistrate can also monitor the investigation, though he cannot himself investigate [as investigation is the job of the police]. Parties may produce any material they wish before the concerned Magistrate. The learned Magistrate shall be uninfluenced by any observation in the impugned order of the High Court.”

10. It is also apposite to mention that in **Sakiri Vasu** [supra], the Hon’ble Supreme Court has observed that when someone has a grievance that his FIR has not been registered at the police station and/or a proper investigation is not being done by the police, he rushes to the High Court to file a writ petition or a petition under Section 482, CrPC and in such situation, the High Court should not encourage this practice and should ordinarily refuse to interfere in such matter and relegate the petitioner to his alternative remedy firstly, under Section 154[3] and Section 36, CrPC before the concerned Police Officer and if that is of no avail, by approaching the concerned Magistrate under Section 156[3], CrPC.

11. Having regard to the background fact situation obtaining in the case qua the prayer [c], the instant writ petition is not entertained. As regards the relief sought for in the form of

prayer [d] is concerned, this Court has found that the petitioner has approached the appointing authority of the respondent no. 9 seeking cancellation of his appointment as a Gaonburah and has approached this Court directly. In such view of the matter, the said prayer is not entertained.

12. At this stage, Mr. Sarma, learned Senior Counsel appearing for the respondent no. 10 – 12 has submitted that any observations made by this Court at various stages of the present proceedings shall not be taken as observations on merits on any of the issues involved herein. Having considered such submission, this Court is of the considered view that the submissions has force and likes to observe that any observations made at various stages of the instant writ proceedings under Article 226 of the Constitution of India shall not have any bearing in any other proceedings, as the writ petition is not disposed of finally determining the rights of the parties with regard to the Next of Kin Certificate dated 17.11.2021. As by order dated 17.11.2021 of the respondent no. 3, the Next of Kin Certificate issued in favour of the respondent no. 10 has been cancelled, liberty stands reserved to the respondent no. 10 to take recourse to appropriate remedy available under the law to assail the same on merits.

13. With the observations made above, this writ petition stands disposed of. No Cost.

JUDGE

Comparing Assistant