

GAHC010009942023



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

Case No. : WP(C)/288/2023

ABU BAKKAR SIDDIQUE
HEAD MASTER DULIAPARA ME MADRASSA, S/O- UNUSH ALI, VILL-
DULIAPARA, P.O. GULANDI, DIST.- DARRANG, ASSAM

VERSUS

THE STATE OF ASSAM AND 3 ORS
REP. BY THE COMM. AND SECY. TO THE GOVT. OF ASSAM, REVENUE
DEPTT., DISPUR, GHY-06

2:THE DY. COMMISSIONER
DARRANG
MANGALDOI
PIN- 784125

3:THE ADDL. DY. COMMISSIONER (REVENUE)
DARANG
MANGALDOI
PIN- 784125

4:THE CIRCLE OFFICER
DALGAON REVENUE CIRCLE
DALGAON
DIST.- DARRANG
ASSAM
PIN- 78412

Advocate for the Petitioner : MR A ALI

Advocate for the Respondent : GA, ASSAM

**BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA**

ORDER

Date : 20-01-2023

Heard Mr. A. Gautam, learned counsel for the petitioner as well as Mr. K. Gogoi, learned Govt. Advocate for the State and Ms. G. Hazarika, learned standing counsel for the Revenue Department.

2. The case projected by the learned counsel for the petitioner is that the petitioner is the Head master of Duliapara ME Madrassa under Dalgaon Revenue Circle of Darrang and the said Madrassa was allotted for the said Madrassa. However, some illegal encroachers have allegedly taken over the possession of the part of the school land for which the Madrassa administration is finding difficulties to accommodate the school functions at the play area for the students.

3. It is submitted that on a representation against the encroachment the Deputy Commissioner, Darrang had issued a direction to the Circle Officer, Dalgaon Revenue Circle to carry out eviction. It is submitted that although notices were issued by the Circle Officer on the alleged encroachers to appear before him on 21.01.2022 but thereafter the ejectment proceedings have been stalled for reasons not communicated to the petitioner. Hence, it is submitted that the petitioner has a legal right to have the Madrassa property freed from the encroachers.

4. In the considered opinion of the Court, there are appropriate legal remedies to the petitioner who has the right to approach the Deputy

Commissioner again for following up the eviction process and to approach the jurisdictional Land Grabbing Tribunal for appropriate remedy as provided in the Assam Land Grabbing Prohibition Regulation Act, 2010 or to file a Civil suit for recovery of the possession.

5. Therefore, as alternative and efficacious remedy has been provided for in respect of the grievance of the petitioner, the Court is not inclined to exercise jurisdiction under Article 226 of the Constitution of India for issuance of a direction which can otherwise be issued by the Deputy Commissioner, Darrang or by the Land Grabbing Tribunal or by a Civil Court. Moreover, there is no other good reason for not exercising jurisdiction under Article 226 of the Constitution of India.

6. In the present case in hand, the petitioner is aware of the persons who are encroaching their Madrassa property, but they are not made parties to the present writ petition. Therefore, if any order is passed in this writ petition it would be without hearing the parties who would be materially affected by any order that would be passed by this Court. Without hearing the alleged land grabbers, the Court cannot determine as to whether the encroachers are actually encroachers or are having their independent right to stay in the land in question. Therefore, in the absence of the necessary parties, the Court is of the considered opinion that this is not a fit case to invoke jurisdiction under Article 226 of the Constitution of India.

7. Therefore the writ petition stands dismissed without issuance of notice on the respondents. However, by granting liberty to the petitioners to approach any other forum if so advised.

JUDGE

Comparing Assistant