

GAHC010011112013



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

Case No. : WP(C)/5570/2013

SMTI DURGESWARI BORUAH and 2 ORS
W/O LT. DHARMESWAR DAS

2: BHUPEN BARUAH

3: NITYA BORUAH
BOTH ARE S/O LT. NELA BARUAH
ALL ARE R/O VILL. and P.O. BALIGAON
DHAKUAKHANA
DIST- LAKHIMPUR
ASSA

VERSUS

THE STATE OF ASSAM AND 8 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE GOVT.
OF ASSAM, REVENUE DEPARTMENT, DISPUR, GHY-6

2:THE DY. COMMISSIONER
LAKHIMPUR
NORTH LAKHIMPUR

3:THE SUB DIVISIONAL OFFICER
DHAKUAKHANA
DIST- LAKHIMPUR
ASSAM

4:THE CIRCLE OFFICER
DHAKUAKHANA REVENUE CIRCLE
DIST- LAKHIMPUR
ASSAM

5:BIPUL SAIKIA

S/O LT. GHANA KANTA SAIKIA
CIRCLE OFFICER
DHAKUAKHANA REVENUE CIRCLE
DIST- LAKHIMPUR
ASSAM
PIN-787055
PERMANENT R/O AMTAL
P.O. BONAI
TIWAK
DIST- JORHAT
ASSAM

6:KANTI RAM CHUTIA

7:NAREN CHUTIA
BOTH ARE S/O LT. KASHI RAM CHUTIA

8:CHANDRA PRAVA DAS
W/O LT. CHANDRA DAS

9:RAJ CHUTIA
S/O SATYA CHUTIA
6 TO 9 ARE R/O STATION CHARIALI
P.O. DHAKUAKHANA
PIN-787055
DIST- LAKHIMPUR
ASSAM

Advocate for the Petitioner : MR.N BARUAH

Advocate for the Respondent : MR.A KHANIKAR

**BEFORE
HONOURABLE MR. JUSTICE SUMAN SHYAM**

ORDER

14.09.2023

Heard Mr. A. J. Das assisted by Mr. G. Rengma, learned counsel appearing for the writ petitioners. Also heard Mr. J. Handique, learned Standing Counsel, Revenue Department, Assam appearing for the respondent No.1, Ms. S. Baruah, learned Government Advocate, Assam appearing for the

respondent Nos.2, 3 and 4 and Mr. A. Khanikar, learned counsel representing the respondent Nos.6 to 9. None has appeared for the respondent No.5.

2. The writ petitioners herein claim that they were in possession in respect of a plot of land measuring more or less 8 Lechas covered by Myadi Patta No.23, Dag No.1296 of village Konwar Ghahee Gaon under Mouza Dhakuakhana in the district of Lakhimpur. Out of the aforesaid 8 Lechas of land, 3 Lechas of land was Sarkari and the remaining 5 Lechas was myadi patta land. Due to an apparent land dispute between the writ petitioners and the respondent Nos.6 to 9 the private respondents had made a complaint before the Sub-Divisional Officer, Dhakuakhana i.e. the respondent No.3 herein with a request to evict the petitioners from the plot of land in question on the ground that the petitioners were encroachers in respect of myadi patta land covered by Dag No.1296 Patta No.23 of village Konwar Ghahee Gaon under Mouza Dhakuakhana by constructing a cowshed. The respondent No.3 had forwarded the complaint to the Circle Officer, Dhakuakhana Revenue Circle i.e. the respondent No.4 herein for initiating necessary action in the matter. Consequently, the respondent No.4 had issued eviction notices to the petitioner Nos.2 and 3 directing them to vacate the land measuring 6 Lechas which included land measuring 3 Lechas pertaining to Sarkari Dag, failing which they would be forcefully evicted from the land in question. Being aggrieved by the aforesaid notice, the petitioner No.2 had submitted a representation before the respondent No.4 for recall of the order but the said representation was not considered by the competent authority. Subsequently, the petitioners were evicted from the plot of land in question on 06.09.2023 at the instance of the respondent No.4 and with the help of police, after demolishing the cowshed

and the boundary wall of the land. Thereafter, the possession of the land was handed over to respondent Nos.6 to 9. Aggrieved by the aforesaid action of the respondent No.4, the petitioners have approached this Court by filing the instant writ petition wherein the learned Single Judge, while issuing notice of motion, had passed an interim order dated 23.09.2013 restraining the respondent Nos.6 to 9 to raise any construction over the plot of land measuring 5 Lechas covered by Myadi Dag No.1296, Patta No.23 and 3 Lechas of Sarkari land situated at village Konwar Ghahee Map under Mouza Dhakuakhana in the district of Lakhimpur.

3. The basic argument of the petitioners' counsel is that the disputed land included myadi patta land, over which the respondent No.4 did not have any authority or jurisdiction to issue eviction notice nor was he authorised under the law to evict the petitioners from their myadi patta land. Notwithstanding the same, the respondent No.4 herein had usurped the powers of Civil Court and evicted the petitioners from the land in question by putting the respondent Nos.6 to 9 in possession of the property.

4. Mr. Handique, learned Standing Counsel, Revenue Department, Assam and Ms. S. Baruah, learned Government Advocate, Assam have argued that there is a civil dispute by and between the petitioners and the private respondents which needs to be resolved in the Civil Court and therefore, the relief as prayed for in the writ petition cannot be granted to the writ petitioners. Similar is the stand of Mr. A. Khanikar, learned counsel for the respondent Nos.6 to 9.

5. After going through the pleadings available on record and upon hearing the submissions made by the learned counsel for the rival parties, this Court is

also of the opinion that since it is the admitted fact that part of the land measuring 8 Lechas constitute myadi patta land, the petitioners cannot get back possession of the land unless they succeed in obtaining a decree from the Civil Court by establishing their right, title and interest over the land. If that be so, I find force in the submission of the learned departmental counsel that this matter deserves to be relegated to the Civil Court.

6. Mr. A. J. Das, learned counsel for the writ petitioners as well as Mr. A. Khanikar, learned counsel representing the respondent Nos.6 to 9 have also agreed to the said proposition.

7. In view of the above, without expressing any opinion on the claims and counter-claims made by the contesting parties in this proceeding, this writ petition is being disposed of by granting three months time to the petitioners, with effect from today, to approach the Civil Court by filing a civil suit seeking appropriate decree so as to get back possession of the land in question, if so advised. If the civil suit, as permitted by this Court, is instituted within three months from today, then the same be decided on merit in accordance with law after proper service of summons upon the opposite parties. The interim order dated 23.09.2013 will continue to hold the field for a period of three months from today permitting the petitioners to institute the Title Suit along with appropriate application for temporary injunction, if so advised.

Writ petition stands disposed of accordingly.

JUDGE

Comparing Assistant