

GAHC010016132014



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

Case No. : WP(C)/5167/2014

ANUKUL BARMAN
S/O UPENDRA BARMAN, R/O BARDUBATUP, P.O. BHURAGAON, P.S.
BHURAGAON, DIST- MORIGAON, ASSAM

VERSUS

THE STATE OF ASSAM AND 4 ORS
REP. BY THE COMMISSIONER and SECY. TO THE GOVT. OF ASSAM, DEPTT.
OF PANCHAYAT AND RURAL DEV., DISPUR, GHY-6

Advocate for the Petitioner : MR.N HAQUE

Advocate for the Respondent : GA, ASSAM

BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA

ORDER

Date : 18-07-2023

Heard Mr. N. Hoque, learned counsel for the petitioner. Mr. M. Chutia, learned Government Advocate for respondent nos. 2 and 3. None appears on call for PNRD representing respondent no. 1 and 4.

2. In so far as the respondent no. 5 is concerned, it is seen that although

order to take steps on respondent no. 5 was passed on 26.09.2014 but steps was issued under memo No. 5148 dated 17.11.2014. As per A/D Card, the notice was served on 22.11.2014, which is beyond the returnable date. Therefore, service upon respondent no. 5 cannot be deemed to be duly served.

3. In view of the order proposed to be passed, issuance of fresh notice upon respondent no. 5 is dispensed with.

4. The petitioner claims that a shop consisting of 4(four) rooms was constructed under the Panchayat scheme and in the year 1998, the then Secretary of Bardubatup Gaon Panchayat had handed over the possession of the shop premises to the petitioner. The respondent no. 5, who was the then President of the Gaon Panchayat issued a notice to the petitioner to vacate the shop premises and being aggrieved by the said notice, the petitioner has approached this Court by filing this writ petition under Article 226 of the Constitution of India.

5. In this writ petition, there is no statement to reflect that the Gaon Panchayat had issued a public notice indicating their intention to give out/allot shops on lease. There is also no statement regarding any agreement of the Panchayat with the petitioner to hand over the possession the shop of the petitioner. The petitioner has also not disclosed the rent which was agreed to be paid to the Bardubatup Gaon Panchayat. Rather, the petitioner has set up a case that the respondent no. 5 had illegally prepared the bills of a sum of Rs. 150/-, Rs.1503/-, Rs. 1670/- and Rs. 1670/- which was illegally deposited in the Bank Account of the father of the petitioner.

6. Under such circumstances, the Court does not find that the petitioner has been able to show any legal and/or vested right to occupy the shop rooms in

respect of which the notice of eviction has been issued. From the materials available, it cannot be held that the petitioner was allotted the shop rooms on rental basis, or otherwise handed over on the strength of a valid or lawful agreement.

7. Therefore, the petitioner has miserably failed to establish any legal and/or vested right to occupy the shop in question. Hence, Court does not find this is a fit case to interfere with the impugned direction/notice No. BGP.01/2013-14/Mis/22 dated 14.05.2013. Accordingly, the Court is disinclined/not inclined to interfere with the said impugned notice.

8. Be that as it may, the petitioner, if so advised, may file his written reply against the impugned notice dated 14.05.2013 before the President/Secretary Bardubatup Gaon Panchayat within a period of 15 days from today along with the certified copy of this order. Thereafter, the President/Secretary of the Gaon Panchayat shall pass appropriate orders in accordance with law. In the event, the petitioner fails to file any reply, he would be doing so at his own risk as to consequences arising from such non-filing.

9. The learned Government Advocate shall also transmit the order passed to the Deputy Commissioner, Morigaon (respondent no. 2) so that the order can be communicated to the concerned Gaon Panchayat.

10. The writ petition stands dismissed.

11. The interim order passed on 26.09.2014 stands vacated.

JUDGE

Comparing Assistant