

GAHC010019052014



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

Case No. : WP(C)/6365/2014

MAHESH DEKA 22 ORS
S/O LT. GHAN KANTA DEKA R/O VILL- JALKHANA NAMSALA, P.O.
JALKHANA DIST. NALBARI, ASSAM.

VERSUS

THE STATE OF ASSAM AND 3 ORS
TO BE REP. BY THE SECRETARY TO THE GOVT. OF ASSAM, URBAN
DEVELOPMENT DEPARTMENT, DISPUR, GUWAHATI-6.

For the Petitioners : None appears.

For the Respondents : Mr. R. Borpujari, Advocate,
Revenue Department.

BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH

JUDGMENT & ORDER (ORAL)

19/07/2023

The instant writ petition has been filed being aggrieved by the impugned notices dated 27.11.2014 (Annexure-4 series) issued by the Respondent No.4

whereby the Petitioners had been directed to vacate the possession of the land on which the Petitioners' shops are situated.

2. The case of the Petitioners herein is that the Petitioners are doing their respective business in the shops allotted by the Tihu Town Committee which are situated at Feeder Path in Tihu town. In support of the above, the Petitioners have enclosed various rent receipts issued by the Tihu Town Committee which have been enclosed as Annexure-1 series. It is the case of the Petitioners that the Circle Officer, Tihu Revenue Circle had issued separate notices to each of the Petitioners all dated 27.11.2014 thereby directing the said Petitioners to vacate the possession of the land described in the Schedule to the notice within seven days from the receipt of the said notice.

3. This Court has perused the Annexure-4 series, wherein it appears that the Circle Officer, Tihu Revenue Circle had specifically mentioned the land to be a Government land for road covered by Dag No. 268 of Tihu town under Tihu Mouza.

4. It appears from the record that this Court vide an order dated 11.12.2014 had issued notice making it returnable by 29.01.2015 and till the returnable date, the operation of the impugned notices dated 27.11.2014 was suspended. It further reveals from the record that the interim order has been extended from time to time and at present is subsisting.

5. The record further reveals that the Respondent No. 4 i.e. the Circle Officer, Tihu Revenue Circle filed an additional affidavit on 8th of March, 2018. In paragraph No. 6 of the additional affidavit, it was specifically mentioned that the land in question is a roadside reserved land bearing Dag No. 268, Tihu town under Tihu Mouza and does not belong to the Tihu Town Committee. It was

further mentioned that the Tihu Town Committee had also raised objection in respect to the illegal permanent construction of shops on the roadside reserved land bearing Dag No. 268 of Tihu Mouza on 22.09.2014. The record further reveals that the Respondent No. 3, i.e. the Tihu Town Committee had also submitted an affidavit on 18th of April, 2018, wherein it is also mentioned that the shops/rooms on which the Petitioners are doing their respective business are not the property/constructions of the Tihu Town Committee. It was further mentioned that the Petitioners are unauthorisedly occupying the aforesaid shops/rooms with illegal constructions. The record further reveals that an affidavit-in-reply was filed by the writ Petitioners, wherein it has been mentioned the writ Petitioners are occupying the shops situated within the municipal area of Tihu Town Committee and the writ Petitioners have been paying rent to the Tihu Town Committee for such occupation. Therefore, the occupation of the shops under the Tihu Town Committee by the Writ Petitioners cannot be said to be illegal.

6. Mr. R. Borpujari, the learned counsel appearing on behalf of the Revenue Department submitted that the land is a roadside reserved land of the Government and as such the Respondent No. 4, who is the Circle Officer, Tihu Revenue Circle was within its jurisdiction under Rule 18 of the Settlement Rules to issue notice for which the question of interference by this Court does not arise.

7. Upon perusal of the materials on record and hearing the learned counsel appearing on behalf of the Revenue Department, this Court is of the opinion that if the land is a Government land and more particularly a roadside reserved land, the Petitioners have no right to remain in occupation of the said land in view of Rule 16 of the Settlement Rules. This Court further takes note of the

affidavit filed by the Respondent No. 3, who categorically deny that the structures on which the Petitioners are carrying on their business belong to the Tihu Town Committee. Under such circumstances, the Petitioners have no right to occupy the Government land. The impugned notices all dated 27.11.2014 enclosed as Annexure-4 series to the writ petition therefore do not call for any interference. Accordingly, the instant petition stands dismissed. The interim order passed earlier stands vacated.

JUDGE

Comparing Assistant