

GAHC010024302022



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

Case No. : WP(C)/1014/2022

RATUL SAIKIA AND ANR
S/O- LATE BODON SAIKIA, R/O- VILL.- BALIJAN NATUN GAON, P.O.
AMTENGGA, MOUZA- KAZIRANGA, BOKAKHAT, DIST. GOLAGHAT, ASSAM

2: ATUL SAIKIA
S/O- LATE BODON SAIKIA
R/O- VILL.- BALIJAN NATUN GAON
P.O. AMTENGGA
MOUZA- KAZIRANGA
BOKAKHAT
DIST. GOLAGHAT
ASSA

VERSUS

THE STATE OF ASSAM AND 5 ORS.
REP. BY THE SECRETARY TO THE GOVERNMENT OF ASSAM, REVENUE
DEPARTMENT, ASSAM SECRETARIAT, DISPUR, GUWAHATI-781006.

2: THE DEPUTY COMMISSIONER
GOLAGHAT
P.O.
P.S. AND DIST.- GOLAGHAT
ASSAM

3: THE SUB-DIVISIONAL OFFICER
BOKAKHAT SUB-DIVISION
P.O. AND P.S. BOKAKHAT
DIST. GOLAGHAT
ASSAM

4: THE CIRCLE OFFICER
BOKAKHAT REVENUE CIRCLE
P.O. AND P.S. BOKAKHAT

DIST. GOLAGHAT
ASSAM

5: BALIJAN NATUN GAON PARICHALANA SAMITEE
REP. BY ITS SECRETARY SRI JIBON BORAH
S/O LATE NANDESWAR BORAH
R/O BALIJAN NATUN GAON
P.O- AMTENGA
MOUZA KAZIRANGA
BOKAKHAT
DIST- GOLAGHAT
ASSAM.

6: JIBON BORAH
SECRETARY OF BALIJAN NATUN GAON PARICHALANA SAMITEE
S/O LATE NANDESWAR BORAH
R/O BALIJAN NATUN GAON
P.O- AMTENGA
MOUZA KAZIRANGA
BOKAKHAT
DIST- GOLAGHAT
ASSAM

Advocate for the Petitioner : MR. R PHUKAN

Advocate for the Respondent : GA, ASSAM

BEFORE
HONOURABLE MR. JUSTICE MANISH CHOUDHURY

ORDER

22.03.2023

The two petitioners have joined together to institute the instant writ petition under Article 226 of the Constitution of India seeking *inter alia* a direction to the respondent authorities not to evict them from the plots of land they are occupying at present.

2. The respondent nos. 5 & 6 had sought for their impleadment as party-respondents during the pendency of the writ petition by preferring an interlocutory application, I.A.[C] no. 2151/2022 and they have got themselves as party-respondents pursuant to an order dated

01.08.2022 passed in the interlocutory application, I.A.[C] no. 2151/2022.

3. I have heard Mr. P. Talukdar, learned counsel for the petitioners; Mr. A. Bhattacharya, learned Standing Counsel, Revenue Department for the respondent no. 1; Mr. S. Baruah, learned Junior Government Advocate, Assam for the respondent nos. 2 – 4; and Mr. N.K. Kalita, learned counsel for the respondent nos. 5 & 6.

4. The case of the petitioners, in brief, is that by an Allotment Order bearing no. 26 dated 28.04.1988 and an Allotment Order bearing no. 27 dated 28.04.1988, the two petitioners were allotted a plot of land each, measuring 1 [one] Bigha each, out of Dag no. 299 at Village – Balijan, Mouza – Kaziranga, Bokakhat Revenue Circle, District – Golaghat by the respondent no. 2 i.e. the Deputy Commissioner, Golaghat. According to the petitioners, on being allotted the plots of land, they took possession of the plots of land and continued to occupy those plots of land since then. During the course of their such possession, there were disturbances on a number of occasions. As the said incidents are not relevant for the purpose of adjudication of the instant writ petition, the same are not mentioned herein.

4.1. On 22.02.2021, the two petitioners were served a notice by the respondent no. 3 to attend a public hearing scheduled at 11-00 a.m. on 26.02.2021 at the office of the respondent no. 3. The notice indicated that an application was received from a number of persons with regard to the public road, abutting the plots of land of the petitioners, leading to the public cremation ground located at the same village i.e. Balijan. It is the case of the petitioners that they attended the public hearing wherein the statements of the petitioners' side and the persons from the other side were recorded. But the petitioners were not been furnished the copies of the statements of the other persons whose statements were recorded during the public hearing. Subsequent to the public hearing, some officials allegedly from the Bokakhat Revenue Circle came to the petitioners' plots of land on 29.01.2022 and started measuring the petitioners' plots of land. In view of such developments, the petitioners apprehending that they might be evicted from their allotted plots of land, have approached this Court by this writ petition with the prayer, mentioned above.

5. Mr. Talukdar, learned counsel for the petitioners has, in his submissions, reiterated the sequence of events leading to the visit of the officials allegedly from the office of the Bokakhat Revenue Circle on 29.01.2022 and has submitted that the petitioners are in legitimate possession of the plots of land, measuring 2 [two] Bighas in total, which were allotted to them as far back as in the year 1988. He has further submitted that the petitioners have, in the meantime, submitted applications on 20.11.2011 before the office of the respondent no. 2 seeking settlement of those plots of land in their favour and the applications are still under process. In such view of the matter, there could not be any eviction of the petitioners from their respective plot of land they are legitimately occupying in terms of the Allotment Order bearing no. 26 dated 28.04.1988 and the Allotment Order bearing no. 27 dated 28.04.1988.

6. Mr. Kalita, learned counsel for the respondent nos. 5 & 6 have referred to the statements made in the affidavit-in-opposition filed by the said respondents, to submit that they are the Secretary and the President of Balijan Natun Gaon Parichalana Samittee, Bokakhat. Mr. Kalita has submitted that the two petitioners have encroached a part of the public land meant for the approach road to the public cremation ground located at the Village-Balijan Natun Gaon, abutting the plots of land allotted to the two petitioners. The Parichalana Samittee is a village committee constituted by the villagers for smooth functioning of the village development works. According to Mr. Kalita, the two petitioners though were allotted 2 [two] Bighas of land, had started encroaching, in course of time, the areas of land reserved for the public road leading to the public cremation ground at the village. The Parichalana Samittee had earlier submitted a representation before the official respondents highlighting the matter of encroachment of the public road by the two petitioners on 13.10.2020. Subsequent to the submission of the representation dated 13.10.2020, the officials from Bokakhat Revenue Circle came for a field verification and measured the areas of land allotted to the petitioners and under their possession. After proper measurement, the officials found that the two petitioners are in possession of an area of land measuring 3 Kathas 14 Lessas, beyond the areas of 2 [two] Bighas allotted to them. Because of the encroachment of the areas of land reserved for the public road, the villagers and the local people are facing immense difficulties to do cremation in the public cremation

ground due to shrinkage in breadth of the public road. On 24.01.2022, a public meeting was held in the premises of Namghar of Balijan Natun Gaon Parichalana Samittee in presence of the Revenue Officials and the Executive Magistrate from the office of the Sub-Divisional Officer [SDO], Bokakhat. In the said public meeting, the Executive Magistrate recorded the statements of number of villagers but no action was subsequently taken as regards the alleged continued encroachment. In view of such inaction, the villagers had, once again, submitted a representation before the Sub-Divisional Officer, Bokakhat [the respondent no. 3] on 20.04.2022. Pursuant to a resolution adopted in a public meeting on 26.05.2022 by the villagers of Balijan Natun Gaon Parichalana Samittee, the respondent nos. 5 & 6 have got themselves impleaded in the writ petition as party-respondents to bring the actual events on records and also the grievances of the villagers in the representative capacity.

6.1. The respondent no. 3 i.e. the Sub-Divisional Magistrate, Bokakhat has also filed an affidavit-in-opposition wherein the said authority has referred to the proceedings of Case no. 16/2021, registered under Section 133, Code of Criminal Procedure [CrPC] in respect of the petitioners. In connection with Case no. 16/2021, the public hearing was scheduled on 24.01.2022 at the Natun Gaon Namghar of the village. It is mentioned that the proceedings of Case no. 16/2021 under Section 133, CrPC so drawn up, is still under process, but no further action has been taken because of the interim order passed in this writ petition, on 17.02.2022, to the effect that the petitioners are not to be evicted without the leave of the Court. The respondent no. 3 has further averred that to demarcate the plots of land of the petitioners, a team of Revenue officials including the Supervisor Kanungoe and Lat Mondal have been already been detailed by the respondent no. 4.

7. I have considered the submissions of the learned counsel for the parties and have also perused the materials brought on record by the parties through their pleadings.

8. It is noticed from the Allotment Order bearing no. 26 dated 28.04.1988 and the Allotment Order bearing no. 27 dated 28.04.1988 that by the said two Allotment Orders, the two petitioners were allotted a plot of land measuring 1 [one] Bigha each at village Balijan. The two plots of land are under Dag no. 299 at village Balijan and are contiguous to one

another. Evidently, the two petitioners have right to be in possession of those plots of land. From the pleadings and submissions of the parties, it is found that there is a public road abutting one side of the petitioners' plots of land and the said public road leads to a public cremation ground, which has been commonly used by the villagers and local people for cremation since a long period of time. If the petitioners are in possession of any area of land beyond the 2 [two] Bighas, allotted to them, and in the event it is found that such area of land reserved for the public road, then the petitioners are to be considered as encroachers in respect of such areas of land, beyond their allotted 2 [two] Bighas. Though the respondent no. 5 and the respondent no. 6 in their affidavit have claimed that the petitioners have been found occupying areas of land measuring 3 Kathas 14 Lessas beyond the 2 [two] Bighas allotted to them, after measurements made by the Revenue Officials, the respondent no. 3 is found silent on that aspect in its affidavit-in-opposition as no documents as regards such encroachment has been brought on record by the official respondents.

9. In this connection, Rule 18 of the Settlement Rules which has provided for ejectment, can be referred to. For ready reference, Rule 18 [1] and Rule 18[2] are quoted hereunder.

Rule 18. Ejectment.-

[1] Subject as hereinafter provided, the Deputy Commissioner may eject any person from land over which no person has acquired the rights of a proprietor, landholder, or settlement-holder.

[2] When such person has entered into possession of Government khas land, or Waste land or estate over which no person has acquired the rights of a proprietor, land-holder or settlement-holder or any land that has previously been reserved roads or roadside land or for the grazing of village cattle or for other public purposes, or has entered into possession of land from which he has been excluded by general or special orders and when further, there is no bonafide claim of right involved he may be ejected or ordered to vacate the land forthwith, and the Deputy Commissioner may sell, confiscate or destroy any crop raised, or any building or other construction erected without authority on the land.

10. As per Rule 18[2], when such person has entered into possession of Government *khas*

land, or waste land or estate over which no person has acquired the rights of a proprietor, land-holder or settlement-holder or any land that has previously been reserved for roads or roadside land or for the grazing of village cattle or for other public purposes, or has entered into possession of land from which he has been excluded by general or special orders and when further, there is no bonafide claim of right involved he may be ejected or ordered to vacate the land forthwith.

11. Since the issue involved in this writ petition is alleged unauthorized possession areas of land reserved for public road by the two petitioners beyond their allotted areas of land measuring 2 Bighas, it is deemed appropriate that the respondent no. 3 shall continue the process of demarcation of the plots of land allotted to the two petitioners for which a team of Revenue Officials have already been detailed. After carrying out the demarcation process, if the two petitioners are found occupying any area of land beyond their allotted areas of land measuring 2 [two] Bigha, then the official respondents are at liberty to take necessary steps for eviction of the petitioners in respect of such encroached areas of land in accordance with law. It is further observed that in case the petitioners do not render assistance and cooperation in the process of eviction, the official respondents will be at liberty to take necessary assistance for force. The entire process shall be completed within a period of 2 [two] months from today.

12. With the observations made and the direction given above, the writ petition is disposed of.

13 A copy of this order be furnished to Mr. Baruah, learned Junior Government Advocate for taking necessary steps from his end.

JUDGE

Comparing Assistant