

GAHC010025582023



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

Case No. : WP(C)/740/2023

DILIP KUMAR BHATTACHARYA AND ANR
S/O- LT. GOBINDA BHATTACHARYA, R/O- VILL- PATARKUCHI, P.O. AND P.S.
BASISTHA, GHY-29, DIST.- KAMRUP (M), ASSAM

2: PRADIP KR. BHATTACHARYA
S/O- LT. GOBINDA BHATTACHARYA
R/O- VILL- PATARKUCHI
P.O. AND P.S. BASISTHA
GHY-29
DIST.- KAMRUP (M)
ASSA

VERSUS

THE STATE OF ASSAM AND 3 ORS
REP. BY THE COMM. AND SECY. TO THE GOVT. OF ASSAM, DEPTT. OF
REVENUE (SETTLEMENT), DISPUR, GHY-6

2:THE DY. COMMISSIONER
KAMRUP (M)
GUWAHATI-01
DIST.- KAMRUP (M)
ASSAM

3:THE CIRCLE OFFICER-CUM- ASSTT. SETTLEMENT OFFICER
CHANDRAPUR REVENUE CIRCLE
CHANDRAPUR
GHY-7810
DIST.- KAMRUP (M)
ASSAM

4:SRI RAGHU NATH MALO DAS
S/O- LT.HARIPAD MALO DAS
R/O- VILL- BOHARI RESERVE

P.O. AND P.S. TARABARI
DIST.- BARPETA
ASSAM
PIN- 78130

Advocate for the Petitioner : MR. D C C PHUKAN

Advocate for the Respondent : SC, REVENUE

BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA

ORDER

Date : 20-07-2023

Heard Mr. D.C.C. Phukan, learned counsel for the petitioners. Also heard Ms. J. Hazarika, learned standing counsel for Revenue Department appearing for the respondent No.1; Mrs. G. Borbhuiya, learned Government Advocate for respondent nos. 1 and 3 and Mr. R. Sarma, learned counsel appearing for respondent no.4.

2. The legality of the order dated 16.09.2022, passed by the Circle Officer cum Assistant Settlement Officer, Chandrapur Revenue Circle is under challenge in this writ petition filed under Article 226 of the Constitution of India.

3. The petitioners claim to be owners of the land measuring 14 bighas situated at Khangkargaon covered by a part of Dag No. 7 of K.P. Patta No. 23 of village, Khangkargaon under Chandrapur Revenue Circle.

4. It is projected that as the respondent no. 4 was seeking to grab the part of the said land, the son of the petitioner no. 1 had approached the Circle Officer of Chandrapur Revenue Circle (respondent no.3) for taking necessary action. On the said application, the Circle Officer-cum-Assistant Settlement

Officer (respondent no.3), passed the impugned order directing status quo to be maintained in respect of the said land by both the parties, i.e the petitioners as well as the respondent no. 4.

5. Per contra, the learned counsel for the respondent no. 4 has submitted that the land was originally a patta land. However, by virtue of order dated 29.05.1976, passed by the Additional Deputy Commissioner in Ceiling Case No. 741/76 and 700/76, a plot of land measuring 8 bighas-1 katha-15 lecha, covered by Dag No. 7 of Patta No. 23 was converted into a new dag bearing no. 181, which was deleted from the settlement made in respect of the year 1983 and declared it as a Government land.

6. The learned counsel for the respondent no. 4 projects that he was in occupation of the said land and accordingly, the learned counsel for the respondent no. 4 has disputed the claim of the petitioner of being the owner of the land in question.

7. Having regard to the nature of the claim and counter-claim in respect of the said land, as projected by the petitioners and the respondent no. 4, the Court is of the considered opinion that it would not be appropriate for this Court to exercise jurisdiction under Article 226 of the Constitution of India to decide the highly disputed questions of fact. Therefore, the issue relating to the right, title, interest and possession of the land, in question is left to be decided by competent Civil Court having jurisdiction.

8. The challenge in this writ petition is the order dated 16.09.2022 which is extracted below:

*“ Government of Assam
Office of the Circle Officer
Chandrapur Revenue Officer*

Chandrapur Revenue Circle, Panikhaity
District Kamrup (M)

NOC PC (Misc)9/2022/Part/

Dated:

ORDER

It is hereby informed that a petition is filed for K.P. Patta No. 23, Dag No. 7 of Village Khangkar Gaon, Mouza Panbari under Chandrapur Revenue Circle, by the Pattadar to restrain for land for illegal attempt for land grabbing of the land treating it to be part of ceiling Govt. land and on the basis of Report concerning Lat Mandal after physical verification that the land in concern is presently under trail of Court. Therefore, the ownership of the land could not be able to detected and both the parties are restrain from making any type of construction and maintain status quo till the said case is disposed of, failing which they will be punished.

Schedule of Land

S/d

Land measuring 3 katha (part)

Circle Officer cum
Asstt. Settlement Officer,
Chandrapur Revenue Circle

Of K.P. Patta No. 23, Dag No. 7

Of village Khangkar Gaon

Mouza Panbari

Memo No. CPC (Misc) 9/2022/part/1009(A) Date-
16.09.2022

Copy to :-

- 1) Officer-in-charge, Pragjyotishpur Police Station, Chandrapur. He is requested to maintain law and order situation and resort necessary action for the purpose.
- 2) Concerning the officials of land record.
- 3) Petitioners:- Dilip Kumar Bhattacharya and Pradip Kumar Bhattacharjee, both are sons of Lat Gobinda for information and necessary action.
- 4) Occupier:- Sri Raghu Nath Malo, S/O, Late Haripad Malo Das for information and necessary action.

Circle Officer cum Asstt. Settlement Officer
Chandrapur Revenue Circle"

9. On perusal of the aforesaid order, it cannot be said that under which particular provision of law the order was passed.
10. The said Circle officer-cum-Assistant Settlement Officer cannot be deemed to be a Magistrate within the meaning of section 3 of Cr.P.C. Therefore, the Circle Officer-cum-Assistant Settlement Officer may not have the power under section 133, 144 and 145 of Cr.P.C. to pass an order for removal of nuisance or to pass an order in urgent cases of nuisance or apprehended danger or to take cognizance for offence which is likely to cause breach of peace. Moreover, as already indicted above, the hereinbefore referred order dated 16.09.2022, does not disclose the power under which such order or direction is passed to maintain status quo. Accordingly, this Court is inclined to hold that the impugned order in memo No. CPC (Misc)9/2022/Pt/ 1009, dated 16.09.2022 is not sustainable on facts and in law. Therefore, the Court is of the considered opinion that the impugned order dated 16.09.2022 liable to be and is accordingly, set aside and quashed.
11. Nothing contained in this order shall be construed to be a finding of this Court on the right, title, interest or possession of any parties, i.e the petitioner or respondent no. 4. Therefore, in case the parties are advised to approach the appropriate civil Court, the Court/forum having jurisdiction shall decide the matter in accordance with law.
12. In view of the discussions above, this writ petition stands allowed partly to the extent as indicated above.
13. There shall be no order as to cost.

JUDGE

Comparing Assistant