

GAHC010028372023



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

Case No. : I.A.(Civil)/364/2023

NAJIR ISLAM@NOZRUL ISLAM AND 4 ORS
S/O. LT. KAFIL UDDIN,

2: MIJANUR ISLAM
S/O. NAJIR ISLAM

3: AKTAR HUSSAIN
S/O. NAJIR ISLAM

4: SAMINUR ISLAM
S/O. NAJIR ISLAM

5: SAHANUR ISLAM
S/O. NAJIR ISLAM
ALL ARE R/O. VILL. BALAPARA
P.O. SUTARPARA
P.S. MATIA
DIST. GOALPARA
ASSAM
PIN-783125 (THE PETITIONER NOS. 3
4 AND 5 ARE MINORS AND THEY ARE DULY REP. BY THEIR FATHER AND
NATURAL GUARDIAN NAMELY NAJIR ISLAM @ NOZRUL ISLAM
I.E. PETITIONER NO.1

VERSUS

THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM AND 6
ORS
PANCHAYAT AND RURAL DEVELOPMENT DEPT., DISPUR, GUWAHATI-06.

2:THE DEPUTY COMMISSIONER

GOALPARA DISTRICT
ASSAM
PIN-783101.

3:THE PROJECT DIRECTOR

DISTRICT RURAL DEVELOPMENT AGENCY
GOALPARA
ASSAM
PIN-783101.

4:THE CIRCLE OFFICER OF MATIA REVENUE CIRCLE

P.O. AND P.S. MATIA
DIST. GOALPARA
ASSAM
PIN-783101.

5:THE BLOCK DEVELOPMENT OFFICER

MATIA DEVELOPMENT BLOCK
P.O. AND P.S. MATIA
DIST. GOALPARA
ASSAM
PIN-783125.

6:THE NABAGATA SIMLITOLA GAON PANCHAYAT

REP. BY THE SECRETARY OF THE PANCHAYAT
VILL. AND P.O. SUTARPARA
P.S. MATIA
DIST. GOALPARA
ASSAM
PIN-783125.

7:OSMAN GONI

(WARD MEMBER OF NABAGATA SIMLITOLA GAON PANCHAYAT)
S/O. LT. MAHALI SHEIKH
VILL. SINGRAMARI
P.O. SUTARPARA
P.S. MATIA
DIST. GOALPARA
ASSAM
PIN-783125

Advocate for the Respondent : GA, ASSAM

**BEFORE
HONOURABLE MR. JUSTICE MANISH CHOUDHURY**

ORDER

24.02.2023

Heard Mr. M.U. Mahmud, learned counsel for the applicants-writ petitioners; Mr. N.K. Dev Nath, learned Standing Counsel, Panchayat & Rural Development [P&RD] Department for the opposite party nos. 1 & 5; and Mr. N. Goswami, learned Junior Government Advocate, Assam for the opposite party nos. 2 & 4.

2. The applicants as the writ petitioners have preferred the connected writ petition, W.P. [C] no. 289/2023. In the writ petition, the applicants as the writ petitioners have *inter alia* sought for a direction to the respondent authorities therein i.e. the opposite parties herein, to stop the ongoing construction of fishery tank/pond and vacate the land of the petitioners, which have been illegally occupied.

3. When the writ petition was came up for consideration in the motion column on 19.01.2023, notices were issued to the respondents. The relevant parts of the order dated 19.01.2023 read as under :-

“ It is projected that the land of the petitioner was dug up under MGNREGA Scheme under Nabagata Simlitola Gaon Panchayat under Matia Development Block and public fishery was created on the petitioner’s land and that despite representations, the land of the petitioner was not released. Accordingly, this writ petition has been filed under Article 226 of the Constitution of India.

* * * * *

The learned counsel for the petitioner has prayed for interim relief. As it is the case of the petitioner that the fishery has been dug up on the land and public fishery signboard has also been affixed, the prayer for interim relief is refused at this stage. However, it is provided that the fishery in question shall be subject to outcome of the

writ petition.”

4. The instant interlocutory application has been preferred by the writ petitioners as applicants on 09.02.2023 praying for issuance of a direction to the opposite parties to stop digging the pond/fishery tank over the applicants’ plot of land during the pendency of the writ petition.

5. As by the order dated 19.01.2023 passed in the connected writ petition, W.P.[C] no. 289/2023, the interim relief sought in similar manner, was refused, the instant interlocutory application preferred again seeking the same interim relief is found not maintainable and accordingly, the same is dismissed.

JUDGE

Comparing Assistant