

GAHC010048772019



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

Case No. : CRP(IO)/66/2019

NEPAL CH. DAS
S/O LT. BISHWANATH DAS, R/O GOALPARA PT.II, P.S.- ABHAYAPURI, DIST.-
BONGAIGAON, ASSAM

VERSUS

KANAILAL DAS AND 2 ORS
S/O-LATE KANCHARAN DAS, R/O- VILL- GOALPARA PT-2, P.S-
ABHAYAPURI, DIST- BONGAIGAON, ASSAM

2:LEGAL HEIRS OF LATE BISHWANATH DAS
WEST BENGAL

2.1:SADHANA BALA DAS
W/O- ROBIN CH DAS
VILL- DHALAGAON
P.S- JOTESWAR
DIST-JALPAIGURI
WEST BENGAL

2.2:JAMUNA BALA DAS
W/O- RANJIT CH DAS
VILL- GOALPARA PT-2
P.S- ABHAYAPURI
DIST- BONGAIGAON
ASSAM

2.3:GOPAL CH DAS
S/O- LATE BISHWANATH CH DAS
VILL- GOALPARA PT-2
P.S- ABHAYAPURI
DIST- BONGAIGAON

ASSAM

2.4:PADDABALA DAS
W/O- SAHADEB DAS
VILL- SOKIHALI
P.S- MANIKPUR
DIST- BONGAIGAON
ASSAM

2.5:DURGA BALA DAS
W/O- BASANA KR. DAS
VILL- DHOLAGAON
P.S- JOLESWAR
DIST- JALPAIGURI
WEST BENGAL

2.6:GANGABALA DAS
W/O- SUJAN SARKAR
VILL- PATILADAHA
P.S- MANIKPUR
DIST- BONGAIGAON
ASSAM

2.7:SULPANA BALA DAS
W/O- GABINDA DAS
VILL- NITTANANDA
P.S- PATACHARKUCHI
DIST- BARPETA
ASSAM

3:BOLARAM DAS
S/O-LATE KANCHARAM DAS
VILL- DHOLAGAON
P.S- JOTESWAR
DIST- JALPAIGURI
WEST BENGAL

4:LEGAL HEIRS OF LATE SATISH CH DAS
BONGAIGAON
ASSAM

4.1:NIMAI CH DAS
S/O- LATE SATISH CH DAS
R/O- VILL- GOALPARA PART-II
P.S- ABHAYAPURI
DIST- BONGAIGAON
ASSAM

4.2:NITAI CH DAS
S/O- LATE SATISH CH DAS
R/O- VILL- GOALPARA PART-II
P.S- ABHAYAPURI
DIST- BONGAIGAON
ASSAM

4.3:JUGAL CH DAS
S/O- LATE SATISH CH DAS
R/O- VILL- GOALPARA PART-II
P.S- ABHAYAPURI
DIST- BONGAIGAON
ASSA

Advocate for the Petitioner : MR. J AHMED

Advocate for the Respondent : MS. R CHOUDHURY

PRESENT

THE HON'BLE MR. JUSTICE PARTHIVJYOTI SAIKIA

For the Petitioner : Mr. J. Ahmed,
Advocate.

For the Respondents : Ms. R. Choudhury,
Advocate.

Date of Hearing : 26.04.2023.

Date of Judgment : 28.04.2023.

JUDGMENT AND ORDER (CAV)

Heard Mr. J. Ahmed, learned counsel representing the petitioner as well as Ms. R. Choudhury, learned counsel representing the respondents.

2. This is an application under Article 227 of the Constitution of India challenging the order dated 28.11.2018 passed by the learned Munsiff, North Salmara, Abhayapuri in Title Suit No.58/2016.

3. The factual matrix lies within a very short campus. The petitioner filed the said suit and during pendency of the suit, the petitioner filed an application under Order 1 Rule 10 (2) of the Code of Civil Procedure praying for impleading the State of Assam represented by the Deputy Collector.

4. The learned court below rejected the prayer on the ground that before filing of the suit, notice under Section 80 of the CPC was not complied with.

5. Mr. Ahmed submits that during pendency of the suit, in order to implead the State of Assam as party, the petitioner/plaintiff issued a notice and accordingly complied with the provision of law as laid down under Section 80 of the CPC.

6. I have considered the submissions made by the learned counsels of both sides.

7. On a plain reading of the provision of law as laid down under Section 80 of the CPC, it is clear that whenever a suit is to be filed against a public officer, in respect of any act purporting to be done by such public officer in his official capacity, until the expiration of two months next after notice in writing has been delivered or left at the office of such officer.

8. So, the law postulates that whenever a person intends to file a suit against a Government official or the Government itself, in that case, a notice has to be issued and after expiry of two months after delivery of such notice, the suit can be filed. In the case in hand, the suit is already pending. No notice under Section 80 of the CPC was issued before filing

of the suit. During pendency of the suit, the provision of law as laid down under Section 80 of the CPC cannot be complied with.

9. Therefore, the learned court below has rightly dismissed the application of the present petitioner.

10. The Revision petition is found to be devoid of merit and stands dismissed accordingly.

JUDGE

Comparing Assistant