

GAHC010049652022



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

Case No. : WP(C)/1875/2022

ABDUL KAYUM TALUKDAR
S/O- LATE IDRISH ALI, R/O- KHATKHATI, NEAR MRF TYRE FACTORY, PS
AND P.O- KHATKHATI, MOUZA- BORJAN, DIST- KARBI ANGLONG, ASSAM

VERSUS

THE STATE OF ASSAM AND 7 ORS
REP. BY THE PRINCIPAL SECRETARY TO THE GOVT OF ASSAM, REVENUE
DEPTT
DISPUR, GUWAHATI- 06, ASSAM

2:THE JOINT SECRETARY
DEPTT OF REVENUE
KARBI ANGLONG AUTONOMOUS COUNCIL
DIST- KARBI ANGLONG
ASSAM

3:THE DEPUTY COMMISSIONER
DIPHU
KARBI ANGLONG
ASSAM

4:THE ADDL. DEPUTY COMMISSIONER
BOKAJAN
KARBI ANGLONG
ASSAM

5:THE SUPERINTENDENT OF POLICE
DIPHU
KARBI ANGLONG
ASSAM

6:THE OFFICER IN CHARGE
KHATKHATI POLICE STATION
KARBI ANGLONG
ASSAM

7:THE ASSISTANT CONSERVATOR OF FOREST
EASTERN RANGE
BOKAJAN
KARBI ANGLONG
ASSAM

8:GOPAL SHARMA
S/O- ASHU RAM SHARMA
PROPRIETOR OF MRF TYRE FACTORY KHATKHATI
R/O- KHATKHATI
P.S AND P.O- KHATKHATI
DIST- KARBI ANGLONG
ASSA

For the Petitioner : Mr. P.K. Munir, Advocate.

For the Respondents : Ms. S. Kemprai, Adv. for R-2 & 7
Mr. G. Alam, Advocate for R-8.
Mr. S. Baruah, GA.
Mr. P.R. Mahanta, Advocate.

BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH

JUDGMENT & ORDER (ORAL)

21/07/2023

The case of the Petitioner herein is that the Petitioner is the owner of a plot of land measuring 3 ½ bighas covered by Dag No. 350 of annual patta No. 79 under Borjan Mouza of Diphu Revenue Circle adjacent to the boundary wall of the CRPF. The Petitioner was issued the annual patta on 16.05.2015.

Thereupon the Petitioner constructed a few hutments over the land which were let out to 25 families. The Petitioner had also planted various trees over the said land. It is the case of the Petitioner that on 09.02.2022, the Respondent No. 8 alongwith some accomplice had dismantled the hutments built by the Petitioner over the plot of land covered by Dag No. 350 of annual patta No. 79 and drove out all the tenants of the Petitioner and had been intimidating them. It is under such circumstances, the Petitioner had initiated a proceeding under Section 145 of the Code of Criminal Procedure, 1973 before the Additional District Magistrate, Bokajan on 10.02.2022.

2. It further appears from the records that the Additional District Magistrate, Bokajan thereupon had directed the Officer-in-Charge, Khatkhathi Police Station to submit a report. The Petitioner had also approached the Forest Department regarding illegal felling of trees by the Respondent No. 8 and further making a request to the Joint Secretary Revenue Department, Karbi Anglong Autonomous Council, Diphu to make a demarcation with the help of Mandal on 14.02.2022. It is on the ground that no steps were taken for demarcation, the instant writ petition was filed praying interalia that an enquiry be made under the supervision of an Officer above the rank of the Officer-in-Charge of Khatkhathi Police Station to protect the Petitioner's rights in respect to the land in question as well as also for a direction to demarcate the land of the Petitioner covered by Dag No. 350 of annual patta No. 79 under Borjan Mouza of Diphu Revenue Circle.

3. It reveals from the records that this Court had issued notice on 16.03.2022. An affidavit-in-opposition has been filed by the Respondent No. 8 stating interalia that the Respondent No. 8 is the owner and possessor of two adjacent plots of lands measuring 7 bighas 3 lechas covered by Dag No.191 of

Periodic Patta No. 97 and another plot of land measuring 4 kathas 12 lechas covered by Dag No. 194 of Periodic Patta No. 52 both in Revenue Village Khatkhathi Bongrung Block No. 1 under Mouza Borjan in the district of Karbi Anglong, Assam. It is the stand taken by the Respondent No.8 that to the north of the land of the Respondent No. 8 in Dag No. 191 is the land of Dag No. 350 which is a plot of land measuring 3 bighas 1 katha 10 lechas and is a Government land as could be seen from the Chitha which was certified by the Assistant Settlement Officer, Diphu Circle Office, Karbi Anglong Autonomous Council on 26.04.2022.

4. It is the case of the Respondent No. 8 that the Petitioner on the other hand had encroached upon a portion of the Respondent No. 8's land in Dag No. 191 and as such the Respondent No. 8 had requested the Assistant Settlement Officer, Diphu Circle Office for demarcation of his land vide an application dated 24.09.2021. Thereupon the Assistant Revenue Officer had made a demarcation pursuant to demarcation notice being issue on 30.09.2021 and the complete land under Dag No. 191 had been demarcated by the Revenue Authority of the Karbi Anglong Autonomous Council by erecting concrete post on the boundary of the Respondent No. 8's land. It was the further stand taken by the Respondent No. 8 that the Petitioner again encroached upon the Respondent No. 8's land covered by Dag No. 191 for which the Respondent No. 8 had again submitted yet another application before the Chief Executive Officer, Karbi Anglong Autonomous Council, whereupon the Joint Secretary/Deputy Secretary, Department of Revenue had directed the Assistant Settlement Officer, Diphu Circle Office to submit a report vide letter dated 30.03.2022. It has further been mentioned that Assistant Settlement Officer thereupon had prepared a report, wherein it was specifically stated that the Petitioner had encroached upon the

Respondent No.8's land by constructing houses and giving it on rent by illegally occupying it and as such there was a direction to evict the Petitioner from the encroached land.

5. Today when the matter was taken up, Mr. S. Baruah, the learned counsel appearing on behalf of the Officer-in-Charge of Khatkhathi Police Station had submitted an instruction given by the Officer-in-Charge of Khatkhathi Police Station to the effect that he had visited the spot alongwith the local people including the Petitioner and the Respondent No. 8 to identify the border of the disputed land but it could not be identified for which the enquiry could not be progressed. The said official further stated in his instruction that he had submitted a requisition to the Assistant Revenue Officer, Diphu requesting to depute a LR staff from his end to identify the border of the disputed land and also submit a report u/s 107 Cr.P.C. before the Court of the ADC, Bokajan Sub-Division vide Khakhati P.S. Non FIR Pt-I Case No.03/2022 dated 08.04.2022. It was further mentioned that the Additional Revenue Officer, Diphu had not yet deputed the L.R. staff for which the enquiry couldn't be completed. The said instruction so produced during the course of the hearing is kept on record and marked with the letter "X".

6. I have heard the learned counsel for the parties and also have perused the materials on record.

7. From the facts stated above, it reveals that there are serious disputes pertaining to who is in possession of whose land. It further reveals from the affidavit-in-opposition filed by the Respondent No. 8 that some demarcation was made made in respect to Dag No. 191 and thereupon concrete pillars were erected on the basis of such demarcation. It further reveals that on one hand the Petitioner has alleged that the Respondent No. 8 had encroached upon his

land covered by Dag No. 350 of annual patta No. 79 wherein the Petitioner had constructed various hutments and rented it out and had also planted various trees and On the other hand, it is the specific case of the Respondent No. 8 that the Petitioner had trespassed into his land for which the Respondent No. 8 had also approached the Assistant Revenue Officer who had also submitted a report enclosed as Annexure-8 to the affidavit-in-opposition. The claims and counter claims of the contesting parties being disputed can only be decided by a competent Court of jurisdiction, having the authority to decide and adjudicate the disputed question of facts. Under such circumstances, this Court is of the opinion that the Petitioner or the Respondent No. 8 would be well advised to approach the Civil Court.

8. This Court cannot also be unmindful of the fact that the ADC, Bokajan Sub-Division had also sought for a report from the Officer-in-Charge of Khatkhati Police Station in a proceeding under Section 145 of the Code of Criminal Procedure, 1973. The learned counsel appearing on behalf of the Petitioner submits that there has been a total inaction on the part of the Officer-in-Charge of Khatkhati Police Station as well as the Revenue Officer of the Karbi Anglong Autonomous Council, for which the said proceeding under Section 145 of the Cr.P.C. have not progressed. This Court further taking note of the instructions which have been kept on record and marked with the letter "X", wherein the Officer-In-Charge, Khatkhati Police Station had stated that on account of not deputing an LR staff by the Additional Revenue Officer, Diphu is not in a position to submit the report before the Court of the ADC, Bokajan.

9. Taking into account the above, this Court is therefore of the opinion that the interest of justice would be met if the Additional Revenue Officer, Diphu is directed to depute an L.R. staff to aid the Officer-in-Charge of the Khatkhati

Police Station so that the report could be submitted at the earliest before the ADC, Bokajan in respect to Khakhati P.S. Non FIR Pt-I Case No.03/2022 dated 08.04.2022.

10. Accordingly, this Court therefore disposes of the instant writ petition with a direction to the Additional Revenue Officer, Diphu to depute an L.R. staff forthwith upon receipt of a certified copy of the order to aid the Officer-in-Charge of the Khatkhati Police Station so that a report could be submitted at the earliest before the ADC, Bokajan in respect to Khakhati P.S. Non FIR Pt-I Case No.03/2022 dated 08.04.2022 so that the ADC, Bokajan is in a position to bring the proceedings pending before it to a logical conclusion. It is further made clear that this Court had not expressed any opinion as regards the claims of the Petitioner and the Respondent No.8. The Competent Court shall decide the same uninfluenced by the observations made hereinabove.

11. With the above observations and directions, the instant petition stands disposed off.

JUDGE

Comparing Assistant