

GAHC010060762018



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

Case No. : WP(C)/1880/2018

SHIRAJUL ISLAM AND 8 ORS
S/O- LATE KAMALDAR, R/O- VILL- BANGALIPARA PT-I, P.O-
BANGALIPARA, P.S- BILASIPARA, DIST- DHUBRI, ASSAM, PIN- 783348

2: AMIA BIBI
D/O- KAMALDAR
R/O- VILL- BANGALIPARA PT-I
P.O- BANGALIPARA
P.S- BILASIPARA
DIST- DHUBRI
ASSAM
PIN- 783348

3: KAMIA BIBI
D/O- KAMALDAR
R/O- VILL- BANGALIPARA PT-I
P.O- BANGALIPARA
P.S- BILASIPARA
DIST- DHUBRI
ASSAM
PIN- 783348

4: JAHIDA KHATUN
D/O-KAMALDAR
R/O- VILL- BANGALIPARA PT-I
P.O- BANGALIPARA
P.S- BILASIPARA
DIST- DHUBRI
ASSAM
PIN- 783348

5: OMISA BIBI
D/O- KAMALDAR
R/O- VILL- BANGALIPARA PT-I

P.O- BANGALIPARA
P.S- BILASIPARA
DIST- DHUBRI
ASSAM
PIN- 783348

6: HANIF ALI
S/O- LATE SUTKU SK
R/O- VILL- BANGALIPARA PT-I
P.O- BANGALIPARA
P.S- BILASIPARA
DIST- DHUBRI
ASSAM
PIN- 783348

7: HAZRAT ALI
S/O- LATE SUTKU SK
R/O- VILL- BANGALIPARA PT-I
P.O- BANGALIPARA
P.S- BILASIPARA
DIST- DHUBRI
ASSAM
PIN- 783348

8: HUZUR ALI
S/O- LATE SUTKU SK
R/O- VILL- BANGALIPARA PT-I
P.O- BANGALIPARA
P.S- BILASIPARA
DIST- DHUBRI
ASSAM
PIN- 783348

9: HAREZUDDIN
S/O- LATE SUTKU SK
R/O- VILL- BANGALIPARA PT-I
P.O- BANGALIPARA
P.S- BILASIPARA
DIST- DHUBRI
ASSAM
PIN- 78334

VERSUS

THE STATE OF ASSAM AND 8 ORS.
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT OF ASSAM,
REVENUE R AND R AND DISASTER MANAGEMENT DEPTT, DISPUR, GHY-6

2:THE DEPUTY COMMISSIONER
DHUBRI
ASSAM
PIN- 783301

3:THE SUB DIVISIONAL OFFICER (CIVIL)
BILASIPARA
DHUBRI
ASSAM
PIN- 783348

4:THE EXECUTIVE MAGISTRATE
SUB DIVISIONAL OFFICE
BILASIPARA
DHUBRI
ASSAM
PIN- 783348

5:THE CIRCLE OFFICER
BILASIPARA REVENUE CIRCLE
BILASIPARA
DHUBRI
ASSAM
PIN- 783348

6:THE OFFICE-IN-CHARGE
BILASIPARA POLICE STATION
BILASIPARA
DHUBRI
ASSAM
PIN- 783348

7:RUP KAMAL RABHA
THE EXECUTIVE MAGISTRATE
SUB DIVISIONAL OFFICE
BILASIPARA
DHUBRI
ASSAM
PIN- 783348

8:ALI HUSSAIN
SUB INSPECTOR OF POLICE
BILASIPARA POLICE STATION
BILASIPARA
DHUBRI
ASSAM
PIN- 783348

9: SHAHER ALI @ MEHER ALI
S/O- TUFANU SK
R/O- VILL BANGALIPARA PART-I
P.O- BANGALIPARA
P.S- BILASIPARA
DIST- DHUBRI
ASSAM
PIN- 78334

Advocate for the Petitioner : MD H R AHMED

Advocate for the Respondent : GA, ASSAM

BEFORE
HONOURABLE MR. JUSTICE MICHAEL ZOTHANKHUMA

ORDER

Date : 29-03-2023

Heard Mr. M. Ahmed, learned counsel for the petitioners. Also heard Mr. S. Baruah, learned counsel for the State respondents and Mr. A.K. Sharma, learned counsel for the respondent No. 7. Despite the Order dated 04.01.2023 showing that service is complete against respondent Nos. 8 & 9, no one appears on their behalf.

2. The petitioners have prayed for a direction to be issued to the respondents, to re-settle them in the **(1)** Land measuring 3 Bigha 3 Katha 11 Lechas covered by Patta No. 120 (new), Dag No. 262 (old), 220 (new) and **(2)** Land measuring 1 Bigha 1 Katha 11 Lechas covered by Patta No. 342 (new), Dag No. 261 (old) 225 (new) at Village Bangalipara Pt. 1 under Bilasipara Revenue Circle of Dhubri District and to pay appropriate compensation amounting to Rs. 10,40,000/-, from where they have been evicted vide the Order dated 12.12.2017 issued by the Executive Magistrate at Bilasipara.

3. The petitioners had earlier prayed for setting aside the Order dated 12.12.2017 issued by the Executive Magistrate at Bilasipara, wherein a direction had been issued to the concerned Police Station for taking over possession of 2 plots of land as per the schedule of land and handing over the same to respondent No. 9. The schedule of land is shown below as follows:-

“SCHEDULE OF LAND

Land measuring 3B-3K-11Ls of which patta No. 120(N), Dag No. 262(O), 220(N) and 1B-1K-11Ls of khatian No. 50 & patta No. 106(O), Dag No. 261(O) under R/vill-Bangalipara pt-I, Bilasipara circle.”

4. The petitioners’ counsel submits that the petitioners are the owners of **(1)** Land measuring 3 Bigha 3 Katha 11 Lechas covered by Patta No. 120 (new), Dag No. 262 (old), 220 (new) and **(2)** Land measuring 1 Bigha 1 Katha 11 Lechas covered by Patta No. 342 (new), Dag No. 261 (old) 225 (new) at Village Bangalipara Pt. 1 under Bilasipara Revenue Circle of Dhubri District. However, without hearing the petitioners, the Executive Magistrate at Bilasipara, vide Order dated 12.12.2017 has directed the concerned Police Station to take over possession of the petitioners’ land and in the process, have damaged the house of the petitioners. The petitioners were thus dispossessed from their land.

5. The petitioners’ counsel submits that some other persons who were also effected by the Order dated 12.12.2017 passed by the Executive Magistrate at Bilasipara, challenged the same by filing a petition under Section 482 Cr.PC, which was registered as Criminal Petition No. 168/2018 in this Court. Criminal Petition No. 168/2018 was disposed of vide Order dated 02.08.2018, by setting

aside the Order dated 12.12.2017, as it had not been made in terms of Section 145/146 Cr.PC, besides being beyond the jurisdiction of the Executive Magistrate. The petitioners' counsel thus prays that the petitioners should be re-settled in the schedule of land mentioned above and they should also be given compensation.

6. The learned counsel for the respondents, on the other hand, submit that as the impugned Order dated 12.12.2017 passed by the Executive Magistrate at Bilasipara has been set aside by this Court in Criminal Petition No. 168/2018, vide Order dated 02.08.2018, the petitioners cannot approach this Court by way of a writ petition under Article 226 of the Constitution. They submit that the petitioners should also approach this Court under Section 482 Cr.PC, after establishing their right, title and interest in respect of the schedule of land before the Civil Court. They however submit that the petitioners not being the owners of the land from which they were evicted, they have no right to be re-settled on the said land or be paid compensation for the said land.

7. I have heard the learned counsels for the parties.

8. A perusal of the Annexures to the writ petition shows that the petitioners had filed Title Suit No. 04/2008 in the Court of Munsiff, Bilasipara praying for declaration of right, title and interest, recovery of Khas possession and permanent injunction, in respect of one of the plots of land mentioned in the Schedule of Land. The said plot of land being land measuring 3B - 3K -11Ls of Patta No. 120 (new), Dag No. 262 (old), 220 (new) under Revenue Village Bangalipara Pt-I, Bilasipara Circle. Title Suit No. 04/2008 was dismissed vide Judgment dated 26.06.2012. Being aggrieved, the petitioners filed Title Appeal

No. 46/2012 before the Court of the Civil Judge, Dhubri. Title Appeal No. 46/2012 was dismissed vide Judgment dated 18.11.2016. The Judgments passed by the Court of the Munsiff, Bilasipara and the Court of the Civil Judge, Dhubri have attained finality as on date, as no challenge has been made against them till date. As the petitioners do not have any right, title and interest over the land measuring 3B - 3K -11Ls of Patta No. 120 (new), Dag No. 262 (old), 220 (new) under Revenue Village Bangalipara Pt-I, Bilasipara Circle, the prayer of the petitioners to re-settle them in the said land and be paid compensation for the said land does not arise.

9. The above facts leaves me with the question as to whether the petitioners can be re-settled on the other plot of land, which they claim is theirs, i.e, land measuring 1B-1K-11Ls of Khatian No. 50 & Patta No. 106(old), Dag No. 261(old) under Revenue Village Bangalipara Pt-I, Bilasipara Circle. As can be seen from the facts narrated above, the petitioners were aggrieved with the Order dated 12.12.2017 passed by the Executive Magistrate at Bilasipara, which has been set aside by this Court in Criminal Petition No. 168/2018, vide Order dated 02.08.2018. If the petitioners were of the view that they were entitled to be re-settled on the above plot of land, they could have easily filed a petition under Section 482 Cr.PC or approached the Civil Court, by claiming right, title and interest over the land measuring 1B-1K-11Ls of Khatian No. 50 & Patta No. 106(old), Dag No. 261(old) under Revenue Village Bangalipara Pt-I, Bilasipara Circle. However, the petitioners have not filed any petition under Section 482 Cr.PC and/or made a prayer for declaration for their right, title and interest for the said land before a Civil Court.

10. Annexure-6 to the writ petition is a copy of the plaint submitted by the petitioners in Title Suit No. 2/2017 before the Court of the Civil Judge, Dhubri, praying for a declaration, cancellation of Deed, partition, issue of separate Patta and injunction with regard to the Schedule of Land.

11. As the petitioners had been dispossessed from their land on the basis of the order passed by the Executive Magistrate, which has subsequently been set aside, in the normal scheme of things, the petitioners should be restored to their earlier position existing prior to the order passed by the Executive Magistrate. However, as shown in the preceding paragraphs, the petitioners prayer for a declaration of their right, title and interest in respect of land measuring 3 Bigha 3 Katha 11 Lechas covered by Patta No. 120 (new), Dag No. 262 (old), 220 (new) has been rejected by the learned Civil Court. As such, whether the petitioners are having any right, title or interest in respect of land measuring 1 Bigha 1 Katha 11 Lechas covered by Patta No. 342 (new), Dag No. 261 (old) 225 (new) at Village Bangalipara Pt. 1 under Bilasipara Revenue Circle of Dhubri District would have to be decided, keeping in view the fact, there appears to be a dispute with regard to the same. Accordingly, in the view of this Court, the remedy against the same would require the petitioners to pursue their remedy regarding their right, title and interest over land measuring 1 Bigha 1 Katha 11 Lechas covered by Patta No. 342 (new), Dag No. 261 (old) 225 (new) at Village Bangalipara Pt. 1 under Bilasipara Revenue Circle of Dhubri District before the Civil Court. On considering the above facts, this Court is not inclined to decide this writ petition, as an alternative remedy is available.

12. In view of the reasons stated above, this Court does not find any ground to exercise its discretion in this case.

The writ petition is accordingly dismissed.

JUDGE

Comparing Assistant