

GAHC010067982022



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

Case No. : WP(C)/2554/2022

NAZIMUDDIN AND 5 ORS
S/O. LT. PIAR ALI, VILL. KHARMUZA NO.2 GHAT, P.O. KHARMUZA, P.S.
GOALPARA, DIST. GOALPARA, ASSAM.

2: ABDUL AWAL

S/O. LT. BOYAT ALI
VILL. KHARMUZA
P.S. GOALPARA
DIST. GOALPARA
ASSAM.

3: ABDUL SAMAD

S/O. LT. BOYAT ALI
VILL. KHARMUZA NO.2 GHAT
P.O. KHARMUZA
P.S. GOALPARA
DIST. GOALPARA
ASSAM.

4: KURBAN ALI
S/O. LT. GADU SHEIKH
VILL. PURNANAGAR CHAR
P.O. KHARMUZA
P.S. PANCHARANTNA
DIST. GOALPARA
ASSAM.

5: MD. KUBAD ALI
S/O. LT. MAJUDDIN
VILL. KUMRI
P.O. DARIDURI
P.S. GOALPARA

DIST. GOALPARA
ASSAM.

6: MD. JINJIR ALI
S/O. LT. MAIJUDDIN
VILL. KUMRI
P.O. DARIDURI
P.S. GOALPARA
DIST. GOALPARA
ASSAM

VERSUS

THE STATE OF ASSAM AND 2 ORS
TO BE REP. BY THE COMM. AND SECY., REVENUE DEPTT., DISPUR,
GUWAHATI-781006.

2:THE DEPUTY COMMISSIONER

GOALPARA
DIST. GOALPARA
ASSAM
PIN-783101.

3:THE CIRCLE OFFICER

BALIJANA REVENUE CIRCLE
BALIJANA
DIST. GOALPARA
ASSAM
PIN-783101

Advocate for the Petitioner : MR. M H RAJBARBHUIYAN

Advocate for the Respondent : GA, ASSAM

BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA

ORDER

Date : 04-01-2023

Heard Mr. M.H. Rajbarbhuiya, learned counsel for the petitioners as well as Mr. A. Bhattacharya, learned standing counsel for the respondent no.1 as

well as Ms. S. Sarma, learned Govt. Advocate for the respondent nos.2 and 3.

2. By filing this writ petition under Article 226 of the Constitution of India, the petitioners who has projected themselves to be patta holders of the land described in para-3 of the writ petition have prayed for setting aside and quashing of notice issued by the Circle Officer, Balijana Revenue Circle, Goalpara under Memo no.B.J.C.28/2013/Part-1/182 dated 21.02.2022, whereby the petitioner nos.1 and 2 were not only restrained/ prohibited to cultivate the land till the decision in a boundary dispute, but the petitioner nos.1 and 2 along with one Sakman Ali were also directed to vacate the possession of the disputed land.

3. The learned counsel for the petitioners upon a query of the Court has submitted that although the impugned notice is issued in the name of the petitioner nos.1 and 2 and one Sakman Ali but other petitioners were also restrained from cultivating the land.

4. In the said context, the Court is of the considered opinion that as such notice has not been issued in the name of the petitioner nos.3 to 6 namely, Abdul Samad, Kurban Ali, Md. Kubad Ali and Md. Jinjir Ali, the said petitioners cannot be said to be the persons who are aggrieved by the said order dated 21.02.2022. Therefore, if the said petitioner nos.3 to 6 are actually disturbed by any authority from cultivating the land on the basis of some notice and/or order, they would have an independent right to approach the Court. Accordingly, the Court is inclined to strike out the name of the petitioner nos.3 to 6 namely, Abdul Samad, Kurban Ali, Md. Kubad Ali and Md. Jinjir Ali from the array of

petitioners with liberty to them to approach the Court if they are aggrieved by any action of the authorities.

5. The learned counsel for the petitioners has stated that the land holding of the petitioner nos.1 and 2 consist of patta land which is morefully described in para-3 of the writ petition. By referring to statement made in para-5 of the additional affidavit-in-opposition filed by the respondent no.3 which is sworn and filed by Sri Rakesh Deka, it has been submitted that Addl. Deputy Commissioner, Goalpara has admitted that the land morefully described in sub-para (i) to (iv) of para-5 is a patta land.

6. The para-5 of the said additional affidavit is reproduced herein below:

5. That with regard to paragraph 3, the deponent states that as per record:

(i) The land area measuring 11B-01K-01L covered by Dag No.225 & Patta No.42 in Revenue Village-Dakshin Katlamari Part-II is recorded in the names of (a) Md. Jinjir Ali (b) Kobad Ali, both sons of Lt. Moyjuddin (c) Nazimuddin, S/o-Piar Ali.

(ii) The land area measuring 11B-01K-01L covered by Dag No.226 & Patta No.21 in Revenue Village-Dakshin Katlamari Part-II is recorded in the names of (a) Korban Ali (b) Musst. Fojili Khatun, father's name of both Lt.Gadu Sheikh (c) Md. Piar Ali, S/o-Lt.Sobor Ali, (d) Md. Nazimuddin, S/o-Piar Ali.

(iii) The land area measuring 11B-01K-01L covered by Dag No.319 & Patt No.70 in Revenue Village-Dakshin Katlamari Part-II is recorded in the names of (a) Abdul Baser, (b) Abdul Samad, (c) Abdul Auwal, all sons of Lt. Boyat Ali.

(iv) The land area measuring 07B-00K-00L covered by Dag No.319 & Patta No.70 in Revenue Village-Dakshin Katlamari Part-II is recorded in the name of Nazimuddin, S/o-Piar Ali.

7. The learned Govt. Advocate has also pointed out that the statement made in para-10 of the said affidavit wherein it is stated as under:

2. That with regard to paragraph 8 the deponent states that the vide office's notice No.BJC.28/2013/Part-1/182 Dtd. 21/02/2022 regarding imposition of restriction of cultivation over the land soil created by the River Brahmaputra was issued based on the field spot verification report submitted by the concerned Lot Mandal, based on public complaint, in writing, as received from the District Administration, Goalpara. The concerned area over which cultivation was restricted vide the aforementioned notice, falls within the boundary of two separate Revenue villages namely Barbhita (Munchirbhita) and Dakshin Katlamari Pt-II and the same is a newly appeared Brahmaputra Char area (Non- Cadastral) by the side of Munchirbhita Village. The aforementioned two villages are separated by river Brahmaputra and the char appeared at the side of Munchirbhita. The area over which the petitioners are claiming to be under their possession in this W.P(C) is a different area under Dakshin Katlamari Part-II from the newly appeared Char area. A proper demarcation can be made with the help of Traverse Party, Assam which is already under process.

8. Accordingly, it is submitted that the land over which the petitioners are claiming to be under their possession in this writ petition is a different land under Dakshin Katlamari Pt-II from the newly appeared "Char area" and it is submitted that a proper demarcation process is already under process. Hence, the learned Govt. Advocate has justified the impugned order.

9. Upon a consideration of the contents of the impugned order dated 21.02.2022, it is seen that the Circle Officer, concerned (respondent no.3) has already passed an order against the petitioner nos.1 and 2 and one Sakman Ali to vacate the land. However, in the said order it is also mentioned that an inquiry had been conducted whereby it was found that the said land belonged

to government non-cadastral area. Moreover, in the order it was projected that the said land was a disputed land for boundary between the two villages namely, Munchirbhita Revenue Village and Katlamari Pt-II Revenue Village.

10. The contents of the said order is extracted below:

“On the basis of complain of local public and official inquiry report, the undersigned has noticed that you are illegally possessing and cultivating over the char area land being created by the course of river Brahmaputra which is situated at nearby and middle portion of Munchirbhita Revenue Village and Katlamari Part-II Revenue Village. On an enquiry, it is seen that the said land belongs to Govt. N.C. area land and since the said land is disputed land for boundary of the said two villages, therefore you are restrained/prohibited to cultivate the land till decision of boundary dispute. Further, it is hereby ordered to take away you possession from the land, otherwise legal will be taken against you. This order is issued with immediate effect.”

11. From the hereinbefore quoted order, it appears that while an inquiry with regard to disputed area is going on, as an interim measure the Circle Officer has also directed the petitioner nos.1 and 2 to vacate the land. From the said order it also appears that an official inquiry was conducted but the order does not reflect if the petitioners were permitted to participate in the said inquiry and they were heard when the inquiry was made. Although there is a reference to a boundary dispute in the order dated 21.02.2022, but the Circle Officer did not take the trouble to record the case number which has been registered by the said authority as a boundary dispute case.

12. In the said impugned order, it is also not mentioned that who are the persons who had made a complaint and moreover, the order also does not reflect the provision of law under which the Circle Officer had exercised jurisdiction to direct the petitioner nos.1 and 2 to vacate the possession of their

land.

13. It may be mentioned to the learned Govt. Advocate in course of submissions, had submitted that if the petitioner disputes the right of others, he had the alternative remedy to approach the Civil Court. The said submission appears to be attractive at first blush, but when the Circle Officer does not record the names of persons who had made a complaint, does not refer to any provision of law by which he had used the power to direct the petitioners to vacate the land, and did not refer to any case number. Under such circumstances, in the considered opinion of the Court, it would be impossible for the petitioners to decide as to which Court/Forum to approach against the impugned order dated 21.02.2022, and impossible for them to name the defendant/ respondent/ opposite party in such a proceeding.

14. Therefore, the Court is inclined to hold that the writ petition is otherwise maintainable as the Circle Officer did not refer to any provision of law by which he had pass derived jurisdiction to the impugned order. Moreover, the Addl. Deputy Commissioner in his affidavit-in-opposition filed on behalf of the Circle Officer (respondent no.3) had admitted a part of the land is a patta land which is recorded in the names of certain persons as mentioned in para-5 as quoted hereinbefore.

15. It may be mentioned that in the additional affidavit-in-opposition, although in the cause-title it is mentioned that the affidavit is filed by the respondent no.3 but in para-1 it has been clearly mentioned that he has been arrayed as respondent no.2, which is factually incorrect because the respondent

no.2 in the writ petition is the Deputy Commissioner, Goalpara.

16. Be that as it may, having known that a final order for eviction was passed during the pendency of the inquiry, and that the inquiry was made in the absence of the petitioners, the Court is of the considered opinion that the impugned order under Memo no.B.J.C.28/2013/Part-1/182 dated 21.02.2022 is in excess of jurisdiction vested on the Circle Officer (respondent no.3). The same is arbitrary and without giving an opportunity to the petitioners to show-cause and to defend their possession over the land in question.

17. Accordingly, the said order under Memo no.B.J.C.28/ 2013/Part-1/182 dated 21.02.2022 is set aside and quashed.

18. It is clarified that this order shall not preclude the concerned authorities to register an appropriate case against the petitioners, as may be permissible and to proceed with the same in accordance with law after serving notice on the petitioners.

19. The writ petition stands allowed to the extend as indicated above with liberty to the respondent authorities as mentioned herein before.

JUDGE

Comparing Assistant