

GAHC010068142023



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

Case No. : WP(C)/2068/2023

MANIK CH NATH AND 7 ORS
SON OF BHUBAN CH. NATH, R/O VILL-BANGORA, NEAR IT PARK,
BONGORA, P.O.-BONGORA, P.S.-PALASHBARI, DIST-KAMRUP, ASSAM, PIN-
781015

2: HARAKANTA CH. NATH
SON OF BHUBAN CH. NATH
R/O VILL-BANGORA
NEAR IT PARK
BONGORA
P.O.-BONGORA
P.S.-PALASHBARI
DIST-KAMRUP
ASSAM
PIN-781015

3: DILIP NATH
S/O LATE KUNJA RAM NATH
GRANDSON OF BHUBAN CH. NATH
R/O VILL-BANGORA
NEAR IT PARK
BONGORA
P.O.-BONGORA
P.S.-PALASHBARI
DIST-KAMRUP
ASSAM
PIN-781015

4: PRADIP NATH
S/O LATE KUNJA RAM NATH
GRANDSON OF BHUBAN CH. NATH
R/O VILL-BANGORA
NEAR IT PARK
BONGORA

P.O.-BONGORA
P.S.-PALASHBARI
DIST-KAMRUP
ASSAM
PIN-781015

5: PULAK CH. NATH
S/O LATE KUNJA RAM NATH
GRANDSON OF BHUBAN CH. NATH
R/O VILL-BANGORA
NEAR IT PARK
BONGORA
P.O.-BONGORA
P.S.-PALASHBARI
DIST-KAMRUP
ASSAM
PIN-781015

6: RABIN CH. NATH
S/O LATE KUNJA RAM NATH
GRANDSON OF BHUBAN CH. NATH
R/O VILL-BANGORA
NEAR IT PARK
BONGORA
P.O.-BONGORA
P.S.-PALASHBARI
DIST-KAMRUP
ASSAM
PIN-781015

7: HAMIN CH. NATH
S/O LATE KUNJA RAM NATH
GRANDSON OF BHUBAN CH. NATH
R/O VILL-BANGORA
NEAR IT PARK
BONGORA
P.O.-BONGORA
P.S.-PALASHBARI
DIST-KAMRUP
ASSAM
PIN-781015

8: ATUL NATH
S/O LATE ANDHU RAM NATH
R/O VILL-BANGORA
NEAR IT PARK
BONGORA
P.O.-BONGORA

P.S.-PALASHBARI
DIST-KAMRUP
ASSAM
PIN-78101

VERSUS

THE STATE OF ASSAM AND 6 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE
GOVERNMENT OF ASSAM, REVENUE AND DISASTER MANAGEMENT
DEPARTMENT, DISPUR, GUWAHATI-781006, ASSAM

2:THE DEPUTY COMMISSIONER
KAMRUP
AMINGAON
GUWAHATI-781031
ASSAM

3:THE CIRCLE OFFICER
PALASHBARI REVENUE CIRCLE
MIRZA
KAMRUP
ASSAM
PIN-781125

4:RAJEN NATH
S/O LATE MAURAM NATH
R/O VILL AND P.O.-RANGAMATI
P.S.-PALASHBARI
DIST-KAMRUP
PIN-781128
ASSAM

5:ANUP MEDHI
S/O LATE RAMA KANTA MEDHI
R/O MIRZA
P.O.-MIRZA
P.S.-PALASHBARI
DIST-KAMRUP
ASSAM
PIN-781125

6:DHRUBAJYOTI PATHAK
ACS
CIRCLE OFFICER
PALASHBARI REVENUE CIRCLE
MIRZA
KAMRUP

ASSAM
PIN-781125

7:KAMAKHYA DEVALAYA
REPRESENTED BY THE DOLOI OF KAMAKHYA TEMPLE
KAMAKHYA
NILACHAL HILL
P.O. AND P.S.-KAMAKHYA
DIST-KAMRUP (M)
ASSAM
PIN-78101

Advocate for the Petitioner : MR. A CHAMUAH

Advocate for the Respondent : SC, REVENUE

BEFORE
HONOURABLE MR. JUSTICE MICHAEL ZOTHANKHUMA

ORDER

08.05.2023

1. Heard Mr. A. Chamuah, learned counsel for the petitioners. Also heard Mr. A. Bhattacharya, learned counsel for the respondent no.1 and Mr. S. Barua, learned counsel for the respondent nos.2 & 3.

2. The petitioners' case is that the petitioners' forefathers were occupancy tenants in respect of a plot of land which had been acquired under the Assam State Acquisition of lands belonging to the Religious or Charitable institutions of Public Nature Act, 1959 (hereinafter referred to as "1959 Act"). The Schedule of land is as follows :

"SCHEDULE OF THE LAND

A land measuring 18 Bighas 3 Kathas 14 Lechas covered by Kaccha Khatian No: illegible and Dag Numbers 11 (O)/19 (N) of L.K. Patta No.1 and Presently

Touzi No.7 under the Revenue Village of Sathikarpa under Palashbari Revenue Circle of Chayani Mouza in the District of Kamrup, Assam.

BOUNDARY OF THE LAND

North : I.T. Park.

South : Public Cremation Centre

East : Land of Smti. Jaya Kalita

West: Land of Sri Jogen Nath & Sri Ambika Charan Nath."

3. The petitioners' counsel submits that in terms of Section 15 of the 1959 Act read with Section 23(i) of the Assam (Temporarily Settled Areas) Tenancy Act, 1971, (hereinafter referred to as "1971 Act") the land ought to have been settled with the petitioners, as their forefathers had been the tenants of the said lands and as they are in possession of the land. However, the State respondents have allotted the said lands occupied by the petitioners' forefathers and the petitioners to the respondent nos.4 & 5. The petitioners have also been dispossessed of the said land and the respondent nos.4 & 5 have started constructing a boundary wall on the said land.

4. The petitioners' counsel submits that various representations have been submitted by the petitioners to the Deputy Commissioner, Kamrup (R), Amingaon. However, no action has been taken by the Deputy Commissioner, Kamrup (R), Amingaon. He also submits that there is already an application dated 01.10.2021 under Section 23(i) read with Section 24 of the "1971 Act" and under Section 15 of the "1959 Act" for issuance of a "Certificate of Ownership Right" pending before the respondent no.2, which has not been decided till date. The petitioners' counsel thus prays that a direction should be

issued to the respondent authorities not to disturb the petitioners' peaceful possession of the land and to dispose of the petitioners' application filed under Section 23(i) read with Section 24 of the "1971 Act" and under Section 15 of the "1959 Act" for issuance of a "Certificate of Ownership Right"

5. Mr. A. Bhattacharya, on the other hand submits that he has received instructions to the effect that the petitioners are not Rayatis in respect of the land, which has been allotted to Yog Garukul Asom, vide letter no.KRL-47/2018/65/06 dated 04.02.2021, which is reflected in the Circle Officer, Palashbari Revenue Circle letter no.PC-11/2020/369 dated 04.05.2023. He further submits that in the above letter dated 04.05.2023, possession of the same has been subsequently handed over to Yog Garukul Asom, by showing the boundary in presence of Lat Mandal and other persons. He also submits that as the issue raised by the petitioners is a disputed question of fact, which would require evidence to be adduced, the petitioners should approach the Civil Court.

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

7. The petitioners have made a prayer for a direction to be issued to the respondent authorities not to disturb the petitioners' peaceful possession over the schedule plot of land. However, the petitioners in paragraph-13 of the writ petition have stated that "*the private respondents have forcefully encroached the land of the petitioners and finally disposed of them in spite of having their legal rights and long possessory rights over the schedule land*". Further, in paragraph-1 of the petitioners' representation dated 11.04.2022 addressed to

the respondent no.2, they have stated in the last sentence that the respondent nos.4 & 5 had forcefully encroached upon their cultivable land by using excavator with the help of gangsters and dispossessed them from the lawful possession of their tenancy land. Thus the above averments made by the petitioners clearly show that the petitioners are no longer in possession of the land in question, even if they had been in possession of the land in question earlier. As such, the first prayer of the writ petitioners cannot be granted as they are not in possession of the land.

8. I have also perused the letter dated 04.05.2023 issued by the Additional Deputy Commissioner, Kamrup, Amingaon to the Standing Counsel, Revenue & D.M. Department, Gauhati High Court, Guwahati which states that parawise comments/instructions with regard to the present case has been forwarded, in terms of the letter dated 04.05.2023 issued by the Circle Officer, Palashbari Revenue Circle.

9. Paragraph-9 and 11 of the letter dated 04.05.2023 issued by the Circle Officer, Palashbari Revenue Circle is re-produced below as follows :

“9. In respect of paragraph no.13 the land was allotted to Yog Garukul Asom vide letter no.KRL-47/2018/65/06 dated 04.02.2021 (Land measuring 10 Bigha) and subsequently handed over possession by showing boundary in presence of LM and other person.

10.

11. As stated in paragraph no.17 this land is not a Rayati land as such it does not falls under Section 23(1) R/W Section 24 of Assam (Temporarily Settled Areas) Tenancy Act, 1971 as such no scope of availing ownership rights and further in paragraph no.18 it is to be mentioned that the petitioners of the writ

petition has no possession over the allotted land.”

10. The extract of Circle Officer’s letter in paragraph 11 clearly shows that the land in question is not a Rayati land and as such it does not fall under Section 23(1) read with Section 24 of the 1971 Act. It further states that there is no scope of ownerships rights by the petitioners. As the State respondents have taken the above stand, the petitioners prayer for a direction for disposal of the petitioners application dated 11.04.2022 has become infructuous, as the respondents have apparently rejected petitioners’ application for issuance of “Certificate of Ownership Right”.

11. The said letter no.PC-11/2020/369 dated 04.05.2023 issued by the Circle Officer, Palashbari Revenue Circle, states that the land in issue was allotted to Yog Garukul Asom, vide letter no.KRL-47/2018/65/06 dated 04.02.2021. The said Yog Garukul Asom is also not a party in this writ petition. In that view of the matter, this Court is of the view that if the petitioners are still aggrieved with the letters dated 04.05.2023 issued by the respondent nos.2 & 3, they would have to make a challenge to the same and approach the Civil Court for redressal of their grievance, as evidence would have to be adduced, there being disputed questions of facts.

12. Accordingly, in view of the above reasons, the writ petition is dismissed, with liberty being given to the petitioners to approach the Civil Court with their grievance as per law, if so advised.

The letters dated 04.05.2023 issued by the Additional Deputy

Commissioner, Kamrup, Amingaon and by the Circle Officer, Palashbari Revenue Circle are made a part of the record and marked as Annexure-'X' and 'Y'.

JUDGE

Comparing Assistant