

GAHC010149182018



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

Case No. : WP(C)/2329/2018

MONIR UDDIN KHANDOKAR
S/O- ABDUL KARIM KHANDAKAR
R/O- BHIMPARA
P.O- HATSINGIMARI
P.S- SOUTH SALMARA
DIST- SOUTH SALMARA MANKACHAR- 783135

VERSUS

THE STATE OF ASSAM AND 8 ORS.
REP. BY ITS COMMISSIONER AND SECRETARY TO THE GOVT OF ASSAM
PANCHAYAT AND RURAL DEVELOPMENT DEPTT
JANATA BHAWAN
C BLOCK
2ND FLOOR
DISPUR
GUWAHATI
ASSAM- 781006

2:THE DEPUTY COMMISSIONER
SOUTH SALMARA MANKACHAR
HATSINGIMARI DIST
P.O HATSINGIMARI
P.S- SOUTH SALMARA
DIST- SOUTH SALMARA MANKACHAR DIST
HATSINGIMARI
3:THE CIRCLE OFFICER
MANKACHAR REVENUE CIRCLE OFFICE
4:THE PRESIDENT
FEKAMARI ANCHALIK PANCHAYAT
FEKAMARI
DIST- SOUTH SALMARA MANKACHAR DIST
HATSINGIMARI

5:SABAN KUMAR SAHA
S/O- NEPAL CHANDRA SAHA
VILL- MAHAMAYA NAGAR
DIST- SOUTH SALMARA
MANKACHAR
6:SAMIUL ISLAM
S/O- SAYED ALI SARKAR
VILL- BHIMAPARA
DIST- SOUTH SALMARA MANKACHAR
7:SWAPAN SUTRADHAR
S/O- NEPAL SUTRADHAR
VILL- MAHAMAYA NAGAR
DIST- SOUTH SALMARA MANKACHAR
8:AKHERUZZAMAN SHIKH
S/O- MUSLEM UDDIN SHEIKH
VILL- PURAN MUKHCHAR
DIST- SOUTH SALMARA MANKACHAR
9:ASRAFUL ISLAM
S/O-HAJI ABDUL HAMID
VILL- BUSAKATA
DIST- SOUTH SALMARA
MANKACHAR

For the petitioner (s) : Mr. S. Banik, Advocate

For the respondent (s) : Mr. R. Islam, Advocate

BEFORE
HON'BLE MR. JUSTICE DEVASHIS BARUAH
ORDER

13.10.2023

The instant writ petition has been filed by the petitioner being aggrieved by the inaction on the part of the respondent authorities in not considering the representations dated 22.01.2018; 25.01.2018 and 29.01.2018. The petitioner has also sought for direction to the respondent authorities to dismantle the structures constructed by the private respondents over the land allotted for bus stand which interferes with the

right of the petitioner for peaceful occupation and enjoyment of the land and accordingly further sought for a direction to the Government authorities to place private respondents in the correct place, i.e. on the southern side of the bus stand area on the row of constructed market share as it reveals from the RTI reply dated 21.02.2018.

2. Pursuant to the filing of the instant writ petition, this Court passed an order on 12.04.2018 whereby notice of motion was issued and there was a further direction that until further orders the private respondents shall maintain status-quo with regard to the land allotted and shall not raise any construction and use the land for any purpose.

3. The private respondents have filed an Interlocutory Application which has been registered and numbered as I.A.(C) No.2660/2018 seeking vacation, modification and alteration of the order dated 12.04.2018 on the ground that the said land has been allotted to the private respondents, and as such, the interim order which has been passed directing the private respondents not to use the said land and also to raise constructions affects their rights over the land which has been allotted.

4. Mr. R. Islam, the learned counsel appearing on behalf of the private respondents submits that the case of the petitioner is totally unfounded and misconceived taking into account that the petitioner has filed the case on the basis that the land wherein the private respondents are occupying and raised constructions was a plot of land allotted for bus stand which is on the face of it was erroneous taking into account that the said lands were allotted to the private respondents. The learned counsel appearing on behalf of the private respondents further submits that the petitioner

has also not challenged the said allotment orders and without a challenge the instant writ petition cannot be maintained.

5. Mr. S. Banik appearing on behalf of the petitioner submits that the petitioner has a plot of land behind the land wherein the private respondents are occupying and raised construction which have affected the right of the petitioner to enjoy his property as well as affected his ingress and egress to the property. The learned counsel for the petitioner submits that he may be permitted to challenge the allotment order which has been issued in favour of the private respondents.

6. I have heard the learned counsels for the parties and perused the materials on record. Taking into account that the entire basis of the case set out by the petitioner is on the basis that the private respondents were occupying and raising constructions upon a plot of land which has been allotted to a bus stand, the entire writ petition is misconceived. Under such circumstances, this Court cannot permit the petitioner in the instant writ petition to change the nature and character of the writ petition by permitting the petitioner to challenge the allotment orders made in favour of the private respondents.

7. Accordingly, as the edifice of the petitioner's case no longer exists in view of the allotment orders issued in favour of the private respondents, this Court finds that the writ petition is devoid of merit for which the instant writ petition stands dismissed. However, dismissal of the writ petition shall not preclude the petitioner if so advised to approach the respondent authorities as well as also to challenge the allotments so made in respect to the private respondents, if so permissible under law.

8. Accordingly, the instant writ petition stands dismissed subject to the observation made in the penultimate paragraph. The interim order also stands vacated.

JUDGE

Comparing Assistant