

GAHC010085192023



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

Case No. : WP(C)/2692/2023

NORTH EASTERN COALFIELDS AND ANR
COAL INDIA LIMITED,
REPRESENTED BY ITS GENERAL MANAGER,
SAUNDARYYA PRASAD DUTTA,
MARGHERITA, DISTRICT- TINSUKIA.

2: THE STAFF OFFICER (LEGAL AND REVENUE)
NORTH EASTERN COALFIELDS
COAL INDIA LIMITED

MARGHERITA
DISTRICT- TINSUKIA

VERSUS

SANJOY DEB
S/O- LATE SATYENDRA KUMAR DEB,
CHANGLANG ROAD TINIALI,
MARGHERITA, DISTRICT- TINSUKIA.

Advocate for the Petitioner : MR M Z AHMED

Advocate for the Respondent : MS. M DEV

**BEFORE
HONOURABLE MR. JUSTICE SANJAY KUMAR MEDHI**

ORDER

17.11.2023

Heard Shri M.Z. Ahmed, learned Senior Counsel for the petitioners. Also heard Ms. M. Dev, learned counsel for the sole respondent.

2. Considering the subject matter involved and the nature of the dispute, the present case is taken up for disposal at the admission stage.

3. It may be mentioned that the pleadings have been exchanged in the meantime.

4. The petitioner no.1 is a Company and claims to be the lawful owner of a plot of land covered under Dag No. 3042 (Part) & Dag No. 3128 (Part) of Patta No. 1 of Margherita Town near the State Bank of India, Margherita Branch.

5. It is the case of the petitioners that the respondent had forcefully occupied the said plot and started construction activities from the year 2018. Though FIR was lodged and the matter was investigated, there was possibility of breach of peace and therefore a proceeding under Sections 107/144/145 of the Cr.P.C. was drawn up. The matter was subsequently transmitted to the Special Tribunal constituted under the Assam Land Grabbing (Prohibition) Act, 2010, Margherita. Accordingly, the proceeding was initiated and numbered as L.G. Case No. 05/2018. The petitioners are aggrieved vide an order dated 23.03.2023 by

which the case instituted by them has been dismissed as uncontested.

6. Shri Ahmed, the learned Senior Counsel for the petitioners has submitted that there were reasonable grounds for seeking adjournment on the said date as the conducting counsel was having some health issues and was therefore unable to attend the Court. It is further submitted that by dismissal of the case on technical grounds, the petitioners are deprived of an opportunity of the subject being adjudicated on merits. He accordingly submits that the order impugned may be interfered with and the matter be remitted back to the learned Tribunal for an adjudication on merits.

7. *Per contra*, Ms. Dev, the learned counsel for the respondent has raised a preliminary issue on the maintainability of the writ petition. It is submitted that the statute holding the field contains an avenue for preferring an appeal and in any case, a writ petition would not be maintainable.

8. The learned counsel otherwise submits that even on merits, the order dated 23.03.2023 is a reasoned one and has been passed by the learned Tribunal by taking into consideration all the relevant facts and circumstances. The learned counsel for the respondent further submits that the petitioner is negligent in conducting the case and the same is pending since the year, 2018 for fault which are attributable solely to the petitioners. She accordingly submits that the present case may not be a fit case for interference by this Court which exercises equitable jurisdiction.

9. The rival submissions advanced have been duly considered and the

materials placed before this Court have been carefully examined.

10. On a careful perusal of the impugned order dated 23.03.2023, it reveals that the said date was fixed for cross-examination of the petitioner's witnesses. It further reveals that in the meantime, a cost of Rs. 10,000/- was already imposed upon the petitioner due to their previous non-appearance.

11. This Court has further noted that the learned Tribunal has taken into consideration the conduct of the petitioner in the case which *prima facie* reveals that there has been negligence in pursuing the litigation.

12. The learned Tribunal has also gone into certain facts regarding the reason sought for adjournment and this Court may not be required to go into the aspect of those matters. However, it is pertinent to note that from the year 2018, the proceeding is pending and is only at the stage of cross examination of the petitioner's witnesses and adjournment was sought for on the grounds that the concerned counsel was unwell. While this Court is of the opinion that dismissal on technical grounds may cause prejudice to the party approaching a Court, it is also equally important to note the conduct of the party. From a reading of the impugned order, it *prima facie* appears that there is lack of due diligence on the part of the petitioners in pursuing the proceeding instituted under the Act.

13. However, taking into consideration the legal status of the petitioner no. 1 which is a Company and also the nature of allegations made, this Court is of the opinion that the equities would be balanced by interfering with the order dated 23.03.2023 and remitting the matter back for adjudication on merits. However

such order would be subject to payment of cost of Rs. 50,000/- to the respondent.

14. Accordingly, the order dated 23.03.2023 passed by the Addl. Sessions Judge, (FTC), Margherita in L.G. Case No. 05/2018 is set aside and the matter is remitted back to the said Tribunal for adjudication on merits.

15. As directed above, the order of remitting is subject to payment of the cost as aforesaid. It is further directed that the matter be disposed of within a further period of 6 (six) months from today in accordance with law and the learned Tribunal would be at liberty to pass necessary orders on merits.

16. Writ petition accordingly stands disposed of.

JUDGE

Comparing Assistant