

GAHC010097782023



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

Case No. : CRP(IO)/131/2023

NATIVE TREE DEVELOPERS PVT LTD
A COMPANY REGISTERED UNDER THE COMPANIES ACT, 1956,
HAVING ITS REGISTERED OFFICE AT 2ND FLOOR, GARIMA ROYAL,
DANISH ROAD, PANBAZAR, GUWAHATI- 781001,
DISTRICT- KAMRUP(M),
REPRESENTED BY ITS DIRECTOR AND AUTHORIZED SIGNATORY, SRI
VIVEK CHHAWCHHARIA,
SON OF SRI BHAGAWATI PRASAD CHHAWCHHARIA,
RESIDENT OF MUKHYA PATH, TARUN NAGAR,
GUWAHATI- 781005, DIST- KAMRUP(M).

VERSUS

MD. SALIM KHAN AND 6 ORS
SON OF MD. SAHABUDDIN KHAN,
RESIDENT OF VILLAGE- BANUGRAM,
P.O. AND P.S.- NILAM BAZAR,
PIN CODE- 788722,
DISTRICT- KARIMGANJ, ASSAM.
PRESENTLY RESIDING AT-
C/O- DR. LALRIMAWIA, MC HILL,
ZARKWAT, AIZAWL, DISTRICT- AIZAWL,
MIZORAM, PIN- 796007.

2:MD. JAHANUDDIN AHMED @ DULU AHMED
SON OF MD. NIZAMUDDIN AHMED

RESIDENT OF SANTIPUR
OPPOSITE ASHRAM ROAD
GUWAHATI- 781009

HAVING OFFICE AT HOTEL PLAZA INN

NEAR GUWAHATI METROPOLITAN DEVELOPMENT AUTHORITY OFFICE

GMCH ROAD
BHANGAGARH
GUWAHATI

DISTRICT- KAMRUP(M)
ASSAM.

3:S.S.R. DESIGN AND CONSTRUCTION PVT. LTD.
A COMPANY REGISTERED UNDER THE COMPANIES ACT

HAVING ITS OFFICE REGISTERED AT T.R. PHUKAN ROAD
MACHKHOWA

OPPOSITE NEW KRISTAL HOTEL

GUWAHATI- 781009
DIST.- KAMRUP(M)
ASSAM.

4:MD. AMINUDDIN AHMED
SON OF LATE FAISUDDIN AHMED

RESIDENT OF F.A. ROAD
MACHKHOWA

BHARALUMUKH
GUWAHATI- 781009

DISTRICT- KAMRUP(M)
ASSAM.

5:SRIKANTA SAHA
SON OF LATE KUMUD BONDHU SAHA

RESIDENT OF A.T. ROAD
ATHGAON

DISTRICT- KAMRUP(M)

PRESENTLY RESIDING AT 28/8 GARIAHAT ROAD
P.S. LAKE
DISTRICT- SOUTH 24 PORGONNAS

KOLKATA- 700029
WEST BENGAL.

6:SHANKAR LAL SAHA
SON OF LATE KUMUD BONDHU SAHA

RESIDENT OF A.T. ROAD
ATHGAON
DISTRICT- KAMRUP(M)

PRESENTLY RESIDING AT 28/8 GARIAHAT ROAD
P.S.- LAKE

DISTRICT- SOUTH 24 PORGANNAS

KOLKATA- 700029
WEST BENGAL.

7:K.B. SAHA AND SONS INDUSTRIES PVT. LTD.
A COMPANY REGISTERED UNDER COMPANIES ACT
HAVING ITS REGISTERED OFFICE AT 28/8 GARIAHAT ROAD
P.S.- LAKE

DISTRICT- SOUTH 24 PORGANNAS

KOLKATA- 700029
WEST BENGAL.
HAVING ITS REGISTERED OFFICE AT A.T. ROAD
ATHGAON
DISTRICT- KAMRUP(M)
ASSAM

Advocate for the Petitioner : MR. R L YADAV
Advocate for the Respondent : MR. R K BHUYAN

PRESENT

THE HON'BLE MR. JUSTICE PARTHIVJYOTI SAIKIA

For the Petitioner	:	Mr. R.L. Yadav, Advocate.
For the Respondents	:	Mr. R.K. Bhuyan, Advocate.
Date of Hearing	:	14.06.2023.
Date of Judgment	:	27.07.2023.

JUDGMENT AND ORDER (CAV)

Heard Mr. R.L. Yadav, learned counsel representing the petitioner as well as Mr. R.K. Bhuyan, learned counsel representing the respondents.

2. This is an application under Article 227 of the Constitution of India challenging the order dated 27.03.2023 passed by the learned Civil Judge No.2, Kamrup(M) in Misc. (J) Case No.115/2022 arising out of Title Suit No.353/2020.

3. The factual matrix giving rise to this petition lies within a very short campus. The respondent Md. Salim Khan and Md. Jahanuddin Ahmed purchased two plots of land attached to each other. Jahanuddin Ahmed handed over his portion of the land to the petitioner company for construction of a building. Salim Khan alleges that while the petitioner company was building a structure on the land of Jahanuddin Ahmed, encroached upon his land and started construction work of the building on his land.

4. Salim Khan filed the suit for declaration of his right, title and interest as well as for recovery of possession. Salim Khan also prayed for an injunction and the trial court allowed the prayer for injunction. On a prayer of Salim Khan, the trial court directed police to implement the injunction order.

5. The petitioner company filed the present revision petition against the said order of the trial court on the ground that it is not undertaking any construction work on the land of Salim Khan. The petitioner apprehends that police would stop construction of the building which is being

undertaken on the land of the other person.

6. I have given my anxious considerations on the submissions made by the learned counsels of both sides.

7. The main grounds on which the High Court interferes under Article 227 of the Constitution of India are-----

1. When the inferior Courts act arbitrarily
2. When the inferior Courts act in excess of the Jurisdiction vested in them.
3. When the inferior Courts fail to exercise jurisdiction vested in them.

8. It is pertinent to note that the High Court does not interfere for correcting mere error of facts or, with a finding of the subordinate court which is within the jurisdiction of such court. However, if, such finding is perverse in such a sense that no prudent person having the knowledge of law could have arrived at such finding, or the finding is not based on any material evidence or, such finding results in manifest injustice or if there is a misdirection in law then the High Court can interfere under Article 227 of the Constitution of India.

9. Reverting to the case in hand, the trial court has granted the prayer of injunction. The present petitioner never moved the trial court for cancellation or modification of the order of injunction. When the trial court directed police to implement the order of injunction, then only the petitioner has come to this Court for restraining police interference.

10. I am of the considered opinion that the petitioner has failed to satisfy this Court for exercising the power under Article 227 of the Constitution of India. There is no error in the impugned order for exercising the power of the High Court under Article 227 of the Constitution of India. Therefore, the present petition is found to be devoid of merit and stands dismissed accordingly.

JUDGE

Comparing Assistant