

GAHC010101312021



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

Case No. : WP(C)/3239/2021

LAKHIMAI DIHINGIA
W/O LATE LAKHI DIHINGIA, RESIDNET OF GHILAMARA TINIALI, PO AND
PS GHILAMARA, SUB DIVISION DHAKUWAKHANA, DIST LAKHIMPUR,
ASSAM 787053

VERSUS

THE STATE OF ASSAM AND 5 ORS
REPRESENTED BY THE PRINCIPAL SECRETARY TO THE GOT. OF ASSAM,
DEPARTMENT OF ASSAM LAND REVENUE AND DISASTER
MANAGEMENT, JANATA BHAWAN ,DISPUR, GUWAHATI 06, ASSAM

2:THE EXECUTIVE ENGINEER

PWD(BUILDING) NORTH LAKHIMPUR
ASSAM
787001

3:THE DEPUTY COMMISSIONER

NORTH LAKHIMPUR
ASSAM
787001

4:THE CIRCLE OFFICER

SOBANSIRI REVENUE CIRCLE
GHILAMARA
NORTH LAKHIMPUR ASSAM 787053

5:THE SUB DIVISIONAL OFFICER (SDO)
DHAKUAKHANA SUB DIVISION

NORTH LAKHIMPUR
ASSAM

6:GHILAMORA SPORTS ASSOCIATION
GHILAMARA
DIST LAKHIMPUR
REPRESENTED BY THE PRESIDENT SRI KIRAN GOGOI
R/O. VILL. TENGAAM MAJ GAON
P.O./P.S. GHILAMARA
PIN-787053
NORTH LAKHIMPUR
ASSAM

Advocate for the Petitioner : MR DEBA SARMAH

Advocate for the Respondent : GA, ASSAM

BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH

ORDER

Date : 31.05.2023

Heard Mr. D. Sarmah, the learned counsel appearing on behalf of the Petitioner. Mr. N. Goswami, the learned counsel appears for the respondent Nos. 3, 4 & 5, Mr. R. Dhar, the learned counsel appears for the Respondent No. 2 and Mr. R. Borpujari, the learned counsel appears for the Respondent No. 1.

2. It is the case of the petitioner herein is that the petitioner is the owner of two plots of land i.e. (i) 4 bigha 0 Katha 0 Lecha covered by Dag No. 651 of Periodic Patta No. 110 of village Ghilamara ½ part under Mouza Gohain and (ii) a plot of land measuring 15 Bighas covered by Dag No. 637 of Patta No. 59 of village Ghilamara ½ part under Mouza Gohain.

3. The instant writ petition was filed on the ground that on 5/7/2021 the Respondent Authorities had demolished the boundary wall constructed by the PWD (Building) Department between the boundary of the petitioner's land and the land of Ghilamara Sports Association and were trying to evict the petitioner from her private

land by cutting the trees, demolishing the other structures standing within the premises of the petitioner by using excavator. It is the further case of the petitioner that although such actions were resorted to on 5/7/2021, the petitioner still continues to retain both the plots of land as above mentioned. However, out of apprehension that similar steps will be taken by the respondents again, the instant writ petition was filed.

4. It appears on record that this Court vide an order dated 8/7/2021 directed maintenance of status-quo in respect to the possession of the land of the petitioner by the parties. On that very date, an objection was raised by the learned counsel appearing on behalf of the Revenue that Ghilamara Sports Association, Lakhimpur was not impleaded as a party and this Court directed the petitioner to file an application for impleading the Ghilamara Sports Association as a party to the instant proceedings. It is in consequence to the order dated 8/7/2008 that I.A. (C) No. 1390/2021 was filed whereupon the respondent No. 6 herein has been impleaded. It further appears from the records that from time to time the interim order which was passed by this Court was extended.

5. In the meantime, the Deputy Commissioner had filed an affidavit on 3rd of January, 2022. In paragraph No. 4 of the said affidavit, it was mentioned that as per the office records land measuring 4 Bigha 0 Katha 0 Lechas covered by covered by Dag No. 651 of Periodic Patta No. 110 of Ghilamara ½ part under Gohain Mouza was recorded in the name of the petitioner. Further to that, another plot of land measuring 14 Bighas 0 Katha 0 Lecha covered by Dag No. 637 of Patta No. 59 of Ghilamara ½ part under Gohain Mouza was recorded in the name of the petitioner and 5 Others. It was further mentioned that as per the official records, 33 Bighas of land covered by Dag No. 647 was recorded in the name of the respondent No. 6 in the year 1981 and the Dag No. 651 and 637 belonging to the petitioner are adjacent to the Dag No. 647. It was further mentioned that there were various applications being filed by the respondent No. 6 for demarcation of the land and on the basis of a public meeting

held under the Chairmanship of the Sub-Divisional Officer (Civil), Dhakuwakhana and in that meeting 5/7/2021 was fixed for demarcation of the land belonging to the respondent No. 6 and accordingly on 5/7/2021 in presence of various officials demarcation of the land owned by the petitioner in Dag No. 637 (area 14 Bighas) and Dag No. 651, (area 4 Bighas) were done and found exact land area of each Dag with official record i.e. land area mentioned in the office record (total 18 Bighas in both Dags) and in field (total 18 Bighas in both Dags) were found. It was further mentioned that the demarcation of Dag No. 647 (area 33 Bighas) was also done and found exact land area of Dag with office record i.e. the land area mentioned in office record (total 33 Bighas) and in field (total 33 Bighas) was found and the same were handed over to the P.W.D. Building Official. It was further mentioned that Dag No. 647 is totally separate Dag to the petitioner's Dag i.e. Dag No.637 and 651 respectively. In paragraph No 14 of the said affidavit, it was mentioned that no eviction was done at the land belonging to the petitioner covered by Dag No. 637 and 651 and in the demarcation process land area of each dag with the official record and in field were found same and whereas demarcation was done in the greater interest of the public.

6. The learned counsel for the petitioner further placed on record during the course of the hearing the Jamabandi of Dag No. 637 of Patta No. 59 and submitted that the land in Dag No. 637 is 15 Bighas. However, it is the specific case of the petitioner that although certain steps were taken to evict the petitioner from a part of the land, but after the filing of the instant petition, the petitioner has been in possession of her entire land in view of the status quo order.

7. In view of the specific statements made in the pleadings and considering the submissions of the learned counsels for the parties, this Court is of the opinion that from the materials on record as well as what has been admitted in the affidavit filed by the Deputy Commissioner, it is clear that the petitioner herein is an absolute owner of the land in Dag No. 651 of Patta No. 110 and a co-owner along with 5 Others in respect to Dag No. 637 of Patta No. 59. Although in the affidavit-in-opposition, it has

been mentioned that Dag No. 651 contains 14 Bighas of land, during the course of hearing, the learned counsel has placed on record a document which is the Jamabandi of Dag No. 637 of Patta No. 59 wherein it shows that the total land in the said dag is 15 Bighas. The rights of the petitioner over the lands in question is a constitutional right guaranteed under Article 300A of the Constitution. Under such circumstances, it is the mandate of law that such valuable right cannot be interfered with save by Authority of law.

8. Under such circumstances, this Court therefore disposes off the instant writ petition with a direction to the Respondent Authorities not to disturb/interfere with the possession of the petitioner in respect to her land contained in Dag No. 651 of Patta No. 110 and land in Dag No. 637 of Patta No.59 of village Ghilamara, ½ part under Mouza Gohain under Revenue Circle Subansiri in the District of Lakhimpur, Assam, save by authority of law.

JUDGE

Comparing Assistant