

GAHC010101372022



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

Case No. : WP(C)/3507/2022

AMBAR BAHADUR PRADHAN AND 2 ORS.
S/O- LATE LOK BAHADUR PRADHAN, R/O- J.D. ROAD, KOKRAJHAR,
WARD NO. 5, P.O. AND DISTRICT- KOKRAJHAR, BTAD, ASSAM, PIN- 783370.

2: SMTI. JYOTI PRADHAN (DHAR)
D/O- LATE LOK BAHADUR PRADHAN
R/O- J.D. ROAD
KOKRAJHAR
WARD NO. 5
P.O. AND DISTRICT- KOKRAJHAR
BTAD
ASSAM
PIN- 783370.

3: SMTI. PUNAM PRADHAN (PODDAR)
D/O- LATE LOK BAHADUR PRADHAN
R/O- J.D. ROAD
KOKRAJHAR
WARD NO. 5
P.O. AND DISTRICT- KOKRAJHAR
BTAD
ASSAM
PIN- 783370

VERSUS

THE STATE OF ASSAM AND 4 ORS.
REPRESENTED BY THE COMMISSIONER AND SECRETARY, TO THE
GOVERNMENT OF ASSAM, DEPARTMENT OF REVENUE AND DISASTER
MANAGEMENT, DISPUR, GUWAHATI-6.

2: THE DEPUTY COMMISSIONER
KOKRAJHAR
DISTRICT- KOKRAJHAR

ASSAM.

3:THE ADDITIONAL DEPUTY COMMISSIONER
KOKRAJHAR
KOKRAJHAR
ASSAM.

4:THE CIRCLE OFFICER
KOKRAJHAR REVENUE CIRCLE
KOKRAJHAR.

5:SAJAL DEY
S/O- LATE SAMBHU CH. DEY
R/O THANAPARA
WARD NO. 9
P.S. AND P.O. - KOKRAJHAR
DISTRICT- KOKRAJHAR BTAD- 783370

Advocate for the Petitioner : MR R DHAR

Advocate for the Respondent : SC, REVENUE

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

ORDER

31.07.2023

Heard Shri R Dhar, learned counsel for the petitioners. Also heard Ms. S Sarma, learned State Counsel, Assam for the respondent nos. 2, 3 and 4 as well as Shri A Bhattacharjee, learned Standing Counsel, Revenue Department, Assam. Shri PK Das, learned counsel appears for the respondent no. 5.

2. Respondent nos. 2, 3 and 4 as well as the respondent no.5 have filed affidavits-in-opposition, respectively on 17.11.2022 and 03.05.2023 which, however, have been replied to by the petitioners by filing rejoinder-affidavit.

3. The controversy in question revolves around a Next of Kin (NoK) certificate

which has been applied by the petitioners. It is the claim of the petitioners that their sister, Surya Pradhan had passed away on 14.10.2020 and had left behind certain immovable and movable properties and upon such death, a NoK certificate was applied for and was furnished on 29.12.2020.

4. However, as projected by the petitioners, the respondent no. 5 had also obtained a NoK certificate subsequently on 30.01.2021 in which, the said respondent no. 5 was described to be the husband of the deceased.

5. Shri Dhar, learned counsel for the petitioners has submitted that subsequent NoK certificate has been obtained by the respondent no. 5 by misrepresentation as, at no point of time, their sister was married to the respondent no. 5. He has submitted that the respondent no. 5 was the driver in the family and was never married to their sister.

6. On the other hand, Shri Das, learned counsel for the respondent no. 5 by referring to the affidavit-in-opposition filed on 03.05.2023 has submitted that the said respondent no. 5 had married the deceased in the year 2008 in a temple and thereafter had started residing at Subhashpally at Kokrajhar in a rented house. For ready reference, the relevant pleadings made in paragraph 3 of the said affidavit-in-opposition are extracted hereinbelow:

“3. That with regard to statements made in paragraph 2 of the writ petition as a matter of record it is true that Lt. Surya Pradhan expired on 14.10.2020. The death certificate showed clearly the name of respondent No. 5 as the husband of respondent no. 5. However, while denying the contentions made therein begs to state that Lt. Surya Pradhan married the respondent no. 5 in 2008 in a temple and thereafter started residing in Subhashpally, Kokrajhar in a rented

house of one Ashish Bhattacharjee.”

7. Ms. S Sarma, learned State Counsel has, however, referred to the affidavit-in-opposition of the respondent nos. 2, 3 and 4 dated 17.11.2022 and has submitted that as per the report of the Circle Officer, Kokrajhar Revenue Circle dated 26.07.2022, the status of the respondent no. 5 is not conclusive.

8. Shri Dhar, learned counsel has, however, submitted that the averments made by the respondent no. 5 regarding marriage are not categorical and that would not establish a valid marriage. In any case, he has referred to the rejoinder-affidavit wherein such averments have been denied.

9. After considering the rival submissions made by the learned counsel for the parties, this Court is confronted with a situation wherein, there are factual disputes that too, regarding the status of the respondent no. 5 as to whether the deceased was the legally married wife of the said respondent no. 5. The said question which has arisen is necessarily a question of fact which would be required to be proved by adducing evidence by both the parties in accordance with law and such exercise would not be within the ambit of this Court in exercise of powers under Article 226 of the Constitution of India. This Court has also noted that the report of the Circle Officer is also not conclusive which has again fortified the aforesaid conclusion of this Court.

10. In view of the above, the issue is directed to be raised before the competent court with regard to the fact whether the married was actually solemnized and thereafter the Deputy Commissioner would take a final decision with regard to the NoK to be issued to the parties. In the event, the parties approaches the competent court/authority, the said court/authority shall not be influenced by any observation made by this Court in this case and shall decide the matter as per its own merits.

The writ petition is accordingly disposed of.

JUDGE

Comparing Assistant