

GAHC010131462017



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

Case No. : WP(C)/3472/2017

SAHIR ALI
S/O. ABDUL JALIL, VILL. KATTANIBARI, P.O. and P.S. THELAMARA, DIST.
SONITPUR, ASSAM, PIN-784149.

VERSUS

THE STATE OF ASSAM and 3 ORS.
REP. BY THE COMMISSIONER and SECY. TO THE GOVT. OF ASSAM,
REVENUE DEPTT., DISPUR, GHY.-06.

2:THE DY. COMMISSIONER

SONITPUR
DIST. SONITPUR
ASSAM
PIN-784001.

3:THE ADDL. DY. COMMISSIONER

SONITPUR
DIST. SONITPUR
ASSAM
PIN-784001.

4:THE CIRCLE OFFICER

THELAMARA REVENUE CIRCLE
P.O. THELAMARA
DIST. SONITPUR
ASSAM
PIN-784149

For the petitioner (s) : Mr. B. Rahman, Advocate

For the respondent (s) : Ms. U. Das, Govt. Advocate

BEFORE
HON'BLE MR. JUSTICE DEVASHIS BARUAH
O R D E R

20.09.2023

The instant writ petition has been filed by the petitioner seeking a writ of mandamus to stop the eviction of the petitioner from the land covered by Dag No.194 included in the KP Patta No.30 and to allow the petitioner to continue his rightful and legal possession over the said land.

2. From a perusal of the materials on record, it reveals that on 20.03.2012, a periodic Khiraj Patta was issued to the petitioner in respect of an area of land measuring 3 bighas covered by Dag No.194 and included in the KP Patta No.30 of village-Kathanibari under Mouza- Naharbari in the district of Sonitpur, Assam (for short referred to as 'the said land'). The record further reveals that the petitioner had been paying the land revenue in respect to the said land and his name was also duly entered in the records of right. The petitioner claims that the Thelamara Gaon Panchayat, vide the No Objection Certificate dated 31.08.2009, granted permission to the petitioner to run a line hotel and a cycle shop. The petitioner claims that his line hotel and his cycle shop are situated over the said land which was settled upon the petitioner and the petitioner is running the said line hotel and the cycle shop from his land. It is the further case of the petitioner that the Office of the Deputy Commissioner, Sonitpur had taken steps for eviction of the Government land and the petitioner was also informed that he would be evicted from the said land and it is under such circumstances, the

petitioner has approached this Court by filing the instant writ petition under Article 226 of the Constitution.

3. This Court vide an order dated 09.06.2017, issued notice and further directed to maintain the status-quo as regards the petitioner's land until further order. The said order has been continuing since then.

4. The record further shows that the respondent No.2 filed an affidavit-in-opposition through the Assistant Commissioner, Sonitpur, Tezpur, Assam. In the said affidavit-in-opposition, it is mentioned that the petitioner is running a line hotel in a plot of land measuring 2 bighas 2 kathas 6 lechas situated at village Ruhinibil under Mouza-Naharbari covered by Dag No.7 which is a Government land. It is denied that the petitioner is having his line hotel over the said land which was settled in favour of the petitioner. It is further stated that the land which has been encroached by the petitioner is situated near NH No.15 under Dag No.7 at village-Ruhinibil whereas the petitioner was settled under Dag No.194 and included in the KP Patta No.30 at village-Kathanibari. Further to that, it has also been mentioned that the petitioner is illegally encroaching the said land of the Government by unlawfully running a line hotel and by digging a fishery tank on the Government land.

5. I have heard the learned counsels for the parties and perused the materials on record. From the materials on record it transpires that the petitioner has been issued a periodic lease in respect to a plot of land measuring 3 bighas covered by Dag No.194 included in KP Patta No.30 of village- Kathanibari under Mouza-Naharbari in the district of Sonitpur, Assam. The petitioner cannot be evicted from the said land by the respondent authorities other than by following the mandates of law as the petitioner has a permanent and transferable right over the said land. The No Objection

Certificate so issued by the Thelamara Gaon Panchayat dated 31.08.2009 to the petitioner to carry on the business of a line hotel and a cycle shop is at village-Kathanibari. However, there is no Dag Number or Patta Number mentioned therein identifying the land for which the said No Objection Certificate was issued.

6. Be that as it may, from the affidavit filed by the respondent No.2, it has been alleged that the petitioner is carrying on the business of a line hotel at village Ruhinibil under Mouza-Naharbari covered by Dag No.7 on a plot of land measuring 2 bighas 2 kathas 6 lechas which is a Government land. It has also been specifically mentioned that the land where the petitioner is carrying on his line hotel is not the said land settled with the petitioner. Therefore, the question arises as to whether the petitioner's line hotel is situated at the periodic patta land of the petitioner or on the Government land.

7. This Court, taking into account the conflicting claims of the parties is of the opinion that interest of justice would be met if the respondent authorities ascertains as to whether the petitioner is carrying on the business of the line hotel in the said land, which had been settled with the petitioner by issuance of Periodic Patta or at Dag No.7 which is a Government land. This Court therefore directs that the necessary verifications shall be carried out by the Deputy Commissioner, Sonitpur or through his delegatee on the basis of the relevant revenue record and field verification by issuance of notice to the petitioner.

8. It is made clear that if the petitioner is carrying on the business of his line hotel in his periodic patta land, the respondent authorities shall not disturb his possession. It is also made clear that if upon field verification and

verification of the revenue records, it is found that the petitioner is in occupation of the Government land, the petitioner may be evicted as per the established provisions of law. This Court directs that till such time the verification as directed upon is not concluded, the possession of the petitioner should not be disturbed.

9. With the above observation and direction, the instant writ petition stands disposed of.

10. A copy of the instant order be served upon Ms. U. Das, the learned Additional Senior Government Advocate for compliance.

JUDGE

Comparing Assistant