

GAHC010141622023



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

Case No. : WP(C)/3782/2023

AZMAL HOSSAIN AND 3 ORS
SON OF LATE SANOWAR ALI SK,
VILLAGE- ALOMGANJ PT VI,
P.O.- ALOMGANJ, P.S. GAURIPUR,
DIST- DHUBRI, ASSAM.

2: MOGBUL HOSSAIN
SON OF LATE SANOWAR ALI SK

VILLAGE- ALOMGANJ PT VI

P.O.- ALOMGANJ
P.S. GAURIPUR

DIST- DHUBRI
ASSAM.

3: SADEL ALI
SON OF LATE SANOWAR ALI SK

VILLAGE- ALOMGANJ PT VI

P.O.- ALOMGANJ
P.S. GAURIPUR

DIST- DHUBRI
ASSAM.

4: NOZMUL HOQUE
SON OF LATE SANOWAR ALI SK

VILLAGE- ALOMGANJ PT VI

P.O.- ALOMGANJ
P.S. GAURIPUR

DIST- DHUBRI
ASSAM

VERSUS

THE STATE OF ASSAM AND 5 ORS
REPRESENTED BY THE PRINCIPAL SECRETARY TO THE GOVERNMENT OF
ASSAM,
REVENUE AND DISASTER MANAGEMENT DEPARTMENT,
DISPUR, GUWAHATI-6.

2:CHIEF ENGINEER PWD(ROADS)
ASSAM
CHANDMARI
GUWAHATI- 781003.

3:EXECUTIVE ENGINEER PWRD
SOUTH SALMARA TERRITORIAL ROAD DIVISION

MANKACHAR
PO- HATSINGIMARI

PIN- 783128.

4:DEPUTY COMMISSIONER-CUM- COMPETENT AUTHORITY FOR LAND
ACQUISITION
DHUBRI
PO- DHUBRI
PIN- 783301.

5:CIRCLE OFFICER
GAURIPUR REVENUE CIRCLE
DHUBRI
PO-DHUBRI
PIN- 783301
DISTRICT- DHUBRI.

6:CIRCLE OFFICER
ATHANI REVENUE CIRCLE
ATHANI
PO- BAGRIBARI

PIN- 783349
DISTRICT- DHUBRI

Advocate for the Petitioner : MR. S K DAS

Advocate for the Respondent : SC, REVENUE

**BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA**

ORDER

Date : 27.06.2023

Heard Mr. S.K. Das, learned counsel for the petitioners. Also heard Ms. G. Hazarika, learned standing counsel for the respondent no.1, Mr. B. Gogoi, learned standing counsel for the respondent nos.2 and 3, and Mr. M. Chetia, learned Govt. Advocate appearing for the respondent nos.4, 5, and 6.

2. In brief, the case of the petitioners is that their father was the original owner and possessor of land measuring 1 bigha 3 katha 9 lessa covered by dag no. 707 under patta no. 151 situated at Village- Alomganj Pt-VI, Revenue Circle- Gauripur as well as another adjacent plot of land measuring 1 bigha 0 katha 8 lessa out of 2 bigha 2 katha 7 lessa covered by dag no. 33 under patta no. 9 (old)/560 (new) situated at Village- Chirakhowa Pt-V, Revenue Circle- Athani in the district of Dhubri.

3. The father of the petitioners died on 19.01.2018 leaving behind the petitioners, six daughters, and a widowed wife. It is projected that the PWD authorities are constructing a road, which would traverse from their patta land and it is also alleged that till date, the authorities have not acquired or requisitioned the land of the petitioners. Hence, the petitioners have challenged the action of the respondents in the construction of a road over the land of the petitioners without due process of law.

4. In this writ petition, reference is made to the pendency of TS No. 299/2021 as well as Misc.(J) Case No. 220/2021 pending before the Court of learned Munsiff No.2, Dhubri. Although the copy of the plaint is not annexed to

this writ petition, on a query of the Court, the learned counsel for the petitioners has produced a copy of the plaint. It is noticed that the petitioners herein are the plaintiffs of the said suit, wherein the Executive Engineer, PWD Road Division, Dhubri is arrayed as defendant no.4 and the concerned Superintendent Engineer, PWD Road Division is also arrayed as defendant no.5 in the said suit. Amongst others, the petitioners, as plaintiffs have sought for declaration of having right, title and interest over the land described in schedule-A and B of the plaint with further declaration that the defendant nos.1, 2, 4 and 5 have no right to enter into the schedule-C and D land and construct any road therein without prior consent of the plaintiffs. The petitioners have also prayed for a decree that the defendant nos.6 and 7 i.e. the Circle Officer, Gauripur Revenue Circle, and the Assistant Settlement Officer/Circle Officer, Athani Revenue Circle have no right to make schedule-C and D land as khas land by creating new khas dag in the vandyke map. The petitioners have also prayed for a perpetual injunction to restrain the defendant nos.1, 2, 4 and 5 to entering into the schedule-C and D land or carrying out any construction thereon without the consent of the petitioners. It is noticed from Annexure2 of this writ petition that the learned Munsiff No.2, Dhubri by order dated 20.12.2021 passed in Misc.(J) 220/2021, which is an application under Order XXXIX Rules 1 and 2 read with section 151 CPC expressed its view that, before disposing of the injunction application, it would be proper to hear the other side for the interest of justice and therefore, expressed its disinclination to grant *ad-interim* temporary injunction and issued notice to the respondents to show cause.

5. It is submitted at the bar that hearing of the Misc.(J) Case No. 220/2021 has not been commenced.

6. Having observed that as the petitioners have approached the

learned trial Court by filing TS 299/2021, the prayer no.1, 2, and 3 of this writ petition would be somewhat similar to the prayers made in the plaint because in the plaint, the petitioners have also prayed that the suit land should not be made khas, which is almost similar to the reliefs that can be granted to the petitioner by prayer no.1, wherein it is prayed that the action of the respondents in initiating WT Message dated 26.05.2023 to acquire the patta land of the petitioners was assailed. Under such circumstances, when the prayer in this writ petition is to direct the respondents to forbear from giving effect to the work order dated 13.01.2020, the matter being sub judice before the Court of learned Munsiff No.2, Dhubri, would dissuade this Court from entertaining this writ petition as the petitioners have already availed an appropriate remedy by approaching the learned Civil Court for reliefs which is found to be somewhat similar to the prayer made in this writ petition.

7. Although the Court is disinclined to entertain this writ petition, but it would be appropriate to grant leave to the petitioners to move the learned trial Court for an expeditious hearing of Misc.(J) Case No. 220/2021.

8. With the liberty as indicated above, this writ petition stands closed on the motion stage without issuance of notice on the respondents.

9. As the writ petition has not been adjudicated on merit, the petitioners shall be permitted to re-agitate the points raised in this writ petition in an appropriate manner in TS 299/2021 as the petitioner may be so advised.

JUDGE

Comparing Assistant