

GAHC010145132023



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

Case No. : WP(C)/3830/2023

KAMAL CHANDRA BARUA
S/O- LATE DADHIRAM BARUA, R/O- VILL.- RAMPUR NO. 1, P.O. AMTOLA,
P.S. AND DIST. NAGAON, ASSAM

VERSUS

THE STATE OF ASSAM AND 6 ORS.
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE
GOVERNMENT OF ASSAM, REVENUE DEPARTMENT, DISPUR, GUWAHATI-
06.

2:THE DEPUTY COMMISSIONER
HOJAI
P.O. AND DIST. HOJAI
ASSAM

3:THE ADDITIONAL DEPUTY COMMISSIONER (REVENUE)
HOJAI
P.O. AND DIST. HOJAI
ASSAM

4:THE CIRCLE OFFICER
HOJAI
P.O. AND DIST. HOJAI
ASSAM

5:SIBA PRASAD CHOUHAN
S/O- LATE SAKHI CHAND CHOUHAN
R/O- RAMPUR NO. 1
P.O. AMTOLA
DIST. HOJAI
ASSAM

6:GANGA SAGAR CHOUHAN

S/O- LATE SAKHI CHAND CHOUHAN
R/O- RAMPUR NO. 1
P.O. AMTOLA
DIST. HOJAI
ASSAM

7:GANGA BISNU CHOUHAN
S/O- LATE SAKHI CHAND CHOUHAN
R/O- RAMPUR NO. 1
P.O. AMTOLA
DIST. HOJAI
ASSAM

Advocate for the Petitioner : MR. A R SIKDAR

Advocate for the Respondent : GA, ASSAM

BEFORE
HONOURABLE MR. JUSTICE MANISH CHOUDHURY

ORDER

Date : 28-06-2023

Heard Mr. A.R. Sikdar, learned counsel for the petitioner; Mr. S. Baruah, learned Junior Government Advocate, Assam for the respondent nos. 1 & 2; and Ms. N. Bordoloi, learned Standing Counsel, Revenue Department for the respondent nos. 3 & 4.

2. As sought for by the learned counsel for the parties, the writ petition is taken up for consideration at the motion stage itself. In view of the nature of relief sought for by the learned counsel for the petitioner, the writ petition is also taken up for disposal.

3. The projected case of the petitioner, in brief, is that he purchased a plot of land measuring 1 Katha 5 Lessas, covered by Dag no. 263 & Patta no. 31, located in Rampur Kissamat, Hojai Revenue Circle, District – Hojai from its erstwhile owner, Sakhi Chand Chouhan by way of a Registered Sale Deed no. 2043 dated 12.05.2004. After purchase of the plot of land, he took possession of the same and constructed a residential house thereon. The petitioner is aggrieved by a show cause notice dated 22.06.2023 issued by the respondent no. 4 whereby the petitioner has been asked to remove the encroachment including the boundary walls allegedly standing between a public road and the petitioner's plot of land,

within a period of 7 [seven] days from the date of notice or to submit a Reply to the said notice showing cause. In the notice dated 22.06.2023, it is reported that on 21.06.2023, a demarcation process was undertaken in presence of the respondent no. 4 and other authorities for the purpose of identifying the petitioner's plot of land and the location of the public road named Dr. Bhupen Hazarika Road and in the said process of demarcation, it has been found that an area of land measuring 0.5 Lessa, beyond 1 Katha 5 Lessas, is under possession of the petitioner, which is necessary for the purpose of construction of the said public road, Dr. Bhupen Hazarika Road under the Chief Ministers Concrete Road Scheme by the Public Works Department [PWD].

4. It is the case of the petitioner that the said demarcation process was undertaken on 21.06.2023 in his absence. It is the petitioner's contention that in response to the notice dated 22.06.2023, the petitioner has already submitted a Reply before the respondent no. 3 on 23.06.2023 showing cause as to why the action of demolition contemplated by the notice shall not be undertaken and the receipt of the said Reply to the show cause notice has been duly acknowledged by the office of the respondent no. 3 on 23.06.2023 under seal and signature. Mr. Sikdar, learned counsel for the petitioner has reiterated that in the Reply, the petitioner has highlighted as to why the action contemplated by the notice dated 22.06.2023 shall not be undertaken for demolition of the boundary walls which exist between the petitioner's plot of land and Dr. Bhupen Hazarika Road. He has submitted that without consideration of the Reply to the show cause notice submitted by the petitioner on 23.06.2023, the respondent authorities shall not undertake the process of demolition, as indicated in the notice dated 22.06.2023.

5. Mr. Baruah, learned Junior Government Advocate, Assam representing the respondent no. 1 has submitted that the Reply showing cause submitted by the petitioner is to be given due consideration in terms of the notice dated 22.06.2023.

6. Having heard the learned counsel for the parties and taking into consideration the projections made on behalf of the petitioner, it transpires that by the notice dated 22.06.2023, the petitioner has been asked to show cause as to why the boundary walls which

exist between the petitioner's plot of land measuring 1 Katha 5 Lessas and Dr. Bhupen Hazarika Road, shall not be demolished on the allegation that the petitioner is in possession of an area of land measuring 0.5 Lessa within the boundary walls constructed to bound his purchased plot of land measuring 1 Katha 5 Lessas. The notice has implied that an area of land measuring 0.5 Lessa over and above an area of land measuring 1 Katha 5 Lessas, which the petitioner had purchased by way of the Registered Sale Deed dated 12.05.2004, is unauthorizedly possessed by the petitioner. As the petitioner has already replied to the notice dated 22.06.2023 showing cause as to why the action contemplated by the notice dated 22.06.2023 shall not be undertaken, this Court is of the considered view that the respondent no. 3 who has received the Reply to the show cause notice on 23.06.2023, should give due consideration to all the contentions raised by the petitioner in the said Reply dated 23.06.2023 and also give a personal hearing to the petitioner. It appears appropriate that the respondent no. 3 after examining the relevant land records with regard to the alleged disputed area of land measuring 0.5 Lessa and after hearing all the stakeholders including the petitioner, passes a reasoned order thereon. Thus, this Court is of the considered view the instead of keeping this writ petition pending, the same can be disposed of by giving a direction to the respondent no. 3 to consider the Reply to the show cause notice submitted by the petitioner on 23.06.2023 in the afore-stated manner before deciding about taking any action, as contemplated in the notice dated 22.06.2023, or otherwise. It is accordingly ordered. The order to be passed on the Reply to the show cause notice by the respondent no. 3 shall also be communicated to the petitioner forthwith thereafter.

7. This order disposes of the writ petition. No cost.

JUDGE

Comparing Assistant