

GAHC010153952022



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

Case No. : Review.Pet./130/2022

ANARUL ISLAM AND 4 ORS.
S/O- LATE A. HOQUE, R/O- VILL. AND P.O. JHOWDANGA, P.S.
MANKACHAR, DIST. SOUTH SALMARA MANKACHAR, ASSAM

2: ABDUL GONI
S/O- LATE A. JOBBAR
R/O- VILL. AND P.O. JHOWDANGA
P.S. MANKACHAR
DIST. SOUTH SALMARA MANKACHAR
ASSAM

3: FULU SK.
S/O- LATE A. HOQUE
R/O- VILL. AND P.O. JHOWDANGA
P.S. MANKACHAR
DIST. SOUTH SALMARA MANKACHAR
ASSAM

4: NUR ISLAM
S/O- LATE A. HOQUE
R/O- VILL. AND P.O. JHOWDANGA
P.S. MANKACHAR
DIST. SOUTH SALMARA MANKACHAR
ASSAM

5: EKTAR HUSSAIN
S/O- LATE A. SATTAR
R/O- VILL. AND P.O. JHOWDANGA
P.S. MANKACHAR
DIST. SOUTH SALMARA MANKACHAR
ASSA

VERSUS

HADIUL ISLAM AND 8 ORS.
S/O- LATE ABDUL MOJID, R/O- VILL. AND P.O. JHOWDANGA, P.S.
MANKACHAR, DIST. SOUTH SALMARA MANKACHAR, ASSAM

2:ASHADUL ISLAM
S/O- MUKLESUR RAHMAN
R/O- VILL. AND P.O. JHOWDANGA
P.S. MANKACHAR
DIST. SOUTH SALMARA MANKACHAR
ASSAM

3:THE STATE OF ASSAM
REPRESENTED BY THE CHIEF SECRETARY TO THE GOVERNMENT OF
ASSAM DISPUR
GUWAHATI-6.

4:THE DISTRICT MAGISTRATE
DIST. SOUTH SALMARA MANKACHAR
ASSAM

5:THE SUPERINTENDENT OF POLICE
DIST. SOUTH SALMARA MANKACHAR
ASSAM

6:ADDITIONAL DISTRICT MAGISTRATE
DIST. SOUTH SALMARA MANKACHAR
ASSAM

7:THE ASSISTANT SETTLEMENT OFFICER
MANKACHAR REVENUE CIRCLE
DIST. SOUTH SALMARA MANKACHAR
ASSAM

8:THE CIRCLE OFFICER
MANKACHAR REVENUE CIRCLE
DIST. SOUTH SALMARA MANKACHAR
ASSAM

9:THE OFFICER-IN-CHARGE
MANKACHAR POLICE STATION
DIST. SOUTH SALMARA MANKACHAR
ASSA

Advocate for the Petitioner : MR S BORTHAKUR
Advocate for the Respondent : GA, ASSAM

BEFORE
HON'BLE MR. JUSTICE MANASH RANJAN PATHAK
ORDER

15-03-2023

Heard Mr. S. Borthakur, learned counsel for the review petitioners and Mr. D. Das, learned counsel for the respondent Nos. 1 and 2. Also heard Ms. D. Das Barman, learned Government Advocate, Assam for the respondent Nos. 3 to 9.

2) The respondent Nos. 1 and 2 as petitioners filed a petition under Section 133 of the CrPC being Misc Case No.81/2017 before the learned District Magistrate, South Salmara-Mankachar, Hatsingimari, praying for removal of the obstructions caused by the present review petitioners/respondent Nos. 8 to 13 of the connected WP(C) No. 4363/2021 from a road measuring about 400 feet in length and 12 feet wide over the land covered by Dag Nos. 242/252/253/254/255 at revenue village Jhowdanga Part-II, Mankachar Circle, District South Salmara Mankachar passing near the residence of the present petitioner No.2 Abdul Goni (respondent No. 8 in WP(C) No. 4363/2021).

3) On 09.12.2020, the present review petitioners agreed before the learned District Magistrate about the existence of the said road and also assured to remove the obstruction from the said road keeping 10 feet breadth from HM Road to 56 No. Anganwadi Centre at Middle Jhowdanga via Jasizul Hoque house within 15 days w.e.f., 09.12.2020.

4) By order dated 17.05.2021 the learned District Magistrate, South Salmara-Mankachar, Hatsingimari in said Misc Case. No.81/2017 in exercising of the powers conferred under Sections 133/144/147 CrPC directed the present review petitioners to remove the obstruction from the said road within 15 days, further directing the Superintendent of Police South Salmara and the Assistant

Settlement Officer, Mankachar Revenue Circle, South Salmara to ensure such removal of obstruction from the disputed road and to report compliance before the said authority directing those authorities to take necessary steps for removal of the obstruction from the road, if not done by the present review petitioners.

5) As the said order dated 17.05.2021, passed in Misc Case. No. 81/2017 was not complied with, the present opposite party Nos. 1 and 2 preferred the connected writ petition, being WP(C) No. 4363/2021 praying amongst others for removing the obstruction from the public road from HM Road to 56 No. Anganwadi Centre at Middle Jhowdanga via Jasizul Hoque house in compliance of said order dated 17.05.2021 passed by the learned District Magistrate, South Salmara-Mankachar, Hatsingimari in said Misc Case. No.81/2017 and to direct the present review petitioners/respondent Nos. 8 to 13 in said WP(C) No. 4363/2021 to voluntarily remove the obstruction from the said public path.

6) The Court after considering the matter vide order dated 06.09.2021 disposed of said WP(C) No. 4363/2021 preferred by the opposite party Nos. 1 and 2 with the observation that--

”Considering the entire aspects of the matter and as agreed upon by the parties, this writ petition is disposed of at the motion stage itself directing the respondents, more particularly, the Superintendent of Police, South Salmara-Mankachar, Hatsingimari, respondent No. 3 and the Assistant Settlement Officer, Mankachar, respondent No. 5 to comply with the order dated 17.05.2021 passed by the District Magistrate, South Salmara-Mankachar, Hatsingimari in Misc. Case No. 81/2017 forthwith, if in the meanwhile the same has not been complied with and if there is no other legal impediment created in the meanwhile on compliance of the same and to submit the compliance report before the District Magistrate, South Salmara-Mankachar, Hatsingimari forthwith on or before 20.09.2021. After submitting of such compliance report by those officers, i.e. respondent Nos. 3 and 5, the District Magistrate, South Salmara-Mankachar, Hatsingimari shall intimate the same to the petitioners. The petitioners shall submit certified copy of this order before the District Magistrate, South Salmara-Mankachar, Hatsingimari, respondent No. 2; the

Superintendent of Police, South Salmara Mankachar, Hatsingimari, respondent No. 3 and the Assistant Settlement Officer, Mankachar, respondent No. 5 and shall obtain necessary acknowledgement from them in that regard. A copy of this order also be furnished to Ms. M Barman, learned Government Advocate, Assam for her necessary use."

- 7) Mr. Borthakur, learned counsel for the review petitioners submitted that after the said order dated 17.05.2021, passed by the learned District Magistrate in Misc Case No. 81/2017, they preferred a Criminal Revision Petition before the learned Sessions Judge, Dhubri being Cri.Revn.Pet. No.11/2021. By order dated 28.07.2021, the learned Sessions Judge, Dhubri admitted the said revision petition and stayed the operation of the order dated 17.05.2021 passed in Misc. Case No.81/2017 that was passed by the learned District Magistrate, South Salmara-Mankachar, Hatsingimari, until further order and called for the records of the case in original by issuing notice to the opposite parties for full and final hearing fixing the said revision petition on 20.08.2021 for hearing.
- 8) It is placed that the Court by order dated 06.09.2021, passed in said WP(C) No. 4363/2021, categorically directed the Superintendent of Police, South Salmara Mankachar and the Assistant Settlement Officer, Mankachar to comply with the order dated 17.05.2021, passed by the learned District Magistrate, South Salmara Mankachar, Hatsingimari in Misc. Case No.81/2017, if in the meanwhile, the same was not complied with and if there is no other legal impediment created in the meanwhile in compliance of the same, but in view of such direction, the learned Sessions Judge is not in a position to proceed with the said Cri.Revn.Pet. No.11/2021, presently pending before it with regard to said Misc. Case No.81/2017 wherein the learned District Magistrate passed the impugned order dated 17.05.2021.
- 9) It is stated at the Bar that said Crl. Revn. P. No.11/2021 has now been re-

registered as Crl. Revn. P. No.5/2022 before the learned Sessions Judge, South Salmara, Mankachar.

10) Hence, this review petition by the petitioners/respondent Nos. 8 to 13 in said WP(C) No. 4363/2021.

11) After hearing the learned counsels for the parties and considering the entire aspect of the matter, it is clarified that since the learned Sessions Judge, Dhubri by order dated 28.07.2021 have already admitted the Crl. Revn. P. No.5/2022 relating to said Misc. Case No.81/2017 wherein the learned District Magistrate, South Salmara Mankachar, Hatsingimari passed the impugned order on 17.05.2021, it may proceed with said Crl. Revn. P. No.5/2022 and to come to a final conclusion by issuing necessary order considering the fact that the Court in the order dated 06.09.2021, passed in WP(C) No. 4363/2021 categorically observed that "if there is no other legal impediment created in the meanwhile regarding compliance of the said order dated 17.05.2021, passed in Misc. Case No.81/2017 by the learned District Magistrate, South Salmara Mankachar, Hatsingimari".

12) With the above observation and direction, this review petition stands disposed of.

JUDGE

Comparing Assistant