

GAHC010175482023



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

Case No. : I.A.(Civil)/2335/2023

BADRUL ISLAM
S/O- LATE MAKRAM ALI,
R/O- FLAT NO- B 2 AND C, 2ND FLOOR, BLOCK 3A, REGENT PARADISE,
GHORAMARA, P.O- GHORAMARA, GUWAHATI-38,
P.S- HATIGAOM, KAMRUP (M), ASSAM

VERSUS

EAJUL HOQUE AND 3 ORS.
S/O- LATE ALIMUDDIN AHMED, R/O- MILIJULI PATH, SATGAON NOPARA,
P.S- SATGAON, P.O- UDAYAN BIHAR, KAMRUP (M), ASSAM

2:THE STATE OF ASSAM

REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM
REVENUE DEPARTMENT
DISPUR
GHY-06

3:THE DEPUTY COMMISSIONER

KAMRUP (M)
HENGRABARI
GUWAHATI-36

ASSAM

4:THE CIRCLE OFFICER
DISPUR REVENUE CIRCLE
BASISTHA
GUWAHATI
KAMRUP (M)

ASSA

Advocate for the Petitioner : MR. D P BORAH

Advocate for the Respondent : SC, REVENUE

Linked Case : WP(C)/4082/2023

EAJUL HOQUE
S/O- LATE ALIMUDDIN AHMED

R/O- MILIJULI PATH
SATGAON NOPARA

P.S- SATGAON

P.O- UDAYAN BIHAR

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GUWAHATI-38

P.S- HATIGAOM
KAMRUP (M)
ASSAM

Advocate for : MR U DAS
Advocate for : SC
REVENUE appearing for THE STATE OF ASSAM AND 3 ORS.

BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA

ORDER

Date : 19.12.2023

Heard Mr. P. Mahanta, learned counsel for the applicant. Also heard Mr. B. Sinha, learned counsel for the opposite party no. 1 (i.e. writ petitioner), Mr. N. Goswami, the learned Government advocate, representing the opposite party nos. 2 and 3, and Mr. D.P. Borah, learned counsel for the opposite party no. 4.

2. By this application under Article 226(3) of the Constitution of India, the applicant has prayed for alteration/ modification/ variation of the order dated 24.07.2023, passed by this Court in the connected W.P.(C) 4082/2023, which was filed by the opposite party no. 1.

3. The contents of the order dated 24.07.2023 is extracted below:-

“Heard Mr. B. Sinha, learned counsel for the petitioner, Ms. G. Hazarika, learned standing counsel for the Revenue Department, respondent no.1 and Mr. K. Gogoi, learned Addl. Senior Govt. advocate appearing for respondent nos. 2 and 3.

The petitioner projects himself to be the encroacher of government land and has applied for settlement of the said land in his favour for which application acknowledgement no. RTPS/SKCSL/2023/592648 dated 07.01.2023 was issued. The petitioner is in receipt of notice of eviction dated 10.07.2023 from the office of the Circle Officer, Dispur Revenue Circle and accordingly, the learned counsel for the petitioner apprehends that the petitioner may be dispossessed of the land which he is holding without disposal of his application for settlement and accordingly, this writ petition has been filed under Article 226 of the Constitution of India.

Issue notice including the notice on the prayer for interim relief returnable on 11.08.2023.

Requisite extra copy of the writ petition be served on the learned State and Departmental counsel in course of the day.

The petitioner shall take steps within 2 days for service of notice on respondent no.4 by registered post with A/D. In addition, the notice would be served on respondent no.4 by way of dasti by routing the process through the Registry of this Court and upon service, an affidavit of service be filed prior to the next date of listing.

The pendency of this writ petition shall not be bar for the competent authority under the establishment of the Deputy Commissioner/ District Commissioner, Kamrup (M), Guwahati to dispose of the petitioner's application for settlement submitted on 07.01.2023. However, till the disposal of the said representation or till the next returnable date, the petitioner shall not be evicted from the land described in the impugned noticed dated 10.07.2023.

The learned Addl. Senior Govt. advocate has referred to the contents of the order dated 12.05.2023 passed in WP(C) 5715/2022 and it is submitted that as there is mention made in the said order that constructions have been made on public land, an order was passed by this Court for physical verification of the land

by the Lat Mandal within a period of 2(two) months. Accordingly, the apprehension is expressed that the land of the petitioner may be covered by the order dated 12.05.2023 passed in WP(C) 5715/2022.

Be that as it may, the petitioner was not arrayed as respondent in WP(C) 5715/2022 and therefore how far the order dated 12.05.2023 passed in WP(C) 5715/2022 would be binding on the petitioner would be a subject matter of adjudication. Nonetheless, as the learned Addl. Senior Govt. advocate has expressed his apprehension, it is also provided that within the time of 2(two) weeks from today, the petitioner shall submit his show cause reply pursuant to notice of eviction dated 10.07.2023.

List on 11.08.2023."

4. In this application, it has been projected by the applicant that the opposite party no. 4 had suppressed material facts that the land encroached by him was a road and that he had applied for allotment of some other land, and obtained an *ex parte* interim order dated 24.07.2023, to the effect that the opposite party no. 1 may not be evicted from the land described in the notice dated 10.07.2023, impugned in the writ petition.

5. The allegation of suppressing material facts is stoutly denied by the learned counsel for the opposite party no. 1. It was submitted that the petitioner was in possession of land covered by dag no. 3854, which was just outside the boundary of the land of the respondent nos. 11 and 12 of the writ petition and that the applicant, who has money and muscle power, in conspiracy with concerned officials are trying to evict the opposite party no. 1 from the disputed land without disposing of his application for land settlement under *Vasundhara Scheme* of the Government of Assam. It was submitted that if for any reason, the Government was unable to settle the land covered by dag no. 3854 to the opposite party no.1, the Government was bound to consider some

other land to the opposite party no.1.

6. Perused the materials available on record. Circle Officer (opposite party no. 4 in this interlocutory application) is arrayed as respondent no. 3 in the connected writ petition. It is seen that in Annexure-A to the affidavit-in-opposition filed by the opposite party no. 4 in the writ petition (as respondent no.3) is the application of the opposite party no.1 under the *Vasundhara Scheme*. As per the contents thereof, the opposite party no. 1 had applied for allotment of land covered by dag no. 3881, which is different from the land covered by dag no. 3854, which he is currently occupying. The Circle Officer (opposite party No. 4) has also stated in his affidavit-in- opposition that the land of dag no. 3854 is reserved for use as main public road. Thus, if the land covered by dag no. 3854 is a public road and is reserved for public purpose, the Court is of the considered opinion that the District Administration has a bounden duty to evict encroachers over public road, whosoever he or she may be.

7. Moreover, the Court cannot put its seal of approval on any attempt on part of the District Administration to settle any part of public road to any person. Therefore, when the Circle Officer claims that the land covered by Dag No. 3854 is a public road and that the opposite party no.1 had applied for settlement of land under Dag No. 3881 under the *Vasundhara Scheme*, the Court is of the considered opinion that the petitioner would not be entitled to be protected from eviction from a public road.

8. Therefore, the Court is inclined to alter/modify/ vary the *ex parte* interim order dated 24.07.2023, passed by this Court in the connected

W.P.(C) 4082/2023 by providing that if the said opposite party no. 1 (writ petitioner), namely, Eajul Hoque has encroached any part of the public road covered by dag no. 3854 of Revenue Village- Hengrabari, Mouza- Beltola in the district of Kamrup (M), the protection against eviction vide interim order dated 24.07.2023, passed by this Court in the connected W.P.(C) 4082/2023 would not be applicable and available and all the concerned authorities including the District Administration shall be free to take such appropriate steps as they may be so empowered or advised for removal of any encroachment on public road by the opposite party no. 1 in accordance with law.

9. The impugned interim order dated 24.07.2023, passed by this Court in the connected W.P.(C) 4082/2023 stands modified/ altered/ varied on terms as indicated above.

10. This application stands allowed.

JUDGE

Comparing Assistant