

GAHC010176932013



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

Case No. : WP(C)/103/2013

HABIBAR RAHMAN
S/O ABDUL JABBAR, R/O NO.2 LOHARKATHA, MOUZA- BARKHETRI, P.S.
MUKALMUA, DIST- NALBARI, ASSAM

VERSUS

STATE OF ASSAM and ORS.
REPRESENTED BY ITS COMMISSIONER AND SECRETARY TO THE GOVT.
OF ASSAM, LAND REVENUE DEPARTMENT, DISPUR, GHY-6

2:THE DY. COMMISSIONER REVENUE
NALBARI
DIST- NALBARI
ASSAM

3:THE CIRCLE OFFICER
BARKHETRI REVENUE CIRCLE
DIST- NALBARI
ASSAM

4:DIGANTA BAISHYA
ACS
CIRCLE OFFICER
BARKHETRI REVENUE CIRCLE
DIST- NALBARI
ASSAM

5:THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM
PWD
DISPUR
GHY-

Advocate for the Petitioner : MR. S DEKA

Advocate for the Respondent : MRS.V L SINGH

**BEFORE
HONOURABLE MR. JUSTICE MANISH CHOUDHURY**

ORDER

Date : 14-06-2023

Heard Mr. S. Deka, learned counsel for the petitioner; Mr. A. Bhattacharya, learned Standing Counsel, Revenue Department for the respondent no. 1; and Mr. M. Chetia, learned Junior Government Advocate, Assam for the respondent nos. 2 & 3.

2. In this writ petition instituted under Article 226 of the Constitution of India, the petitioner has inter alia sought for a direction to the respondent authorities not to carry out any eviction drive in respect of a plot of land measuring 2 katha 5 lessas, covered by Dag no. 60 & K.P. Patta no. 376, located at Revenue Village – Loharkatha Part-II, Mouza – Pubbarkhetri, Revenue Circle – Barkhetri, District – Nalbari, Assam [thereinafter referred to as 'the subject-land', for easy reference] without following due process of law.

3. The case projected by the petitioner, in brief, is that the name of the petitioner along with his 2 [two] brothers viz. Saiful Haque and Rahmat Ullah, came to be recorded as joint owners in respect of the subject-land pursuant to an order dated 09.07.1997 passed by the respondent no. 3 in the Chitha along with other pattadars of K.P. Patta no. 376. It is stated that in the year 2007, the two brothers of the petitioner i.e. Saiful Haque and Rahmat Ullah sold their respective shares, measuring 1 katha 10 lessas in total, to the petitioner by way of a registered sale deed. Pursuant to the registration of the sale deed, the name of the petitioner came to be mutated in respect of the subject-land by an order dated 13.06.2007 passed by the respondent no. 3. In support of such claim, the petitioner has annexed a copy of the Jamabandi pertaining to Village –Loharkatha Part-II viz. Mouza – Pubbarkhetri, Revenue Circle – Barkhetri as Annexure-I to the writ petition wherein the afore-mentioned two orders passed by the respondent no. 3, on 09.07.1997 & on 13.06.2007, are reflected.

3.1. It is further case of the petitioner that on 30.12.2012, which was a Sunday, the

respondent no. 3 accompanied by other office staff entered into the subject-land forcefully and illegally without issuing any prior notice and without any demarcation of the petitioner's patta land or other adjoining lands. The petitioner has stated that there was a village road in front of the subject-land and the same is recorded in the revenue records as Government land. By entering into the subject-land on 30.12.2012, the respondent no. 3 had demolished the boundary wall and uprooted the trees, etc. standing on the subject-land.

3.2. By projecting in the afore-stated manner, the petitioner has preferred this writ petition with the contention that since the petitioner is the owner and is in legal possession of the subject-land, which is a periodic patta land, the respondent authorities had acted in a high handed manner on 30.12.2012. It is the further case of the petitioner that in case of a periodic patta land, the respondent authorities are not empowered to carry out any such eviction drive which they had undertaken on 30.12.2012.

4. Though notices were issued to the respondents as far back as on 21.01.2023, none of the respondents has filed any response till date traversing the above assertions made by the petitioner, despite elapse of more than 10 [ten] years since 21.01.2013. The learned counsel representing the State respondents have submitted that they have not received any instructions in the matter till date and as such, they are not in a position to controvert the case pleaded by the petitioner in the writ petition, briefly stated hereinabove.

5. In such obtaining fact situation, the Court is reminded of the observations made by the Hon'ble Supreme Court of India in City and Industrial Development Corporation vs. Dosu Aardeshir Bhiwandiwalla and others, reported in [2009] 1 SCC 168, in the following manner :

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34. It will not be appropriate to dispose of the matter without one word about the conduct of the State Government reflecting highly unsatisfactory state of affairs. We express our grave concern as to the manner in which the State has conducted in this case. It is the constitutional obligation and duty of the State to place true and relevant facts by filing proper affidavits enabling the court to discharge its constitutional duties.

The State and other authorities are bound to produce the complete records relating to the case once Rule is issued by the court. It is needless to remind the Governments that they do not enjoy the same amount of discretion as that of a private party even in the matter of conduct of litigation. The Governments do not enjoy any unlimited discretion in this regard. No one needs to remind the State that they represent the collective will of the society.

35. The State in the present case instead of filing its affidavit through higher officers of the Government utilised the lower ones to make oral statements and that too through its AGP in the High Court. This malady requires immediate remedy. We hope the Government shall conduct itself in a responsible manner and assist the High Court by placing the true and relevant facts by filing a proper affidavit and documents that may be available with it. We also hope and trust that the Legal Advisors of the Government will display greater competence and attention in drafting affidavits.

36. Let not the fence eat the grass.

6. In view of non-submission of any response from the ends of the respondents, traversing or controverting the contentions of the petitioner made in the writ petition, it is a case where the doctrine of non-traverse is found applicable.

7. From the documents annexed as the Annexure-I to the case papers, it has emerged that the petitioner is the owner of the subject-land. The provisions of Rule 18 of the Settlement Rules framed under Assam Land and Revenue Regulation, 1886 which is for the purpose of ejectment, are found not applicable as the same pertains to only Government land. In such view of the matter, this writ petition is disposed of with the direction that there shall not be any eviction drive in respect of the subject-land of which the petitioner is the owner, without any prior and proper demarcation process and without any prior notice. If in the event the respondent authorities contemplate any kind of eviction process pertaining to any Government land, which is adjacent to the subject-land, it is observed that such eviction drive shall not be undertaken without such proper and prior demarcation process in relation to the subject-land and that should be done only with prior notice.

8. With the observation made and the direction given above, the writ petition stands

disposed of. No cost.

JUDGE

Comparing Assistant