

GAHC010189452022



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

Case No. : Crl.Rev.P./470/2022

ANAMIKA PEGU @ APALI PEGU AND ANR
D/O- LATE BETHAI PEGU, R/O- GOGAMUKH CHARIALI, NHPC ROAD, DIST.
DHEMAJI, ASSAM

2: MONORANJAN SAHA @ KUTU SAHA
S/O- LATE GITU SAHA
VILL.- GOGAMUKH RAILWAY COLONY
P.S. GOGAMUKH
DIST. DHEMAJI
ASSA

VERSUS

SMTI. LOPUNG DOLEY
D/O- LATE UPUNG DOLEY, VILL.- PURANA PARGHAT, P.S. GOGAMUKH,
DIST. DHEMAJI, ASSAM

Advocate for the Petitioner : MR B KAUSHIK

Advocate for the Respondent : MR. D DOLEY

BEFORE
HONOURABLE MR. JUSTICE SOUMITRA SAIKIA

ORDER

Date : 07.06.2023

Heard Mr. B. Kaushik, learned counsel for the petitioners.

Also heard Mr. D. Doley, learned counsel for the respondent.

2. This criminal revision petition is filed by the petitioners, namely, Sri Anamika Pegu @ Apali Pegu and Sri Monoranjan Saha @ Kutu Saha being aggrieved by the order dated 08.08.2022 passed by the Court of Additional District Magistrate, Dhemaji under Sections 107/145 Cr.P.C in case No. 16M/2022.

3. On an application made by the respondent seeking orders under Section 107/145 Cr. P.C, proceedings were initiated by the Court of Additional District Magistrate, Dhemaji. In the said application it was alleged that the opposite party therein including the petitioners No.1 and 2 herein had encroached upon the land measuring 1(one) katha covered by Touzi dag No. 736 situated at Bordoloni Mouza in Moinapara Chetia Map. In response to the application filed, the Additional District Magistrate, Dhemaji called for a report from the Circle Officer. The Circle Officer in response to the requisition made by the Additional District Magistrate submitted its report on 18.07.2022. The Report is extracted as under:-

“ GOVERNMENT OF ASSAM

OFFICE OF THE CIRCLE OFFICE:::: GOGAMUKH REVENUE CIRCLE

No: GRT-17/Mis2022

Dtd: Gogamukh 18/07/2022

TO,

Additional Deputy Commissioner,

Revenue Department

District: Dhemaji, Dhemaji

Ref No: Case No: 16 M/2022 Dated: 1/7/2022

Sir,

In reference to the above this is to inform you as per Lat Mandals report/enquiry,

1. Lupung Doley's name is recorded against land measuring 14 lechas covered by daag no 736 of Moinapara , Chetia Gaon map under Bordoloni Mouza. Out of 14 lechas of land under daag no 736 the land advisory board in its meeting dated 13/01/2021 settled 9 lechas of land in favour of Lapung Doley and consequently thereafter under Basundhara Scheme the land is converted to periodic patta. Patta no: 564 of daag no 874 comprises of 9 lechas. As informed by the applicant since 2000-2001, the 1 katha land is possessed by paying 129 No touzi land revenue. It is to be mentioned herein that while physical verification it is found that one person namely Sri Kutu Saha is possessing a portion of land under daag no 736 by constructing a shop house and running a business therein.

2. The copy of the sketch map is enclosed herewith.

3. Lapung Doley's name is recorded against 14 lechas of land in the map of daag no 736 and Smt. Padmini Kumbang name is recorded against 1 katha land under daag no 737 of Moinarapara Chetia gaon under Bordoloni Mouza. Out of 14 lechas of daag no 736, 9 lechas has been settled in favour of Lupung Doley and later under Basundhara Scheme, the land is converted to periodic patta. Patta no 564 of daag no 894 comprises of 9 lechas of land. From the records it is observed that Smt. Padmini Kumbang has acquired settlement over 1 katha of land under daag no 737 and later periodic patta no 496 of daag no 785 has been issued.

The report is submitted for necessary action.

Yours faithfully

Sd/

Circle Officer, Gogamukh Circle office

4. Notices in the matter were issued to the opposite party including the petitioners herein and they appeared before the Court. It is submitted by the learned counsel for the petitioner that although their statements were recorded no opportunity of filing objections were granted to the petitioners, who appeared before the Additional District Magistrate as Opposite Parties no. 2 and 3. Upon due consideration of the matter the Additional District Magistrate passed the following order:-

“ Accordingly, I declared possession 00b-01k-00L land including 09 Lecha which presently converted into the periodic patta land in the name of Lupung Doley, the 2nd party namely Sri Kutu Saha and Apali Pegu illegally encroached the land of 1st party without authority. As such 2nd party Kutu Saha and Apali Pegu are declared as illegal encroacher and they shall be evicted from their illegal encroachment and 2nd party Binud Kumbang has possessed his periodic patta land measuring 00B-01k-00L and there is no dispute . I, declare possession of the disputed land in question in favour of 1st party and he entitled the possession of the below scheduled land until and unless evicted from due course of law. I, also ordered the 2nd party not to disturb the peaceful possession of 1st party and abstained from committing any kinds of breach of peace and tranquility. According the case is disposed off. Aggrieved party may appeal to the court of law.

Scheduled of Land:

A piece of land measuring 00Bigha-00Katha-14 Lecha situated at Moinapara Chetia part map under the Bordoloni Mouza and Gogamukh Revenue Circle bearing Touzi Dag No-736 including new PP No564 Dag-No-874 measuring 00Bigha-00Katha-09Lecha.

Boundary:

North:Land of Sri Betal Doley

South:NH-15

East:Land of padmini Kumbang

West:Land of Ivarani Doley”.

5. Being aggrieved the present petition under Section 397/401 Cr.P.C. read with Section 482 Cr.P.C has been filed.

6. Learned counsel for the petitioner submits that the impugned order passed by the District Magistrate is beyond jurisdiction as contemplated under Section 107/145 Cr.P.C. The learned counsel for the petitioner referring to the Report of the Circle Officer submits that there was no finding on fact that the petitioners were occupying the land of the private respondent. Under such circumstances there was no occasion for the District Magistrate to return a finding that the opposite parties therein namely the petitioners herein had encroached the land of the first party therein namely, the sole respondent herein without any authority. The petitioners herein were declared as illegal encroachers and they were directed to be evicted from the illegal encroachment made. Accordingly the possession of the disputed land in question was decided in favour of the first party, namely the respondent herein. It was also held that the first party is entitled to the possession of the scheduled land mentioned until and unless evicted in due course of law. There was a further direction to the second party, namely the petitioners herein, not to disturb the peaceful possession of the first party and abstain from committing any kind of breach of peace and tranquility.

7. This Court by order dated 21.09.2022 issued Notice and till

the next returnable date the impugned order dated 08.08.2022 passed in case no. 16M/2022 was stayed. The said interim order was extended from time to time and is still in force.

8. The respondents have filed an affidavit opposing the claims of the petitioner. The learned counsel for the respondent submits that they were given sufficient opportunity to support their claims by relevant documents. However, they failed to support their claims or adduce any evidence in support of their claims.

9. It is further alleged that the petitioners are influential persons in the society and they are carrying out their businesses by constructing shops over the land which is owned by the sole respondent covered by dag No. 736.

10. Learned counsels for the parties have been heard. Pleadings on record have been carefully perused. Impugned order dated 08.08.2022 have also been carefully perused.

11. It is seen that in the report dated 18.07.2022 submitted by the Circle Officer, Gogamukh Revenue Circle it is stated that dag No. 736 consists of 14 lechas of land and the Land Advisory Board in its meeting held on 13.01.2021 settled 9 lechas of land in favour of the Lapung Dolay, namely, the sole respondent and under Basundhara Scheme the land was converted to periodic patta No. 564 of dag no. 874 comprising of 9 Lechas.

12. It is further stated that one more katha of land is under

possession of the said person by paying 129 number of touzi Land Revenue. The Circle Officer on physical verification found that one person namely the petitioner No.2 was found possessing a land under dag No. 736 by constructing a shop house and running business therein. The report was accordingly submitted before the Additional District Magistrate, Dhemaji.

13. Upon due perusal of the report, it is seen that what was recorded in favour of the sole respondent is 9 lechas of land which was earlier covered by dag No. 736 and subsequently converted to periodic patta No. 564 of dag no. 874 comprising of 9 Lechas. It is also seen that under dag No. 736 there were 14 lechas of land and after conversion of 9 lechas of land in favour of the respondent there was remaining land measuring 5 lechas. The further finding of the Circle Officer that 1 katha land is also possessed by the sole respondent is not supported by any description of the said land as to under which dag No: or patta No: the said 1 katha land stated to be under possession by the sole respondent is located. The further finding of the Circle Officer upon physical verification is that the respondent No.2 is in possession of a land under dag No. 736 by constructing a shop house and running a business therein. As such there is no clear finding by the Circle Officer in his report that the land stated to be under possession of the petitioner No.2 under the dag No. 736 is the land which belonged to the sole respondent, as from the said report it is

seen that dag No. 736 comprises of 14 lechas of land out of which 9 lechas have been settled in favour of the sole respondent.

14. Under such circumstances the specific finding that has been arrived at by the Additional District Magistrate, Dhemaaji that the petitioners have illegally encroached the land of the first party without any authority is without any material/evidence. Consequently the further finding of the Additional District Magistrate that the petitioners are declared as illegally encroachers and that they should be evicted from the illegal encroachment is also without any basis.

15. That apart, perusal of Section 145 Cr.P.C reveals that the Magistrate is to proceed in the matter without reference to the claims or the merits of each party as to the right to possess the land in question. The power vested under Section 145 Cr.P.C is to pass appropriate orders in respect of the dispute concerning land or water where there is a likelihood of causing breach of peace.

16. The Magistrate under Section 145 Cr.P.C is not empowered to declare the title and consequently declare any person to be an encroacher without there being supporting documents or evidence being adduced thereto before the Court. Any declaration to that effect is ordinarily required to be made by the Court of competent civil jurisdiction before which the parties may approach, if so advised.

17. Under such circumstances this Court find that the impugned order dated 08.08.2022 is beyond the powers of the District Magistrate as prescribed under Section 145 Cr.P.C while dealing with a proceeding under the said Section 145 Cr.P.C.

18. The impugned order, is therefore interfered with and set aside and the matter is relegated back to the Additional District Magistrate, Dhemaji to cause a fresh hearing in the matter and the parties to the proceeding will appear before the concerned authorities and file necessary objections if so advised and the matter be proceed therefrom. The District Magistrate is at liberty to call for any further report as may be deemed necessary from the Circle Officer or any other officer under the Revenue Department.

19. The parties are to maintain *status quo* till 22.06.2023 on which date the parties will appear before the District Magistrate along with a certified copy of this order on 22.06.2023. The District Magistrate will thereafter proceed with the hearing and pass appropriate orders thereon as permitted under the law.

20. Criminal petition is accordingly allowed and disposed of in terms of the above.

JUDGE