

GAHC010200352023



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

Case No. : I.A.(Civil)/2737/2023

DILBAR MOLLAH AND ANR
S/O LATE KAMAL UDDIN MOLLAH,
RESIDENT OF VILLAGE JHAGRA PART III, PO JHAGRAPAR PS AND DIST
DHUBRI, ASSAM
PRESENTLY RESIDING AT GTB ROAD(OPP. SIDE OF D.T.O DHUBRI) WARD
NO. 9, DHUBRI, PO , PS AND DIST DHUBRI, ASSAM 783301

2: AZIAL HOQUE
S/O HURMUJ ALI
RESIDENT OF VILLAGE JHAGRA PART III
PO JHAGRAPAR
PS AND DIST DHUBRI. ASSAM
PIN 78332

VERSUS

HOSSEN ALI SK. AND 2 ORS
S/O LATE ABDUL KADER DEWANI, VILLAGE JHAGRA PART III, PO
JHAGRAPAR, PS AND DIST DHUBRI, ASSAM 783325

2:ASHAD ALI

S/O HASHEM ALI
R/O VILLAGE JHAGRA PART III
PO JHAGRAPAR
PS AND DIST DHUBRI
ASSAM
PIN 783325

3:HASHEM ALI (MASTER)

S/O LATE ABDUL KADER DEWANI
R/O VILLAGE JHAGRA PART III
PO JHAGRAPAR

PS AND DIST DHUBRI
ASSAM
PIN 783325

Advocate for the Petitioner : MR J MOLLAH

Advocate for the Respondent :

Linked Case : FAO/43/2023

DILBAR MOLLAH AND ANR
S/O LATE KAMAL UDDIN MOLLAH

RESIDENT OF VILLAGE JHAGRA PART III
PO JHAGRAPAR PS AND DIST DHUBRI
ASSAM
PRESENTLY RESIDING AT GTB ROAD(OPP. SIDE OF D.T.O DHUBRI) WARD
NO. 9
DHUBRI
PO
PS AND DIST DHUBRI
ASSAM 783301

2: AZIAL HOQUE
S/O HURMUJ ALI
RESIDENT OF VILLAGE JHAGRA PART III
PO JHAGRAPAR
PS AND DIST DHUBRI. ASSAM 783325
VERSUS

BHARATI PAUL AND 11 ORS.
D/O BHIM BALLABH PAUL

RESIDENT OF WARD NO. 15
DHUBRI
ASSAM

2:SNIGDHA HARLALKA
D/O BIMAL KR. HARLALKA

RESIDENT OF H.N ROAD
WARD NO. 7
DHUBRI TOWN

PO
PS AND DIST DHUBRI ASSAM 783301
3:SRADHA HARLALKA
D/O BIMAL KR. HARLALKA

RESIDENT OF H.N ROAD
WARD NO. 7
DHUBRI TOWN
PO
PS AND DIST DHUBRI ASSAM 783301
4:BIMAL KR. HARLALKA
S/O LATE CHANDANMAL HARLALKA

RESIDENT OF H.N ROAD
WARD NO. 7
DHUBRI TOWN
PO
PS AND DIST DHUBRI ASSAM 783301
5:CHAN MIAH
S/O LATE MOHAMMAD ALI

RESIDENT OF VILLAGE JHAGRA PART IV
PO JHAGRAPAR
PS AND DIST DHUBRI
ASSAM 783325
6:NOWSHAD ALI
S/O LATE ABUL KASHEM BEPARI
RESIDENT OF B.N COLLEGE ROAD
NAYA MASJID
DHUBRI
PO BIDYAPARA
PS AND DIST DHUBRI
ASSAM 783324
7:HOSSEN ALI SK.
S/O LATE ABDUL KADER DEWANI
VILLAGE JHAGRA PART III
PO JHAGRAPAR
PS AND DIST DHUBRI
ASSAM 783325
8:THE STATE OF ASSAM
REPRESENTED BY THE COLLECTOR/DEPUTY COMMISSIONER
DHUBRI
ASASM 783301
9:THE SR. SUB REGISTRAR
DHUBRI
ASSAM 783301
10:MUSSTT. MEHERUN NESSA
W/O LATE AJIT ULLAH

RESIDENT OF VILLAGE JHAGRA PART III
PO JHAGRAPAR
PS AND DIST DHUBRI
ASSAM 783325
11:MD. AMZAD HUSSAIN
S/O LATE ASHULLA

RESIDENT OF NEW MARKET
PS AND DIST DHUBRI
ASSAM 783301
12:KAPIL UDDIN
S/O NABI UDDIN

RESIDENT OF NEW MARKET PS AND DIST DHUBRI
ASSAM 783301

Advocate for : MR J MOLLAH
Advocate for : GA
ASSAM appearing for BHARATI PAUL AND 11 ORS.

BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA

ORDER

Date : 06.10.2023

Heard Mr. J. Mollah, learned counsel for the applicants. Mr. K.K. Bhattacharya, learned Govt. Advocate, who appears for respondent nos.8 and 9 in the connected appeal is present. The said respondents are not arrayed as parties to this instant interlocutory application.

2. By filing this application under Order XXXIX, Rule 2A read with section 151 of the CPC, the applicant has alleged wilful disobedience and deliberate and intentional violation of the *ad interim* injunction passed by this Court by order dated 09.08.2023 in connection with IA(Civil) 2166/2023 in FAO No. 43/2023.

3. The operative part of the said *ad interim* order dated 09.08.2023 reads as follows:

”After hearing the learned counsel for the appellants/applicants till the returnable date, it is directed that the opposite party/defendants shall not cause any disturbance to the peaceful possession of the appellants/applicants over the suit land.”

4. In this application, the applicants have referred to certain events which had happened prior to the passing of the order dated 09.08.2023, which are not relevant for the purpose of this order. Therefore, those statements have not been referred to in this order.

5. The applicants claimed that the steps taken by the applicants by registered post have been duly served on the opposite party on 28.08.2023. However, the service report of notice on the opposite parties is not found to be recorded in the note sheet. Moreover, the process server's report as well as the returned acknowledgement card of process sent by registered post is also not available on record. Accordingly, on the basis of materials presently available on record, the Court is unable to accept the statement made by the applicants that steps by registered post was served on the opposite parties on 28.08.2023.

6. In support of the statement made in this application, the applicants have relied on a photocopy of photograph (Annexure-I) showing two workmen working at some place. In the left hand bottom of the said photocopy of photograph, a date “11-03-2022” is typed. Therefore, it cannot be said from the photocopy of photograph that on 11.03.2022, the two workmen were working at which site/place. According to the applicants, they are in possession of the suit land, which also appears from the prayer No. I of the suit/plaint, a copy of which is annexed to the memo of connected appeal that the applicants had prayed for a decree for declaration of confirmation and possession over the suit land.

7. Nonetheless, it appears from the photocopy of two photographs

annexed to this application as Annexure-V that some amount of construction has come up. From the said two photocopies of photographs, it cannot be believed that the said construction has come up after 28.08.2023, the date when the applicants claimed that steps by registered post had been duly served on the opposite parties. The said presumption is drawn from the fact that for the construction as reflected in Annexure-V, the persons who are making construction would have to dig the land, put into place the necessary piling on which the said construction would come up. This application was filed on 11.09.2023, and therefore, if the statement made in paragraph 7 of this application is to be believed, the construction as reflected in Annexure-V was made within 14 days i.e. between 28.08.2023 and 11.09.2023. Hence, the Court is disinclined to accept construction as reflected in Annexure-V to this application that had come up within 14 days as elaborated hereinbefore.

8. In this application, the applicants have annexed a copy of letter no. ... (illegible) /Pt.I/45/2015/128 dated 27.07.2022, issued by the Chairman, Dhubri Gauripur Development Authority, Dhubri, wherein reference is made to NOC of building construction permission vide NOC No. DGDA/BP/04/13/GP/955 dated 01.04.2022 and one Hussain Ali Sk. (opposite party no.1) was requested to stop building construction. Therefore, if construction is being made in violation of the said communication dated 27.07.2022, issued by the Chairman, Dhubri Gauripur Development Authority, Dhubri, the applicants have a right to approach the competent authority for disobedience of the said communication dated 27.07.2022.

9. It may be pertinent to mention here that the hereinbefore referred communication dated 27.07.2022, issued by the Chairman, Dhubri Gauripur Development Authority, Dhubri was either annexed to the memo of appeal filed

in FAO 43/2023 or in the application filed in IA(Civil) 2166/2022. Therefore, it *prima facie* appears that the *ad interim* order of injunction dated 09.08.2023 was obtained by the applicants without complete disclosure of relevant facts. However, this is only a tentative observation and not a final opinion of the Court.

10. From the documents which is annexed to this application, it *prima facie* appears that atleast the opposite party no.1 had a NOC for construction issued by the competent authority on 01.04.2022 and the photograph (Annexure-I) discloses that as on 11.03.2022, some labourers were working on a plot of land of which identity is not known and as per the two photographs (Annexure-V), some construction can be seen therein. This Court while granting injunction by order dated 09.08.2023 in IA(Civil) 2166/2023 had merely directed that the opposite parties shall not cause any disturbance to the peaceful possession of the appellants/applicants over the suit land. There was no order to restrain the opposite parties from carrying out construction. From the nature of construction as reflected in Annexure-V, it cannot be conclusively said that the applicants were dispossessed by the opposite parties after 09.08.2023, i.e. when the order was passed by this Court and/or after 28.08.2023, i.e. when steps by registered post is allegedly stated to have been served on the opposite parties. Therefore, as such construction as reflected in the Annexure-V has already come up, it is presumed that at least the opposite party no.1 was in possession of the particular part of suit land and there is no order to restrain the opposite parties to carry out construction if they are in possession.

11. Therefore, the Court is of the considered opinion that no *prima facie* case could be made out by the applicants of there being any deliberate and wilful violation or disobedience of the order passed by this Court on 09.08.2023 in IA(Civil) 2166/2023. Therefore, this application is liable to be dismissed and is

accordingly dismissed at the threshold without issuance of notice on the opposite parties.

JUDGE

Comparing Assistant