

GAHC010214992022



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

Case No. : WP(C)/6794/2022

OM PRAKASH JAISWAL AND 7 ORS.
S/O- LATE PARSURAM JAISWAL, R/O- LEKHAPANI, SDO, MARGHERITA,
DIST. TINSUKIA, ASSAM, PIN- 786182.

2: JAI PRAKASH JAISWAL
S/O- LATE PARSURAM JAISWAL
R/O- LEKHAPANI
SDO
MARGHERITA
DIST. TINSUKIA
ASSAM
PIN- 786182.

3: CHAN PRAKASH JAISWAL
S/O- LATE PARSURAM JAISWAL
R/O- LEKHAPANI
SDO
MARGHERITA
DIST. TINSUKIA
ASSAM
PIN- 786182.

4: BINOD JAISWAL
S/O- LATE PARSURAM JAISWAL
R/O- LEKHAPANI
SDO
MARGHERITA
DIST. TINSUKIA
ASSAM
PIN- 786182.

5: MANOJ JAISWAL
S/O- LATE PARSURAM JAISWAL
R/O- LEKHAPANI

SDO
MARGHERITA
DIST. TINSUKIA
ASSAM
PIN- 786182.

6: SANTOSH KR. JAISWAL
S/O- LATE PARSURAM JAISWAL
R/O- LEKHAPANI
SDO
MARGHERITA
DIST. TINSUKIA
ASSAM
PIN- 786182.

7: RAKESH KUMAR JAISWAL
S/O- LATE PARSURAM JAISWAL
R/O- LEKHAPANI
SDO
MARGHERITA
DIST. TINSUKIA
ASSAM
PIN- 786182.

8: ROSHAN JAISWAL
S/O- LATE PARSURAM JAISWAL
R/O- LEKHAPANI
SDO
MARGHERITA
DIST. TINSUKIA
ASSAM
PIN- 786182

VERSUS

THE STATE OF ASSAM AND 3 ORS.
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE
GOVERNMENT OF ASSAM, REVENUE (LR) DEPARTMENT, DISPUR,
GUWAHATI-6.

2:THE DEPUTY COMMISSIONER
TINSUKIA DISTRICT
TINSUKIA.

3:THE SUB-DIVISIONAL OFFICER (C)
MARGHERITA
DIST. TINSUKIA
ASSAM

4:THE CIRCLE OFFICER (C)
MARGHERITA
DIST. TINSUKIA
ASSA

For the Petitioners : Mr. H. Mazumdar, Advocate.

For the Respondents : Ms. S. Sarma, Advocate.

Mr. R. Borpujari, Advocate.

BEFORE

HONOURABLE MR. JUSTICE DEVASHIS BARUAH

ORDER

17.08.2023

The Petitioners have joined together in filing the instant writ petition thereby seeking a direction upon the Deputy Commissioner, Tinsukia to dispose of the appeal dated 31.08.2009 filed by the father of the Petitioner in pursuance to the order passed by this Court dated 27.03.2009 in W.P.(C) No. 1280/2009 as well as the fresh appeal dated 22.11.2011 filed by the Petitioner and for a further direction that the Respondent Authorities more particularly the Respondent No. 2 to dispose of the said appeal by passing a reasoned order and to refrain from giving effect to the eviction notice dated 03.02.2009.

2. The facts as could be discerned from a perusal of the writ petition is that the predecessor of the Petitioners as well as the Petitioners were in occupation of Govt. lands. They claim that they were paying Touzi (a penalty paid for occupation of the Government land).

3. The Sub-Divisional Officer (C), Margherita had issued various notices to the predecessor in interest of the Petitioners as well as the Petitioners to vacate the lands tea cultivations, mustard cultivation etc within 15 days from the date of receipt of the said notices. It was mentioned in the notices that if the Petitioners do not vacate the lands, they shall be evicted from the lands by law.

4. The Petitioners as well as their predecessor in interest challenged those notices before this Court in W.P.(C) No. 1280/2009. This Court vide order dated 27.3.2009 dismissed the writ petition by observing that the Petitioners were issued eviction notices as per the provisions of the Assam Land and Revenue Regulations, 1886. However, taking into account the submissions so made by the learned counsel for the Petitioners in the said writ petition that the Petitioners have an appellate remedy to approach the Deputy Commissioner, Tinsukia, this Court granted the liberty to the Petitioners to approach the Appellate Authority.

5. It further reveals from the records that the predecessor-in-interest of the Petitioners as well as the Petitioners subsequently approached the Deputy Commissioner, Tinsukia challenging those eviction notices. However, the said Appeals were kept pending. A perusal of the said Appeals so enclosed to the writ petition shows that the predecessors-in-interest of some of the Petitioners as well as the Petitioners claim that they have been evicted from the patta lands.

The said Appeals being not adjudicated upon, the instant writ petition has been filed.

6. This Court have heard the learned counsel for the Petitioners and put a specific query upon the Petitioners as to what is the basis of the Appeals so filed inasmuch as a perusal of the Appeals so filed by the Petitioners shows that the predecessors-in-interest of the Petitioners as well as the Petitioners claim that they have been evicted from their patta lands. This Court further asked the learned counsel for the Petitioners as to whether the Petitioners have been issued any patta over the lands in question thereby creating any right over the land. The learned counsel for the Petitioners could not show any document when the matter was taken up yesterday i.e. 16/8/2023 for which the writ petition was taken up today.

7. The learned counsel for the Petitioners submitted that as per his instructions Annexure -1 are the documents. A perusal of Annexure -1 shows that these are documents showing payment of Touzi which is a penalty fee paid for occupation of Government lands. Under such circumstances, this Court is of the opinion that as subject matter of the said appeals is non-existent inasmuch the predecessors-in-interest as well as the Petitioners have no semblance of right over the Government lands, there is nothing to be decided in the said appeals. Accordingly, therefore the question of direction to be issued to the Deputy Commissioner, Tinsukia for deciding those appeals as has

been sought for cannot be issued.

8. Furthermore, from a perusal of those Appeals, it is seen that the Petitioners have already been evicted and as such the directions sought for not to give effect to the notice dated 3.2.2009 also does not arise. Accordingly, this Court finds no merits in the instant petition for which the petition stands dismissed.

9. This Court however observes that the Petitioners shall be at liberty to approach the Deputy Commissioner, Tinsukia seeking compensation for the loss sustained by them as regards the structures zirats over the Government lands from where they were evicted, if otherwise permissible under law.

JUDGE

Comparing Assistant