

GAHC010221582019



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

Case No. : WP(C)/6819/2019

RAM CHANDRA CHAUBEY AND ANR.
S/O LT. BAIJNAT CHAUBEY, R/O VILL. LOONPURIA, P.O. GOBINDAPUR
(PANITOLA), P.S. AND DIST. TINSUKIA, ASSAM, PIN-786183

2: MITHLESH SINGH
S/O LT. RAM DUTT SINGH
R/O VILL. LOONPURIA KOIBARTA GAON
P.O. GOBINDAPUR (PANITOLA)
P.S. AND DIST. TINSUKIA
ASSAM
PIN-78618

VERSUS

THE STATE OF ASSAM AND 4 ORS.
REP. BY THE SECRETARY TO THE GOVT.OF ASSAM, REVENUE AND
DISASTER MANAGEMENT DEPTT. DISPUR, GUWAHATI-781006

2:THE DEPUTY COMMISSIONER
BORGURI
DIST. TINSUKIA
ASSAM
PIN-786125

3:TINSUKIA MUNICIPAL BOARD
REP. BY ITS CHAIRPERSON
P.O. P.S. AND G.N.B. ROAD
DIST. TINSUKIA
ASSAM
PIN-786125

4:THE CIRCLE OFFICER
TINSUKIA REVENUE CIRCLE
DIST. TINSUKIA

ASSAM
PIN-786125

5:RADHESHYAM CHAUBEY
S/O LT. BAIJNATH CHAUBEY
R/O JOGIPATHAR
P.O. GOBINDAPUR
P.S. AND DIST. TINSUKIA
ASSAM
PIN-78618

Advocate for the Petitioner : MR. K N CHOUDHURY

Advocate for the Respondent : SC. REVENUE

**BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH**

ORDER

16.08.2023

1. The instant writ petition had been filed challenging the notice dated 04.09.2019 issued by the Chairman, Tinsukia Municipal Board, Tinsukia whereby the petitioner was asked to vacate the land covered by Dag No. 5153(Part) and 5154(Part) Town Sheet No. 13 within 7 days from the date of receipt of the said notice. It is further observed in the said notice that failing to do so, the Tinsukia Municipal Board would take necessary steps to free the encroachment without any further notice.
2. Mr. K.N. Choudhury, learned Senior Counsel for the petitioner has submitted that the Tinsukia Municipal Board does not have the jurisdiction to vacate the petitioner from the said land in question and at best it is on the Revenue Authority that can take such action by following provisions of law.
3. Mr. M. Smith, learned counsel for the Tinsukia Municipal Board had submitted that in the notice the Dag No. mentioned as 5153 was inadvertently

done. However, as regards Dag No. 5154 was done in terms of the order passed by this Court dated 11.08.2017 passed in W.P.(C) No. 6393/2015.

4. This Court has duly perused the said order dated 11.08.2017 and more particularly paragraph no. 10 of the said order which being relevant is reproduced herein under :-

“10. In such view of the matter, this writ petition as agreed to by the learned counsel for the parties, is disposed of by providing that the aforementioned four conditions shall be complied with by the respondent Tinsukia Municipal Board by taking all necessary steps for removing the encroachers standing thereon. It is further directed that the Deputy Commissioner, Tinsukia shall fully cooperate with the Tinsukia Municipal Board and provide all the required means to facilitate the eviction of the encroachers by following due procedure of law and cooperate with the Tinsukia Municipal Board in all manner as the Board may request the Deputy Commissioner.”

5. Perusal of the above quoted directions so passed in the order dated 11.08.2017 would show that Tinsukia Municipal Board was permitted to take steps by coordinating with the Deputy Commissioner, Tinsukia who represented the Revenue Authority for the Tinsukia District. However, it is seen from the impugned notice dated 04.09.2019 that the Chairman Tinsukia Municipal Board had unilaterally taken such action which is contrary to the law as for eviction from land, it only Revenue Authority or the Civil Court who can do so. Even assuming for argument sake that the land in Dag No. 5154 belong to Tinsukia Municipal Board, eviction thereupon can only be resorted to by following the due process. It is also the opinion of this Court that the impugned notice is also contrary to the direction so passed by this Court vide order dated 11.08.2017 passed in W.P.(C) No. 6393/2015 taking into account the directions quoted herein above.

6. Under such circumstances, this Court finds merit in the instant writ petition and accordingly, the impugned notice dated 04.09.2019 is set aside and quashed. It is however observed that setting and quashing of the said notice

dated 04.09.2019 shall not prejudice the Tinsukia Municipal Board to resort to such action as permissible under law.

7. With the above observation and directions, the writ petition stands disposed of.

JUDGE

Comparing Assistant