

GAHC010224502022



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

Case No. : Crl.Pet./1131/2022

MOIN UDDIN MAZUMDER AND 2 ORS.
S/O LATE KONDUR ALI MAZUMDER
R/O VILL- VICHINGCHA
PT.II,
P.O., P.S. AND DIST. HAILAKANDI, ASSAM, PIN-788151

2: KAMRUL ISLAM MAZUMDER
S/O FORASH UDDIN MAZUMDER
R/O VILL- VICHINGCHA
PT.II

P.O.
P.S. AND DIST. HAILAKANDI
ASSAM
PIN-788151

3: AINUL AHMED MAZUMDER @ NUR AHMED MAZUMDER
R/O VILL- VICHINGCHA
PT.II

P.O.
P.S. AND DIST. HAILAKANDI
ASSAM
PIN-78815

VERSUS

THE STATE OF ASSAM AND 2 ORS.
REP. BY THE PP, ASSAM

2:MOJIB UDDIN CHOUDHURY
S/O LATE ATAB ALI CHOUDHURY
R/O VILL- PAIKAN
P.O.

P.S. AND DIST. HAILAKANDI
ASSAM

3:KHALIL UDDIN CHOUDHURY
S/OLATE TOYAB ALI CHOUDHURY
R/O VILL- PAIKAN
P.O.
P.S. AND DIST. HAILAKANDI
ASSA

Advocate for the Petitioner : MS. S B CHOUDHURY

Advocate for the Respondent : PP, ASSAM

BEFORE
HONOURABLE MRS. JUSTICE SUSMITA PHUKAN KHAUND

ORDER

Date : 01.12.2023

Heard Ms. S.B. Choudhury, learned counsel for the petitioners namely 1. Moin Uddin Mazumder 2. Kamrul Islam Mazumder and 3. Ainul Ahmed Mazumder . Also heard Mr. A.M. Barbhuiya, learned counsel for the respondent No.3 and Ms. A. Begu, learned Additional Public Prosecutor, Assam for the respondent No.1.

The petitioners have filed this application under Section 482 read with Section 401 of the Criminal Procedure Code, 1973 seeking quashing the impugned Ex-parte order dated 27.09.2022 passed by the learned Additional District Magistrate, Hailakandi in Case No.13M/2022 under Section 133 Cr.P.C. and to give a direction to decide the case afresh by allowing the present petitioners to appear before the learned Additional District Magistrate, Hailakandi and produce relevant documents in support of their claim.

The petitioners have submitted that they did not appear on 19.07.2022, 05.08.2022, 17.08.2022, 02.09.2022 and 27.09.2022 as they were misguided by the Bench Assistant who gave them wrong dates.

It is alleged that on 31.12.2021, the respondents initiated a case by filing a petition under Section 133 Cr.P.C. before the Additional District Magistrate for an order to clear the land encroached

by the present petitioners. The petitioners have denied by stating that they have encroached the land because the land in dispute is a part of the ancestral graveyard land. The land is covered by Dag No.1060 and 1056 appertaining to Patta No.358, 360 and Dag No.1061 pertaining to Patta No.369 belonging to paternal grandfather of the petitioner No.2 therein.

It is contended that the learned Additional District Magistrate on the basis of vague police report passed the ex-parte order dated 11.01.2022 and thereafter the impugned order dated 27.09.2022 was passed.

Being aggrieved by the aforesaid ex-parte order dated 11.01.2022, the petitioners approached the learned Sessions Judge by filing petition which was registered as CrI.Revn No.10/2022 and the petition was disposed of vide order dated 25.04.2022 and the petitioners were directed to appear before the learned trial Court and accordingly they have submitted their written statement.

Per-contra learned counsel for the respondents have submitted that the petitioners have not disputed through the written statement that the police report was vague. The impugned order was passed as the petitioners failed to appear on five consecutive dates and through the impugned order dated 27.09.2022 the earlier ex-parte order dated 11.01.2022 was made absolute.

In the order dated 11.01.2022, the petitioners were directed to remove the nuisance or any obstruction over the path erected by the respondents and to appear before the learned Additional District Magistrate to file written statement and also directed the O/C of the concerned police station to maintain the peace and tranquility in the locality and execute the order dated 11.01.2022 passed by the learned Additional District Magistrate, Hailakandi.

Learned counsel for the respondents has supported the order the learned Additional District Magistrate, Hailakandi and has submitted that the petitioners have no case and this is a matter of civil dispute and the petitioners cannot approach the Civil Court for relief. In case the order is set aside, there is every apprehension of breach of public peace and tranquility and the commuters will face hurdles while crossing the path, which is alleged to be a part of the disputed land.

I have considered the submissions at the Bar. The petitioners are willing to appear before the learned Additional District Magistrate and to cooperate with the proceedings at this juncture.

Accordingly, the order dated 27.09.2022 passed by the learned Additional District Magistrate, Hailakandi in connection with Case No. 13M/2022 is hereby set aside. The petitioners are directed to appear before the Additional District Magistrate and co-operate with the proceedings. The learned

Magistrate may dispose of the case expediently within two months after hearing both the sides.

The petition is accordingly disposed of.

Send back the LCR.

JUDGE

Comparing Assistant