

GAHC010242862023



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

Case No. : CRP/167/2023

PAYAL GOSWAMI AND 2 ORS
DAUGHTER OF LATE SUMITRA OSHAN,
WIFE OF SRI RATUL GOSWAMI,
RESIDENT OF 601, B BLOCK, SHREE ENCLAVE,
BELTOLA BAZAR ROAD, P.O.- BELTOLA,
DISTRICT- KAMRUP(M), ASSAM.
PERMANENT RESIDENT OF WARD NO. 3,
MARIANI TOWN, MOUZA- KATONI,
DISTRICT- JORHAT.

2: KUNALDEEP SINGH
SON OF SUMITRA OSHAN

RESIDENT OF 601
B BLOCK
SHREE ENCLAVE

BELTOLA BAZAR ROAD
P.O.- BELTOLA

DISTRICT- KAMRUP(M)
ASSAM.
PERMANENT RESIDENT OF WARD NO. 3

MARIANI TOWN
MOUZA- KATONI

DISTRICT- JORHAT.

3: JEENI MORANG
DAUGHTER OF TARUN KAMAN

WIFE OF SRI RATNESWAR MORANG

PRESENTLY RESIDING AT KALYANPUR
WARD NO. 2

BOKAKHAT TOWN

PERMANENT RESIDENT OF WARD NO. 3

MARIANI TOWN
MOUZA- KATONI

DISTRICT- JORHAT

VERSUS

RAMESH KAMAN AND 9 ORS
SON OF LATE KATENG KAMAN,
RESIDENT OF WARD NO. 3,
MARIANI TOWN, MOUZA- KATONI,
DISTRICT- JORHAT.

2:NAREN KAMAN
SON OF LATE KETENG KAMAN

RESIDENT OF WARD NO. 3

MARIANI TOWN
MOUZA- KATONI

DISTRICT- JORHAT.

3:LILAWATI PAIT
DAUGHTER OF LATE KETENG KAMAN

RESIDENT OF WARD NO. 3

MARIANI TOWN
MOUZA- KATONI

DISTRICT- JORHAT.

4:PUTUL PEGU
DAUGHTER OF LATE KETENG KAMAN

RESIDENT OF WARD NO. 3

MARIANI TOWN
MOUZA- KATONI

DISTRICT- JORHAT.

5:DIPALI DANG
DAUGHTER OF LATE KETENG KAMAN

RESIDENT OF WARD NO. 3

MARIANI TOWN
MOUZA- KATONI

DISTRICT- JORHAT.

6:DIPTI KAMAN
DAUGHTER OF LATE KETENG KAMAN

RESIDENT OF WARD NO. 3

MARIANI TOWN
MOUZA- KATONI

DISTRICT- JORHAT.

7:MARIANI TOWN COMMITTEE
REPRESENTED BY ITS CHAIRMAN

MARIANI
JORHAT
ASSAM.

8:THE STATE OF ASSAM
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE GOVT.
OF ASSAM

DEPARTMENT OF REVENUE
DISPUR

GUWAHATI- 781006.

9:THE DEPUTY COMMISSIONER
JORHAT
DISTRICT- JORHAT
ASSAM.

10:THE CIRCLE OFFICER
MARIANI REVENUE CIRCLE
MARIANI
DISTRICT- JORHAT
ASSAM

Advocate for the Petitioner : MR S P DAS

Advocate for the Respondent : GA, ASSAM

**BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA**

ORDER

Date : 19.10.2023

Heard Mr. S.P. Das, learned counsel for the petitioners. Also heard Mr. K.K. Bhattacharyya, learned Govt. advocate representing proforma respondent nos.8, 9 and 10.

2) This application under Article 227 of the Constitution of India has been filed against the impugned order dated 11.10.2023, passed by the learned District Judge, Jorhat in Misc. Appeal No. 4/2023 filed under Order XLIII, Rule 1(r) CPC was dismissed.

3) The petitioners have also assailed the order dated 13.02.2023, passed by the learned Civil Judge (Senior Division) Jorhat in Misc. (J) Case No. 24/2023 in T.S. No. 36/2020. By the said order prayer for *ad interim* injunction was rejected.

4) In short, the case of the petitioners is that they had filed TS No. 36/2020, with prayer for declaration that they being the legal heirs of Ketang Kamang, who was the original occupier of the suit land, are entitled for joint possessory right over suit land described in Schedule 'A' and 'B' of the plaint; (a) for declaration that the plaintiffs being the legal heirs and successors of the original occupier of the suit land namely Ketang Kaman are entitled for joint

possessory right over schedule-A and B plots of land along with the principal defendants no.1 to 6; (b) for declaration that being the joint possessors of schedule-A & B plots of land, and plaintiffs no. 1 & 2 jointly and plaintiff no.3 along are having 1.75 lechas each over schedule-A plot of land and 10 lechas each over schedule-B plot of land along with the principal defendants and without partitioning and providing them with their respective shares, the principal defendants no. 1 to 6 are having no right or authority to construct any RCC building and/ or any other construction over the said suit land and the construction so carried out by the principal defendants no. 1 to 6 are liable to be demolished; (c) for declaration that the alleged permission as well as approval of drawing granted by the principal defendant no. 7 in respect of the suit land is illegal, arbitrary and without any sanction of law and as such the said permission dated 05.10.2018 and approval of the drawing are liable to be cancelled; (d) for recovery of possession of 1/8th share jointly to plaintiff no. 1 & 2 and the plaintiff no. 3 alone i.e. 1.75 lechas each over schedule-A plot of land and 10 lechas each over schedule-B plot of land through the bailiff of this Hon'ble Court by dismantling the structures standing thereon; (e) for permanent injunction restraining the principal defendants nos. 1 to 6, their men, agents, servants, workman etc. from making any type of construction over below schedule-A & B plots of land till the joint possessory right over the same is partitioned amongst the plaintiffs and the principal defendant nos. 1 to 6 and further restrain them from selling, encumbering and/ or creating any third party right over the same; (f) Full costs of the suit; (g) Any other relief or reliefs to which the plaintiff is entitled to under the law and equity.

5) In connection with Misc. (J) Case No. 10/2020, under Order XXXIX, Rules 1 and 2 read with Section 151 CPC, arising in T.S. No. 36/2020,

the learned Addl. District Judge, Jorhat had disposed of the said application by an order dated 15.12.2020, by which, amongst others, it was provided as follows:-

“21. Accordingly, the instant Misc. (J) Case is disposed of on contest by imposing following conditions viz.,

- (i) If the opposite party nos. 1-6/ defendant nos. 1-6 desires to proceed to construct and complete the construction and develop the suit property, they are at liberty to do so.*
- (ii) In case of construction of any building on a portion of the suit property which the Petitioners/Plaintiffs have now claimed Including creating any encumbrance or alienation in the form of lease or mortgage or sale etc., the same will be subject to the final outcome of the suit;*
- (iii) Opposite Party Nos.1-6/Defendant Nos.1-6 in the guise of construction, till disposal of the suit shall not encumber the suit schedule property in any way either to any financial Institutions or any third persons;*
- (iv) Induction by Opposite Party Nos.1-6/Defendant Nos.1-6 or any third person or persons on building or buildings to be constructed on the suit property claimed by the Petitioners /Plaintiffs as their share either in the form of a vendee, lessee or a mortgagee, such Induction or occupation shall be at the risk of Opposite Party Nos.1-6/Defendant Nos.1-6 and the occupant;*
- (v) In case Opposite Party Nos.1 to 6/Defendant Nos.1 to 6 succeed in the suit, they shall remove any construction or obstruction of himself or persons claiming under them, their men, agents, servants, workman etc. on the site claimed by the Petitioners/Plaintiffs as their share of the suit property without pleading any equity.”*

6) The learned counsel for the petitioners has submitted that the respondent nos. 1 to 6 have started to demolish some structures over the suit land with an aim to raise further construction over the suit land, which would change the nature and character of the suit land. It was submitted that the said act of demolition of the existing structures was in violation of the order dated 15.12.2020, passed by the learned Addl. District Judge, Jorhat in Misc. (J) Case No. 10/2020. Hence, it was submitted that the petitioners had filed an

application for *ad interim* injunction, which has been registered as Misc. (J) Case No. 24/2020.

7) It has been submitted by the learned counsel for the petitioners that instead of granting an *ad interim* injunction, the learned Civil Judge (Senior Division), Jorhat, by order dated 13.02.2023, issued notice to the respondents. Therefore, the aggrieved petitioners had preferred an appeal under Order XLIII, Rule 1(r) CPC. It has been submitted that the learned first appellate Court held that the order dated 15.12.2020, passed in Misc. (J) Case No. 10/2020 gave liberty to the respondent nos. 1 to 6 to construct and develop the suit property, with restriction that such activities would be subject to outcome of the suit, which was perverse as the said order did not grant permission to the respondent nos. 1 to 6 to demolish existing structures. It was also submitted that the learned first appellate Court had arrived at a perverse finding that there was no infirmity by the learned trial Court in not granting *ex parte* interim injunction.

8) Accordingly, it was submitted that this Court may be pleased to admit this application and grant *ad interim* injunction as prayed for otherwise the nature and character of suit land would be altered.

9) Considered the submissions and also considered the materials available on record.

10) From the order dated 15.12.2020, passed by the learned Addl. District Judge, Jorhat in Misc. (J) Case No. 10/2020, it is evident that the said learned Court had granted liberty to the respondent nos. 1 to 6 to construct and develop the suit property. In the considered opinion of the Court, the said liberty must be deemed to include demolition of structures so as to facilitate

construction, as and where necessary. The power to develop land and to make construction over the suit land cannot be given a restrictive meaning to exclude demolition, as such an interpretation is likely to cause immense hindrance to the right of the respondent nos. 1 to 6 to carry out construction activity and develop the suit land.

11) Therefore, in light of the order dated 15.12.2020, passed by the learned Addl. District Judge, Jorhat in Misc. (J) Case No. 10/2020, this Court is of the considered opinion that no jurisdictional error or perversity is found in the impugned order dated 11.10.2023, passed by the learned District Judge, Jorhat in Misc. Appeal No. 4/2023 filed under Order XLIII, Rule 1(r) CPC, thereby dismissing the appeal. In view of the discussions as aforesaid, the case of *Bindeshwar Narayan Singh & Ors. v. Managing Committee, Shri Sundarmal Hindi High School & Ors*, AIR 1982 Gau 69, decided by the Division Bench of this Court does not help the petitioners.

12) Therefore, in light of the discussions above, the Court is inclined to hold that no purpose would be served in keeping this matter pending and therefore, this application stands dismissed in the "motion stage" without issuance of notice on the respondents.

13) It is clarified that none of the observations made herein shall prejudice the petitioner during trial of T.S. No. 36/2020.

14) It is also clarified that nothing contained in this order is intended to dilute the directions contained in the order dated 15.12.2020, passed by the learned Addl. District Judge, Jorhat in Misc. (J) Case No. 10/2020, as well as the observations made by the learned District Judge, Jorhat in Misc. Appeal No. 4/2023 to the effect that any construction or development activity carried out by

the respondent nos. 1 to 6 shall be subject to outcome of T.S. No. 36/2020.

15) The Registry shall transmit a copy of this order to the Court of the learned District Judge, Jorhat to be made a part of the record of Misc. Appeal No. 4/2023.

JUDGE

Comparing Assistant