

GAHC010082252019



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

Case No. : WP(C)/2512/2019

CHITRA LEKHA THAKURIA AND ANR.
W/O- LATE UDDHAB THAKURIA, R/O- BALIRAM TERON PATH, H NO. 37,
NARAKASUR, KAHILIPARA, GUWAHATI- 19

2: PRAVA MAHANTA CHOUDHURY
W/O- RAMEN CHOUDHURY
R/O- BALIRAM TERON PATH
BYE LANE NO.1
H NO. 37
NARAKASUR
KAHILIPARA
GHY- 1

VERSUS

THE STATE OF ASSAM AND 4 ORS
TO BE REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT OF
ASSAM, LAND REVENUE AND DISASTER MANAGEMENT DEPTT, DISPUR,
GUWAHATI- 06

2:THE CHIEF ENGINEER
PWD(ROADS)
GUWAHATI- 03

3:THE DEPUTY COMMISSIONER CUM DISTRICT COLLECTOR
KAMRUP(M)
PANBAZAR
GUWAHATI- 01

4:THE ADDITIONAL DEPUTY COMMISSIONER (REVENUE)
KAMRUP(M)
PANBAZAR
GUWAHATI- 01

5:THE CIRCLE OFFICER
DISPUR REVENUE CIRCLE
BASISTHA CHARIALI
GUWAHATI- 2

Linked Case : WP(C)/7722/2018

CHITRA LEKHA THAKURIA AND ANR.
W/O. LT. UDDHAB THAKURIA
R/O. BALIRAM TERON PATH
HOUSE NO. 37
NARAKASUR
KAHILIPARA
GUWAHATI-19.

2: PRAVA MAHANTA CHOUDHURY

W/O. RAMEN CHOUDHURY
R/O. BALIRAM TERON PATH
BYE LANE NO. 1
HOUSE NO. 37
NARAKASUR
KAHILIPARA
GUWAHATI-19.
VERSUS

THE STATE OF ASSAM AND 4 ORS.
TO BE REP. BY THE COMM. AND SECY. TO THE GOVT. OF ASSAM
LAND REVENUE AND DISASTER MANAGEMENT DEPTT.
DISPUR
GUWAHATI-06.

2:THE CHIEF ENGINEER

PUBLIC WELFARE DEPTT. (ROAD)
GUWAHATI

3:THE DY. COMMISSIONER CUM DIST. COLLECTOR

KAMRUP (M)
PANBAZAR
GUWAHATI-01.

4:THE ADDL. DY. COMMISSIONER (REVENUE)

KAMRUP (M)
PANBAZAR
GUWAHATI-01.

5:THE CIRCLE OFFICER DISPUR REVENUE CIRCLE

BOSISTHA CHARIALI
GUWAHATI.

For the Petitioner (s) : Mr. A.R. Bhuyan, Advocate.

For the Respondent (s) : Mr. H. Sarma, Advocate.

Ms. D. Das Barman, Govt. Advocate.

Date of hearing & Judgment : **17.11.2023**

BEFORE

HONOURABLE MR. JUSTICE DEVASHIS BARUAH

JUDGMENT AND ORDER(ORAL)

Both the writ petitions are taken up together taking into account the similarity of the issues and the parties being same.

2. It is the case of the Petitioners that the Petitioner No. 1 namely Chitra Lekha Thakuria is the owner of a plot of land measuring 2 kathas 5.94 lechas covered by Dag No. 457 and included in K.P. Patta No. 47 at Dakhingaon Revenue Village under Beltola Mouza of Dispur Revenue Circle and have permanent structures standing thereon. The Petitioner No. 2 namely Prava Mahanta Choudhury is one of the land owners of the land measuring 5.35 Are covered by Dag No. 2865 and included in K.P. Patta No. 1131 at Dakhingaon Revenue Village under Beltola Mouza of Dispur Revenue Circle and have permanent structures standing thereon. Both the lands as per the Petitioners are

adjacent to Dakhingaon Road which connects Dindayal Upadhaya Path from Dakhingaon Bus Stop Tiniali point with Lalganesh Lokhra Road at Sonaighuli point. It is the further case of the Petitioners that in the plot of land of the Petitioner No. 1 there is a hardware shop namely "Shivam Hardware" having permanent structures and in the land of the Petitioner No. 2 she also have one shop having permanent structures. It is the further case of the Petitioners that the Petitioners could come to learn that the PWD of the Government of Assam had approved a scheme for construction of drain as well as the widening of Dakhingaon Road connecting Dindayal Upadhaya Path from Dakhingaon Bus Stop Tiniali point with Lalganesh Lokhra Road at Sonaighuli point. It is also the case of the Petitioners that they could come to learn that the estimated width of the said road would be 7.50 metres. It is the further case of the Petitioners that in order to widen the said road, the contractor who was awarded the construction of the drainage on both sides of the road forcefully acquired lands in some places 40 feet and in some places 45 feet. The Petitioners objected to the said action of the contractors and told them that without payment of compensation and acquisition of the said land by following the due process, the said land cannot be taken over from the Petitioners. It is under such circumstances that the Petitioners apprehending that there would be an eviction drive by which the Petitioners would lose their lands and no payment of compensation

would be made, have approached this Court seeking various reliefs including that if there is any construction of road and drainage system, the Respondent Authorities are required to acquire the lands from the Petitioners and also pay the compensation in terms with the provisions of the Right to Fair Compensation and Transparency in (Land Acquisition, Rehabilitation and Resettlement) Act, 2013. The Petitioners fearing that the Respondent Authorities shall take steps without following the due process, the W.P.(C) No. 7722/2018 was filed. It is also seen from the grievances set out in the writ petition that there is an allegation that the Respondents are constructing the road and drainage in the Dakhingaon road but in the process have entered into the patta lands of the Petitioners.

3. On 12.12.2018, this Court had issued notice and in the meanwhile, directed that no constructions shall be carried out by the Respondents over the patta lands of the Petitioners without acquiring the land in accordance with law and/or without proper measurement. It further reveals that pursuant to the order dated 12.12.2018, a notice dated 06.04.2019 was issued to the Petitioner No. 1 stating inter alia by the Circle Officer, Dispur Revenue Circle that the demarcation was done on 09.01.2019 on the land covered by Dag No. 458 under Beltola Mouza, Village – Dakhingaon by the PWD under the “Mission Flood Free Scheme” to construct the drainage. It was also mentioned that the Petitioner No. 1 was illegally possessing some

portion of the land in Dag No. 458 which was a Government land for which the Petitioner No. 1 was directed to vacate the movable/immovable property over the land within 15 days from the receipt of the said notice. This notice was put to challenge in the subsequent Writ Petition which was registered and numbered as W.P. (C) No. 2512/2019.

4. The records further reveals that this Court vide an order dated 11.04.2019 had issued notice and it was further mentioned that till the next date, the Petitioner shall not be evicted from the said land.

5. It is further pertinent to take note of that from a perusal of the records in W.P.(C) No. 7722/2018, an affidavit was filed by the PWD, wherein it was mentioned that after the demarcation of the Govt. land by the Revenue Department officials of the Dispur Revenue Circle on 09.01.2019, follow-up execution was taken up shortly by the Circle Officer, Dispur. It was further mentioned that as per the information required from the local public, Govt. land width available for the road was 100 ft. (30.48 metres). It was stated that land demarcation was required to be done again by the Revenue Authority/Circle Officer, Dispur Revenue Circle and in that connection correspondences was made with the Circle Officer, Dispur Revenue Circle, Dispur vide the Communications dated 19.05.2018 and 20.11.2018 for demarcation of the right of way. It was further mentioned that the local people were also of the opinion that there were encroachment being made by

some residents and the land available in the field is more than that on paper for which necessary measurement were required to be made.

6. In W.P.(C) No. 2512/2019, the Respondent No. 5 who is the Circle Officer, Dispur Revenue Circle had filed an affidavit. In the said affidavit, it was mentioned that although in the writ petition, it was stated that the name of the Petitioner No. 1 is included in Patta No.47 covering an area of 2 kathas 5.94 lechas and the name of the Petitioner No. 2 is included in Patta No. 1131 covering an area of 5.35 Are in Revenue Village Dakhingaon under Beltola Mouza but as per the office land records, the name of Ajay Kumar, son of Paresh Thakur is the recorded pattadar of K.P. Patta No.47 of Revenue Village Dakhingaon under Beltola Mouza. It was further mentioned that names of Reziya Khatun, Abu Taleb and Ms. Najra Azad Sultana were the recorded pattadars in K.P.Patta No. 1131 of Revenue Village Dakhingaon under Beltola Mouza in the District of Kamrup (Metro), Assam. Further to that, it was mentioned that as per the field visit, no action was taken for eviction of the shop "Shivam Hardware" situated in the area covered by K.P. Patta No.347 of Dag No.457 attached to Din Dayal Upadhaya Path of Revenue Village Dakhingaon under Beltola Mouza except encroached area of Government land in the front. It was mentioned that arrangements have been made for eviction of the front of the Shivam Hardware shop which had encroached the road of Government Dag No.458 attached to the

above mentioned Dag No. and Patta No. after serving eviction notice as per the Rule of law. Further to that, the Respondent No. 5 have also stated in the said affidavit that the name of the Petitioner No. 1 is recorded as pattadar in K.P. Patta No. 347 of Dag No. 457 Village Dakhingaon under Beltola Mouza in the District of Kamrup (Metro), Assam. Further to that, the name of the Petitioner No. 2 is recorded as separate pattadar of K.P. Patta No. 1131 of Dag No. 2865 of Revenue Village- Odalbakra under Beltola Mouza. It was mentioned that arrangements were also made for eviction of the part of the shop which have encroached the road of Government Dag No. 2866 attached to the above mentioned Dag No. and Patta No. after serving eviction notice as per the Rule of law.

7. This Court had duly heard the learned counsels for the parties and also perused the materials on record. From the perusal of the materials on record, it is the opinion of this Court that the Petitioners cannot be evicted from the patta land of the Petitioners without following the due process of law. However, in respect to Government lands more particularly Dag Nos. 458 and 2866 which is a part of the road, the Petitioners have no right to encroach. Under such circumstances, this Court therefore disposes of both the writ petitions with the following observations and directions :-

(i) The Respondent Authorities are directed not to evict the Petitioners from their patta lands covered by Dag No. 457 of K.P. Patta

No.347 attached to Din Dayal Upadhaya Path of Revenue Village Dakhingaon under Beltola Mouza as well as from the land covered by Dag No.2865 of K.P. Patta No. 1131 of Revenue Village- Odalbakra under Beltola Mouza without following the due process of law.

(ii) As regards the land covered by Government Dag Nos. 458 and 2866, the said land being Government lands, the Petitioners have no right to encroach upon the same. Under such circumstances, the Respondent Authorities shall after making necessary demarcation evict the Petitioners from the said land and would further be at liberty to remove encroachment by the Petitioners upon the Govt. land.

(iii) This Court further directs the Circle Officer, Dispur Revenue Circle to carry out the said demarcation proceedings on 30.11.2023 at 11.30 AM and thereupon after identifying the area of lands falling under the Dag Nos. 458 and 2866 which are Government lands and if there is any encroachment, the Revenue Authorities shall be at liberty to remove such encroachment by carrying out necessary eviction.

8. A copy of the instant judgment shall be served upon Mr. H. Sarma, the learned counsel for due compliance.

JUDGE

Comparing Assistant