

GAHC010264962013



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

Case No. : WP(C)/6843/2013

SONAPUR NEWMARKET KHUDRA BYABASAI SANTHA and 2 ORS
REP. BY SRI PRITAM DUTTA, S/O- SRI GOPAL DUTTA, R/O VILL.-
BARUABARI, P.O. and P.S.- SONAPUR, DIST.- KAMRUP M, ASSAM.

2: NAYAN JYOTI BARMAN
S/O- SRI BANESWAR BARMAN
R/O VILL.- MILLANPUR
P.O. and P.S.- SONAPUR
DIST. - KAMRUP M
ASSAM.

3: AKIB AHMED
S/O- LT. CHUNA MIYA
R/O- SANTINAGAR
P.O. and P.S.- SONAPUR
DIST.- KAMRUP M
ASSAM

VERSUS

THE STATE OF ASSAM AND 4 ORS
REP. BY THE COMMISSIONER AND SECY. TO THE GOVT. OF ASSAM,
REVENUE DEPTT., DISPUR, GHY- 6.

2:THE DY. COMMISSIONER
KAMRUP M
GUWAHATI
ASSAM.

3:THE CIRCLE OFFICER
SONAPUR REVENUE CIRCLE
SONAPUR
DIST.- KAMRUP M
ASSAM.

4:THE OFFICER-IN-CHARGE
SONAPUR POLICE STATION
SONAPUR
DIST.- KAMRUP M
ASSAM.

5:SONAPUR SPORTS ASSOCIATION
REP. BY SRI DEEPAK DAS
R/O VILL. and P.O.- SONAPUR
DIST.- KAMRUP M
ASSAM

Advocate for the Petitioner : MRS.S D SAIKIA

Advocate for the Respondent : MS.T ROY

**BEFORE
HONOURABLE MR. JUSTICE SUMAN SHYAM**

ORDER

03.10.2023

Heard Mr. R. P. Sarmah, learned senior counsel assisted by Mr. R. Sarma, learned counsel appearing for the writ petitioners. Also heard Ms. G. Hazarika, learned Standing Counsel, Revenue Department, Assam appearing for the respondent No.1 and Mr. N. Goswami, learned Government Advocate, Assam appearing on behalf of respondent Nos.2, 3 and 4. Mr. A. Ganguly, learned counsel is present on behalf of the respondent No.5.

The writ petitioner No.1, viz., Sonapur Newmarket Khudra Byabasai Santha claims to be a registered association of petty businessmen operating their shops from the aforesaid market and the petitioner Nos.2 and 3 are the members of the petitioner No.1 association. As per the case projected in the writ petition, the petitioners are running their shops from the sheds located in the aforesaid

market for earning their livelihood. According to the petitioners, on 18.11.2013, the Revenue authorities came to their shops and have orally threatened to evict them from the sheds under their occupation on the ground that they are occupying land falling in the Tribal belt. Apprehending eviction from their shops, the instant writ petition has been filed by the members of the association.

Mr. Sarmah, learned senior counsel for the petitioners submits that in the year 1987, around 18 bighas of land was allotted in favour of the respondent No.5 i.e. the Sonapur Sports Association by issuing a patta in its name and the petitioners, numbering 38 in total, who are the members of the petitioner association are jointly occupying about 3 Katha 18 Lechas of land covered by Dag No.111 of FS Grant No.1 of village Baruabari under Panbari Mouza in the district of Kamrup(M), Assam which forms part of the 18 Bighas of land. The learned senior counsel has, therefore, argued that since the petitioners are in occupation of private patta land, they cannot be evicted from the land without serving prior notice or giving them an opportunity of being heard in the matter. It is also the submission of Mr. Sarmah that if the petitioners are forced to close down their business in this manner, then not only would the petitioners but even their family members would suffer immense injury and hardships. As such, an order be passed by this Court restraining the respondents from taking any arbitrary action for eviction of the petitioners from the land under their occupation without following the due process of law.

Mr. Goswami, learned Govt. Advocate, Assam appearing for the respondent Nos.2, 3 and 4 has argued that the petitioners are encroachers upon land falling under the Tribal belt and hence, they are liable to be evicted.

Mr. Ganguly, learned counsel for the respondent No.5 i.e. the Sonapur Sports

Association, on the other hand, submits that the land in question is a private patta land belonging to his client. However, the writ petitioners are illegal encroacher upon the said land.

Having heard the submissions advanced by the learned counsel for both the sides, it is apparent that the writ petitioners are in occupation of a part of private patta land which land was earlier allotted to the respondent No.5. The claim of the petitioners of having paid revenue in respect of the land has not been seriously disputed by the respondents. It is also not in dispute that the petitioners are operating their petty businesses from the sheds constructed in the market complex situated over the said land. The members of the petitioner No.1 Society have been earning their livelihood by operating their shops is also not in dispute. If that be so, this Court is left with no manner of doubt that the eviction of the petitioners from the land under their occupation must be preceded by service of proper notice since the petitioners are evidently in occupation of private patta land.

Therefore, this writ petition is being disposed of by providing that in the event of any proceeding being initiated so as to evict the petitioners from the land in question, the same shall be done only in accordance with law and after serving prior notice upon the individual members of the petitioner No.1 association, giving them at least 30 days time to vacate the respective sheds. In such an eventuality, the respondent Nos.2 to 4 shall also consider the request, if any, made by the members of the petitioner association, for providing them with alternative sites for conducting their day to day businesses. Until such time the aforesaid exercises are carried out, the respondents shall not interfere with the running of the daily businesses of the members of the petitioner association.

The writ petition stands disposed of accordingly.

JUDGE

Comparing Assistant