

GAHC010267292017



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

Case No. : WP(C)/1553/2017

JABED ALI AHMED and 13 ORS.
S/O AHAD ALI AHMED, R/O NORTH JALUKBARI, P.S. JALUKBARI, GHY-14,
DIST- KAMRUP METRO, ASSAM

2: MD. ABDUL MAZID AHMED
S/O ABDUL HAKIM
R/O NORTH JALUKBARI
P.S. JALUKBARI
GHY- 14
DIST- KAMRUP METRO
ASSAM

3: MUSSTT. SALEHA BEGUM
W/O LT. BANIZUR REHMAN
R/O NORTH JALUKBARI
P.S. JALUKBARI
GHY- 14
DIST- KAMRUP METRO
ASSAM

4: ANOWARA BEGUM
W/O MAKIB ALI
R/O NORTH JALUKBARI
P.S. JALUKBARI
GHY- 14
DIST- KAMRUP METRO
ASSAM

5: NAJIB ALI
S/O NAUSHAD ALI
R/O NORTH JALUKBARI
P.S. JALUKBARI
GHY- 14
DIST- KAMRUP METRO

ASSAM

6: NASEEM ALI
S/O NAUSHAD ALI
NORTH JALUKBARI
P.S. JALUKBARI
GHY- 14
DIST- KAMRUP METRO
ASSAM

7: NAFISHA BEGUM
D/O MAUSHAD ALI
R/O NORTH JALUKBARI
P.S. JALUKBARI
GHY- 14
DIST- KAMRUP METRO
ASSAM

8: NURSUDHMA BEGUM
W/O NAUSHAD ALI
R/O NORTH JALUKBARI
P.S. JALUKBARI
GHY- 14
DIST- KAMRUP METRO
ASSAM

9: ASPIA BEGUM
W/O LT. JAHIRUL ISLAM
R/O NORTH JALUKBARI
P.S. JALUKBARI
GHY- 14
DIST- KAMRUP METRO
ASSAM

10: IKRAM HUSSAIN
S/O LT. ALI AHMED
R/O NORTH JALUKBARI
P.S. JALUKBARI
GHY- 14
DIST- KAMRUP METRO
ASSAM

11: INTAZ ALI
S/O LT. MAZIBUR RAHMAN
R/O NORTH JALUKBARI
P.S. JALUKBARI
GHY- 14
DIST- KAMRUP METRO

ASSAM

12: RAUSHANA SHAH
W/O MD. ADIL SHAH
R/O NORTH JALUKBARI
P.S. JALUKBARI
GHY- 14
DIST- KAMRUP METRO
ASSAM

13: ON THE DEATH OF MD. ADIL SHAH HIS LEGAL HEIRS
13 (a). ROSHNA SHAH

WIFE OF LATE ADIL SHAH.
13 (b). MD. ARAFAT AJMIR SHAH

SON OF LATE ADIL SHAH.
13 (c). SHAH AJMIRA ADIL

DAUGHTER OF LATE ADIL SHAH.
13 (d). SHAH KASHMIRA ADIL

DAUGHTER OF LATE ADIL SHAH
ALL ARE RESIDENCE OF NORTH JALUKBARI
P.S. JALUKBARI
GUWAHATI-781014
DIST.-KAMRUP (M)
ASSAM

14: MUSSTT. TAIBUR NESSA
W/O MD. MASTAIM
R/O NORTH JALUKBARI
P.S. JALUKBARI
GHY- 14
DIST- KAMRUP METRO
ASSA

VERSUS

THE UNION OF INDIA and 5 ORS.
REP. BY THE GENERAL MANAGER, N.F. RAILWAY, H.Q.- MALIGAON, GHY-
11

2:THE GENERAL MANAGER
N.F. RAILWAY
MALIGAON
GHY-11

3:THE STATE OF ASSAM
REP. BY THE COMMISSIONER AND SECY.
REVENUE DEPTT.
DISPUR
GHY-6

4:THE DY. COMMISSIONER
KAMRUP METRO
ASSAM
GHY-1

5:THE ADDL. DY. COMMISSIONER
KAMRUP METRO
ASSAM
GHY-1

6:THE SETTLEMENT OFFICER
GUWAHATI REVENUE CIRCLE
KAMRUP METRO
ASSA

Advocate for the Petitioner : MR. K SAIKIA

Advocate for the Respondent : MR.S C BISWAS

**BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH**

JUDGMENT

Date : 15-11-2023

1. The instant writ petition has been filed by the petitioners seeking a direction upon the respondents, more particularly the respondent Nos.1 and 2 not to evict them and to demolish the buildings situated in Dag No.13 of K.P Patta No.109 of village-North Jalukbari, Mouza Jalukbari in the district of Kamrup (M), Assam.

2. The facts as can be discernible from the materials on record reveals that the petitioners as well as the predecessors in interest have jointly filed a suit being Title Suit No.100/1999 against the Union

of India represented by the General Manager, Northeast Frontier Railway seeking a declaration that the plaintiffs are the owners and co-pattadars of the land shown in Schedule A and for confirmation of possession over the said land. The plaintiffs in the said suit also sought for a permanent injunction restraining the principal defendants i.e., the respondent Nos.1 and 2 herein and their agents from evicting the plaintiff from the suit land.

3. This Court finds it relevant at this stage to mention that the suit land in question ad-measures 4 bighas 0 kathas 3 lechas covered by Dag No.Old 13, New 581, 582, 583, 584, 585, 586, 596, 598, 54/55, 43, 18, 34, 33, 54/59 of N.K. Patta No.Old 1, New 7, 8, 9, 1 and 13 of village North Jalukbari in the district of Kamrup in Mouza Jalukbari under Police Station Jalukbari in the district of Kamrup.

4. The record further reveals that the said suit being Title Suit No.100/1999 was decreed in favour of the plaintiffs by the Court of the Civil Judge, Junior Division No.3 thereby declaring the right title and interest of the plaintiff over the suit land; the possession of the plaintiffs were also confirmed over the suit land and also a permanent injunction was passed against the defendant Nos.1 and 2 who are the respondent Nos.1 and 2 herein; restraining them, their agents, servants etc. from interfering with the peaceful possession over the suit land, from demolishing their houses constructed over the suit land and from evicting the plaintiffs from the suit land. The said judgment and decree dated 24.07.2001 passed in Title Suit No.100/1999 was challenged in appeal before the Court of the Civil Judge No.2 along with the condonation application. The said appeal was registered as

Title Appeal No.78/2001. On the ground of delay the said appeal was also dismissed.

5. It is therefore the case of the petitioners that the respondents more particularly the respondent Nos.1 and 2 cannot evict the petitioners in respect to the said plot of land measuring 4 bighas 0 kathas 3 lechas covered by N.K. Patta No.1 Old, New 7, 8, 9, 1 and 3 in Dag No. Old 13, New 581, 582, 583, 584, 585, 586, 596, 598, 54/55, 43, 18, 34, 33, 54/59 of village North Jalukbari under Jalukbari Mouza in the district of Kamrup Metro.

6. It is the further case of the petitioners that they came to learn that the respondent Nos.1 and 2 were proposing to evict the petitioners from the land for which the instant writ petition was filed.

7. The record reveals that this Court vide order dated 17.03.2017 issued notice and in the interim provided that the entry No.Gha dated 03.12.2009 in the zamabandi of KP Patta No.109 of North Jalukbari shall remain stayed. The record further reveals that an affidavit in opposition was filed by the respondent No.1 and 2. In the said affidavit filed it was mentioned that the Railways acquired 203 bighas, 2 kathas, 12 lechas of land from Bramhaputra Bridge Project at Pandu area, South approach Project 1 and 11B in the year 1959. It was further mentioned that the land measuring 47 bighas, 0 kathas 16 lechas out of total land of 60 bighas 2 kathas 7 lechas of land covered by Dag No.13 of N.K. Patta No.1 (old)/K.P Patta No.109 (New) of Revenue Village – North Jalukbari, Mouza Jalukbari under Revenue Circle Guwahati in the district of Kamrup (M) was acquired by the Revenue Department, Govt. of Assam and allotted to the

railways and 13 bighas, 1 katha, 13 lechas remained as patta land which is apparent from the records.

8. It was further mentioned that a letter dated 03.08.2017 was written by the NF Railway authority to the Deputy Commissioner, Kamrup (Metro) for demarcation of the railway land from Dunlop Bridge, Jalukbari to Brahmapurta Bridge, (Saraighat Bridge) South approach at the earliest. In response to the said communication the Additional Deputy Commissioner, Kamrup (Metro) Guwahati, Assam wrote to the Circle Officer to take necessary action.

9. In the said affidavit more particularly at paragraph No.8 the respondents duly admitted to the passing of the judgment and decree dated 20.07.2001 in Title Suit No.100/1999 in respect of the land measuring 4 bighas, 0 kathas, 3 lechas covered by NK Patta No.1 (old), 7 (new), 8, 9, 1 and 3 Dag No.13 (old), 581, 582, 583, 584, 585, 586, 596, 598, 54/55, 43, 18, 34, 33, 54/59 (new) of village North Jalukbari under Jalukbari Mouza in the district of Kamrup Metro. Further to that at paragraph No.12 it has been mentioned that the Railway initiates eviction proceeding only against unauthorized occupants of railway lands in strict compliance of the provisions of Section 4 and 5 of the Public Premises (Eviction of Un-authorized Occupants Act), 1971.

10. I have heard the learned counsel for the parties.

11. From a perusal of the materials on record one aspect is clear that in respect to the plot of land measuring 4 bighas, 0 kathas, 3 lechas covered by NK Patta No.1 (old), 7 (new), 8, 9, 1 and 3 Dag No.13 (old), 581, 582, 583, 584, 585, 586, 596, 598, 54/55, 43, 18,

34, 33, 54/59 (new) of village North Jalukbari under Jalukbari Mouza in the district of Kamrup Metro, there is a decree passed in favour of the plaintiffs of the said suit are either the petitioners or their predecessors in interest, thereby declaring the right, title and interest as well as possession of the plaintiffs and also issuing a permanent injunction against the respondent No.1 and 2 herein not to interfere with the possession. Under such circumstances unless and until the decree passed in TS No.100/1999 is not set aside, the respondent nos.1 and 2 cannot interfere with the possession in respect of the land measuring 4 bighas, 0 kathas, 3 lechas covered by NK Patta No.1 (old), 7 (new), 8, 9, 1 and 3 Dag N.13 (old), 581, 582, 583, 584, 585, 586, 596, 598, 54/55, 43, 18, 34, 33, 54/59 (new) of village North Jalukbari under Jalukbari Mouza in the district of Kamrup Metro.

12. In that view of the matter, this Court therefore directs the respondent Nos.1 and 2 not to interfere with the possession of the petitioners in respect of the land measuring 4 bighas, 0 kathas, 3 lechas covered by NK Patta No.1 (old), 7 (new), 8, 9, 1 and 3 Dag N.13 (old), 581, 582, 583, 584, 585, 586, 596, 598, 54/55, 43, 18, 34, 33, 54/59 (new) of village North Jalukbari under Jalukbari Mouza in the district of Kamrup Metro. However, taking into account that the huge plot of land was acquired by the railways and the said 4 bighas 0 kathas 3 lechas is a part of the said land, the revenue officials are required to carry out necessary demarcation so that the decree so passed in Title Suit No.100/1999 is made effective in letter and in spirit.

13. Accordingly, this court therefore disposes of the instant writ

petition with the following observation and directions:

I. The Deputy Commissioner, Kamrup Metro is directed to demarcate the 4 bighas, 0 kathas, 3 lechas covered by NK Patta No.1 (old), 7 (new), 8, 9, 1 and 3 Dag No.13 (old), 581, 582, 583, 584, 585, 586, 596, 598, 54/55, 43, 18, 34, 33, 54/59 (new) of village North Jalukbari under Jalukbari Mouza in the district of Kamrup Metro within 60 days from the date a certified copy of the instant judgment is served upon the Deputy Commissioner, Kamrup Metro.

II. Upon such demarcation being carried out and the land measuring 4 bighas, 0 kathas, 3 lechas covered by NK Patta No.1 (old), 7 (new), 8, 9, 1 and 3 Dag No.13 (old), 581, 582, 583, 584, 585, 586, 596, 598, 54/55, 43, 18, 34, 33, 54/59 (new) of village North Jalukbari under Jalukbari Mouza in the district of Kamrup Metro being specifically identified the respondent Nos.1 and 2 shall not interfere with the possession in respect to the said land till such time the said decree is not set aside in accordance with law.

III. In respect to the other lands, the respondent Nos.1 and 2 shall be at liberty to take such action as permissible under law.

14. With the above observations the writ petition stands disposed of.

JUDGE

Comparing Assistant