

GAHC010010612023



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

Case No. : WP(C)/289/2023

NAJIR ISLAM@NOZRUL ISLAM AND 4 ORS
S/O. LT. KAFIL UDDIN,

2: MIJANUR ISLAM
S/O. NAJIR ISLAM

3: AKTAR HUSSAIN
S/O. NAJIR ISLAM

4: SAMINUR ISLAM
S/O. NAJIR ISLAM

5: SAHANUR ISLAM
S/O. NAJIR ISLAM
ALL ARE R/O. VILL. BALAPARA
P.O. SUTARPARA
P.S. MATIA
DIST. GOALPARA
ASSAM
PIN-783125 (THE PETITIONER NOS. 3
4 AND 5 ARE MINORS AND THEY ARE DULY REP. BY THEIR FATHER AND
NATURAL GUARDIAN NAMELY NAJIR ISLAM @ NOZRUL ISLAM
I.E. PETITIONER NO.1

VERSUS

THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM AND 6
ORS
TO THE GOVT. OF ASSAM, PANCHAYAT AND RURAL DEVELOPMENT
DEPT., DISPUR, GUWAHATI-06.

2:THE DEPUTY COMMISSIONER

GOALPARA DISTRICT
ASSAM
PIN-783101.

3:THE PROJECT DIRECTOR

DISTRICT RURAL DEVELOPMENT AGENCY
GOALPARA
ASSAM
PIN-783101.

4:THE CIRCLE OFFICER OF MATIA REVENUE CIRCLE

P.O. AND P.S. MATIA
DIST. GOALPARA
ASSAM
PIN-783101.

5:THE BLOCK DEVELOPMENT OFFICER

MATIA DEVELOPMENT BLOCK
P.O. AND P.S. MATIA
DIST. GOALPARA
ASSAM
PIN-783125.

6:THE NABAGATA SIMLITOLA GAON PANCHAYAT

REP. BY THE SECRETARY OF THE PANCHAYAT
VILL. AND P.O. SUTARPARA
P.S. MATIA
DIST. GOALPARA
ASSAM
PIN-783125.

7:OSMAN GONI

(WARD MEMBER OF NABAGATA SIMLITOLA GAON PANCHAYAT)
S/O. LT. MAHALI SHEIKH
VILL. SINGRAMARI
P.O. SUTARPARA
P.S. MATIA
DIST. GOALPARA
ASSAM
PIN-783125

Advocate for the petitioner(s): Mr. MU Mahmud

Advocate for the respondent(s): Mr. P Bordoloi

Standing Counsel, P & RD Department

Mr. BJ Talukdar,

Government Advocate, Assam

B E F O R E
HON'BLE MR. JUSTICE DEVASHIS BARUAH
ORDER

07.08.2024

Heard Mr. MU Mahmud, the learned counsel appearing on behalf of the petitioners.

2. Mr. P Bordoloi, the learned standing counsel appears on behalf of the P & RD Department, Government of Assam and Mr. BJ Talukdar, the learned Government Advocate appears on behalf of the District Administration, Goalpara.

3. The petitioner herein claims that they are the owners of various plots of land measuring 02 bighas covered by Dag No.339 of Patta No.201; 1 bigha, 2 katha, 10 lechas covered by Dag No. 19 of patta No.182; 1 bigha of Dag No. 21 of patta No.68, totaling to 4 bighas, 2 kathas, 10 lechas situated at Revenue Village: Garopara Tari Mouza: Matia, Revenue Circle Matia in the district of Goalpara Assam.

4. It is the case of the petitioners that the petitioners are also in possession of another plot of land measuring 03 bighas 2 kathas 10 covered by Dag No. 326 (Eksona) of Revenue Village: Garopara Tari Mouza: Matia, Revenue Circle Matia in the district of Goalpara Assam. It is the further case of the petitioners that the respondent authorities are going ahead with the construction of a fishery/tank/pond and thereby illegally trying to take over the possession of 4 bighas, 2 kathas, 10 lechas of the patta land of the petitioners as well as 3 bighas 2 kathas 10 lechas, which is a government land, which the petitioners adversely had been possessing.

5. Mr. P Bordoloi, the learned counsel appearing on behalf of the respondent P & RD Department submitted that one Nazir Islam, who is the petitioner No.1 had submitted an application for a fishery with plantation work in his land measuring 10 bighas covered by Dag No. 326. Upon such an application being received, the same was forwarded by the Block Development Officer to the Circle Officer, Matia Revenue Circle to make an inquiry as regards the land so offered by the petitioner No.1.

6. It was mentioned that the land in Dag No. 326 is a Government land. It was also mentioned that vide the said communication dated 16.02.2023 of the Circle Officer that the land measuring 17 bighas 1 katha 9 lechas, covered by Dag No.2 has been identified by the concerned LR staff and the said land has been shown to the Officials of the Block Development Officer, Matia in connection with construction of the MGNREGA scheme, namely Development of Fishery Tank with Plantation near Singimari No.1 Masjid.

7. Mr. P Bordoloi, the learned standing counsel appearing on behalf of the P & RD Department submits that the respondents are not going to construct any fishery or tank in the patta land of the petitioners. The construction of the

fishery/tank would only be carried out in Dag No. 326 as well as Dag No.2 as mentioned in the communication dated 16.02.2023 issued by the Circle Officer, Matia Revenue Circle.

8. I have heard the learned counsels appearing on behalf of the parties and have also perused the materials on record.

9. This Court is of the opinion that the land belonging to the petitioners measuring 4 bighas, 2 kathas, 10 lechas in various Dags and patta numbers as referred to hereinabove cannot be used by the respondent authorities for the purpose of construction of the fishery /tank without acquiring the same in accordance with the provisions of law. However, the respondent authorities would always be at liberty to carry out the construction of the fishery/tank at Dag No. 326 as well as in Dag No. 2, which, as per the certification of the Circle Officer, is a Government land.

10. It is also seen that it is an admitted case of the petitioners also that the said Dag No. 326 is a Government land. Under such circumstances, this Court, therefore, disposes of the instant writ petition, thereby directing the respondent authorities not to construct fishery/tank in the patta land of the petitioners, the details of which have been referred to in the previous segments of the instant order. However, the respondent authorities can very well go ahead with the construction of the fishery and tank in Dag No. 326 as well as Dag No.2.

11. With the above, the instant writ petition stands disposed of.

JUDGE

Comparing Assistant