

GAHC010019492024



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

Case No. : WP(C)/648/2024

RANJIT DAS AND ANR
SON OF LATE BROJENDRA DAS, RESIDENT OF VILLAGE- DHANUAR
BASTI, P.S. HOJAI, DISTRICT- HOJAI, ASSAM

2: SRI NITAI DAS
SON OF LATE GOPAL DAS
RESIDENT OF VILLAGE- DHANUAR BASTI
P.S. HOJAI
DISTRICT- HOJAI
ASSA

VERSUS

THE STATE OF ASSAM AND 4 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE
GOVERNMENT OF ASSAM, LAND AND REVENUE DEPARTMENT, DISPUR,
GUWAHATI- 781006

2:THE DISTRICT COMMISSIONER
HOAJI
ASSAM

3:THE SUPERINTENDENT OF POLICE
HOAJI
DISTRICT- HOAJI
ASSAM

4:THE OFFICER-IN-CHARGE
HOAJI POLICE STATION
DISTRICT- HOAJI
ASSAM

5:SRI NITYANANDA DEBNATH
S/O- LATE RAJMOHAN DEBNATH
VILLAGE- TELIBASTI
P.O. PADUMPUKHURI
P.S. HOAJI
DISTRICT- HOJAI
ASSA

Advocate for the Petitioner : MR. A B T HAQUE

Advocate for the Respondent : GA, ASSAM

BEFORE
HONOURABLE MR. JUSTICE MANISH CHOUDHURY

ORDER

Date : 12-02-2024

Heard Mr. J.M.A. Choudhury, learned counsel for the petitioners; Mr. J. Handique, learned Standing Counsel, Revenue Department for the respondent no. 1; and Ms. S. Sharma, learned Junior Government Advocate, Assam for the respondent nos. 3 & 4.

2. The petitioners have approached this Court by filing the instant writ petition under Article 226 of the Constitution of India seeking the following reliefs :

[1] A writ in the nature of Mandamus directing the respondent authorities more particularly the respondent No.4, the Officer-in-charge, Hojai Police Station not to create any disturbance to the petitioners in peaceful possession of the petitioners' land measuring 23 Bighas 4 Kathas 15 Lessas situated at Dhanuhar Basti Kissam, Mouza Hojai, District Hojai, Assam, covered by Periodic Patta No. 161, Dag No.107 and not to illegally evict /dispossess the petitioners from their aforesaid land.

[II] A writ in the nature of Mandamus directing the respondents authorities to ensure that the petitioners are not disturbed in any manner from possessing the land measuring 23 Bighas 4 Kathas 15 Lessas situated at Dhanuhar Basti Kissam, Mouza Hojai, District Hojai, Assam, covered by Periodic Patta No. 161, Dag No.107.

[III] Pass such further or other order, as Your Lordships may deem fit and proper in the interest of justice and to grant complete relief to the Petitioners.

3. From the pleadings of the writ petition, it is noticed that the petitioners are claiming rights as an occupancy tenant in respect of a plot of land measuring 23 Bighas 4 Kathas 15 Lessas, covered by Periodic Patta no. 161 and Dag no. 107, situate at Dhanuhar Basti Kissam, Mouza - Hojai, District - Hojai [‘the subject-plot’, for short] on the basis of a Rayati Khatian no. 30 issued under the provisions of the Assam [Temporary Settled Areas] Tenancy Act, 1971 [‘the Tenancy Act, 1971’ for short]. It is the case of the petitioners that the fathers of the petitioners were the Khatian holders. The petitioners have alleged that in the year 2019, the respondent no. 5 along with some hired persons tried to dispossess the petitioners from the possession of the subject-plot and that incident was followed by institution of a title suit, Title Suit no. 35/2020 by the respondent no. 5 as the plaintiff before the Court of learned Civil Judge, Junior Division, seeking declaration of right, title and interest. Later on, the said title suit was transferred to the Court of learned Civil Judge, Hojai and has been re-numbered as Title Suit no. 94/2021. The petitioners have stated that the said title suit, Title Suit no. 94/2021 is pending before the Court of learned Civil Judge, Hojai as on date. The petitioners have further stated that the petitioners along with others, have also instituted a title suit being Title Suit no. 05/2023, before the Court of learned Civil Judge, Hojai, Sankardevnagar for confirmation of possession, permanent injunction and declaration for occupancy tenant under

the Tenancy Act, 1971 and the said title suit is also stated to be pending before the learned trial court for final consideration.

4. It has further emerged that the petitioners filed an interlocutory application Misc[J] Case no. 02/2023 in Title Suit no. 05/2023 seeking an ad-interim injunction against opposite parties which included the respondent no. 5 herein, to restrain them from disturbing/interfering with the peaceful possession of the petitioners-plaintiffs in respect of the subject-plot. The petitioners have stated that the said interlocutory application seeking ad-interim injunction is already pending for consideration, after issuance of notice to the opposite-parties therein.

5. The petitioners have further stated that the respondent no. 5 as the informant instituted a case against the petitioners before the Hojai Police Station by lodging a FIR and the said FIR has been registered as Hojai Police Station Case no. 319/2023. The petitioners have alleged that based on the said FIR, police personnel from Hojai Police Station arrested the petitioner no. 2 and the petitioner no. 2 was released on bail after few days by the Court of learned Chief Judicial Magistrate, Hojai. The petitioner no. 1 approached this Court seeking the benefit of pre-arrest bail in connection with the said case and this Court had extended the benefit of pre-arrest bail to the petitioner no. 1. It is the further case of the petitioner that since thereafter the respondent no. 5 with the assistance of the police personnel from Hojai Police Station is trying to evict the petitioners from the subject-plot. Various representations/complaints lodged by the petitioners before the Hojai Police Station did not bring any effective action. The petitioners have further stated that on 20.06.2023, the petitioners filed a petition before the Sub-Divisional Officer [Civil], Hojai under Sections

144/145/146[A] Code of Criminal Procedure, 1973 for restraining the entry of the respondent no. 5 and others into the subject-plot. The Sub-Divisional Officer [Civil], Hojai forwarded the said petition to Hojai Police Station for enquiry and report. The petitioners have alleged that on 09.01.2024, the respondent no. 5 and others entered into the subject-land with JCB excavator and dumper and indulged in earth cutting inside the subject-plots. The petitioners have alleged despite a complaint lodged in that connection before the Hojai Police Station, there was no action before the Hojai Police Station.

6. With projection of such fact situation, the petitioners have approached this Court by the instant writ petition seeking the afore-mentioned reliefs.

7. Having gone through the statements and averments made in this writ petition, it is noticed that the petitioners have not approached the learned trial Court which court is trying the title suit, Title Suit no. 05/2023 wherein the petitioners have also preferred an interlocutory application, Misc[J] Case no. 02/2023 seeking ad-interim injunction for not disturbing/interfering with the peaceful possession of the petitioners in respect of the subject-plot. This Court is of the unhesitant view that the petitioners should have brought the alleged action of the respondent no. 5 including the police personnel from Hojai Police Station, as regards their attempts to dispossess the petitioners from the subject-plot before the learned trial court who is adjudicating the title suit, Title Suit no. 05/2023 as well as Misc[J] Case no. 02/2023 arising out of Title Suit no. 05/2023. When litigations are already pending before a competent court of law, and the reliefs sought for in this writ petition could have been examined by the said learned court of law, the present approach by the writ petitioner is found to be misconceived. Accordingly, the writ petition is not entertained. Consequently,

this writ petition is liable to be dismissed and it is accordingly held. There shall, however, be no order as to cost.

JUDGE

Comparing Assistant