

GAHC010026122021



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

Case No. : WP(C)/1030/2021

RAMEN BORTHAKUR
S/O LATE ARUN BORTHAKUR, R/O LOONPURIA KOIBARTA GAON, PO
PANITOLA, DIST TINSUKIA, ASSAM 786183

VERSUS

THE STATE OF ASSAM AND 4 ORS
REPRESENTED BY THE PRINCIPAL SECRETARY TO THE GOVT. OF ASSAM,
REVENUE AND DISASTER MANAGEMENT (LR) DEPARTMENT, DISPUR
GUWAHATI 6

2:SRI SANJIB PHUKAN
CIRCLE OFFICER
TINSUKIA REVENUE CIRCLE
TINSUKIA
786125

3:DEPUTY COMMISSIONER

(REV)
TINSUKIA
ASSAM
786125

4:SRI PRAMOD KR. KASERA
S/O LATE ONKARMAL KASERA
PROPRIETOR OF M/S PARSURAM (SOUTH) TEA ESTATE
A T ROAD
TINSUKIA
ASSAM 786125

5:SECRETARY

DIMORUGURI GAON PANCHAYAT
PO PANITOLA DIST TINSUKIA
ASSAM
78618

Advocate for the Petitioner : MR. D K BAGCHI,

Advocate for the Respondent : SC, REVENUE, SC, P AND R.D.,MR K AGARWAL,MR. A K GUPTA,MR D AKRAM,MS. S KAKATI,MR. N HASAN,MR. A HASAN,MR. I K BURAGOHAIN

BEFORE
HONOURABLE MR. JUSTICE ARUN DEV CHOUDHURY

ORDER

Date : 23.09.2024

Heard Mr. D.K. Bagchi learned counsel for the petitioner. Also heard Mr. R Borpujari learned counsel for the respondent No.1, Mr. S Dutta learned counsel for respondent No.2, Ms. M Barman learned counsel for the respondent No.3, Mr. A.K. Gupta learned counsel for respondent No.4 and Ms. N Bora learned counsel for respondent No.5.

The case of the petitioner in brief is that the petitioner intended to construct a boundary wall over his private patta land covered by Dag No.528, Periodic Patta No.77 and accordingly he applied for a No Objection Certificate for construction before the respondent No.5.

The respondent No.5 thereafter by NOC dated 08.12.2020 granted permission to construct the boundary wall. While the petitioner started construction, the impugned communication dated 03.02.2021 was served upon the petitioner by the respondent No.5 cancelling the NOC dated 08.12.2020. Being aggrieved, the present writ petition is

filed.

It is the case of the respondent No.4 that the petitioner has encroached their land and tried to construct boundary wall and therefore, they have raised objection to such NOC.

Mr. Dutta learned counsel submits that reading of the impugned order dated 03.02.2021 clearly discloses intention of the authority that they want to first demarcate the land and want to temporarily cancel such NOC on the basis of the complaint filed by the respondent No.4. Therefore, according to Mr. Dutta no right of the petitioner has been violated and in the event, after demarcation, if it is found that the petitioner proposes construction over his patta land, the NOC shall freshly be issued.

In view of the nature of the dispute, this court is also of the opinion that the matter should be relegated to the authorities to first demarcate the land in question between the petitioner and the respondent No.4 and in the event it is found that the proposed construction is over, the petitioner shall be allowed to carry out construction of the boundary wall as per the extant norms.

However, in the event it is found by the authorities that the proposed construction is over the land claimed by the respondent No.4, they may refuse such NOC and the parties should be relegated to the Civil Court for determination of their right.

The demarcation be made in presence of both the petitioner and the respondent No.4. The petitioner and the respondent No.4 are directed to appear before the Circle officer, Tinsukia Revenue Circle on

21.10.20214, on which date the Circle officer may fix a date intimating both the parties to remain present for the purpose of demarcation. Such demarcation be made within three weeks from the date of appearance of the parties before the Circle Officer.

It is needless to say that this order is passed for the purpose of construction of the Boundary wall and the same should not be treated as any comment on the merit of any claim of title by either of the parties.

JUDGE

Comparing Assistant