

GAHC010062392023



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

Case No. : WP(C)/1723/2023

BRIHATTAR GUWAHATI RABI DAS (MUCHI) SHAMPRADAI UNNAYAN
SANGHA AND 3 ORS
HAVING ITS OFFICE AT- DR. B. BARUAH ROAD, LALMATI, ULUBARI,
GUWAHATI, DIST.- KAMRUP (M), ASSAM, PIN- 781007, REP. BY ITS
GENERAL SECRETARY, SHRI AJAY KUMAR, AGED ABOUT 40 YEARS, S/O-
SHRI LAKHINDER RAM, R/O- A.K. DEV ROAD, DATALPARA, GUWAHATI,
PIN- 781025

2: PRAKASH CHANDRA RABI DAS
S/O- LATE BAYDIYANATH RABI DAS
PRESIDENT
BRIHATTAR GUWAHATI RABI DAS MUCHI SHAMPRADAI UNNAYAN
SANGHA
LALMATI
ULUBARI
GUWAHATI
DIST.- KAMRUP (M)
ASSAM
PIN- 781007

3: ANIL RABI DAS
S/O- LATE BUDHAN RABI DAS
WORKING PRESIDENT
BRIHATTAR GUWAHATI RABI DAS MUCHI SHAMPRADAI UNNAYAN
SANGHA
LALMATI
ULUBARI
GUWAHATI
DIST.- KAMRUP (M)
ASSAM
PIN- 781007

4: AJAY KUMAR
S/O- SHRI LAKHINDER RAM

GENERAL SECRETARY
BRIHATTAR GUWAHATI RABI DAS MUCHI SHAMPRADAI UNNAYAN
SANGHA
LALMATI
ULUBARI
GUWAHATI
DIST.- KAMRUP (M)
ASSAM
PIN- 78100

VERSUS

THE STATE OF ASSAM AND 4 ORS
REP. BY THE COMM. AND SECY. TO THE GOVT. OF ASSAM, REVENUE AND
DISASTER MANAGEMENT DEPTT., JANATA BHAWAN, DISPUR, GHY-06

2:THE COMM. AND SECY. TO THE GOVT. OF ASSAM
REVENUE AND DISASTER MANAGEMENT DEPTT.
JANATA BHAWAN
DISPUR
GHY-06

3:THE DEPUTY COMMISSIONER
KAMRUP (M) DISTRICT
LICHUBAGAN
HENGRABARI
GUWAHATI- 781036

4:THE COMMISSIONER OF POLICE
GUWAHATI
M.G.ROAD
PANBAZAR
GHY-01

5:THE CIRCLE OFFICER
GUWAHATI REVENUE CIRCLE
ULUBARI
GHY-0

Advocate for the Petitioner : MR. P D NAIR

Advocate for the Respondent : SR. GA, ASSAM

**BEFORE
HONOURABLE MR. JUSTICE SOUMITRA SAIKIA**

ORDER

10.06.2024

Heard Mr. G. Alam, learned counsel for the petitioners. Also heard Mr. N. Goswami, learned Government Advocate, Assam.

2. The petitioner no.1 is the Sangha, namely, *Brihattar Guwahati Rabi Das (Muchi) Shampradai Unnayan Sangha*, which is registered under the Societies Registration Act, 1860 bearing registration No.RS/2311 of 1994-95. The petitioner no.2 is the president of the Society and the present Mahant of *the Muchi Kabarsthan* at Guwahati. The petitioners no. 3 & 4 are the members of the said Society and they belong to the *Muchi* Caste which is recognized as a Scheduled Caste under the Constitution of India (Schedule Castes) Order, 1950. The grievance of the petitioners is that they have been allotted composite plot of land measuring about 7 Bigha 9 Lessa covered by Dag nos. 2140, 2142 and 2145 in the Revenue Village Sahar Sarania Part-II under Mouza-Ulubari, Dist.-Kamrup (Metropolitan), Assam. The said plot of land is used as a graveyard known as "*Muchi Kabarsthan*" for the burial of the persons belonging to the said community.

3. It is the claim of the petitioners that some unauthorized persons had occupied some portions of this land without any authority and are refusing to vacate the land and thereby causing hindrance to the purpose for which the land has been allotted to the petitioners' society. Because of the presence of these unauthorized occupants, the community and the committee members have been facing difficulties in performing their rituals at the time of cremation of the persons belonging to the said community.

4. Notice in the matter was issued on 27.03.2023.

5. The Additional Deputy Commissioner, Kamrup(M) on behalf of the respondent no.3 and the Deputy Commissioner of Police (Crime), Guwahati, on behalf of the respondent no.4 both have filed their respective affidavits-in-opposition.

6. In the affidavit-in-opposition filed on behalf of the respondent no.4, it is stated that an FIR was filed by the petitioners. However, in view of the Judgment of the Court rendered in Crl. Pet No.1331/2019 (*Sri Dina Nath Roy vs. the State of Assam*) as well as the judgment rendered in Re:- vs. State of Assam reported in (2018) 2 GLR 313 wherein it was been held that it is only the special Tribunal instituted by State of Assam which can extensively go into the various facets of the Land Grabbing Prohibition Act and has held that only the Special

Tribunal is competent to enquire into and try the offence of land grabbing. Accordingly, the FIR could not be registered.

7. At Paragraph-4 of the affidavit filed by the Additional Deputy Commissioner, Kamrup(M), there is a clear averment that land covered by Dag no.2140 at village Sahar Sarania Part-2 under Ulubari Mouza is a Government land and the same is recorded in the name of "*Muchi Kabarstan*". Similarly, the lands covered by Dag no.2142 and 2145 of the same village are also reserved for "*Muchi Kabarstan*". The land covered under Dag no.2141 is recorded as a road. In the said affidavit there is also a clear averment that during the field verification by the Lot Mandal staff, the plots of land covered under that Dag nos. 2140, 2142 and 2145 of the village Sahar Sarania Part-2 under Ulubari Mouza in the district of Kamrup(M), which is reserved for "*Muchi Kabarstan*", is found to be possessed by some people constructing temporary house and sports club besides some other commercial establishments.

8. In view of such specific averments made in the affidavit it is clear that the land covered by Dag nos. 2140, 2142 and 2145 of the village Sahar Sarania Part-2 under Ulubari Mouza in the district of Kamrup(M) are government lands and which are earmarked for the "*Muchi Kabarstan*" which the petitioners' claim are being used for graveyard of the members of the Muchi community and the

petitioner no.1 is a Society is entrusted to look into the works of the graveyard allotted by the Government.

9. Considering the prayers made in the writ petition and the averments made in the affidavit-in-opposition, this Court is of the view that since there is already a representation dated 12.01.2023 before the Deputy Commissioner, Kamrup(M), the same may be disposed of and if any unauthorized occupants are found by the Deputy Commissioner, Kamrup(M) after making the field verification, then necessary steps be taken under the provisions of the Assam Land and Revenue Regulation Act, 1886 and other ancillary provisions of law to ensure that the lands which are allotted by the Government for the purpose of "*Muchi Kabarstan*" are used for the same and all required steps be taken to ensure that the purpose of the use of the said land is not restricted by undue and unauthorized occupants. The Deputy Commissioner, Kamrup(M) will conduct the necessary verification and pass appropriate orders and take necessary steps under the provisions of law and for which purpose, if required, personal hearings may be granted to the persons found to be in possession of the land. The effective steps be taken by the Deputy Commissioner, Kamrup(M) within a period of 60 (sixty) days from the date of a receipt of a certified copy of this order.

10. Writ petition accordingly stands disposed in terms of the above. Interim order, if any, stands vacated.

JUDGE

Comparing Assistant