

GAHC010076492024



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

Case No. : WP(C)/2183/2024

MOZAKKIR HUSSAIN
S/O- LAT. MAFIZUDDIN AHMED,
R/O- VILL. NIRANCHUBA,
P.O.- PATHARIGHAT,
P.S.- SIPAJHAR,
DIST.- DARRANG, ASSAM.

VERSUS

THE STATE OF ASSAM AND 5 ORS.
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE GOVT.
OF ASSAM,
REVENUE DEPARTMENT, DISPUR, GUWAHATI-6.

2:THE DEPUTY COMMISSIONER
DARRANG
P.O. AND P.S.- MANGALDAI

DISTRICT- DARRANG.

3:THE CIRCLE OFFICER
PATHARIGHAT REVENUE CIRCLE
PATHORIGHAT
DISTRICT- DARRANG.

4:THE BLOCK DEVELOPMENT OFFICER
SIPAJHAR DEVELOPMENT BLOCK
SIPAJHAR
DISTRICT- DARRANG.

5:THE OFFICER IN CHARGE
SIPAJHAR POLICE STATION

DISTRICT- DARRANG
ASSAM.

6: MOZAMBIQUE HAQUE
S/O- LATE KHAIRULLA SHEIKH

R/O- VILL.- NIRANCHUBA

P.O.- PATHORIGHAT
P.S.- SIPAJHAR

DIST.- DARRANG
ASSAM

Advocate for the Petitioner : MS N SAIKIA

Advocate for the Respondent : SC, REVENUE

**BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA**

ORDER

Date : 26.04.2024

Heard Mrs. N. Saikia, learned counsel for the petitioner, Mr. S. Dutta, learned standing counsel for the Revenue Department appearing for respondent no.1 and Mr. S. Baruah, learned Govt. Advocate appearing for respondent nos.2 to 5.

2. The case projected by the petitioner is that he is having a plot of land measuring about 3 katha in dag no.133 patta no.1395 at village- Niranchuba, Mouza- Rainakuchi under Patharighat Revenue Circle. The said land is inherited from his deceased father. It is projected that the respondent no.6 availed PMGAY benefit and has forcibly and illegally started construction of his house on the plot of the land falling in the petitioner. The petitioner approached the Circle

Officer of Patharighat Revenue Circle for stopping the construction and to take action against the respondent no.6. The Sipajhar Police Station was also informed to stop construction. Although, the Circle Officer directed the BDO, Sipajhar Block by letter dated 25.07.2022 to stop construction, but the competent authorities released the 2nd and 3rd installments of the PMGAY fund to the respondent no.6. Accordingly, it is submitted that not only the construction of the respondent no.6 is going on in full swing, but in the process, the petitioner is deprived of possession of his land.

3. Accordingly, by filling this writ petition under Article 226 of the Constitution of India, the petitioner has prayed for a direction upon the respondent authorities to demarcate the land and to restore possession of the land to the petitioner as per the entries made in the land revenue records.

4. The learned counsel for the petitioner has submitted that the petitioner belongs to an economically weaker section of the society and would be unable to engage counsel, if he is relegated to avail alternative remedy.

5. From the documents appended to this writ petition, it appears from the letter dated 30.08.2023 from the Circle Officer, Patharighat Revenue Circle wherein it is mentioned that the *ejmali* (joint) patta land and the land revenue records contain mutation in the name of the father of the respondent no.6 namely, Khairulla Sheikh as well as in the name of the father of the petitioner namely, Late Mafizuddin Ahmed, and that the respondent no.6 has carried out construction having possession over the land. Therefore, it is evident that disputed questions of fact relating to the possession would arise in this writ petition, if this writ petition is entertained.

6. Moreover, the issues relating to mutation, partition etc. will also arise which will require some amount of adjudication.

7. In such matters, the Civil Court or the Revenue Court is the appropriate authority to adjudicate such dispute, and as a rule of prudence, the High Court in exercise of power under Article 226 of the Constitution of India would not enter into or adjudicate disputed questions of fact.

8. Accordingly, the Court is inclined to relegate the petitioner to approach the jurisdictional Civil Court and/or the Revenue Court and/or apply for demarcation of land in accordance with the provisions contains in the Assam Land and Revenue Regulation, 1886.

9. As the learned counsel for the petitioner has submitted that the petitioner comes from economically weaker section of the society, the petitioner may be well advised to apply for legal aid from the District Legal Service Authority, if so advised, and if the petitioner is found entitled to free legal aid, definitely such aid would be provided to him.

10. With the aforesaid observation, this writ petition stands closed.

JUDGE

Comparing Assistant