

GAHC010081252024



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

Case No. : I.A.(Civil)/1191/2024

AMAR BARUAH
S/O GOVINDA BARUAH RESIDENT OF FLAT H1, FIRST FLOOR,
MONORANJAN AMBIENCE, LOKESWAR BARUAH ROAD, GANESH
MANDIR PATH, NOONMATI, GUWAHATI 781020, DIST KAMRUP M ASSAM

VERSUS

DIPAK KUMAR DEKA AND ANR
S/O LATE AMRIT DEKA RESIDENT OF VILLAGE 2 NO. DOIGRONG GAON
PS NUMALIGARH, DIST GOLAGHAT, ASSAM, 785613

2:SMTI BARNALI PHUKAN DEKA
D/O MANIK PHUKAN

W/O SRI DIPAK KUMAR DEKA

RESIDENT OF VILLAGE 2 NO. DOIGRONG GAON PS NUMALIGARH
DIST GOLAGHAT
ASSAM
78561

Advocate for the Petitioner : MR. M C DAS

Advocate for the Respondent :

**BEFORE
HONOURABLE MRS. JUSTICE MITALI THAKURIA**

ORDER

Date : 02.05.2024

Heard Mr. S. P. Choudhury, learned counsel for the applicant. Also heard Mr. R. Sarma, learned counsel for the respondents/opposite parties.

2. This is an application under Section 151 of the Code of Civil Procedure praying for enforcement of the ad-interim/temporary injunction of status quo order dated 19.03.2024, passed by this Court in I.A.(C) No. 370/2024, through the Superintendent of Police, Golaghat with the help of the Numaligarh (Rural) Police Station.

3. It is submitted by Mr. Choudhury, learned counsel for the applicant, that the applicant has filed a Title Suit No. 05/2024 in the Court of learned Civil Judge Senior Division, Golaghat with a prayer for declaration of right, title and interest and confirmation of possession over the suit land along with a prayer for permanent injunction and for issuance of precept for cancellation of sale deed, which was executed behind the back of the applicant. One application under Order XXXIX Rule 1 & 2 of the Code of Civil Procedure was also filed, which was numbered as Misc. (J) Case No. 13/2024, but when the said Misc. (J) Case No. 13/2024 was presented before the learned Trial Court for an urgent interim order considering the nature of urgency, the Trial Court did not pass any interim order and only issued show cause notice to the defendants/opposite parties vide order dated 20.02.2024. Being aggrieved by the order dated 20.02.2024, the applicant has preferred an appeal, being FAO No. 17/2024,

before this Court assailing the aforesaid order dated 20.02.2024, passed by the learned Civil Judge Senior Division, Golaghat. The said FAO No. 17/2024 is also accompanied with an application under Order XXXIX Rule 1 & 2 CPC, which is numbered as I.A.(C) No. 670/2024, praying for an interim protection as the opposite parties are trying to encroach upon the suit land and for which, this Court, vide order dated 19.03.2024, admitted the appeal and considering the urgency involved, passed a status quo order dated 19.03.2024 directing both the applicant and the opposite parties to maintain status quo over the suit land and also directed the applicant to serve notice on the respondents by way of *Dasti*. In compliance of the said direction, the applicant took necessary steps for service of notice by way of *Dasti*, but the respondents refused to accept the notice with a deliberate intention to encroach upon the land of the applicant so as to frustrate the prayer of the applicant and to cause undue harassment to him. Accordingly, the applicant filed an affidavit stating that the opposite parties refused to accept the notice through *Dasti* and thereafter, vide order dated 28.03.2024, when the FAO No. 17/2024 was against listed before this Court, an order was passed to take necessary steps for service of notice to the opposite parties by registered post with A/D as well as by usual process and the opposite parties duly received the notice. But, even after the receipt of notice, the respondents/opposite parties are trying to dismantle the standing structures of the applicant where he has stored all machineries and other materials and thereby attempting to encroach upon the suit land by violating the order of status quo. In this regard, the applicant tried to communicate the Officer-in-Charge of the local Police Station for due compliance of the order of this Court dated 19.03.2024, but the concerned Police Station did not take any steps.

4. It is further submitted by Mr. Choudhury, learned counsel for the applicant, that the respondents are trying to change the nature, character and feature of the suit land and also trying to alienate the suit property in spite of the status quo order showing total disregard to the direction of this Court. The applicant is presently staying at Guwahati and hence, his staffs are presently staying in the schedule suit land and they are not capable enough to withstand the forceful action of the respondents/opposite parties to encroach upon the suit land and hence, in such a situation, it is very much essential for enforcement of the status quo order dated 19.03.2024 with the help of police and therefore, the present interlocutory application has been filed praying for necessary direction to the Superintendent of Police, Golaghat to enforce the order of status quo dated 19.03.2024.

5. He further submitted that the Court can pass the order of enforcement of the order through the assistance of police personnel by exercising the inherent power under Section 151 CPC and in that regard, he also relied on a decision of Hon'ble High Court of Jammu & Kashmir & Ladakh at Jammu, passed in OW104 No. 56/2016^{c/w} OW 104 No. 78/2016, wherein it has been observed that inherent power can be exercised for meeting the ends of justice or to prevent abuse of the process of law and if the Court satisfied that there is eminent threat or violation of interim order, the Court can pass the order for police protection for enforcement of the order.

6. In this context, Mr. Sarma, learned counsel for the respondents/opposite parties, by filing affidavit-in-opposition, has submitted that there is no cause of action in the present application for enforcement of the status quo order. It is

further submitted that the false statement has been made by the applicant while furnishing his affidavit in connection with the *Dasti* service that the respondents refused to accept the notice. In fact, no one has approached the respondents with any notice and the false affidavit has been filed with a statement that the respondents did not accept the copies of the notice tendered upon them by *Dasti* service. Rather, one lady advocate from Golaghat went to the place of the opposite parties and insisted them to put their signatures on a notice without furnishing them copies of the petition and he was not even allowed to see the statement and contents of the petition. Further it is submitted by the learned counsel for the respondents that there no is description of any incident or mention about any attempt made by the respondents to encroach the land of the applicant or to violate the order of status quo passed by this Court. Rather, the respondents are in possession of the disputed land and the applicant is trying to occupy the land of the respondents by forging the signature of the respondent No. 1 and prepared a false sale deed who was only the permissive possessor over the suit land. Further it is submitted by Mr. Sarma that the false and concocted statement has been made that the machineries were kept in the suit property where the respondents are trying to encroach upon. Rather, there is no machinery available in the suit land and till date, the applicant has not been able to show any single letter to police or photographs of such action nor there is any incident mentioned or described by the applicant when the respondents tried to encroach upon the land of the applicant by violating the order of status quo.

7. Further he submitted that there is an appropriate provision under Order XXXIX Rule 2-A CPC in situation where status quo or injunction order is violated

or disobeyed by any of the parties. Thus, for non-compliance or disobedience of the status quo/injunction order, the remedy lies under Rule 2-A of Order XXXIX CPC. But the present application has been filed only to grab the entire land of the opposite parties where they are claiming the land on the basis of the manufactured and fake sale deed.

8. After hearing the submissions made by the leaned counsels for both sides, I have perused the application as well as the affidavit-in-opposition filed by both the respondents/opposite parties. It is seen that an order of status quo was passed by this Court in I.A.(C) No. 670/2024 vide order dated 19.03.2024, wherein both the parties were directed to maintain status quo over the suit land till the next date of listing and asking the applicant to take steps for service of notice through *Dasti* mode. However, as per order dated 28.03.2024, it is observed by this Court that on refusal to accept the notice through *Dasti* mode, the applicant was directed to take steps for service of notice on respondents by way of registered post with A/D and accordingly the notice was duly served on the respondents. The present application is filed by the applicant with a prayer to enforce the order of maintenance of status quo passed by this Court with the help of police stating that the respondents are trying to encroach upon the land of the applicant by violating the order of status quo passed by this Court. But, it is seen that except some averments made in the application, there is no mention of any such incident to substantiate the plea of the present applicant that the respondents are trying to encroach upon the land of the applicant by violating the order of status quo. Further it is seen that the order of maintenance of status quo is already within the knowledge of the respondents after receipt of notice issued through registered A/D. More so, I do not find any

eminent danger or threat from the respondent side to pass any order for enforcement on the maintenance of status quo with the help of police. Further, the remedy is also available under the provision of Order XXXIX Rule 2-A CPC in the situation wherein the injunction/status quo order is violated by any of the parties.

9. In view of above, I do not find any necessity to pass any order for enforcement of the maintenance of status quo over the suit land with the help of police administration and accordingly, the present interlocutory application stands dismissed. However, both the parties are hereby directed to maintain status quo over the suit property in pursuant to order dated 19.03.2024, passed by this Court in I.A.(C) No. 670/2024.

10. In terms of above, this interlocutory application stands disposed of.

JUDGE

Comparing Assistant