

GAHC010092092024



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

Case No. : WP(C)/2805/2024

RATAN SARKAR
SON OF LATE PRAHLAD CHANDRA SARKAR, HAVING HIS PLACE OF
BUSINESS AT SHILLONG HOTEL, A.T. ROAD, PALTAN BAZAR, P.O.
GUWAHATI- 781008 AND RESIDENT OF BHASKAR NAGAR, P.O.
GUWAHATI- 781018, DISTRICT- KAMRUP (METRO), ASSAM

VERSUS

THE STATE OF ASSAM AND 5 ORS
REPRESENTED BY THE CHIEF SECRETARY TO THE GOVT. OF ASSAM,
DISPUR, GUWAHATI- 781006

2:THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM
DEPARTMENT OF HOME AFFAIRS
DISPUR
P.O. GUWAHATI- 781006

3:THE DIRECTOR GENERAL OF POLICE
ASSAM
POLICE HEADQUARTERS
ULUBARI
P.O. GUWAHATI- 781007

4:THE COMMISSIONER OF POLICE
GUWAHATI CITY
PAN BAZAR
P.O. GUWAHATI- 781001

5:THE OFFICER-IN-CHARGE
PALTAN BAZAR POLICE STATION
PALTAN BAZAR
P.O. GUWAHATI- 781008

6:SMTI. ANJUMAN ARA RAHMAN ALIAS ARJUMAN ARA RAHMAN
WIFE OF S.S. RAHMAN
RESIDENT OF HOUSE NO. 11
OPPOSITE F.A. AHMED BUILDING
S.S. ROAD
LAKHTOKIA
P.O. GUWAHATI- 78100

Advocate for the Petitioner : MR J C GAUR, MS. M GAUR

Advocate for the Respondent : SR. GA, ASSAM, J TALUKDAR(R-6),MR. A BORUA(R-6),MR M BORO(R-6),MR. R ALI(R-6),MR M BORO(R-6),MR. R ALI(R-6)

BEFORE
HONOURABLE MR. JUSTICE SOUMITRA SAIKIA

ORDER

29.11.2024

Heard Mr. J.C. Gaur, learned counsel for the petitioner.

2. This writ petition is filed by the petitioner praying for a direction to the concerned police authorities to register the FIRs lodged by the petitioner on 28.01.24 and 02.02.2024 and to investigate the matter properly and submit a report of such investigation.

3. The petitioner claims to be a businessman carrying on his business of running a hotel under the name and style M/S Shillong Hotel having his place of business at A.T. Road, Paltan Bazar, Opp. ASTC Bus Stand, Guwahati. The business run in a tenanted premises which belongs to the respondent No. 6.

4. The grievance of the petitioner is that on 15.12.2023, the petitioner was asked to vacate the tenanted premises by the landlady on the ground that she wants to construct a new building thereon. The petitioner requested for some time to shift his business to an alternative place but the landlady refused to

allow such time and/or to accept the rent for the month of December, 2023. As such the petitioner approached the competent Civil Court and deposited the rent before the Court. It is the claim of the petitioner that the respondent No. 6 became infuriated by the actions of the petitioner and on 28.01.2024 she came accompanied by 20/25 goons and put a lock on the gate of the tenanted premises and started demolishing the tenanted premises from the backside. Seeing this, the petitioner went to the Paltan Bazar Police Station to lodge an FIR against the illegal locking and demolition of the tenanted premises. However, the police did not accept the FIR nor help the petitioner on the ground that it is the landlady tenant dispute. The petitioner thereafter filed a Civil Suit and obtained an order for restoration of possession of the shop premises with police. However, no action was taken by the concerned police station. The landlady removed all goods of the petitioner from the shop premises and demolished it completely. The petitioner again went to the concerned police station to file FIR but no FIR was registered.

5. Upon hearing the learned counsel for the petitioner and upon carefully perused the documents enclosed to the writ petition, it is seen that a Title Suit being TS No. 5/2024 has been filed before the Civil Judge (Jr Division) No. 1 seeking declaration that the petitioner is entitled to peaceful use and occupation of the tenanted premises as well as uninterrupted supply of electricity to the suit premises and a permanent injunction in favour of the plaintiff/petitioner restraining the defendant/landlady and her men, relatives, servants, employees, agents, attorneys and/or any other person claiming under her from dispossessing the petitioner from the suit premises by force or without following due process of law.

6. The learned counsel for the petitioner submits that the suit is still pending

and there is also an order of restoration of the premises to the petitioner which was passed on 29.01.2024 in Misc (J) Case No. 4/2024.

7. It is also seen that FIR had been filed on 02.02.2024 received on 04.02.2024 which the petitioner claims was not registered and no action thereunder has been taken. He has also filed a complaint against the ASI of the Paltan Bazar Police Station before the Special Director General of Police, Assam Police Headquarter on the alleged inaction of the said police officer in his failure to take appropriate action pursuant to the orders of the Civil Court.

8. Having heard the learned counsel for the petitioner, considering the fact that there is a Civil case pending before the Competent Court of Civil Jurisdiction and an order of restoration of possession vide order dated 09.01.2024 has already been issued, this Court is of the view that ordinarily if the FIR of the petitioner was not registered, he ought to have taken recourse to filing a complaint under Section 223 of the BNSS. There is no explanation as to why pursuant to filing of the FIR on 02.02.2024, the petitioner did not take recourse to any legal remedy as prescribed. However, since the law mandate that any FIR filed must be promptly registered and investigation be carried on, this Court considers that ends of justice will be served if this writ petition is disposed of at the motion stage directing the respondents No. 4 & 5 to ensure that the FIR filed by the petitioner is duly registered under the provisions of law and necessary investigation thereon be carried out promptly and report thereof as mandated by the law be filed.

9. The Apex Court in *Lalita Kumari Vs. Government of U.P. and Ors*, reported in 2023 4 SCR713 has strongly deprecated the action of the police authorities in refusal or failure to register any FIR. In terms of the said Judgment, all FIRs filed must be registered and prompt action thereon be taken.

10. Accordingly, this writ petition stands disposed of directing the respondents No. 4 & 5 to ensure that the FIR filed by the petitioner is registered immediately and necessary action thereunder be taken to ensure that the petitioner's grievances are redressed as per the provisions of law. After due completion of the investigation, necessary report as per procedure prescribed be filed before the competent Court if required. If the FIR in the meantime has been registered and investigation have been proceeded with then necessary information thereon shall be furnished to the petitioner.

11. The writ petition accordingly disposed of in terms of the above direction.

JUDGE

Comparing Assistant