

GAHC010099812022



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

Case No. : WP(C)/3461/2022

DR. DIBAKAR SAIKIA
S/O- LATE HARENDRA KUMAR SAIKIA, R/O- DHANUA NAGAR, TEZPUR,
P.O.- TEZPUR, P.S.- TEZPUR, DIST- SONITPUR, ASSAM, PIN- 784001.

VERSUS

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

2:THE DEPUTY COMMISSIONER
KAMRUP (METROPOLITAN) DISTRICT
GUWAHATI- 781001.

3:THE CIRCLE OFFICER
DISPUR REVENUE CIRCLE
KAMRUP(METROPOLITAN) DISTRICT
DISPUR
GUWAHATI- 781029

4:MONI THAKURIA
R/O- DHAKINGAON
KAHILIPARA
GHY- 781019.

5:PRAFULLA DUTTA THAKURIA
R/O- DHAKINGAON
KAHILIPARA
GHY- 781019.

6:ROSHESWAR BORA
S/O LATE MANIK CH. BORA

P.O- KAHILIPARA
GUWAHATI
P.S- DISPUR
DIST- KAMRUP (M)
PIN-781019

Advocate for the Petitioner : MR. S CHAUHAN, MR S CHAUHAN,MR. A R SHOME,MR B PUSHILAL

Advocate for the Respondent : SC, REVENUE, MR. S BARUAH, GA, ASSAM,MS G HAZARIKA, SC, REVENUE & DM DEPTT., ASSAM,MR. S A AHMED (R-4,5),MR. A S AKAND (R-4,5,6),MR. A HUSSAIN (R-4,5,6),MR J ISLAM (R-4,5,6),GA, ASSAM

BEFORE

THE HON'BLE MR. JUSTICE ARUN DEV CHOUDHURY

Order

10.09.2024

1. Heard Mr. R Chauhan, learned counsel for the petitioner. Also heard Mr. S Baruah, learned State counsel, Ms. N Bordoloi, learned standing counsel for the Revenue Department and Mr. A Hussain, learned counsel for the respondent Nos. 4,5 and 6.
2. The petitioner claims that he is the pattadar of a plot of land measuring 1 Katha 5 Lechas covered by Dag No. 286(O), 1063(N) of KP Patta No. 56 (O)/ 625 (N) of village Kahilipara under Mouza Beltola in the district of Kamrup (M) which the petitioner had purchased with his brother-in-law, namely, Arun Kumar Dutta from one Smt. Saraju Sarma by executing a registered deed being Deed No. 4114 dated 04.06.2004. According to the petitioner, the said land of the petitioner is now covered by Dag No. 1063(N) and Patta No. 625(N) of village Kahilipara under Mouza Beltola in the district of Kamrup (M) as renumbered as Dag No. 1095 Patta No. 296.
3. By way of the present writ petition, the petitioner has challenged a notice dated 12.05.2022 issued in Misc. Case No. 207/2021 by the Circle Officer, Dispur Revenue Circle by which the petitioner was directed to remove an iron gate alleging that the gate is constructed over Government land covered by Dag No. 628 of village Dakhin Gaon Mouza Beltola in the district of Kamrup (M) and further directed him to remove the encroachment over the said

land informing him that failure on his part to comply with the same, he shall be evicted from the said land under the provision of Rule 18(2) of the Assam Land and Revenue Regulation, 1886.

4. Mr. Chouhan submits that first notice was served upon him on 12.05.2022, however, such notice is without any schedule/ boundary of the land involved in the case. It is his further case that he has not been given any reasonable opportunity of hearing to present his case. It is also his case that the enquiry conducted by the Circle Officer in this regards, which is disclosed in the affidavit filed by the respondent No. 3 came to the knowledge of the petitioner only filing of such affidavit and he is not aware of such enquiry report. Therefore, his right is sought to be violated without following the principles of natural justice.
5. Per contra, the learned counsel for the respondent No. 3 relying on the affidavit submits that a complaint was lodged by the respondent No. 4,5 and 6, inter alia, alleging that a public road has been blocked by the petitioner resulting in difficulty in ingress and egress of the respondent Nos. 4,5 and 6 and on the basis of such complaint a Misc. case was registered and accordingly a notice was issued. However, the petitioner did not respond to such notice.
6. In the aforesaid backdrop, an enquiry was conducted through the Circle Officer and after the enquiry it was found that the land over which the gate was constructed is a land covered by Dag No. 628 of village Dakhin Gaon and it is recorded as Government land. It is also a stand that a date was also fixed for such enquiry on 22.03.2022, however, the petitioner was not present on that date and subsequently, he filed certain documents which are annexed with the writ petition as Annexure 8 and 9 on 13.04.2022. However, as the enquiry was already over, such documents were not accepted by the Circle Officer. Accordingly, in view of the aforesaid, the petitioner was asked to remove the iron gate, which is constructed over the Government land.
7. From the aforesaid, it is seen that though notice was issued to the petitioner, however, the petitioner did not avail such opportunity in the case. However, in the interest of justice, it is provided that the Circle Officer may measure the disputed land in presence of the petitioner and the respondent Nos. 4,5 and 6 along with Revenue Staff and after verification, if it is found that the petitioner is encroaching Government land, he may be evicted forthwith. The

Circle Officer shall complete such exercise within a period of three weeks from the date of receipt of an order passed today to be furnished by the respondent Nos. 4,5 and 6. It is requested by Mr. Baruah, learned counsel that a date may be fixed for such verification otherwise, the petitioner may not appear on the notice of the Circle Officer like the earlier occasion. In view of such submission, it is provided that the parties shall appear before the Circle Officer on 3rd of October, 2024 and thereafter, the Circle Officer shall do the needful with a period of four weeks as directed hereinabove. It is made clear that if the gate is on patta land and not over the Govt. land no eviction shall be carried out and parties may be relegated to Civil Court for resolution of their disputes.

8. Accordingly, writ petition stands disposed of.

JUDGE

Comparing Assistant