

GAHC010100232024



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

Case No. : WP(C)/2669/2024

PRAMOD KOTHARI AND 5 ORS
S/O- LATE MOTILAL KOTHARI,
R/O- N 122, PANCHSEEL PARK,
NEW DELHI- 110017.

2: ANKUR KOTHARI
S/O- LATE DHANPAT SINGH KOTHARI

R/O- FLAT 701
RAJUL AUGUSTA

NEMINGAR COLONY
VAISHALI

JAIPUR- 302021
RAJASTHAN.

3: NIRMAL KUMAR KOTHARI
S/O- LATE RAICHAND KOTHARI

R/O- F-201
SKY BELVERDERE
VIMAN NAGAR

NEAR AIRPORT
PUNE- 411014

MAHARASHTRA.

4: BIMAL SINGH KOTHARI
S/O- LATE RAICHAND KOTHARI

R/O- 41
PALI HILLS ROAD

BANDRA

MUMBAI- 400050
MAHARASHTRA.

5: RAJENDRA KUMAR KOTHARI ALIAS RAJ KUMAR KOTHARI
S/O- LATE KUNDAN LAL KOTHARI

RESIDENT OF M.S. ROAD
FANCY BAZAR

GUWAHATI- 781001
ASSAM.

6: ANIL KOTHARI
S/O- LATE KUNDAN LAL KOTHARI

RESIDENT OF M.S. ROAD
FANCY BAZAR

GUWAHATI- 781001
ASSAM

VERSUS

THE STATE OF ASSAM AND 7 ORS
REPRESENTED BY THE CHIEF SECRETARY,
GOVT. OF ASSAM,
DEPARTMENT OF HOME AFFAIRS,
DISPUR, GUWAHATI-06.

2:THE PRINCIPAL SECRETARY
DEPT. OF REVENUE AND DISASTER MANAGEMENT

DISPUR
BLOCK-C
SECOND FLOOR

G.S. ROAD
KAMRUP(M)
GUWAHATI-06.

3:THE DISTRICT COMMISSIONER CUM COLLECTOR
ERSTWHILE DEPUTY COMMISSIONER
KAMRUP(M)
HENGRABARI
GUWAHATI- 781006.

4:THE COMMISSIONER AND SECRETARY
DEPT. OF HOME AFFAIRS
GOVT. OF ASSAM
DISPUR
GUWAHATI- 781006
DISTRICT- KAMRUP(M).

5:THE DIRECTOR GENERAL OF POLICE
ASSAM
B.K. KAKOTI ROAD
ULUBARI
GUWAHATI- 781007

KAMRUP(M)
ASSAM.

6:THE COMMISSIONER OF POLICE

CITY POLICE COMMISSIONERATE

PANBAZAR
GUWAHATI- 781001

KAMRUP(M)
ASSAM.

7:THE OFFICER-IN-CHARGE
BASISTHA POLICE STATION
GUWAHATI
PIN- 781029
KAMRUP(M)
ASSAM.

8:SOMESWAR TUMUNG @ SOMESWAR GARO
S/O- LATE DHANESWAR GARO @ LATE DHANESWAR GAONBURA

R/O- KHANAPARA POLICE COLONY
BASISTHA

GUWAHATI- 781029
KAMRUP(M)
ASSAM

For the petitioner (s) : Mr. S. P. Roy, Advocate

For the respondent (s) : Mr. N. Goswami, Govt. Advocate
Mr. S. K. Choudhury, Advocate

BEFORE
HON'BLE MR. JUSTICE DEVASHIS BARUAH
O R D E R

19.09.2024

Heard Mr. S. P. Roy, the learned counsel appearing on behalf of the petitioners. Mr. N. Goswami, the learned counsel appears on behalf of the State respondents and Mr. S. K. Choudhury, the learned counsel appears on behalf of the respondent No.8.

2. It has been submitted by Mr. S. P. Roy, the learned counsel for the petitioners that the filing of the instant writ petition was necessitated on account of the non-compliance to the order of injunction dated 27.02.2024 passed in Misc.(J) Case No.175/2024 in Title Suit No.95/2024 by the Court of the Civil Judge (Senior Division) No.1, Kamrup (M) at Guwahati. The learned counsel for the petitioners submitted that in view of the non-compliance to the order of injunction dated 27.02.2024 when the petitioners went to file an application under Order XXXIX Rule 2A of the Code of Civil Procedure, 1908 (for short, 'the Code'), the Trial Court refused to accept the said application and it is under such circumstances, the petitioners having no other alternative for which the petitioners have approached this Court by filing the instant writ petition. The learned counsel appearing on behalf of the petitioners further submitted that in the meantime, the learned District Judge, Kamrup (M) at Guwahati has already transferred the Title Suit No.95/2024 to the Court of the Civil Judge (Senior Division) No.2, Kamrup (M) at Guwahati, and as such, he would be in a position to file the application under Order XXXIX Rule 2A of the Code. The counsel for the petitioners further submitted that till the

existence of the order dated 27.02.2024 passed in Misc.(J) Case No.175/2024, the interim order passed in the instant proceedings shall be permitted to be continued otherwise there is a likelihood that with the disposal of the instant writ petition, the respondent authorities may again resort to all the legalities thereby violating the order dated 27.02.2024.

3. Taking into account that the reason for which the petitioners herein have approached this Court is on the ground that the petitioners had no other avenues available in view of the Court of the Civil Judge (Senior Division) No.1, Kamrup (M) at Guwahati had recused himself and sent the file to the learned District Judge for transfer and now that the suit having been already transferred to the Court of the Civil Judge (Senior Division) No.2, Kamrup (M) at Guwahati wherein the petitioners would be at liberty to file the application under Order XXXIX Rule 2A of the Code, this Court is of the opinion that keeping the writ petition pending before this Court would serve no meaningful purpose.

4. This Court however finds it pertinent to observe that the interim order passed on 21.05.2024 in the present proceedings shall continue till further orders are passed in Misc.(J) Case No.175/2024 by the Court of the Civil Judge (Senior Division) No.2, Kamrup (M) at Guwahati before whom the said injunction application is still pending.

5. In view of the above, the instant writ petition stands disposed of.

JUDGE

Comparing Assistant