

GAHC010106412016



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

Case No. : WP(C)/565/2016

ON THE DEATH OF BIREN BARMA, REPRESENTED BY SMTI. KAMLA
BARMAN and ORS

S/O LT. RAKHAL BARMAN R/O VILL- NO.1 SUKTAGURI P.O. BAZANA
PATHAR, P.S. SIPAJHAR, DIST. DARRANG, ASSAM.

1.1: SMTI. KAMLA BARMAN

W/O- LT. RAKHAL BARMAN R/O VILL- NO.1 SUKTAGURI P.O. BAZANA
PATHAR

P.S. SIPAJHAR
DIST. DARRANG
ASSAM.

1.2: SHRI JIBEN BARMAN

S/O- LT. RAKHAL BARMAN R/O VILL- NO.1 SUKTAGURI P.O. BAZANA
PATHAR

P.S. SIPAJHAR
DIST. DARRANG
ASSAM.

1.3: SHRI SHYAM BARMAN

S/O- LT. RAKHAL BARMAN R/O VILL- NO.1 SUKTAGURI P.O. BAZANA
PATHAR

P.S. SIPAJHAR
DIST. DARRANG
ASSAM.

1.4: SHRI BISHNU BARMAN

S/O- LT. RAKHAL BARMAN R/O VILL- NO.1 SUKTAGURI P.O. BAZANA
PATHAR

P.S. SIPAJHAR
DIST. DARRANG
ASSAM.

2: JAVED ALI

S/O LT. RAMJAN ALI R/O VILL- NO.1 SUKTAGURI
P.O. BAZANA PATHAR
P.S. SIPAJHAR
DIST. DARRANG
ASSAM.

3: MD. ESHRAF ALI
S/O LT. MAYUR ALI R/O VILL- NO.2 SUKTAGURI
P.O. BAZANA PATHAR
P.S. SIPAJHAR
DIST. DARRANG
ASSAM.

4: BANISH ALI
S/O LT. BHANGUR ALI R/O VILL- NO.2 SUKTAGURI
P.O. BAZANA PATHAR
P.S. SIPAJHAR
DIST. DARRANG
ASSAM.

5: RAHIMUDDIN ALI
S/O LT. KARAMAT ALI R/O VILL- NO.1 SUKTAGURI
P.O. BAZANA PATHAR
P.S. SIPAJHAR
DIST. DARRANG
ASSAM.

6: MOSHIR ALI
S/O LT. KISMAT ALI R/O VILL- NO.1 SUKTAGURI
P.O. BAZANA PATHAR
P.S. SIPAJHAR
DIST. DARRANG
ASSAM.

7: JABED ALI
S/OLT. MUZIBOR ALI R/O VILL- NO.1 SUKTAGURI
P.O. BAZANA PATHAR
P.S. SIPAJHAR
DIST. DARRANG
ASSAM.

8: KABIR ALI @ KOBUR ALI
S/O LT. MOKBUL ALI R/O VILL- NO.1 SUKTAGURI
P.O. BAZANA PATHAR
P.S. SIPAJHAR
DIST. DARRANG
ASSAM.

9: AIZUL HAQUE
S/O LT. RAMJAN ALI R/O VILL- NO.2 SUKTAGURI
P.O. BAZANA PATHAR
P.S. SIPAJHAR
DIST. DARRANG
ASSAM.

10: AKBAR ALI
S/O LT. AZIMUDDIN SHEK
R/O VILL- NO.1 SUKTAGURI
P.O. BAZANA PATHAR
P.S. SIPAJHAR
DIST. DARRANG
ASSAM.

11: AABULL KALAM
S/O LT. SUNDULLA R/O VILL- NO.2 SUKTAGURI
P.O. BAZANA PATHAR
P.S. SIPAJHAR
DIST. DARRANG
ASSAM.

12: KASHIRON BEGUM
W/O HIJUZUR RAHMAN R/O VILL- NO.1 SUKTAGURI
P.O. BAZANA PATHAR
P.S. SIPAJHAR
DIST. DARRANG
ASSAM.

13: ANAR HUSSAIN @ ANWAR HUSSAIN
S/O AJIMUDDIN @ AJI ALI R/O VILL- NO.2 SUKTAGURI
P.O. BAZANA PATHAR
P.S. SIPAJHAR
DIST. DARRANG
ASSAM.

14: HAKIM ALI
S/O LT. MUZIBUR ALI @ MUZIBUR RAHMAN R/O VILL- NO.1 SUKTAGURI
P.O. BAZANA PATHAR
P.S. SIPAJHAR
DIST. DARRANG
ASSAM.

15: ABBAS ALI
S/OLT. IBRAHIM ALI R/O VILL- NO.1 SUKTAGURI
P.O. BAZANA PATHAR
P.S. SIPAJHAR
DIST. DARRANG

ASSAM.

16: MD. SOIMUDDIN AHMED
S/O MD. ABDUL RASHID R/O VILL- NO.2 SUKTAGURI
P.O. BAZANA PATHAR
P.S. SIPAJHAR
DIST. DARRANG
ASSAM.

17: INTAJUL HUSSAIN
S/O LT. RAHIMUDDIN AHMED R/O VILL- NO.2 SUKTAGURI
P.O. BAZANA PATHAR
P.S. SIPAJHAR
DIST. DARRANG
ASSAM.

18: KAMAL HUSSAIN
S/OLT. RAHIMUDDIN AHMED R/O VILL- NO.2 SUKTAGURI
P.O. BAZANA PATHAR
P.S. SIPAJHAR
DIST. DARRANG
ASSAM.

19: JAKIR HUSSAIN
S/OLT. RAHIMUDDIN ALI R/O VILL- NO.2 SUKTAGURI
P.O. BAZANA PATHAR
P.S. SIPAJHAR
DIST. DARRANG
ASSAM.

20: RAHIMUDDIN AHMED
S/O LT. MOIZUDDIN AHMED R/O VILL- NO.1 SUKTAGURI
P.O. BAZANA PATHAR
P.S. SIPAJHAR
DIST. DARRANG
ASSAM.

21: AZAN ALI
S/O LT. ZABBAR ALI R/O VILL- NO.1 SUKTAGURI
P.O. BAZANA PATHAR
P.S. SIPAJHAR
DIST. DARRANG
ASSAM.

22: DULAL HUSSAIN
S/O MUKTAR ALI R/O VILL- NO.1 SUKTAGURI
P.O. BAZANA PATHAR
P.S. SIPAJHAR

DIST. DARRANG
ASSAM.

23: ANSUL ALI
S/O LT. AZAL ALI R/O VILL- NO.1 SUKTAGURI
P.O. BAZANA PATHAR
P.S. SIPAJHAR
DIST. DARRANG
ASSAM.

24: BHOLA ALI
S/O LT. AZIMUDDIN ALI R/O VILL- NO.2 SUKTAGURI
P.O. BAZANA PATHAR
P.S. SIPAJHAR
DIST. DARRANG
ASSAM

VERSUS

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

2:THE DEPUTY COMMISSIONER-CUM- DISTRICT MAGISTRATE

DARRANG
MANGALDOI
ASSAM.

3:THE ADDITIONAL DISTRICT MAGISTRATE

DARRANG
MANGALDOI
ASSAM.

4:THE CIRCLE OFFICER

SIPAJHAR REVENUE CIRCLE
DARRANG
ASSAM.

5:THE OFFICER-IN-CHARGE

SIPAJHAR POLICE STATION
SIPAJHAR
DARRANG.

6:THE KURUWA KRISHAK SAMABAI SAMITTEE

REP. BY ITS SECRETARY SRI GOPAL DAS
VILL- KURUWA
MOUZA- SIPAJHAR P.S. SIPAJHAR DIST. DARRANG
ASSAM

Advocate for the Petitioner : MR. S P DAS

Advocate for the Respondent : MR. B K DAS (R-6)

BEFORE
HONOURABLE MR. JUSTICE KAUSHIK GOSWAMI

ORDER

Date : 19.07.2024

Heard Mr. S. P. Das, learned counsel for the petitioners. Also heard Mr. B. K. Das, learned counsel for the respondent No. 6 and Mr. S. S. Roy, learned Junior Government Advocate for the State respondents.

2. By filing this petition under Article 226 of the Constitution of India, the petitioners are seeking direction inter-alia to the respondents not to interfere with possession of the land of the petitioners measuring 109 Bighas covered by Dag No. 448 of Village No. 2, Suktaguri under Mouza- Sipajhar, District- Darrang and for a declaration that the order dated 23.09.2011 passed by the Additional District Magistrate, Darrang, Mangaldai in Misc. Cas No. 13/2005 is not binding upon the petitioners.

3. The petitioners being 24 in numbers have filed the present writ petition projecting themselves being aggrieved by the action of the respondent authorities in purporting to evict/ dispossessed them from their land over which they are cultivating for the last more than

four decades.

4. Mr. S. P. Das, learned counsel for the petitioners submits that in view of the order passed by this Court on 22.02.2012 in Criminal Petition No. 595/2011 whereby the order of the Additional District Magistrate, Darrang dated 23.09.2011 declaring possession of the subject land measuring 153 Bighas 4 Kathas 16 Lechas covered by Dag NO. 448 was issued, the respondent authorities are resorting to execute the said order, for which petitioners apprehend that they shall be evicted from their land.

5. Mr. B. K. Das, learned counsel for the respondent No. 6 on the other vehemently submits that the petitioners are not in possession of the subject land, which is covered under the order of the Additional District Magistrate dated 23.09.2011, which was upheld by this Court by order dated 22.02.2012 in Criminal Petition No. 595/2011.

6. He further submits that the order of this Court having attained finality cannot be re-opened by way of the present writ petition.

7. Mr. S. S. Roy, learned Junior Government Advocate submits that the plot of land in question covered by Dag No. 448 (new) was attached by the then Additional District Magistrate, Darrang under Section 145/146 (1) of the Cr.P.C. in connection with miscellaneous Case No. 13/2005 due to apprehension of breach of peace and tranquility and finally by order dated 23.09.2011, the Additional District Magistrate, Darrang concluded the proceeding by way of declaring possession in favour of respondent No. 6.

8. He further submits that subsequently by judgment dated 22.02.2011, this Court in criminal petition No. 595/2011 uphold the aforesaid order of the Additional District Magistrate, Darrang.
9. He further submits that as per the joint report of the Circle Officer, Sipajhar Revenue Circle and O.C. Sipajhar P.S., a large staff along with police visited the land under Dag No. 448 of No. 2, Suktaguri of Sipajhar Revenue Circle and handed over possession of the said plot of land to respondent No. 6.
10. He further submits that as per report of the said Circle Officer, the land in question does not belong to the petitioner nor is in the possession of the petitioner at the time of filing this writ petition.
11. Heard the parties at length and perused the materials available on record.
12. It appears that the learned Executive Magistrate on 01.02.2005 upon considering the police report as well as the non-FIR submitted by the respondent No. 6 recorded his satisfaction that there was every likelihood of breach of peace and tranquility between the parties and drew up the proceeding under 145 of Cr.PC.
13. Thereafter, the Additional District Magistrate, Darrang by order dated 23.09.2011, disposed of the proceedings by declaring the possession of the respondent No. 6 with a direction to the petitioners/opposite parties not to interfere with the possession of the respondent No. 6 until ordered otherwise by a proper Court of law.
14. Pertinent that while recording such finding the learned Magistrate considered the petition submitted by the respondent No. 6 as

well as the written submission submitted by the opposite parties some of whom are related to the petitioners herein.

15. It further appears that the learned Magistrate also took into consideration the extensive evidence adduced by both the parties. In addition, the written arguments of both the sides were called and perused.

16. It further appears that the learned Magistrate also considered the police report, the report of the Circle Officer and that of the Gaon burha.

17. It further appears from the report submitted by the Circle Officer that the disputed land was possessed by the respondent No. 6 and the total areas of the disputed land is 153 Bighas 4 Kathas 16 Lecha.

18. It further appears that after an overall assessment of the above, the learned Magistrate took the view that the disputed land and the land stated to be in the possession of the opposite parties are distinct and separate and declared the possession of the respondent No. 6 over the disputed land.

19. Pertinent that the respondent no. 6, in the affidavit-in-opposition filed, have stated that the petitioner no. 6, i.e Moshir Ali son of Kismat Ali was represented before the learned Magistrate at serial no.3 and the petitioner Nos. 17, 18 and 19 are the sons of Rahimuddin Ali who is the brother of Md. Harez Ali who's name appears at serial no. 8 in the said proceedings before the learned Magistrate. However the said averments are denied by the petitioners in the affidavit-in-reply

filed on 14.06.2017.

20. Being aggrieved by the aforesaid decision of order of the learned Magistrate, an application was filed under Section 482 of the Cr.PC being Criminal Petition No. 595/2011, wherein this Court by order dated 29.12.2015, was of the considered opinion that the view taken by the learned Magistrate is a plausible one and that no infirmity is found in the order of the learned Magistrate dated 23.09.2011, and accordingly dismissed the application by upholding the order of the learned Magistrate.

21. Pursuant to the aforesaid order of this Court on 22.02.2012, the Additional District Magistrate, Darrang, Mangaldai by order dated 24.09.2015 directed the Officer-in-Charge, Siphajhar Police station to execute the order of the Additional District Magistrate, Darrang dated 23.09.2011.

22. The writ petitioners projecting themselves to be in possession of the disputed land filed this instant writ petition canvassing their apprehension that they shall be evicted.

23. In the writ petition, the following prayers have been sought which are reproduced hereunder for ready reference:-

“In the premises aforesaid, it is prayed that your Lordships may be pleased to admit this petition, call for the records and issue Rule calling upon the Respondents to show cause as to why:

1. A writ in the nature of Mandamus shall not be issued directing the respondents not to interfere with possession of the land of the petitioners measuring 109 Bighas covered by Dag No.448 of Village No. 2 Suktaguri

under Mouza Sipajhar, Darrang in the interest of justice;

2. A declaration that the order dated 23.9.2011 passed by the Additional District Magistrate, Darrang, Mangaldoi in Misc. Case No. 13/2005 is not binding upon the petitioners;

And/or as to why other appropriate Writ, Order or directions shall not be issued giving adequate relief (s) to the Writ Petitioners.

Upon perusal of the records and the cause or causes as may be shown by the respondents and after hearing the parties Your Lordships may be pleased to make the rule absolute and/or may be pleased to pass any such further order(s) as Your Lordships may deem fit and proper.”

24. It appears that the petitioners is seeking a writ in the nature of Mandamus for declaration inter-alia that the respondents not to interfere with possession of the land of the petitioners measuring 109 bighas covered by Dag No. 448 of Village No. 2, Suktaguri under Mouza-Siphajhar, Darrang.

25. It further appears that the petitioners are also seeking further direction to the effect that the order dated 23.09.2011 passed by the Additional District Magistrate, Darrang, Mangaldai, in Misc Case No. 13/2005 shall not be binding upon the petitioners.

26. It appears from the affidavit-in-opposition filed on behalf of the respondent No. 2 on 22.08.2017 that the petitioners are not in possession of the subject plot of land.

27. Paragraphs 4, 5 and 11 of the aforesaid affidavit-in-opposition are re-produced hereunder for ready reference:-

“4. That with regard to the statement made in paragraphs 2 and 3 of the Instant writ petition the answering deponent begs to state that it is a matter of record. Further it is stated the petitioners have to prove their statement made in the paragraph 2 of the writ petition.

It may kindly be stated that the plot of land in question covered by Dag No.421 (Old) 448(New) was attached by the then Additional District Magistrate, Darrang under Section 145/146(1) of the Cr.P.C. in connection with Misc. Case No.13/2005 due to apprehension of breach of peace and finally vide order dated 23.09.2011 the Additional District Magistrate, Darrang concluded the proceeding by way of declaring possession in favour of Kurua Krishak Samabai Samiti. Subsequently, vide judgment dated 22.02.2012 in Crl. Petition No.595/2011 the Hon'ble Gauhati High Court pleased to confirm the judgment passed by the Additional District Magistrate, Darrang.

5. That with regard to the statement made in paragraph 4 of the instant writ petition the answering deponent begs to state that as per joint report of the Circle Officer, Sipajhar Revenue Circle and O.C. Sipajhar P.S., LR Staff along with police came to the land under Dag No.448 of No.2 Suktaguri of Sipajhar Revenue Circle and handed over possession of the plot of land to respondent No.6, i.e. Kurua Krishak Samabai Samiti.

11 That with regard to the statement made in paragraphs 14 and 17 of the instant writ petition the answering deponent begs to state that as per report of the Circle Officer, Sipajhar Revenue Circle, the land in question neither belongs to the petitioners nor is in their possession at the time of filing this writ petition.”

28. Pertinent that the aforesaid averments made in the affidavit-in-opposition filed by the State respondents is not rebutted by the

petitioners.

29. In fact, no rejoinder has been filed against the said affidavit-in-opposition.

30. That being so, the petitioners have failed to establish the factum of possession of the petitioners over the subject disputed land.

31. In such event, the prayer sought cannot be granted by this Court under Article 226 of the Constitution of India. Therefore, this writ petition fails.

32. Resultantly the writ petition stands dismissed with no cost.

33. Interim Order passed earlier shall stands vacated.

JUDGE

Comparing Assistant