

GAHC010118782023



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

Case No. : Crl.Pet./537/2023

TARUN NANDY AND ANR
S/O- K.P. NANDY,
R/O- LAHARIJAN, KHATKHOTI,
KARBI ANGLONG,
DIST- KARBI ANGLONG,
PIN- 782480.

2: ABHISHEK SEN CHOUDHURY
S/O- MANIK SEN CHOUDHURY

S/O- HOUSE NO. 503
3RD FLOOR

CITY TOWERS BUILDING

NST COLONY
DIMAPUR

NAGALAND

VERSUS

THE STATE OF ASSAM AND ANR
REPRESENTED BY ITS PUBLIC PROSECUTOR.

2:S SAVINDERJIT SINGH SETHI
S/O- LATE P.S. SETHI

R/O- LAHARIJAN
KHATKHATI

DIST- KARBI ANGLONG
ASSAM

Advocate for the Petitioner : MR B P BORAH

Advocate for the Respondent : PP, ASSAM

**BEFORE
HONOURABLE MR. JUSTICE ARUN DEV CHOUDHURY**

ORDER

Date : 22.04.2024

1. Heard Mr. B.P. Borah learned counsel for the petitioners. Also heard Mr. A Tewari learned counsel for the respondent No.2.
2. The present application is filed assailing an order dated 03.11.2022 passed in M.R. Case No.9/2022 by Sub Divisional Magistrate, Bokajan in exercise of its power under section 145 Cr.P.C whereby a possession over the disputed land was declared in favour of the respondent herein.
3. The record was called for by this court and the same is received and perused.
4. The record reflects that an application was filed by the respondent herein before the Sub Divisional Officer (Civil), Bokajan in short SDO (Civil) Bokajan. The said application is quoted herein below:

“With due respect and humble submission I beg to submit before your authority that I am the rightful and beneficial owner and patta holder of land situated at Lahorijan, Karbi Anglong, Assam. By a tenancy agreement dated 01/07/2017, I rented out a room standing in my above said land at Lahorijan along with parking area in my patta land covered by patta No.134 Dag no.6 under Borjan Mouza, Lahorijan Karbianglong, for a period of 3 years w.e.f 01.01.2017 till 31.12.2019 to Mr. Tarun Kumar Nandi now

residing at Bokajan, Karbi Anglong. Upon expiry of the said Tenancy agreement I have grace period and approached my tenant Mr. Tarun Kumar Nandi to vacate the room and the parking area since I am need of the room and area for my personal use as my sons have grown up and want to use my room and space for their employment purposes, but surprisingly, instead of vacating the room and the parking space, he has stopped giving my rent since last 6 months nor vacant my land and where as he is running the parking illegal with out license. The act of Tarun Kumar Nandi has put me to mental agony and I am passing my days with fear psychosis.

5. On the basis of the said application filed on 29.03.2022, the learned SDO (Civil), Bokajan forwarded the same to the Officer in Charge Khatkhati police station to enquire and submit a report. Thereafter, on the basis of the report submitted by the police officer, the learned SDO (Civil), Bokajan had drawn a proceeding under section 107/145 Cr.P.C and issued notice to both the parties.

6. The record further reveals that on 26.10.2022, five witnesses on behalf of the first party were examined and the next date was fixed on 03.11.2022 for order. It is important to note here that the present petitioner who is the second party in the aforesaid proceeding, though appeared in the proceeding initially, however, he remained absent on 15.10.2022 and 26.10.2022. Thereafter on 03.11.2022 the impugned order was passed.

7. The impugned order reveals that there is no discussion as regards the evidence laid in the proceeding and how the learned Officer has made its conclusion on the basis of such evidence. Thus, it can be said that though a conclusion is made that the first party/respondent herein is in

possession, however, such conclusion is based on no material.

8. Be that as it may, the most important aspect of the matter is that a bare perusal of the petition filed by the respondent No.2 shall disclose that the dispute is essentially a landlord and a tenant dispute involving non-payment of rent and non vacation of the tenanted premises after expiry of the tenancy. Therefore, such dispute in the considered opinion of this court, cannot be termed as dispute under provisions of section 145 and 107 Cr.P.C.

9. That being the position, the parties should be relegated to the Civil Court for determination of their dispute. The parties can also pray for injunction before the appropriate court, if necessity arises.

10. Accordingly, the impugned order dated 03.11.2022 as well as the proceeding under section 107/145 Cr.P.C are quashed with liberty to the parties to approach the Civil Court so far the same relates to tenanted premises i.e., the land measuring 2000 sq. fts. Covered by periodic Patta no.134, Dag No.06/4,17 situated at Lahorijan Non-k village, Mouza Borjan 1 No. under Diphu Revenue Circle surrounded by North: Land of Sovinderjit Singh Sethi, South : Land of Sovinderjit Singh Sethi, East : Land of Sovinderjit Singh Sethi and West : NH-39.

11. Till the parties approach the appropriate forum or till next eight weeks from today, whichever is earlier, the status quo as regards the disputed land be maintained by the parties.

12. The instant criminal petition stands disposed of accordingly.

JUDGE