

GAHC010160662020



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

Case No. : WP(C)/4798/2020

BINOD SINGH
S/O SRI PRASADI SINGH
RESIDENT OF VILLAGE CHANAKA. PS MAYONG, DIST MORIGAON,
ASSAM

VERSUS

THE STATE OF ASSAM AND 6 ORS.
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE GOVT.
OF ASSAM. REVENUE DEPARTMENT, DISPUR GUWAHATI 781006

2:THE DISTRICT MAGISTRATE
MORIGAON DISTRICT
MORIGAON
782001

3:THE ADDITIONAL DISTRICT MAGISTRATE
MORIGAON DISTRICT
MORIGAON
782001

4:SHRI MADHAB DEKA
S/O LATE BASIRAM DEKA
RESIDENT OF VILLAGE CHANAKA
PS MAYONG
DIST MORIGAON
782411 ASSAM

5:SHRI KRISHNA SAIKIA
S/O LATE BATIRAM SAIKIA
RESIDENT OF VILLAGE CHANAKA
PS MAYONG

DIST MORIGAON
782411 ASSAM

6:SHRI NILADHAR SAIKIA
S/O LATE HAHIRAM SAIKIA
RESIDENT OF VILLAGE CHANAKA
PS MAYONG
DIST MORIGAON
782411 ASSAM

7:SHRI HAREN DEKA
S/O BAHADUR SAIKIA
RESIDENT OF VILLAGE CHANAKA
PS MAYONG
DIST MORIGAON
782411 ASSA

Advocate for the petitioner(s): Mr. S Chakraborty

Advocate for the respondent(s): Ms. G Hazarika

For respondent No.1

Mr. BJ Talukdar

For respondent Nos.2 and 3

Mr. R Majumdar

For respondent Nos.4, 5, 6 and 7

B E F O R E

HON'BLE MR. JUSTICE DEVASHIS BARUAH

ORDER

16.08.2024

Heard Mr. S Chakraborty, the learned counsel appearing on behalf of the petitioner. Ms. G Hazarika, the learned counsel appears on behalf of respondent No.1, Mr. BJ Talukdar, the learned counsel appears on behalf of respondent

Nos.2 and 3 and Mr. R Majumdar, the learned counsel appears on behalf of the respondent Nos.4 to 7.

2. The petitioner herein had challenged the order dated 28.09.2020 passed by the learned Additional District Magistrate, Morigaon whereby a proceedings i.e. Case No. M.R.138/2019 was reopened on the basis of a purported order of the Deputy Commissioner, Morigaon.

3. The learned counsel appearing on behalf of the petitioner submits that the order dated 28.09.2020 passed in M.R.138/2019 is an order by which the learned Additional District Magistrate had sought to review an order dated 11.09.2020 passed in the said proceedings which the said authority did not had the jurisdiction to do so.

4. This Court had duly heard the learned counsels appearing on behalf of the parties and has given an anxious consideration.

5. A perusal of the order dated 11.09.2020 passed in M.R.138/2019 clearly shows that on the basis of a police report, the learned Additional District Magistrate, Morigaon had declared the possession of the petitioner on the disputed land and thereupon dropped the said proceedings. Pursuant thereto on 28.09.2020, the learned Additional District Magistrate, Morigaon again reopened the said proceedings. In the opinion of this Court, the learned Additional District Magistrate has no jurisdiction to do so, however, erroneous the order dated

11.09.2020 may be. The said opinion is based on the well settled principles of law that the power to review is a creation of a statute. Accordingly, the impugned order dated 28.09.2020 passed by the learned Additional District Magistrate Morigaon is set aside and quashed.

6. Before parting with the records, this Court, however, finds it very pertinent to take note of the submissions of Mr. R Majumdar, the learned counsel appearing on behalf of the private respondents. The learned counsel submitted that the order dated 11.09.2020 is bereft of any reasons and was passed at a time when the various lockdowns were in operation. He submits that in view of the order dated 28.09.2020, the proceedings were again re-opened. The private respondents did not challenge the order dated 11.09.2020 as per the mandate of law, and, therefore, submitted that as the Court is setting aside the order dated 28.09.2020, liberty may be given to the private respondents to assail the order dated 11.09.2020 before the appropriate Court and the limitation for filing such a proceedings may be condoned taking into account that today only, this Court had set aside the order dated 28.09.2020.

7. This Court has given due consideration to the said submission. It is apparent that as the proceedings being M.R.138/2019 was reopened there was no occasion on the part of the private respondents to challenge the order dated 11.09.2020 and it is on account of the order passed herein today that the order dated 11.09.2020 in M.R.138/2019 had again come into existence.

8. Under such circumstances, this Court grants 30(thirty) days time from

today to the private respondents to assail the order dated 11.09.2020 as per the extant law.

9. For the sake of clarity that this Court makes it clear that the setting aside of the order dated 28.09.2020 by this Court shall not be construed that this Court had given any approval to the order dated 11.09.2020. The legality and validity of the order dated 11.09.2020 shall be decided in due proceedings.

JUDGE

Comparing Assistant