

GAHC010174872021



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

Case No. : WP(C)/5746/2021

MANTU RAM DAS AND ANR
S/O LATE TANU RAM DAS, VILL. DADARA, P.O. AND P.S. HAJO, DIST.
KAMRUP, ASSAM.

2: MANASH KALITA

S/O SRI KAMESWAR KALITA
VILL. PACHORIA
P.O. AND P.S. HAJO
DIST. KAMRUP
ASSAM
PIN 78110

VERSUS

THE STATE OF ASSAM AND 10 ORS
REPRESENTED BY THE COMMISSIONER AND SECY. TO THE GOVT. OF
ASSAM, DEPTT. OF REVENUE, DISPUR, GUWAHATI 781006

2:THE COMMISSIONER AND SECY. TO THE GOVT. OF ASSAM

HOME AND POLITICAL DEPTT.
DISPUR
GUWAHATI 781006

3:THE DEPUTY COMMISSIONER

KAMRUP
AMINGAON
PIN 781031

4:THE DIST. MAGISTRATE

KAMRUP

AMINGAON
DIST. KAMRUP
ASSAM
PIN 781031

5:THE SUPERINTENDENT OF POLICE

KAMRUP
AMINGAON
DIST. KAMRUP
ASSAM
PIN 781031

6:THE CIRCLE OFFICER

HAJO REVENUE CIRCLE
KAMRUP
DIST. KAMRUP
ASSAM
PIN 781102

7:THE OFFICER IN CHARGE

HAJO POLICE STATION
KAMRUP
ASSAM
PIN 781102

8:THE OFFICER IN CHARGE

DADARA OUT POST
DADARA
KAMRUP
ASSAM
PIN 781104

9:MANIK DAS

S/O LATE BATIRAM DAS
VILL. DADARA (NA PARA)
P.S. HAJO
DIST. KAMRUP
ASSAM
PIN 781104

10:MONIKANTA DAS

S/O LATE BATIRAM DAS

VILL. DAARA (NA PARA)
P.S. HAJO
DIST. KAMRUP
ASSAM
PIN 781104

11:HEMANTA DAS

S/O LATE TANURAM DAS
VILL. DADARA
P.S. HAJO
DIST. KAMRUP
ASSAM
PIN 78110

For the Petitioner(s) : Mr. M. Bhagawati, Advocate.

For the Respondent(s) : Mr. S. Baruah, Standing Counsel

BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH

ORDER

Date : 25.09.2024

Heard Mr. M. Bhagawati, the learned counsel appearing on behalf of the Petitioners and Mr. S. Baruah, the learned Standing counsel appearing on behalf of the District Administration including the Sub-Divisional Magistrate, Kamrup, Amingaon.

2. The Petitioners herein have assailed the order dated 14.09.2021 whereby the Sub-Divisional Magistrate, Kamrup, Amingaon had passed an order under Section 146(1) of the Code of Criminal Procedure, 1973 (for short "the Code") thereby attaching the disputed Tin Sali tenanted room in front of Tanu Dinu Market situated at Dadara Chowk under Hazo Revenue Circle covered by Dag No.142, 680 of Patta No.68 until further

orders.

3. It is seen that pursuant to the filing of instant writ petition, the matter has been pending. In the meantime, the Sub-Divisional Magistrate, Kamrup, Amingaon had passed an order on 20.12.2021 whereby the proceedings in Case No.169^m/2021 was stayed until further orders including the order dated 14.09.2021.

4. It is relevant to take note of that an order passed under Section 146 of the Code can be passed when the Magistrate at any time after making of an order under Sub-Section (1) of Section 145 of the Code considers the case to be one of emergency or if he decides that none of the parties was then in such possession as referred to in Section 145 or if the Magistrate is unable to satisfy himself as to which of them was then in such possession of the subject matter of the dispute.

5. The fact that the order dated 14.09.2021 has been withdrawn by the Sub-Divisional Magistrate vide the order dated 20.12.2021 is not in dispute. The fact that the Petitioners herein are running their shop in the said tenanted premises also is not in dispute. Under such circumstances, it is the opinion of this Court that the further continuation of the order dated 14.09.2021 which is already been withdrawn by the Sub-Divisional Magistrate, Kamrup, Amingaon vide the order dated 20.12.2021 does not arise.

6. Accordingly, this Court sets aside the order dated 14.09.2021 passed by the Sub-Divisional Magistrate, Kamrup, Amingaon in Case No.169^m/2021. It is however observed that the setting aside of the said order dated 14.09.2021 shall not prejudice either the Petitioners or the

private Respondents herein to take appropriate steps before the Civil Court, if so advised.

7. With above observations and directions, the instant writ petition stands disposed of.

JUDGE

Comparing Assistant