

GAHC010186512024



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

Case No. : Cont.Cas(C)/489/2024

MOSTAB ALI SHEIKH @ MOSTAB ALI @ MOSTAM ALI AND ANR
S/O- LATE RUSTOM ALI, R/O- VILL- GUTIPARA PART-III, P.O. GUTIPARA,
P.S. BILASIPARA, DIST. DHUBRI, ASSAM, PIN- 783349.

2: MALEKA KHATUN @ MATEKA KHATUN
W/O- LATE HASHEM ALI @ HASEM ALI
R/O- VILL- GUTIPARA PART-III
P.O. GUTIPARA
P.S. BILASIPARA
DIST. DHUBRI
ASSAM
PIN- 783349

VERSUS

DIBAKAR NATH AND ANR
THE DISTRICT COMMISSIONER, DHUBRI, P.O., P.S. AND DIST. DHUBRI,
ASSAM, PIN- 783301.

2:SARI L. LUNGTAU
THE CIRCLE OFFICER CUM THE ASSISTANT SETTLEMENT OFFICER
BILASIPARA REVENUE CIRCLE
P.O. AND P.S. BILASIPARA
DIST. DHUBRI
ASSAM
PIN- 783348

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

For the Respondent(s) : None appears.

**BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH**

ORDER

Date : 13.09.2024

Heard Mr. M. Hussain, the learned counsel appearing on behalf of the Petitioner.

2. The Petitioner has approached this Court by filing the instant application under Sections 11 and 12 of the Contempt of Court Act, 1971 read with Article 215 of the Constitution alleging willful, disobedience and deliberate violation of the order dated 23.01.2023 passed in WP(C) No.6158/2022.

3. Taking into account the above, this Court finds it relevant to take note of paragraph Nos. 6 and 7 of the order dated 23.01.2023 passed in WP(C) No.6158/2022. The said paragraphs are extracted herein below:

“6. It is settled that if there is an alternative, efficacious and adequate remedy, then the petitioners should avail that remedy instead of approaching this Court under Article 226 of the Constitution of India. If it is a case of simple demarcation, as it has been projected by the petitioners, the petitioners should avail the remedy by applying for the notified public service [demarcation] under the Act first by approaching jurisdictional Designated Public Servant by submitting the prescribed standard application form and by depositing of the requisite user charges. On receipt of such application, the jurisdictional Designated Public Servant shall acknowledge the same and shall proceed to dispose of the said application as per the procedure laid down in the Act and the Office Memorandum dated 21.12.2020 [supra] within the stipulated time period prescribed for the said notified public service [demarcation]. It is accordingly observed.

7. The authorities while undertaking the process for partition and

demarcation of the subject-plot as well as in undertaking the process to demarcate the contemplated fishery, if any, in the Government Khas land, situated in the Northern side of the subject-plot shall ensure that the partition and demarcation of the subject-plot is completed either prior to handing over of possession the Government Khas land to Kajaikata Gaon Panchayat for the purpose of fishery or simultaneously.”

4. From a perusal of the said paragraphs, it reveals that the writ petition so filed was not entertained in view of the availability of the alternative, efficacious and adequate remedy under the provisions of the Assam Right to Public Service Act, 2012 (for short “the Act of 2012”). It is further seen that pursuant thereto, the Petitioner availed remedy by filing applications before the Circle Officer-cum-Assistant Circle Officer, Bilasipara. Thereupon, the Petitioner also filed an appeal under Section 8(1) of the Act of 2012.

5. It has been submitted that an order has been passed on 27.08.2024 pursuant to the said application being filed. However, the process has not been completed and as such the instant contempt application has been filed.

6. In the opinion of this Court, the same cannot constitute a contempt within the meaning of Sections 11 and 12 of the Contempt of Court Act, 1971 more so in view of the fact that the order which has been passed dated 27.08.2024 gives rise to a fresh cause of action and as such if the Petitioner is aggrieved by the same, the Petitioner ought to have approached the appropriate authority or this Court by filing a writ petition.

7. Accordingly, this Court finds no merit in the instant contempt petition

for which the instant contempt petition stands dismissed.

8. It is however observed that the Petitioner would always be at liberty to approach the appropriate forum or this Court if the Petitioner is aggrieved by the order dated 27.08.2024.

JUDGE

Comparing Assistant