

GAHC010196912017



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

Case No. : WP(C)/3238/2017

SATISH CHANDRA BASUMUTARY and ANR.
S/O LT. MANSHING BASUMATARY

2: SRI PULUNG BASUMATARY
S/O SATISH CHANDRA BASUMATARY BOTH ARE RESIDENTS OF
VILLAGE- DHALIGAON
MAIN GATE
P.S. DHALIGAON DIST. CHIRANG
BTAD
ASSAM
PIN - 783385

VERSUS

THE STATE OF ASSAM and 5 ORS.
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM,
URBAN DEVELOPMENT DEPARTMENT, DISPUR, GUWAHATI -6.

2:THE DEPUTY COMMISSIONER

CHIRING AT KAJOLGAON
DIST. CHIRANG
BTAD
ASSAM

3:THE ADDL. DEPUTY COMMISSIONER

CHIRANG DISTRICT AT KAJOLGAON
DIST. CHIRANG
BTAD
ASSAM

4:THE CIRCLE OFFICER

SYDLI REVENUE CIRCLE
SYDLI DIST. CHIRANG
BTAD
ASSAM

5:THE KAJAL GAON TOWN COMMITTEE

REP. BY ITS CHAIRMAN
KAJAL GAON TOWN COMMITTEE
P.O. KAJAL GAON
DIST. CHIRANG
BTAD
ASSAM

6:THE CHIRMAN
KAJAL GAON
TOWN COMMITTEE
P.O. KAJAL GAON
DIST. CHIRANG
BTAD
ASSA

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

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

BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH

ORDER

Date : 16.02.2024

1. The instant writ petition has been filed by the Petitioners seeking appropriate directions against the Respondent Authorities not to enter or demolish the eastern part of the Petitioners' boundary wall, gate etc. standing on the patta land of the Petitioners or construct any drain in the patta land of the Petitioners without following the procedure established by law.

2. The records reveals that the Petitioners claim to be the owners, land holders and possessors of two plots of land measuring 0 Bigha 3 Kathas 6

Lechas and 0 Bigha 3 Kathas 19½ Lechas situated at village Kukurmari, P.S. Dhaligaon, Mouza Sidli, Part-II Sub-Registry Office Bongaigaon now at Kajalgaon. The said land is covered by Dag No.81 included in Patta No.4.

3. This Court finds it relevant to observe that although the Petitioners claim that the lands have been purchased on the basis of a Deed of Sale dated 03.12.1992 but the said Deed of Sale is not a part of the writ petition. This Court however finds that an additional affidavit has been filed by the Petitioners wherein the Petitioners claim that those documents enclosed therein relates to the Deed of Sale. However the translated copies of the said documents which have been placed do not appear to be a properly translated documents. Be that as it may, it is the case of the Petitioners that the Respondent Authorities more particularly the Respondent Nos. 3, 4, 5 and 6 without following the due procedure of law have tried to encroach upon the Petitioners' lands and thereupon demolished the eastern part of the Petitioners' boundary wall, gate etc. covering 3 x 100 ft. approximately with an intention to construct a drain in the said patta land of the Petitioners. It is under such circumstances, the Petitioners had approached this Court by filing the instant writ petition.

4. The record reveals that this Court vide an order dated 12.06.2017 issued notice and in the interim directed that no public drain shall be constructed by the Respondent Authorities more particularly the Respondent Nos.5 and 6 over any portion of the private land of the Petitioners. Thereupon, the matter has been listed on various occasions but the Respondents have not filed their affidavit.

5. This Court has duly heard Mr. M. U. Mahmud, the learned counsel appearing on behalf of the Petitioners; Mr. S. R. Baruah, the learned Standing counsel appearing on behalf of the Respondent Nos. 1 to 4 and Mr. S. Biswas,

the learned Standing counsel appearing on behalf of the Respondent Nos. 5 and 6.

6. The issue involved in the instant writ petition pertains to as to whether the Respondent Authorities without following the due process take over the private land of the Petitioners and demolish the structures as well as construct a public drain on the land of the Petitioners. The said aspect is clear from a reading of Article 300A of the Constitution of India which stipulates that no persons shall be deprived of his property save by authority of law. Under such circumstances, if the property on which the Petitioners are claiming right is the property of the Petitioners, the Respondent Authorities in the opinion of this Court cannot disturb the possession of the Petitioners without following the due procedure.

7. Accordingly, this Court therefore disposes of the instant writ petition thereby directing the Respondent Authorities not to disturb the possession of the Petitioners over the land the Petitioners have right, title and interest without following the due procedure of law. Further to that, this Court directs the said Respondents that in the circumstance, any steps needs to be taken on the land of the Petitioners, the Petitioners have to be issued a notice thereby permitting the Petitioners to submit their necessary documents showing that they have rights over the land. Further, this Court directs that in the eventuality, it is seen that the land belongs to the Petitioners, the Respondent Authorities are directed not to take any action till the procedure established by law is followed.

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

JUDGE

Comparing Assistant