

GAHC010214472023



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

Case No. : Crl.Pet./1033/2023

MD. KAMAR UDDIN
S/O LT. B ASIRUDDIN
R/O VILL- METHIGAON
P.O. NILBAGAN
P.S. MURAJHAR
DIST. HOJAI, ASSAM
PIN- 782445

VERSUS

THE STATE OF ASSAM AND ANR
REP. BY THE PP, ASSAM

2:MD. NAZRUL ISLAM
S/O TOZMUL ALI (LAL MIAH)
VILL- SUTARPUR
P.O. NILBAGAN
P.S. MURAJHAR
DIST. HOJAI
ASSAM
PIN-78244

Advocate for the Petitioner : MR. M U MONDAL

Advocate for the Respondent : PP, ASSAM

BEFORE
HON'BLE MR. JUSTICE KAUSHIK GOSWAMI

22.03.2024

Heard Mr. M.U. Mondal, learned counsel for the petitioner. Also heard Mr. D. Das, learned Additional Public Prosecutor, Assam for the State respondent and Mr. Sarfraz Nawaz, learned counsel for the respondent No.2.

This petition is filed under Section 482 Cr. P.C. assailing the proceedings of MR Case No.08/2022 under Sections 107/145 pending before the Additional District Magistrate, Hojai, Sankardev Nagar.

The case of the petitioner is that on 10.01.2022, respondent No.2 has filed a petition under Sections 145/146 Cr.P.C. before the District Magistrate, Hojai, praying for restraining the petitioner from entering to the disputed land. By an order dated 21.03.2022, the said proceedings were transferred to the Executive Magistrate, Hojai, Sankardev Nagar for disposal. Thereafter, notice was issued to the parties by the Executive Magistrate under Sections 107/145 Cr.P.C. for their appearance. Thereafter, when the matter was put up before the Executive Magistrate on 10.03.2023, the respondent No.2 was present while the petitioner appeared through appearance slip without being physically present. The Executive Magistrate considering the submissions of the respondent No.2 to the effect that the petitioner was engaged in some activities in the disputed land during the pendency of the case before the court of jurisdictional Executive Magistrate, directed that the parties shall be restricted from entering or carrying any activity in the disputed land pending disposal of the case. Subsequently, the matter came up on 17.07.2023 before the Additional District Magistrate, Hojai,

and on that day, the petitioner was absent without any steps. It further appears that on that day, after considering and seeing the emergent nature and the possibility of breach of tranquility and also considering the fact that the petitioner has violated the order of status quo passed earlier, the Additional District Magistrate directed attachment of the disputed land under Section 146(1) Cr.P.C. and prohibited the petitioner from entering into the disputed land till determination of the title and possession of the disputed land by any competent court. Being aggrieved, the petitioner has filed this criminal petition.

Mr. Nawaz, learned counsel for the respondent No.2 fairly submits that he has no objection if the attachment is kept in abeyance and the matter is remanded back to the Additional District Magistrate, Hojai, Sankardev Nagar to consider the matter afresh in presence of both the parties.

As such, for the ends of justice, this Court is of the considered view that the criminal petition can be disposed of with the direction that the Additional District Magistrate shall consider the matter afresh in presence of both the parties. Accordingly, the parties are directed to appear before the court of Additional District Magistrate, Hojai on 19.04.2024. The order of attachment dated 17.07.2023 passed by the Additional District Magistrate, Hojai shall be kept in abeyance.

Needless to clarify that upon appearance of the parties on the date fixed, the Court of Additional District Magistrate is at liberty to proceed in accordance with law.

Registry to intimate the order of this Court to the Court of Additional District Magistrate, Hojai, Sankardev Nagar through email.

Send the LCR back.

With the aforesaid observations and directions, this criminal petition is disposed of.

JUDGE

Comparing Assistant