

GAHC010220562024



2024:GAU-AS:12475

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

Case No. : WP(C)/5388/2024

JOINAL ABDIN AND 8 ORS
S/O- ABDUL RAHMAN,
R/O- VILL/TOWN- MOHKHULI,
P.O.- MOHKHULI, P.S.- NAGAON SADAR,
DIST- NAGAON, ASSAM, PIN- 782003,
ASSAM.

2: IKRAMUL HUSSAIN
S/O- JALAL UDDIN

R/O- VILL/TOWN- MOHKHULI

P.O.- MOHKHULI
P.S.- NAGAON SADAR

DIST- NAGAON
ASSAM
PIN- 782003

ASSAM.

3: ABUL HUSSAIN
S/O- ABDUL RAHMAN

R/O- VILL/TOWN- MOHKHULI

P.O.- MOHKHULI
P.S.- NAGAON SADAR

DIST- NAGAON
ASSAM
PIN- 782003

ASSAM.

4: SADDAM HUSSAIN
C/O- JALAL UDDIN

R/O- VILL/TOWN- MOHKHULI

P.O.- MOHKHULI
P.S.- NAGAON SADAR

DIST- NAGAON
ASSAM
PIN- 782003

ASSAM.

5: MANIKUL ISLAM
S/O- ABDUL MATALIB

R/O- VILL/TOWN- MOHKHULI

P.O.- MOHKHULI
P.S.- NAGAON SADAR

DIST- NAGAON
ASSAM
PIN- 782003

ASSAM.

6: RAMJAN ALI
S/O- HASSEN ALI

R/O- VILL/TOWN- MOHKHULI

P.O.- MOHKHULI
P.S.- NAGAON SADAR

DIST- NAGAON
ASSAM
PIN- 782003

ASSAM.

7: JALAL UDDIN
S/O- FALU SHEIKH

R/O- VILL/TOWN- MOHKHULI

P.O.- MOHKHULI
P.S.- NAGAON SADAR

DIST- NAGAON
ASSAM
PIN- 782003

ASSAM.

8: NABI HUSSAIN
S/O- ABDUL RAHMAN

R/O- VILL/TOWN- MOHKHULI

P.O.- MOHKHULI
P.S.- NAGAON SADAR

DIST- NAGAON
ASSAM
PIN- 782003

ASSAM.

9: ABDUL MATALIB
S/O- LT. ABDUL GAFUR

R/O- VILL/TOWN- MOHKHULI

P.O.- MOHKHULI
P.S.- NAGAON SADAR

DIST- NAGAON
ASSAM
PIN- 782003

ASSAM

VERSUS

THE STATE OF ASSAM AND 6 ORS
REPRESENTED BY THE CHIEF SECRETARY TO THE GOVERNMENT OF
ASSAM,
DISPUR, GUWAHATI-06.

2:THE DEPUTY COMMISSIONER
NAGAON
ASSAM.

3:THE SUPERINTENDENT OF POLICE
NAGAON
ASSAM.

4:CIRCLE OFFICER
NAGAON SADAR REVENUE CIRCLE
NAGAON

5:MOFIZUL ISLAM
S/O- IBRAHIM ALI

R/O- VILL/TOWN- MOHKHULI

P.O.- MOHKHULI
P.S.- NAGAON SADAR

DIST- NAGAON
ASSAM
PIN- 782003

ASSAM.

6:THE PRESIDENT
DIPHALU GAON PANCHAYAT
R/O- VILL DIPHALU
P.O.- DIPHALU

DISTRICT- NAGAON
ASSAM.

7:THE GOVERNMENT GAON BURA
MOHKHULI VILLAGE
R/O- MOHKHULI

P.O.- MOHKHULI
P.S.- NAGAON SADAR

DIST- NAGAON
ASSAM
PIN- 782003

ASSAM

Advocate for the Petitioner : MD. M H CHOUDHURY, TANZIM L. CHOUDHURY,MR. P CHAKRABORTY,MR MONZUR K CHOUDHURY

Advocate for the Respondent : GA, ASSAM, SC, REVENUE

BEFORE
HON'BLE MR. JUSTICE KARDAK ETE
O R D E R

11.12.2024

Heard Md. M.H. Choudhury, learned counsel for the petitioners. Also heard Ms. S. Bora and Mr. A. Bhattacharjee, learned counsel for the respondents.

The petitioners are the permanent residents of Mohkhuli village under Sadar Police Station in the district of Nagaon, Assam, and claims that have been continuously using the Mohkhuli P.H.E. Road, which is more than 100 years old developed by panchayat from time to time. The said road is being used for ingress and egress of the people of the village.

It is contended that recently the respondent no.5 and their family members have blocked the said road causing disturbance to the other people of the village.

It is contended that the petitioners have filed a representation before the Superintendent of Police, Executive Magistrate and Deputy Commissioner, Nagaon. However, no action has been initiated. Therefore, the petitioners have prayed for a direction to the respondent authorities to remove the blockage of Mohkuli P.H.E. Road by the respondent no.5.

Ms. S. Bora, and Mr. A. Bhattacharjee, learned State counsels by placing the parawise comment submits that as per the verification report done by the concerned Lat Mondal of Nagaon Sadar Revenue, the road falls under the Govt. reserved land covered by Dag No. 945 and 943. A part of the road also falls under Annual Patta No. 32, Dag No. 814, 816 and Dag No. 939 of Annual Patta No. 89 and also over part of land of Dag No. 815 of P.P. No. 7 of Diphalu Kissam under Niz Sahar Mouza in the district of Nagaon, Assam. The said road is not marked in the cadastral map of Diphalu Revenue village.

On the enquiry, the Superintendent of Police, Nagaon, Assam has reported that the

issue is primarily civil in nature and in the meantime, two Non FIR case have been registered in this respect which is pending for trial in the Court of Executive Magistrate, Nagaon.

Having considered the submissions of the learned counsel for the parties and also on perusal of the instruction placed by the learned State Counsel, it appears that the dispute of blockage of road in question appears to be of civil in nature and such dispute, needless to observe that, is to be adjudicated by competent Civil Court.

The grievances raised in this writ proceeding is to the effect the respondent no.5, namely, Mofizul Islam and his family members have blocked the Mohkhuli P.H.E. Road, which has been used for road since 100 years. As noted above, the dispute raised appears to be civil dispute and the claim is a disputed question of facts as to whether the land is used for road since 100 years or the land belongs to the private respondent no.5, which this Court would not exercise its extra jurisdiction under 226 to determine disputed question of fact. That apart, there is an alternative and efficacious remedy provided under the law.

Having considered above, in view of disputed question of facts and availability of not only alternative but also efficacious remedy under the law, I am of the view that the writ petition is not maintainable.

Accordingly, writ petition is dismissed.

However, it is provided that if the road in question is used by the people of village, the authorities may take appropriate action for the convenience of the people of the village at large.

JUDGE

Comparing Assistant