

GAHC010243462024



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

Case No. : CRP(IO)/483/2024

MANBOR MAHATO AND 7 ORS
S/O LATE LABA MAHATTO, R/O 1 NO. SALENGURI GAON, P.O.-
SALENGURI, P.S.-KAKOPATAHR, DIST- TINSUKIA, ASSAM, PIN-786152

2: RUBUL SONAR @ TANTI
S/O LATE HARE KRISHNA TANTI
R/O MANKHOWA TEA ESTATE
15 NO. LINE
P.O.-RUPAI SIDING
P.S.-DOOMDOOMA
DIST- TINSUKIA
ASSAM
PIN-786153

3: RAHUL KARMAKAR
S/O SRI KHUDIRAM KARMAKAR
R/O MANKHOWA TEA ESTATE
15 NO. LINE
P.O.-RUPAI SIDING
P.S.-DOOMDOOMA
DIST- TINSUKIA
ASSAM
PIN-786153

4: SHIVA KARMAKAR
S/O SRI KHUDIRAM KARMAKAR
R/O MANKHOWA TEA ESTATE
15 NO. LINE
P.O.-RUPAI SIDING
P.S.-DOOMDOOMA
DIST- TINSUKIA
ASSAM
PIN-786153

5: GAMONTA BAGH
S/O SRI DEBANANDA BAGH
R/O MANKHOWA TEA ESTATE
9 NO. LINE
P.O.-RUPAI SIDING
P.S.-DOOMDOOMA
DIST- TINSUKIA
ASSAM
PIN-786153

6: PREMNATH MAHALI @ BUTLU
S/O LATE JOGE MAHALI
R/O 2 NO. ATHANGIA GAON
P.O.-RUPAI SIDING
P.S.-DOOMDOOMA
DIST- TINSUKIA
ASSAM
PIN-786153

7: BABLU MAHALI
S/O LATE JOGE MAHALI
R/O 2 NO. ATHANGIA GAON
P.O.-RUPAI SIDING
P.S.-DOOMDOOMA
DIST- TINSUKIA
ASSAM
PIN-786153

8: MAHESH MAHALI
S/O LATE JOGE MAHALI
R/O 2 NO. ATHANGIA GAON
P.O.-RUPAI SIDING
P.S.-DOOMDOOMA
DIST- TINSUKIA
ASSAM
PIN-78615

VERSUS

GAUTAM PHUKAN AND 3 ORS
S/O SRI GOBINDA PHUKAN, R/O AZAD ROAD, DOOMDOOMA, P.O. AND
P.S.-DOOMDOOMA, DIST- TINSUKIA, ASSAM, PIN-786151

2: PRANJIL KUMAR BORAH
S/O LATE PROBIN KUMAR BORAH
R/O MILLAN TIRTHA ROAD
BEESAKIOPIE
NEAR DON BOSCO SCHOOL

P.O. AND P.S.-DOOMDOOMA
DIST- TINSUKIA
ASSAM
PIN-786151

3:LAKHI NATH MORAN
S/O SRI MONESHWAR MORAN
R/O TAPOBAN RUPAI SIDING
P.O.-RUPAI SIDING
P.S.-DOOMDOOMA
DIST-TINSUKIA
ASSAM
PIN-786153

4:M/S M.R. BRICKS INDUSTRIES
A PARTNERSHIP FIRM
HAVING ITS OFFICE AND PLACE OF BUSINESS AT RUPAI SIDING
P.O.-RUPAI SIDING
P.S.-DOOMDOOMA
DIST- TINSUKIA
ASSAM
PIN-786153
THE PARTNERSHIP FIRM IS BEING REPRESENTED BY ITS PARTNERS I.E.
THE RESPONDENTS NO. 1 TO 3

Advocate for the Petitioner : MR. BHASKAR DUTTA, SENIOR ADVOCATE, MS L
RONGPIPI,MR JITENDRA DAS,MR. SAILENDRA DEKA

Advocate for the Respondent : ,

BEFORE
HONOURABLE MR. JUSTICE ROBIN PHUKAN

ORDER

Date : 22.11.2024

Heard Mr. B. Dutta, learned Senior Counsel, assisted by Mr. S. Deka, learned counsel for the petitioners.

2. In this petition, under Article 227 of the Constitution of India, the petitioners have put to challenge the correctness or otherwise of the orders dated 04.05.2024 and 05.10.2024, passed by the learned Presiding Officer,

Special Tribunal, LG(P) at Tinsukia, in Land Grabbing Case No. 4/2024.

3. It is to be noted here that vide impugned order 04.05.2024, the learned Tribunal had rejected the prayer of the petitioners for adjournment for filing written statement and vide impugned order dated 05.10.2024, the learned Tribunal had dismissed the petition No. 1376/2024, for setting aside the order dated 03.09.2024 and to allow the respondent Nos. 1 to 8/ the petitioners herein, to cross-examine the witnesses of the applicants/respondents herein.

4. Mr. Dutta, learned Senior Counsel for the petitioners submits that the impugned orders dated 04.05.2024 and 05.10.2024, suffer from manifest illegalities and while passing the order dated 04.05.2024, the learned Tribunal had not considered Rule 10 of the Assam Land Grabbing (Prohibition) Rules, 2013 ('Rules of 2013', for short) and thereby, debarred the petitioners to file their written statement and that it had failed to take note of the fact that while serving notice upon the petitioners on 22.03.2024, the legible copy of the documents had not been furnished to the petitioners and the same were furnished on 02.04.2024 and thereafter, without giving sufficient opportunities to file written statement, debarred them from filing written statement, vide impugned order dated 04.05.2024.

4.1. Further, Mr. Dutta submits that the learned Tribunal had debarred the petitioners to cross-examine the witnesses, vide order dated 03.09.2024, as on that day, the learned counsel for the petitioners could not appear before the Tribunal on account of illness and thereafter, closed the cross-examination by the petitioners and thereafter, the petitioners preferred petition No. 1376/2024, before the Tribunal, but the learned Tribunal had dismissed the same, vide impugned order dated 05.10.2024, on account of absence of any reasonable ground for failing to cross-examine the witnesses on 03.09.2024. Mr. Dutta also

submits that there may be some lapses on the part of the counsel for the petitioners, for which the petitioners shall not suffer and therefore, Mr. Dutta has contended to allow the petition.

5. To a pointed query of this Court, Mr. Dutta fairly submits that the counsel for the petitioners could not produce any document in support of his ailment, for which he could not remain present in the Court on 03.09.2024, to cross-examine the witnesses and no such document has been furnished in the present petition also to justify the contention that the counsel for the petitioners was suffering from any ailment, on 03.09.2024.

6. Having heard the submission of Mr. Dutta, learned Senior counsel for the petitioners, I have carefully gone through the petition and the documents placed on record and also perused the impugned orders dated 04.05.2024 and 05.10.2024, and also the order dated 03.09.2024.

7. It appears that the petitioners herein received the notice on 22.03.2024 and admittedly, no legible copy of the documents were enclosed with the said notice, for which they had filed a petition before the learned Tribunal for providing legible copy of the documents and the same was furnished to them on 02.04.2024, and as per Rule 10 of the Rules of 2013, written statement has to be furnished within a period of 14 days. But even after elapse of more than 14 days, since furnishing of legible copy on 02.04.2024, the petitioners could not file their written statement, for which the learned Tribunal had debarred them from filing written statement, vide impugned order dated 04.05.2024.

8. It is true that Rule 10 of the Rules of 2013 is not inflexible and the period of 14 days can be extended. But, there must be some ground let alone sufficient ground, for such extension. In the present case, no such ground could be

shown by the petitioners, for which the learned Tribunal had debarred them from filing written statement. Thus, the impugned order dated 04.05.2024, suffers from no infirmity or illegality requiring any interference of this Court and accordingly, the prayer for setting aside the impugned order dated 04.05.2024, stands repudiated.

9. Now, coming to the second prayer, I find that after passing of the order dated 04.05.2024, the respondents herein had submitted their examination-in-chiefs, but on several occasions, the petitioners failed to cross-examine those witnesses. Ultimately, the case was listed on 03.09.2024, on which also the learned counsel for the petitioners remained absent to cross-examine the witnesses of the respondents herein.

10. From a perusal of the order dated 03.09.2024 and the impugned order dated 05.10.2024, it appears that the Bench Assistant of the concerned Tribunal rang up the counsel for the petitioners, but received no response and ultimately being left with no option, the Tribunal had closed the cross-examination of the witnesses of the respondents.

11. Though, it is contended that on 03.09.2024, the counsel for the petitioners, namely, Mr. Sharma, was suffering from ailments and he was taken to Hospital and his junior was also busy in his treatment, the same fails to inspire confidence, in as much as, no such document was furnished before the learned Tribunal and also before this Court to substantiate ailment and as such, the order dated 03.09.2024 and the impugned order dated 05.10.2024, cannot be said to be suffered from any infirmity or illegality.

12. However, considering the fact that right to cross-examine a witness, apart from being a natural right, is a statutory right as provided under Section 138 of

the Indian Evidence Act, 1872 and as held by Hon'ble Supreme Court in the case of **Jayendra Vishnu Thakur vs. State of Maharashtra**, reported in **(2009) 7 SCC 104**, this Court is inclined to grant an opportunity to the petitioners to cross-examine the witnesses of the respondents herein.

13. Accordingly, the impugned order dated 05.10.2024 and consequently, the order dated 03.09.2024, stand set aside and quashed. The learned Tribunal is directed to allow the petitioners to afford an opportunity to cross-examine the witnesses of the respondents herein. However, the petitioners have to pay a sum of Rs. 10,000/-, being the cost before the learned Tribunal before cross-examination of the witnesses.

14. In terms of above, this revision petition stands disposed of.

JUDGE

Comparing Assistant