

GAHC010267462024



2024:GAU-AS:12704

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

Case No. : WP(C)/6726/2024

HANA RAHMAN
W/O- LATE FAIZUR RAHMAN, R/O- VILL. NARTAMGAON, P.O.- ITACHALI,
P.S. NAGAON SADAR, DIST- NAGAON (ASSAM), PIN- 782003

VERSUS

THE STATE OF ASSAM AND 5 ORS.
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE
GOVERNMENT OF ASSAM, DEPARTMENT OF HOME AND POLITICAL,
DISPUR, GUWAHATI, KAMRUP (M), ASSAM, PIN- 781006

2:THE SUPERINTENDENT OF POLICE
NAGAON
P.O. AND P.S. NAGAON
DIST. NAGAON
ASSAM
PIN- 782001

3:THE OFFICER-IN-CHARGE
NAGAON SADAR POLICE STATION
P.O. AND P.S. NAGAON
DIST. NAGAON
ASSAM
PIN- 782001

4:THE INSPECTOR-IN-CHARGE
ITACHALI POLICE OUT POST
P.O. AND P.S. NAGAON
DIST. NAGAON
ASSAM
PIN- 782003

5:SMTI. PARI MAJINDAR BARUA
W/O- RAM NARAYAN BARUA

R/O- VILL. SHANTIPUR HILLSIDE MOUZA- JALUKBARI
P.O. AND P.S. BHARALUMUKH
GUWAHATI
DIST.- KAMRUP (M)
ASSAM
PIN- 781009

6:SRI RAM NARAYAN BARUA
S/O- JADAV CHANDRA DEKA
R/O- VILL. SHANTIPUR HILLSIDE MOUZA- JALUKBARI
P.O. AND P.S. BHARALUMUKH
GUWAHATI
DIST.- KAMRUP (M)
ASSAM
PIN- 78100

Advocate for the Petitioner : S AHMED, MR. M I HUDA,MS A HUSSAIN

Advocate for the Respondent : GA, ASSAM,

BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA
HONOURABLE MRS. JUSTICE SUSMITA PHUKAN KHAUND

ORDER

Date : 13.12.2024

(K.R. Surana, J)

Heard Mr. S. Ahmed, learned counsel for the petitioner. Also heard Mr. D. Nath, learned Senior Government Advocate for the respondent nos. 1 to 4

2. By this writ petition filed by invoking Articles 226 and 227 of the Constitution of India, the petitioner is praying for a mandamus against the Superintendent of Police, Nagaon of the Officer-in-Charge, Nagaon Sadar Police Station and the Inspector-in-Charge of Itachali Police Out Post, respondent nos. 2,3 and 4 herein not to interfere in the tenancy dispute and to register a case filed by the petitioner and for other ancillary reliefs.

3. The case projected by the petitioner is that she is a tenant under the

respondent nos. 5 and 6 on the strength of a tenancy agreement, but on 08.12.2024, at about 9 P.M., the daughter-in-law of the petitioner was asked to produce the petitioner before the Itachali Police Out Post on next date. It is projected that the petitioner has some mental health issues and she was in the Nagaon Medical College and Hospital and she had to take premature discharge from the hospital to appear before the Itachali Out Post where she was unlawfully detained from 1:00 P.M. to 9:00 P.M. and mentally harassed. It is also projected that respondent nos. 5 and 6 with the help of muscle men had disconnected the electricity supply and by breaking the gate of the rented house started unauthorized construction.

4. It is projected that the respondent nos. 5 and 6 were trying to evict the petitioner with the help of respondent nos. 3 and 4 without following due process of law and without refunding the security deposit provided by the petitioner.

5. It is projected that because of illegal trespass and illegal detention of the petitioner in the Police Station from 1:00 P.M. to 9:00 P.M. on 09.12.2024, she had approached the Itachali Out Post for filing an FIR, which was not accepted. It is stated in paragraph 11 of this writ petition that the petitioner did not invoke the provisions of Section 175(3) of BNSS 2023, as the petitioner desires a speedy remedy and because there is continuous interference of the police authority and illegal trespass and that availing of such remedy would cause further delay.

6. By referring to the case of *Lalita Kumari vs The State of Uttar Pradesh (2014) 2 SCC 1*, it is submitted that this incumbent on part Police to register all the FIR and to proceed with investigation and in this regard reliance is also placed in the case of *Lallan Chaudhary and Ors. Vs the State of Bihar and Ors,*

AIR 2006 SC 3376, accordingly, this present writ petition has been filed.

7. The learned Senior Government Advocate has opposed the admission of this writ petition in the light of the decision of the Supreme Court of India in the case of *Sakiri Vasu Vs. State of Uttar Pradesh*, reported (2008) 2 SCC 409 : (2007) 0 Supreme (SC) 1563.

8. On consideration of the materials available on record, it would be appropriate to refer to paragraph Nos. 25,26 & 28 in the case of *Sakiri Vasu (supra)*, as extracted from (2007) 0 Supreme (SC) 1563.

25. We have elaborated on the above matter because we often find that when someone has a grievance that his FIR has not been registered at the police station and/or a proper investigation is not being done by the police, he rushes to the High Court to file a writ petition or a petition under Section 482 Cr. P.C. We are of the opinion that the High Court should not encourage this practice and should ordinarily refuse to interfere in such matters, and relegate the petitioner to his alternating remedy, firstly under Section 154(3) and Section 36 Cr.P.C. before the concerned police officers, and if that is of no avail, by approaching the concerned Magistrate under Section 156(3).

26. If a person has a grievance that his FIR has not been registered by the police station his first remedy is to approach the Superintendent of Police under Section 154(3) Cr.P.C. or other police officer referred to in Section 36 Cr.P.C. If despite approaching the Superintendent of Police or the officer referred to in Section 36 his grievance still persists, then he can approach a Magistrate under Section 156(3) Cr.P.C. instead of rushing to the High Court by way of a writ petition or a petition under Section 482 Cr.P.C. Moreover he has a further remedy of filing a criminal complaint under Section 200 Cr.P.C. Why then should writ petitions or Section 482 petitions be entertained when there are so many alternative remedies?

28. It is true that alternative remedy is not an absolute bar to a writ petition, but it is equally well settled that if there is an alternative remedy the High Court should not ordinarily interfere.

9. In view of the hereinbefore directions contained in the decision of the ***Sakiri Vasu (supra)***, this Court is disinclined to entertain this writ petition in view of the fact that alternate remedy to available to the petitioner. Accordingly, the petitioner may well advised as to the manner in which she desires of seeking appropriate remedy in connection with her grievances.

10. With the aforesaid observations this instant writ petition stands closed, at the "motion" stage, without issuance of notice on the respondents.

JUDGE

JUDGE

Comparing Assistant