

GAHC010269712023



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

Case No. : I.A.(Civil)/3519/2023

TAIJUDDIN AHMED,
S/O LATE HUSSAIN ALI, R/O NO. 2 KANDDHBARI, P.O.-MERUATTARY, P.S.-
MUKALMUA, DIST-NALBARI, ASSAM

VERSUS

SAKLA M E MADRASSA,
REPRESENTED BY ITS HEAD MASTER NAMELY MAKBUL HUSSAIN (50
YEARS), S/O MAJIBAR RAHMAN, R/O NO. 2 KANDHBARI, P.O.-
MERUATTARY, P.S.-MUKALMUA, DIST-NALBARI, ASSAM

Advocate for the Petitioner : MR. A R BHUYAN

Advocate for the Respondent : MR. A ALI

Linked Case : WP(C)/6117/2023

SAKLA M E MADRASSA
REPRESENTED BY ITS HEAD MASTER NAMELY MAKBUL HUSSAIN (50
YEARS)
S/O MAJIBAR RAHMAN
R/O NO. 2 KANDHBARI
P.O.-MERUATTARY
P.S.-MUKALMUA
DIST-NALBARI

ASSAM

VERSUS

THE STATE OF ASSAM AND 11 ORS.
REPRESENTED BY ITS COMMISSIONER AND SECRETARY (WOMEN AND
CHILD DEVELOPMENT) DEPARTMENT
GOVERNMENT OF ASSAM
DISPUR
GUWAHATI-06

2:THE DIRECTOR OF WOMEN AND CHILD DEVELOPMENT
ASSAM
UZANBAZAR
GUWAHATI-01

3:THE DIRECTOR OF SOCIAL WELFARE DEPARTMENT
GOVERNMENT OF ASSAM
GUWAHATI-06

4:THE DEPUTY COMMISSIONER
NALBARI
ASSAM

5:THE DISTRICT SOCIAL WELFARE OFFICER
NALBARI
ASSAM

6:THE DISTRICT SOCIAL COMMISSIONER CUM CHAIRMAN
DISTRICT LEVEL MONITORING COMMITTEE
NALBARI
ASSAM

7:THE CHILD DEVELOPMENT PROJECT OFFICER (CDPO)
INTEGRATED CHILD DEVELOPMENT PROJECTS
P.O. AND P.S.-MUKALMUA
DIST-NALBARI
ASSAM
PIN-781126

8:THE BLOCK DEVELOPMENT OFFICER
BARKHETRI DEVELOPMENT BLOCK
MUKALMUA
P.O. AND P.S.-MUKALMUA
PIN-781126

9:THE CIRCLE OFFICER
MUKALMUA REVENUE CIRCLE
P.O. AND P.S.-MUKALMUA
PIN-781126

10:TAJUDDIN AHMED
S/O LATE HUSSAIN ALI
R/O NO. 2 KANDDHARI
P.O.-MERUATTARY

P.S.-MUKALMUA
DIST-NALBARI
ASSAM
11:HUSSAIN ALI
S/O LATE SANU ALI
R/O NO. 2 KANDDHBARI
P.O.-MERUATTARY
P.S.-MUKALMUA
DIST-NALBARI
ASSAM
12:ABUL HUSSAIN
S/O LATE MAJAM MUNSHI
R/O NO. 2 KANDDHBARI
P.O.-MERUATTARY
P.S.-MUKALMUA
DIST-NALBARI
ASSAM

Advocate for : MR. D P CHALIHA
Advocate for : GA
ASSAM appearing for THE STATE OF ASSAM AND 11 ORS.

**BEFORE
HONOURABLE MR. JUSTICE SANJAY KUMAR MEDHI**

ORDER

19.04.2024

Considering the nature of the grievances and as agreed to by the learned counsel for the parties, this writ petition along with the connected I.A. which has been filed for vacation of the interim order dated 19.10.2023 are taken up for disposal at the admission stage.

2. The facts projected is that the petitioner-School has been allotted a plot of land measuring 3 Katha 15 Lechas from which the same has been functioning. An Anganwadi Centre is located adjacent to the school campus on Government Land and as per prescription, the said Centre is being converted into a Model Anganwadi Centre.

3. The allegations made in the petition is that the aforesaid Model Anganwadi Centre of which the respondent nos. 10, 11 & 12 are the Office-Bearers is being constructed by encroaching upon the land of the petitioner - School. Since no action was taken on the representation submitted by the petitioner, the instant writ petition has been filed in which an interim order was passed on 19.10.2023.

4. I have heard Shri D.P. Chaliha, learned Senior Counsel assisted by Shri A. Ali, the learned counsel for the petitioner. I have also heard Shri H. Sharma, learned Addl. Senior Government Advocate for the official respondents and Shri T. Ahmed, learned counsel for the respondent nos. 10, 11 & 12.

5. Shri Chaliha, the learned Senior Counsel for the petitioner has submitted that the petitioner does not have any objection with the existence of an Anganwadi Centre adjacent to the school campus which in fact is requirement. However, the grievance is with regard to the encroachment upon the land of the petitioner. In this connection, reference has been made to the Land Holding Certificate dated 08.08.2023 issued by the Circle Officer, Barkhetri Revenue Circle as per which, 3 Katha 15 lechas of land covered by Dag No. 1415 under Kharaj Myadi No. 618 is in the name of the President / Secretary of the petitioner-School. The learned Senior Counsel has also referred to the pleadings made in paragraph 15 of the writ petition wherein it has been stated that the construction of the 30 Model AWC was done on the land of the petitioner-School.

6. *Per contra*, Shri Ahmed, the learned counsel for the respondent nos. 10, 11 & 12, by referring to the pleadings in the connected I.A.(Civil)/3519/2023 has submitted that constructions of the Model AWC is being done on the land allotted to the Centre and not on the land of the School. He further submits that

the allegations are incorrect and the interim order accordingly is required to be vacated.

7. Shri H. Sharma, learned Addl. Senior Government Advocate, who appears for the official respondents was directed to seek instructions on the earlier occasions.

8. Shri Sharma, by referring to the instructions including a communication dated 04.03.2024 has submitted that out of 2 Katha 10 lechas of land covered by Government Dag No. 101, 1 Katha appears to be in the possession of the Anganwadi Centre and 1 Katha 10 lechas under the possession of the petitioner –School.

9. He has however further submitted that the aforesaid instructions may be required to be re-verified and upon such re-verification, the matter may be resolved by demarcating the land of the petitioner - School so that any issue of encroachment can be ruled out.

10. Shri Chaliha, the learned Senior Counsel, in his rejoinder has however disputed the factual aspect as contained in the communication dated 04.03.2024 which was transmitted to the learned State Counsel.

11. The dispute involved in this writ petition is a factual one in which no conclusive findings can be given by exercise of jurisdiction under Article 226 of the Constitution of India. However, it appears that the allegations of the petitioner and the version of the private respondents are conflicting and are in connection with the respective plots of land allotted to them. It is not in dispute that an area of 3 Katha 15 lechas covered by Dag No.1415 has been allotted to the petitioner as would reflect from the Land Holding Certificate dated 08.08.2023. It is also not in dispute that the Angawadi Centre of which the

respondent nos. 10, 11 & 12 are the Office Bearers is also situated on an adjacent Government land.

12. The dispute regarding the area allotted to the respective parties to the *lis* can be resolved if a demarcation exercise is carried out by the competent authority. This Court has also taken into consideration that the Anganwadi Centre in question has been transformed to No. 30 Model Anganwadi Centre. The importance of both the institutions cannot be undermined.

13. Accordingly, the writ petition is disposed of by directing the office of the District Commissioner, Nalbari to cause a demarcation exercise by the authorised officer and to demarcate the boundaries of the petitioner - School as well as the Anganwadi Centre in question. Such exercise may be carried out within a period of 60 days from the certified copy of the order.

14. The petitioner as well as the private respondents are directed to render all necessary cooperation including submissions of all connected documents and testimonials before the competent authority to facilitate completion of the demarcation exercises as directed above.

15. Writ petition accordingly stands disposed of.

16. It is clarified that the interim order would be in operation till completion of the demarcation exercise.

17. Both the writ petition and I.A. accordingly stands disposed of.

JUDGE

Comparing Assistant