

GAHC010268842023



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

Case No.: WP(C)/729/2023

ARYA VIDYAPEETH COLLEGE
A.K.AZAD ROAD
GOPINATH NAGAR
GHY-16
REP. BY THE PRINCIPAL

VERSUS

THE STATE OF ASSAM AND 2 ORS
REP. BY THE SECY. TO THE GOVT. OF ASSAM
REVENUE DEPTT.
DISPUR
GHY-06

2:THE DY. COMMISSIONER
KAMRUP (M)
GUWAHATI
PIN- 781036
3:THE CIRCLE OFFICER
GUWAHATI REVENUE CIRCLE
GUWAHATI- 781036

For the petitioner (s) : Mr. K.K. Dey, Advocate

Mr. P. Sarma, Advocate

For the respondent (s) : Mr. P. Sarma, Advocate
Mr. S. Baruah, Advocate
Mr. R. C. Saikia, Advocate
Ms. N. Bordoloi, SC, Revenue

BEFORE
HON'BLE MR. JUSTICE DEVASHIS BARUAH

08.01.2024

The instant writ petition has been filed challenging the Notice bearing No.GC.49/2015/2929 dated 10.11.2022 issued by the respondent No.3, i.e. the Circle Officer, Guwahati Revenue Circle, Kamrup (M), Guwahati.

2. The facts as could be discerned from the writ petition is that the petitioner herein is a Government Aided College established in the year 1958. It has been mentioned that the petitioner's College building is standing over a plot of land measuring 4.2 bighas covered by Dag No.128 of Mouza-Sahar Ulubari, Part-III, situated on the western side of A. K. Azad Road, Gopinath Nagar, Guwahati-781016. It is claimed that the said plot of land covered by Dag No.128 was allotted by the Government of Assam for establishment of the petitioner College. It is however relevant to mention that no such documents have been enclosed to the writ petition evidencing the allotment of the land in Dag No.128.

3. It is the further case of the petitioner that Dag No.182 which has an area of 10 bigha 2 katha 10.51 lechas was allotted to the petitioner College

by the Government of Assam and upon allotment, settlement was granted by issuance of Periodic Patta No.5 to the petitioner College. It is the further case of the petitioner that the petitioner College had thereupon established its hostels on the said plot of land covered by Dag No.182 of Patta No.5. It is also the specific case of the petitioner that the petitioner is not in occupation of the Government Dag No.381 of Sahar Ulubari, Part-III under Ulubari Mouza. However, the petitioner was issued the impugned notice by the Circle Officer, Guwahati Revenue Circle on 10.11.2022 alleging that the petitioner College had encroached the Government Dag No.381 of Sahar Ulubari, Part-III under Ulubari Mouza. It is under such circumstances that the petitioner has approached this Court challenging the said notice.

4. This Court has also taken note of that a Society in the name and style of Assam Society of Centre of Excellence which is a registered NGO along with 11 others had filed a Public Interest Litigation (PIL) which was registered and numbered as PIL No.70/2018. From a perusal of the order dated 26.08.2019, passed in PIL No.70/2018, it reveals that the said Society had projected that the plot of land measuring more or less 5 bighas covered by Dag Nos.370, 381 and 382 situated at Gopinath Nagar, Sahar Ulubari, Part-III under Ulubari Mouza in the district of Kamrup (M), Assam was reserved by the Government of Assam for a children park vide the communication dated 03.06.1999. Though such a decision was taken by the Government for the purpose of creating a children park but no steps were taken which had led to encroachment upon the said plot of land and it is under such circumstances, the PIL was filed. In the said proceedings, the respondent No.2 therein had filed an affidavit-in-opposition wherein it was mentioned that there were certain encroachment including the encroachment being made by Arya Vidhyapith Higher Secondary and Bahumukhi Vidyalaya

by erecting pucca pillars with iron pipe nearby by the road.

5. It is seen that the Division Bench of this Court in its order dated 26.08.2019 in PIL No.70/2018 had duly taken note of the stand taken by the State Government that the encroachment would be removed and observed that keeping the land unutilized may further create the problem of encroachment for which there was direction for establishment of a children park within 6 months from that date of the said order.

6. Therefore, from the above order passed by the Division Bench dated 26.08.2019, it is clear that amongst the various Dags, Dag No.381 is one of such Dag wherein the Government had reserved the said land for the purpose of construction of children park and there was direction for construction of children park. Therefore, any eviction drive so carried out in respect to Dag No.381 cannot be interfered with, more so in view of the order dated 26.08.2019 passed by the Division Bench in PIL No.70/2018.

7. Be that as it may, this Court has also taken due note of the submission of Mr. K. K. Dey, the learned counsel for the petitioner that the petitioner College is not of occupation in Dag No.381. However, the respondent authorities have illegally issued the said impugned notice. It is the opinion of this Court that the said dispute can be settled by issuing appropriate directions to the respondent authorities as herein under.

8. Accordingly, this Court, therefore, directs the respondent authorities and more particularly, the Circle Officer, Guwahati Revenue Circle to carry out the demarcation in respect to the land contained in Dag No.381 of Sahar Ulubari, Part-III under Ulubari Mouza and after carrying out such demarcation, if it is found that anybody is in occupation of the said land including the petitioner, appropriate steps be taken for eviction from the said

land in accordance with law. This Court further observes and directs that the respondent authorities shall take due care that in the name of taking appropriate steps for eviction from the land contained in Government Dag No.381 of Sahar Ulubari, Part-III under Ulubari Mouza, the respondent authorities shall not interfere with the possession of the petitioner in respect to the Dag No.182 of Patta No.5. The said exercise be carried out within a period of 6 (six) weeks from today

9. With the above observations and directions, the instant writ petition stands disposed of. Interim order, if any, stands vacated.

10. The Registry is directed to serve a copy of the instant order upon Mr. S. Baruah, the learned Government Advocate for due compliance.

JUDGE

Comparing Assistant