

GAHC010277352023



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

Case No. : WP(C)/7595/2023

NAZRUL HUSSAIN CHOUDHURY AND 3 ORS
S/O- LATE GAUSUL HUSSAIN CHOUDHURY, RESIDENT OF S.S. ROAD,
HOUSE NO. 455 AFSAR LANE, NEAR HOTEL CITY PARK, LAKHTOKIA, P.S.
PANBAZAR, DIST.- KAMRUP (M) (ASSAM), PIN- 781001

2: IRA CHOUDHURY
W/O- LATE IQBAL HUSSAIN CHOUDHURY
RESIDENT OF S.S. ROAD
HOUSE NO. 455 AFSAR LANE
NEAR HOTEL CITY PARK
LAKHTOKIA
P.S. PANBAZAR
DIST.- KAMRUP (M) (ASSAM)
PIN- 781001

3: AFZAL HUSSAIN CHOUDHURY
S/O- LATE IQBAL HUSSAIN CHOUDHURY
RESIDENT OF S.S. ROAD
HOUSE NO. 455 AFSAR LANE
NEAR HOTEL CITY PARK
LAKHTOKIA
P.S. PANBAZAR
DIST.- KAMRUP (M) (ASSAM)
PIN- 781001

4: IBAD HUSSAIN CHOUDHURY
S/O- LATE IQBAL HUSSAIN CHOUDHURY
RESIDENT OF S.S. ROAD
HOUSE NO. 455 AFSAR LANE
NEAR HOTEL CITY PARK
LAKHTOKIA
P.S. PANBAZAR
DIST.- KAMRUP (M) (ASSAM)
PIN- 78100

VERSUS

THE STATE OF ASSAM AND 3 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE GOVT.
OF ASSAM, REVENUE DEPARTMENT, DISPUR, GUWAHATI-6

2:THE DISTRICT COMMISSIONER
KAMRUP (M)
P.S. DISPUR
DISTRICT- KAMRUP (M)
ASSAM

3:THE CIRCLE OFFICER
GUWAHATI REVENUE CIRCLE
ULUBARI
GUWAHATI- 781007
DISTRICT- KAMRUP (M)
ASSAM

4:SRI CHAND RATAN SWAMI
S/O- LATE MOHAN LAL SWAMI
RESIDENT OF S.R.C.B. ROAD
M/S- INDIAN UMBRELLA
FANCY NAZAR
GUWAHATI-01
P.S. PANBAZAR
DIST.- KAMRUP (M) (ASSAM)
PIN- 78100

Advocate for the Petitioner : MD B ISLAM

Advocate for the Respondent : SC, REVENUE

BEFORE
HONOURABLE MR. JUSTICE MANISH CHOUDHURY

ORDER

Date : 03-01-2024

Heard Mr. B. Islam, learned counsel for the petitioners; Ms. G. Hazarika, learned Standing Counsel, Revenue Department for the

respondent no. 3; and Mr. N. Goswami, learned Junior Government Advocate, Assam for the respondent nos. 2 & 3.

2. The petitioners, 4 [four] in nos., have instituted the present writ petition seeking to invoke the extra-ordinary and discretionary jurisdiction of this Court under Article 226 of the Constitution of India by projecting the following facts :-

2.1. The petitioners have claimed that they and their mother, Late Jahanara Choudhury, are pattadars of parcels of land measuring 18.68 Lessas, covered by [i] Dag no. 478 & Patta no. 401; and [ii] Dag no. 684 & Patta no. 443; situate in Revenue Village – Town Guwahati Part 3, Guwahati Revenue Circle, District – Kamrup [M]. The petitioners have stated that one Sri Chand Ratan Swami who has been impleaded as party-respondent no. 4 in the writ petition, had purchased a plot of land measuring 1 Katha 1 Lessa, adjacent to the aforesaid parcel of land, belonging to the petitioners. The petitioners have themselves stated that Sri Chand Ratan Swami as a lease holder and whose name is shown as 44th pattadar in the concerned Jamabandi, has been occupying 9 Lessas of extra-land besides the land measuring 1 Katha 1 Lessa, purchased by him.

2.2. The petitioners have further stated that seeking recovery of the said 9 Lessas of land which falls under [i] Dag no. 478 & Patta no. 401 and [ii] Dag no. 684 & Patta no. 443, belonging to the petitioners, two representations were submitted before the Circle Officer, Guwahati Revenue Circle and the Chief Secretary to the Government of Assam on

15.06.2023 and 19.01.2023 respectively. With the contention that the said representations have not been given due consideration of till date, the petitioners have preferred the instant writ petition.

3. From the above facts projected the writ petition, it has clearly emerged that the petitioners are seeking recovery of 9 Lessas of land, which is admittedly in occupation of a private individual. It is not the case of the petitioners that there is any kind of arbitrary and high-handed action on the part of any of the State respondents. The allegation is unauthorized encroachment of the petitioners' private patta lands by a private individual. The extra-ordinary and discretionary jurisdiction of this Court under Article 226 of the Constitution of India is a public law remedy. The case projected by the petitioners does not appear to fall within the realm of public law as the case of the petitioners is confined to restoration of possession of the petitioners' patta land. There is a need to examine and determine factual questions relating to title, extent and actual possession and such questions cannot be gone into in writ proceedings by embarking on a fact-finding exercise. As the dispute appears to be of civil nature, the instant writ petition is not entertained, reserving the liberty to the petitioners to avail appropriate remedy permissible under the law.

JUDGE