GAHC010145042020

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

WP(C)/2178/2020

JYOTSNA NATH
W/O- LT. GOURI HARI NATH
PRESENTLY R/O- H.NO. 7
BORA SERVICE
P.O. ULUBARI
ASEB ROAD
DIST.- KAMRUP (M)
GHY
ASSAM

VERSUS

THE STATE OF ASSAM AND 3 ORS.
REP. BY THE COMM. AND SECY. TO THE GOVT. OF ASSAM
DEPTT. OF REVENUE
DISPUR
GHY-6

2:THE DY. COMMISSIONER
KOKRAJHAR
DIST.- KOKRAJHAR
BTR
ASSAM
3:THE CIRCLE OFFICER
GOSSAIGAON REVENUE CIRCLE
GOSAIGAON
DIST.- KOKRAJHAR
BTR
ASSAM
4:SONTOSH DEBNATH
S/O- LT. SUBAL DEBNATH
P.O. DALGAON

P.S. GOSAIGAON
DIST.- KOKRAJHAR
BTR
ASSAM
PIN- 7

Advocate for : MR R DHAR
Advocate for : GA
ASSAM appearing for THE STATE OF ASSAM AND 3 ORS.

I.A.(Civil)/1752/2020 In
WP(C) No.2178/2020

SANTOSH DEBNATH
S/O- LT. SUBAL DEBNATH, P.O. DALGAON, P.S. GOSAIGAON,
DIST.- KOKRAJHAR (BTAD), ASSAM

VERSUS

JYOTSNA NATH 3 ORS.
W/O- LT. GOUR HARI NATH, R/O. H/NO. 7, BORA SERVICE,
ASEB ROAD, P.O. ULUBARI, DIST.- KAMRUP (M), ASSAM

2:THE STATE OF ASSAM
REP. BY THE COMM. AND SECY. DEPTT. OF REVENUE
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GOSAIGAON
DIST.- KOKRAJHAR
BTR
ASSAM.

Advocate for the Petitioner : MR. B J MUKHERJEE

Advocate for the Respondent : GA, ASSAM

BEFORE
HONOURABLE MR. JUSTICE SANJAY KUMAR MEDHI

ORDER

Date : 18-12-2020

Though IA(C) No.1752/2020 has been filed for modification of the interim order dated 19.05.2020 passed in the connected WP(C) No.2178/2020, considering the subject matter and the submissions made by the learned counsel for the parties, the writ petition itself is taken up for disposal.

2. I have heard Shri R Dhar, learned counsel for the writ petitioner as well as Ms. N Bordoloi, learned counsel for the Revenue Department for respondent no. 1. Also heard Ms. D Das Barman, learned State Counsel, Assam for respondent nos. 2 and 3. Shri BJ Mukherjee, learned counsel represents the private respondent no. 4.

3. The facts, as projected in the writ petition are that the petitioner had inherited a plot of land on the strength of being the legal heirs of one Gouri Hari Nath. The said plot of land was developed by them incurring huge expenditure as the land was low lying one. In April 2020, the petitioner was informed that the respondent no. 4 had started construction over the said plot of land against which the petitioner had submitted representation before the Deputy Commissioner, Kokrajhar. However, taking advantage of the situation created due to the ongoing pandemic, the respondent no. 4 had encroached upon the land and had also erected concrete pillar thereon and it is under those circumstances and inaction on the part of the respondent authorities to take action that the petitioner had approached this Court under Article 226 of the Constitution of India.

4. This Court vide order dated 19.05.2020, while issuing notice, had also passed an interim order preventing any further construction by the respondent no. 4. Liberty was also granted to the respondent no. 4 to come up for modification of the interim order, if so advised.

5. Shri Dhar, learned counsel for the petitioner submits that the petitioner being the owner of the land, the respondent authorities were duty bound to take action on the representation and grave prejudice has been caused to him by the encroachment and the ongoing construction. He further submits that this Court being *prima facie* satisfied, had passed the order of stay and interest of justice would demand continuation of the stay order.

6. Shri Mukherjee, learned counsel for the respondent no. 4, however, projected a different version. The learned counsel contends that the respondent no. 4 along with his father were the actual possessors being the ryots over the plot of land and an agreement for sale of the said plot was entered into by the respondent no. 4 with the sons of the petitioner. As a condition thereof, out of the total amount of Rs.3,70,000/-, an amount of Rs.2,70,000/- has already been paid with a balance of Rs.1,00,000/- only. It is the further case of the respondent no. 4 that Sale Permission was granted on 09.01.2008 which, however, was deferred by the sons of the petitioner without any reason. Suppressing all these material facts, the present writ petition has been filed and it is contended by Shri Mukherjee, learned counsel that this Court in exercise of its writ jurisdiction being a Court of equity, no relief is entitled to by the petitioner.

7. Shri Dhar, learned counsel in his reply submits that the case projected by the respondent no.4 is not correct and the land records would show that the petitioner and his predecessors were all along the recorded pattadars.

8. Ms. N Bordoloi, learned counsel representing the Revenue Department submits that since the disputed questions of fact are involved, the present may not be a fit case to be adjudicated by this Court in exercise of its writ jurisdiction.

9. After considering the rival submissions, this Court is of the view that undoubtedly, the *lis* before this Court involves disputed questions of fact. The petitioner claims to be the recorded pattadar whereas the respondent no. 4 claims to be the possessor of the land for a long period of time as ryot. The respondent no. 4 has also drawn the attention of this Court to certain transactions, including payment for sale of the land in favour of him by the sons of the petitioner. This fact, on the other hand is disputed by Shri Dhar, learned counsel for the petitioner.

10. Though the limitations of this Court in exercise of its writ jurisdiction are self-imposed and the jurisdiction can be stretched to any extent to ensure justice, certain self-imposed restrictions are also required to be followed by a writ court as settled by the Hon'ble Supreme Court in a catena of decision. One of such restriction is cases involving factual dispute which would require adducing of evidence by the respective parties to prove their case and the writ court is only guided by the pleadings and the documents annexed thereto. However, there is no scope for examination and cross-examination of witnesses which would be necessary for establishing questions of fact projected by the parties which are disputed by the adverse party. In the instant case, as has been indicated above, it involves disputed questions of fact and therefore, this Court is not inclined to exercise its extra ordinary jurisdiction to venture to adjudicate such a dispute.

11. At this stage, Shri Dhar, learned counsel submits that he may be given liberty to approach the appropriate Civil Court, if so advised.

12. In view of the above, while dismissing the writ petition on the ground of involvement of disputed questions of fact, liberty is granted to either of the parties to approach the appropriate Civil Court for redressal of their grievances.

13. In case such approach is made, in view of interim protection given by this Court which would stand vacated on dismissal of the writ petition, this Court observes that the liberty granted to file a civil suit may be utilized within a period of 30 days from today with an

application for injunction. In the event such injunction application is filed, the same be considered within 15 days from the date of filing of such application and till such consideration, the protection given by this Court would continue.

14. It is made clear that while deciding the suit as well as the injunction application, the learned Court would not be influenced by any observation made by this Court in this order. Since both the parties are before this Court, if the petitioner wishes to approach the Civil Court, prior notice needs to be given to the respondent no. 4 so that the respondent no. 4 is in a position to appear and defend his case at the time of consideration of the injunction application.

15. In view of the above, the writ petition as well as the interlocutory application is disposed of.

JUDGE

Comparing Assistant