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

Case No. : Crl.Pet./1081/2026

MD ISMAIL HUSSAIN
S/O-LATE JAMAL UDDIN
VILLAGE-LUTIRTARI.P.O.-MAHTOLI, PS-BOKO, DIST-KAMRUP, ASSAM

VERSUS

JINNAH SHAHJAHAN ALI AND 41 ORS.
S/O-LATE MAKTEL MANDAL

2:ABUL HUSSAIN
S/O-LATE MAKTEL MANDAL

3:NURJAMAL HAQUE
S/O-LATE MAKTEL MANDAL

4:JAMAL UDDIN
S/O-LATE MAKTEL MANDAL

5:HEKMOT ALI
S/O-LATE MAKTEL MANDAL

6:AKRAM HUSSAIN
S/O-LATE ABDUR REZZAK

7:SOLEMAN ALI
S/O-LATE ABDUR REZZAK

8:ABDUL HAI
S/O-LATE ABDUR REZZAK

9:KARIM ALI
S/O-LATE MAFEZ UDDIN

10:RABIUL HUSSAIN
S/O-LATE MAFEZ UDDIN

11:RAFIQUL ISLAM (PANGKHI)
S/O-LATE MAFEZ UDDIN

12:BAHADUR ALI
S/O-LATE KANCHA SHEIKH

13:BILLAL HUSSAIN
S/O-BAHADUR ALI

14:HAMZA ALI
S/O-BAHADUR ALI

15:SURUT JAMAL HOQUE
S/O-BAHADUR ALI

16:AMZAD ALI
S/O-LATE MAHAR ALI

17:SAHAR ALI
S/O-LATE MAHAR ALI

18:AZAHAR ALI
S/O-LATE MAHAR ALI

19:GULAP HUSSAIN
S/O-ABUL HUSSAIN

20:RABIAL HUSSAIN
S/O-ABUL HUSSAIN

21:KUDDUS ALI
S/O-LATE-ABDUR RAHMAN

22:HAMIDUL ALI
S/O-KUDDUS ALL

23:MOIDUL ISLAM
S/O-KUDDUS ALL

24:RAFIQUL ISLAM
S/O-KUDDUS ALL

25:MUNNAF ALI
S/O-LT HUKUM ALI

26:AJMAL ALI
S/O-LT HUKUM ALI

27:MUNNAF ALI
S/O-JURAN ALI

28:KERAMOT ALI
S/O-LT HUKUM ALI

29:LIAKOT ALI
S/O-LT HUKUM ALI

30:AZIT ALI
S/O-LT AJGAR ALI

31:MUKTAR ALI
S/O-AJIT ALI

32:MAGRAB ALI
S/O-AJIT ALI

33:FAJAL HOQUE
S/O- LT KAMAL UDDIN

34:TAJIBAR RAHMAN (TAIJU)
S/O-KANCHU MIA

35:KAYUM ALI
S/O-TAJIBAR RAHMAN TAIJU

36:MAFIZ UDDIN
S/O-BUDDU GOWAL

37:RAHAM ALI
ARE S/O-BUDDU GOWAL

38:NURU MIA
S/O-LT MAZIBAR RAHMAN

39:HABEJ UDDIN
ARE S/O-LT MAZIBAR RAHMAN

40:SOFIQUL ISLAM
S/O-NUR JAMAL

41:SADDAM HUSSAIN
S/O-NUR JAMAL HOQUE

42:SADDAM HUSSAIN
S/O-ISMAIL HUSSAIN (BEPARI) ALL ARE VILLAGE-LUTIRTARI
PS-BOKO DIST KAMRUP
ASSA

Advocate for the Petitioner : MR. J AHMED, MR. S I BORA

Advocate for the Respondent : MR. A M ALAMAN (R-1 to R-42), MR. K M HASSAN (R-1 to R-42),MR. A S TAPADER (R-1 to R-42)

BEFORE
HONOURABLE MR. JUSTICE ROBIN PHUKAN
ORDER

17.11.2026

Heard Mr. J. Ahmed, learned counsel for the petitioner and Mr. A.S. Tapadar, learned counsel for the respondents.

2. This petition, under Section 528 of the BNSS, is preferred by the petitioner challenging the order dated 06.07.2026, passed by the learned Additional Sessions Judge, Kamrup, Amingaon (revisional court hereinafter), in Criminal Revision Case No. 17/2025.

3. It is to be noted here that vide impugned order, dated 06.07.2026, the learned revisional court had upheld the order dated 21.08.2025, passed by the Executive Magistrate, Kamrup, Amingaon.

4. Mr. Ahmed, learned counsel for the petitioner, submits that on the basis of one complaint, lodged by the present petitioner, the disputed land, measuring 804 bighas, was attached by the Executive Magistrate, Kamrup, Amingaon, in case No. 9^{m}/2025, registered under Sections 164/165 of the BNS. Mr. Ahmed further submits that despite existence of the attachment order, the opposite parties entered into the suit property and thereafter, the Executive Magistrate,

Kamrup, Amingaon, had directed to hand over the land to the opposite parties and vacated the attachment order, vide order dated 21.08.2025.

4.1. Mr. Ahmed further submits that though the petitioner herein had filed a revision petition, against the order dated 21.08.2025, passed by the learned Executive Magistrate, Kamrup, Amingaon, but the same was dismissed by the learned revisional court, vide judgment and order, dated 06.07.2026.

4.2. Mr. Ahmed further submits that the impugned judgment and order dated 06.07.2026, passed by the learned revisional court, is illegal and improper as the learned revisional court has failed to take into account that the order dated 21.08.2025, passed by the learned Executive Magistrate is perverse for being passed without affording any opportunity of being heard to the petitioner herein and without allowing him to adduce evidence, as mandated by Section 164(4) of the BNSS and as such, the judgment and order dated 06.07.2026, passed by the learned revisional court and also the order dated 21.08.2025, passed by the learned Executive Magistrate, Kamrup, Amingaon, are illegal and improper and the same require interference of this Court.

5. Per contra, Mr. Tapadar, learned counsel for the respondents, has supported the impugned judgment and order, dated 06.07.2026, passed by the learned revisional court and also the order dated 21.05.2025, passed by the learned Executive Magistrate, Kamrup, Amingaon.

5.1. Mr. Tapadar has pointed it out that the present petitioner is the petitioner in the Misc. Case No. 9^{M}/2025 and as such, the question of not hearing the petitioner does not arise. He further submits that the learned Executive Magistrate, Kamrup, Amingaon, had passed the impugned order, dated 21.08.2025, on the basis of one report of the Lat-Mandal, in accordance with

the provision of Section 164(4) of the BNSS.

5.2. Mr. Tapadar also submits that the learned Executive Magistrate, Kamrup, Amingaon, under Section 164(4) of the BNSS, is not supposed to decide who has the right to possess the land, it has to see only under whose possession the land was, at the relevant point of time and as per the report of the Lat-Mandal, the respondents herein are in possession of the land and therefore, the learned Executive Magistrate, Kamrup, Amingaon, had vacated the attachment order and handed over the possession of the land to the respondents herein and as such, the same requires no interference of this Court.

6. Having heard the submissions of learned counsel for both the parties, this Court has carefully gone through the petition as well as the documents placed on record and also perused the scanned copy of the record received from the learned revisional court.

7. The basic facts, herein this case, are not in dispute. A plot of land measuring 1407 bighas, had been allotted in favour the present petitioner, namely, Ismail Hussain and 409 persons for homestead and cultivation, in view of the order of the Deputy Commissioner (Annexure No. 1 of the petition) and the said proposal was forwarded to the Government by the Deputy Commissioner, vide Annexure No. 2. And while the petitioner and the allottees were cultivating over the aforesaid plot of land, the respondents herein, with the intention of grabbing the land, set fire in their houses and in connection with the said incident, Boko P.S. Case No. 527/2024 and 528/2024 have been registered. Thereafter, they had filed one petition before the Executive Magistrate, Kamrup, Amingaon, upon which Misc. Case No. 9^{M}/2025, under Sections 164/165 of the BNSS, had been registered.

7.1. Then, the Executive Magistrate, Kamrup, Amingaon, vide order dated 06.01.2025, by invoking the provision of Section 165(1) of BNSS, had attached 404 bighas of the said plot of land, except the dwelling houses, with immediate effect, until further order from that court as is apparent from the Annexure No 3. Thereafter, the Officer-in-Charge of Boko Police Station and the Circle Officer, Chamaria Revenue Circle, were asked to execute the order and then, the Officer-in-Charge, Boko Police Station, vide his letter dated 19.02.2025 (Annexure No. 4), had informed the learned Executive Magistrate, Kamrup, Amingaon, about the execution of the order in presence of both the parties.

7.2. Thereafter, the learned Executive Magistrate, Kamrup, Amingaon, vide letter dated 19.02.2025 (Annexure No. 5), had asked the Officer-in-Charge of Boko Police Station, to file a report after field verification and thereafter, vide Annexure No. 6, the learned Executive Magistrate, Kamrup, Amingaon, had issued reminder to the Officer-in-Charge of Boko Police Station and then, vide letter dated 10.03.2025 (Annexure No. 7), the Officer-in-Charge of Boko Police Station had informed that the attachment order, dated 21.08.2025, was executed in presence of both the parties and both the parties were asked not to enter the land and to do any work there. Further, it is reported that in connection with the said dispute, two cases, being Boko P.S. Case No. 527/2024 and 528/2024, have been registered before the attachment order being passed and that the crops have already been cutted by someone else.

7.3. Thereafter, the Circle Officer, Chamaria Revenue Circle, had submitted a report, regarding allegation of illegal encroachment, dated 11.03.2025 (Annexure No. 8), wherein it is stated that after field inquiry it has been found that 51 numbers of persons have been occupying the said land and the cultivators are cultivating nuts, coriander, masur, etc. and due to attachment of

the said land, the cultivators have been facing inconvenience. Further, it is reported that the families occupying the aforesaid plot of land are landless family, whose lands were eroded by the river Brahmaputra and they have no land.

7.4. Thereafter, the circle officer had filed another report, dated 30.07.2025 (Annexure No. 9) and in the said letter, it is stated that the first party, namely, Ismail Hussain and 409 others, are not in possession of the attached land and thereafter, on the basis of the said report, the learned Executive Magistrate, Kamrup, Amingaon, had passed the impugned order, dated 21.08.2025, withdrawing the earlier attachment order and directed the Circle Officer to depute one Lat-Mandal, to hand over the disputed land to the second party and thereafter, the petitioners herein have preferred the revision petition, being petition No. 17/2025, but the learned revisional court, vide impugned judgment and order dated, 06.07.2026, had dismissed the petition, by holding that the learned Executive Magistrate, Kamrup, Amingaon, had relied upon two reports submitted by the Circle Officer, Chamaria Revenue Circle; the first report dated 11.03.2025 and the second report dated 30.07.2025.

7.5. The first report, dated 11.03.2025, indicates that it was found by the Circle Officer, Chamaria Revenue Circle, on field verification, that 51 numbers of families had been in possession of the disputed land from earlier and that the first party, i.e. Ismail Hussain, is not in possession of the disputed land and thereafter, considering both the report, the learned Executive Magistrate, Kamrup, Amingaon, had decided to issue of possession over the disputed land, in favour of the second party, the respondents herein.

8. Under Section 165 of the BNSS, Magistrate may attach the subject of dispute only when he considered the case to be of emergency, or if he decides

that none of the parties was in possession of the subject, or if he is unable to satisfy himself as to which of the parties was in possession of the subject of the dispute and when Magistrate comes to a conclusion after perusal of the report submitted by the concerned Circle Officer that the subject of dispute is in possession of one of the contesting parties, the Magistrate need not keep the subject of dispute in attachment and as such, the learned Executive Magistrate, Kamrup, Amingaon, had rightly vacated the attachment order, dated 06.01.2025.

9. It is to be noted here that an order, under Section 164(4) of the BNSS, cannot be passed solely on the basis of a police report without hearing the parties and without allowing them to adduce evidence.

10. Section 164 of the BNSS, deals with the procedure where a dispute concerning land or water or its boundaries is likely to cause a breach of peace and the scheme of Section 164 of BNSS reads under:-

> "**Under Section 164(1) of the BNSS an Executive Magistrate, if satisfied from a police report or other information that such a dispute exists, makes a preliminary order requiring the parties to attend court on a specified date and to file a written statement of their claim regarding actual possession and under Section 164(4) of the BNSS, the Magistrate is required to:**
>
> 1. **Peruse the written statement put in by the parties;**
> 2. **Hear the parties;**
> 3. **Receive all such evidence as may be produced by them;**
> 4. **Take such further evidence, if any, as the magistrate thinks necessary; and**

5. Then, if possible, decide which party was in possession of the subject of dispute on the date of preliminary order under sub-Section (1).

The enquiry under Section 164(4) of the BNSS is confined to the question of actual possession, not the title or the right to possess.

The provision is mandatory and its language 'the Magistrate shall hear the parties and receive the evidence they produce and order declaring entitlement to possession under Section 164(6) of the BNSS can follow only after this process'. A police report can form the basis of initiating the proceeding and passing the preliminary order under Section 164(1) of the BNSS, but it cannot by itself substitute for the mandatory enquiry, hearing and evidence under Section 164(4) of the BNSS and passing a final order under Section 164(4) of the BNSS solely on the basis of the report without hearing the parties or permitting them to lead evidence would be contrary to the express statutory requirement and would be liable to be set aside."

11. It is to be noted here that in the case of **R.S. Bhutani vs. Miss Mani J. Desai**, reported in **AIR 1968 SC 144**, Hon'ble Supreme Court has clearly explained the scheme of the provision as under:-

"**1. The object is to prevent a breach of the peace by providing a speedy remedy bringing the parties before the court, ascertaining who was in actual possession and maintaining status quo until rights are determined by the competent court.**

2. Once the magistrate is satisfied under sub-Section (1) that a dispute likely to cause a breach of the peace

exists, he must pass a preliminary order and thereafter makes an enquiry under sub-Section (4) and passes the final order under sub-Section (6).”

3. The enquiry under sub-Section (4) is limited to the question of actual possession on the date of preliminary order, irrespective of title or right to possess.

12. The aforesaid proposition is reaffirmed in a later decision in the case of **M. Siddique through Legal Heirs vs. Mahant Suresh Das**, reported in **2020 1 SCC 1**.

13. From the aforementioned discussion, it becomes clear that any order under Section 164(4) of the BNSS passed solely on the basis of police report or on the basis of report of Circle Officer, without the mandatory hearing and opportunity to adduce evidence, would be contrary to the statute and the binding observation made by the Hon'ble Supreme Court in the case of **R.S. Bhutani (supra)**.

14. In the instant case, it is the consistent plea of the petitioner that he had not been afforded an opportunity of being heard before passing the impugned order, dated 21.08.2025, by the learned Executive Magistrate, Kamrup, Amingaon. And perusal of the said order also does not indicate that the petitioner had been given an opportunity of being heard and also to adduce evidence. Mr. Ahmed, learned counsel for the petitioner, has rightly pointed it out at the time of argument.

15. Though Mr. Tapadar, learned counsel for the respondents, submits that the petitioner herein was one of the petitioners in the Misc. Case, before the learned

Executive Magistrate, Kamrup, Amingaon and that it has not been mentioned in the impugned order about hearing of the parties, but the petitioner had been heard before passing the impugned order, yet the said submission of Mr. Tapadar left this Court unimpressed. Nothing is there in the impugned order to demonstrate that the learned Executive Magistrate, Kamrup, Amingaon, before passing the impugned order, dated 21.08.2025, had given an opportunity of being heard to the petitioner.

16. Indisputably also, no evidence had been allowed to be adduced by the concerned parties. Thus, it becomes apparent that the impugned order was passed by the learned Executive Magistrate, Kamrup, Amingaon, without complying with the mandatory provision of Section 164(4) of the BNSS.

17. Further, appears that the learned revisional court, while dealing with the contention of the petitioner in the impugned judgment and order dated 06.07.2026, that the Executive Magistrate, Kamrup, Amingaon, had not received any evidence before passing the impugned order, had recorded a finding that there is nothing on the record to show that the petitioner had filed any petition seeking leave to produce evidence is not consistent with the provision of law since nowhere in the provision it is provided that a petition is required to be filed for adducing evidence. Also it appears that the contention of the petitioner that he has not given any opportunity by being heard has also not been dealt with.

18. Thus, having examined the impugned order, dated 21.08.2025, passed by the learned Executive Magistrate, Kamrup, Amingaon, in Misc. Case NO. 9^{M}/2025 and also the impugned judgment and order, 06.07.2026, passed by the learned revisional court, in Criminal Revision Case No. 17/2025, in the light of

the aforementioned discussion, this Court finds that the same failed to withstand the legal scrutiny.

19. Accordingly, the impugned order, passed by the learned Executive Magistrate, Kamrup, Amingaon, dated 21.08.2025 and the impugned judgment and order, passed by the learned revisional court , dated 06.07.2026, stand set aside and quashed.

20. The matter stands remanded to the learned Executive Magistrate, Kamrup, Amingaon, to hear the matter a fresh, strictly complying with the provision of Section 164(4) of the BNSS and thereafter, to pass a fresh order. Further, it is provided that if the parties wish to adduce evidence, then such opportunity shall be afforded to them. And till passing of a fresh order, the attachment order, dated 06.01.2025, shall continue.

21. In terms of above this criminal petition stands disposed of.

JUDGE

Comparing Assistant