

GAHC010280972023



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

Case No. : WP(C)/7210/2023

SUBHAS PATWARY AND ANR
S/O LT. KRISHNALAL PATWARY R/O KACHARI BASTI GMC ROAD P.O. AND
P.S. DISPUR GANESHGURI GUWAHATI 6

2: MAHABIR PATWARY
S/O LT. MOHAN PATWARY R/O KACHARI BASTI GMC ROAD P.O. AND P.S.
DISPUR GANESHGURI GUWAHATI

VERSUS

THE STATE OF ASSAM AND 3 ORS.
REP BY THE COMMISSIONER AND SECRETARY TO THE GOVT OF ASSAM
REVENUE AND DM DEPTT SETTLEMENT BRANCH DISPUR GUWAHATI
781006

2:THE DEPUTY COMMISSIONER
KAMRU (M)
GUWAHATI ASSAM

3:THE CIRCLE OFFICER
DISPUR REVENUE CIRCLE
KAMRUP METRO ASSAM

4:DISPUR COLLEGE
REP. BY ITS PRINCIPAL GANESHGURI GUWAHATI KAMRUP METR

Advocate for the Petitioner : MR G KHANDELIA

Advocate for the Respondent : GA, ASSAM

Linked Case : WP(C)/1219/2023

SUBHAS PATWARY AND ANR.

S/O LT. KRISHNALAL PATWARY R/O KACHARI BASTI GMC ROAD P.O. AND
P.S DISPUR GANESHGURI GUWAHATI 6

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4:DISPUR COLLEGE

REP. BY ITS PRINCIPAL GANESHGURI GUWAHATI KAMRUP (M)

Advocate for : MR G KHANDELIA

Advocate for : GA

ASSAM appearing for THE STATE OF ASSAM AND 3 ORS.

BEFORE
HONOURABLE MR. JUSTICE MANISH CHOUDHURY

ORDER

Date : 09-01-2024

Heard Mr. D. Das, learned Senior Counsel assisted by Mr. G. Khandelia, learned counsel for the petitioners; Mr. J. Handique, learned Standing Counsel, Revenue & Disaster Management Department for the respondent no. 1; Mr. H. Sharma, learned Additional Senior Government Advocate, Assam for the respondent nos. 2 & 3; and Mr. K.N. Choudhury, learned Senior Counsel assisted by Mr. D. Choudhury, learned counsel for the respondent no. 4.

2. Both the writ petitions, W.P.[C] no. 1219/2023 and W.P.[C] no. 7210/2023, under Article 226 of the Constitution of India, are preferred by the same two petitioners [hereinafter referred to as 'the petitioners' side', for convenience].

2.1. The first writ petition, W.P.[C] no. 1219/2023 is preferred in connection with a Notice dated 18.08.2022 issued by the respondent no. 3 i.e. the Circle Officer, Dispur Revenue Circle, Kamrup [M]. The Notice dated 18.08.2022 was issued pursuant to an application submitted by the respondent no. 4 i.e. Dispur College [hereinafter referred to as 'the College side', for convenience] for settlement of a plot of Government land in its favour. By the Notice dated 18.08.2022 which was addressed to the petitioners' side as the possessor and wherein the College side was shown as the applicant, the petitioners' side was informed that the College side had applied for settlement of a parcel of land measuring 6.60 Ares, comprised of 1.60 Ares in Government Dag no. 141 and 5.00 Ares in Government Dag no. 146. The Notice further indicated that as per a Report of the Lot Mandal, the applicant College side did not have the possession in respect of the said parcel of land measuring 6.60 Ares and it had been reported that the petitioners' side was occupying the said parcel of land measuring 6.60 Ares by constructing an Assam Type House and a tin Chali/Tarza house. By indicating so, the respondent no. 3 mentioned that a hearing on the subject was necessitated and the petitioners' side was asked to appear before him on the scheduled date with all the supporting documents.

2.2. The second writ petition, W.P.[C] no. 7210/2023 has been preferred by the petitioners' side when the petitioners' side was served with an eviction notice

dated 29.11.2023, issued under the hand of the respondent no. 3, purportedly under Rule 18[2] of the Settlement Rules framed under the Assam Land and Revenue Regulation, 1886. By the said Notice dated 29.11.2023, it had been informed to the petitioners' side to the effect that the petitioners' side was in unauthorized occupation of the parcel of land covered by Government Dag nos. 141 & 146 of Village – 2 No. Dispur, Mouza – Beltola. By serving the Notice dated 29.11.2023, the petitioners' side was asked to vacate the said parcel of land within a period of 14 days from the date of receipt of the said Notice dated 29.11.2023.

3. The petitioners' side has projected that the petitioners' side is the owner of two plots of land which, for convenience, are hereinafter referred to as **Land A** and **Land B** respectively.

3.1. **Land A** is stated to be comprised of two Dag nos. 177 [Old] & 234 [Old]. The petitioners' side has stated that **Land A** belongs to the petitioners' side and after the last land settlement operation, Old Dag no. 177 had been bi-furcated and re-numbered as Dag nos. 727 and 728. Subsequently, the parcel of land covered by Dag nos. 727 & 728 had been bi-furcated further into Dag nos. 727, 728, 931 & 932. On the other hand, the Dag no. 234 [Old] had been re-numbered as New Dag nos. 931 & 932.

3.2. **Land B** was originally covered by Dag no. 19 [Old]. Subsequently, Dag no. 19 [Old] had been bi-furcated into two Dag nos. 134 & 138. The petitioners' side has claimed that as per the periodic patta, the area under **Land B** is 2 Bighas 18 Lessas.

4. On the other hand, the respondent College side has staked claim in respect of two plots of land which, for convenience, are referred to hereinafter as **Land C** and **Land D** respectively.

4.1. **Land C** comprises of Dag no. 38 [Old] and its area of land is 1 Bigha 2 Kathas.

4.2. **Land D** pertains to Dag no. 18 [Old] and the land area under it is 2 Bighas 3 Kathas 2 Lessas.

5. The two sides are stated to be at loggerheads because of the manner of locations of the afore-mentioned four plots of land [**Land A, Land B, Land C & Land D**]. The two plots of land i.e. **Land A** and **Land B**, in respect of which the petitioners' side has staked claim of ownership, are situated in a diagonally opposite manner and the other two plots of land in respect of which the College side has staked claim i.e. **Land C** and **Land D** are also situated in a diagonally opposite manner. As a result, the two contesting sides have a common intersectional point between the four plots of land.

6. In so far as the two Dag nos. mentioned in the Notice dated 22.08.2022 and the Notice dated 29.11.2023 i.e. Dag no. 141 and Dag no. 146, the respondent no. 3 in the said Notice has mentioned that the land under those two Dag nos. belong to the Government. The petitioners' side has alleged that these two Dag nos. i.e. Dag no. 141 & Dag no. 146 were not in existence at an earlier point of time and those two Dags had been created later on. The Notice

dated 22.08.2022 has, however, indicated that the College side has claimed for possession, as the possession of 6.60 Ares is not with them. It has been contended that the College side has put an obstruction at the intersectional point of the four plots of land [**Land A, Land B, Land C & Land D**]. As a result, ingress and egress for the petitioners' side from **Land B** through **Land A** has been blocked and as a result, **Land B** has become landlocked. On the other hand, the College side has contended that even if the intersection is closed, without however admitting that it has put any obstruction, the ingress and egress from **Land B** to any public road has not been blocked as the petitioners' side can have access to a public road directly from **Land B** itself. The respondent no. 3 in the Communication bearing no. Dis-4/2018/Court/3032 dated 19.12.2023 has mentioned that as per the land records available in his office, the Government Dag no. 141 comprises of 1 Katha 19.96 Lessas and Dag no. 146 comprises of 2 Bighas 2 Kathas 5.54 Lessas and an area of land measuring 6.60 Ares out of the said two Dag nos. are found to be in possession of the petitioners' side and the petitioners' side has constructed an Assam Type House and Tini Chali/Tarza house in that area measuring 6.60 Ares. The petitioners' side has also contended that it has much lesser areas of land in possession in **Land B**, than the areas of land mentioned in the concerned Periodic Patta. The three trace maps produced during the course of the present proceedings by the sides project three different pictures as regards the locations of various Dag nos. including **Land A, Land B, Land C** and **Land D**. From a perusal of those trace maps, it is difficult for this Court to arrive at any definite view as regards the claims and counter claims of the contesting parties.

7. The petitioners' side has also alleged that by the Notice dated 22.08.2022,

they were called for hearings and during the course of the hearing before the respondent no. 3, they had submitted all the supporting documents as regards their claim in respect of **Land A** and **Land B**. The petitioners' side has further claimed that the petitioners' side has been using the intersection since a long period of time for ingress and egress to **Land B** through **Land A** and if the intersection is blocked, **Land B** would remain landlocked. The petitioners' side has also contended that they are not in occupation of any Government and to ascertain the actual state of affairs, a thorough field inspection/enquiry would be necessary. The petitioners' side has also contended that despite placing all the supporting documents including the land documents pertaining to **Land A** and **Land B**, the respondent no. 3 without ascertaining the ground situation and without coming to a definite conclusion by himself, had acted merely on the basis of a Report of the Lot Mandal and had issued the eviction notice dated 29.11.2023, which in the fact situation obtaining, according to the petitioners' side, is uncalled for as the Report of the Lot Mandal was full of inconsistencies.

8. The College side has, on the other hand, contended that it is a public educational institution and for conducting its affairs, the disputes raised by the petitioners' side call for early resolution. The College side has further contended that there should not be any disturbance to the academic atmosphere of the public educational institution. It has further claimed that **Land D** already has a girls' hostel. The College side has further contended that **Land A** in respect of which the petitioners' side has staked claim of ownership, is a Government Land and, thus, the petitioners' side cannot claim ownership of **Land A**. The College side has also contended that it should be given full possession of **Land C** and **Land D**.

9. During the course of the proceedings, this Court had called for instructions from the respondent no. 3 as regards the exact locations of the four plots of land [**Land A, Land B, Land C & Land D**] and as regards the dispute relating to the intersectional point. This Court had also sought instructions as to whether in case of any blockage at the intersectional point between **Land A, Land B, Land C & Land D**, there would be any point of ingress and egress left for the petitioners' side from **Land B** to a public road. The respondent no. 3 vide his Communication bearing no. Dis-4/2018/Court/16 dated 02.01.2024 has submitted that accessibility to Dag no. 134 & 138 [**Land B**] can be made through Government Dag nos. 729, 140 & 141. Such instructions do not throw any light as to whether, in case of any blockage at the intersectional point between the four plots of land [**Land A, Land B, Land C & Land D**], there can be ingress and egress to a public road directly from **Land B**.

10. From a perusal of the contents of the Eviction Notice dated 29.11.2023, it transpires that the said Notice had been issued by the respondent no. 3 on the basis of knowledge gathered from a Report of a Lot Mandal wherein it appears to have been reported that the petitioners' side is in unauthorized occupation of Government Dag nos. 141 & 146. A writ petition is ordinarily decided on the basis of affidavits. When a number of disputed questions of fact are involved in the process of adjudication of a writ petition, the writ court does not generally embark upon a fact-finding exercise for determination of disputed questions of fact, which demand any field inspection/enquiry and/or any examination of land/revenue records, like in a case like the one on hand, to find out the respective rights of the contesting sides. Having regard to the claims and

counter claims of the two contesting sides on the basis of the documents placed by them in the case in hand, it clearly emerges that a number of disputed questions have fallen for determination for resolution of all the issues raised by the two contesting sides. This Court is of the clear view that all such disputes raised by the two contesting parties cannot be adjudicated, without any thorough field inspection/enquiry and/or a detail examination of the land/revenue records pertaining to **Land A, Land B, Land C & Land D** and all other plots of lands adjoining these four plots of land.

11. At this stage, the learned Senior Counsel appearing for the two contesting sides have sought resolution on two main issues. The petitioners' side has submitted that the petitioners' side should have proper access to a public road from **Land B**, which could be either through the intersectional point which connects **Land B** with **Land A** or through any other route, as indicated by the respondent no. 3 in his Communication bearing no. Dis-4/2018/Court/16 dated 02.01.2024, that is, through Government Dag nos. 729, 140 & 141. On the other hand, the College side has contended that the College side should have full access to and possession of **Land C** and **Land D**, without any kind of interruption from the petitioners' side. The learned Senior Counsel appearing for the two contesting sides have submitted that a fact finding exercise in the form of field inspection/enquiry by the jurisdictional District Commissioner would go a long way to resolve the two main issues between the two contesting sides.

12. Ordinarily, the extra-ordinary and discretionary jurisdiction under Article 226 of the Constitution of India is not to be exercised in a matter where a number of disputed questions of facts are involved. Notwithstanding the other

issues, even for resolution of the aforesaid two main issues raised by the two contesting sides, a detailed field inspection/enquiry in the afore-stated manner is necessary. As apart from a detailed field inspection/enquiry, a thorough examination of the concerned land/revenue records are also found necessary, this Court having regard to the nature of disputed questions, is of the considered view that to resolve the two main issues, which are of emergent nature, such an exercise can definitely be undertaken by the jurisdictional District Commissioner. For the purpose of carrying out such field inspection/enquiry and examination of land/revenue records, the jurisdictional District Commissioner can undertake such exercise himself or if due to any administrative exigency such exercise cannot be undertaken by him, then he can delegate the task to any other authority, but not below rank of the Additional District Commissioner. But even in case of such delegation, the exercise should be under active supervision of the District Commissioner. Assistance of all the concerned revenue officials including the respondent no. 3 and the two contesting sides can also be called for. The aforesaid exercise is found necessary considering the peculiar fact situation obtaining in the case in hand in that one of the contesting sides is a public educational institution and if an exercise to find out resolution of the two issues are not undertaken by such an exercise, the petitioners' side might not have also access to a public road from **Land B**. Such a situation might not be conducive for the two contesting sides. In such peculiar fact situation obtaining in the case, this Court is of the considered view that such a direction to the jurisdictional District Commissioner to undertake the exercise as indicated above, is called for so as to make an earnest endeavour to resolve the two main issues, raised by the two contesting sides, at an early date in an expeditious manner. Such an exercise will, in

essence, also assist in bringing the process initiated by the Notice dated 18.08.2022 to a logical conclusion. It is accordingly directed. It is observed that for carrying out the exercise by the jurisdictional District Commissioner, that is, the District Commissioner, Kamrup [M] or by the authority to whom the task may be delegated, as the case may be, the two contesting parties should extend all the assistance and cooperation. The two contesting sides should also be provided the opportunities to represent their cases on the basis of the supporting documents available at their disposal. Mr. Sharma, learned Additional Senior Government Advocate has submitted that a period of 4 [four] months would be a reasonable period to undertake and complete such an exercise. It is accordingly observed. Till completion of such exercise, the respondent authorities shall not take any further action, as contemplated by the impugned Eviction Notice dated 29.11.2023.

13. With the directions given above, the writ petitions stand disposed of.

14. A copy of this order be furnished to Mr. Sharma, learned Additional Senior Government Advocate, Assam for taking necessary steps from his end.

JUDGE

Comparing Assistant