

GAHC010116652015



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

Case No. : Cont.Cas(C)/293/2015

SMTI. SHANTI HARIJAN
W/O- SHRI RAMESWAR PASWAN, R/O- K B BANERJEE ROAD, PROFESSOR
COLONY, PALTAN BAZA, GHY- 8, DIST.- KAMRUP M, ASSAM.

VERSUS

M. ANGAMUTHU and ANR.
THE DY. COMMISSIONER, KAMRUP M, PANBAZAR, GHY- 1.

2:DIPAK CHOUDHURY
THE ADDL. DY. COMMISSIONER
KAMRUP M
PANBAZAR
GHY- 1

Linked Case : **WP(C)/2764/2014**

SMTI SHANTI HARIJAN and ANR.
W/O SHRI RAMESWAR PASWAN

2: RAMESWAR PASWAN
S/O LT. BISHNUDHAR
BOTH ARE R/O KB BANERJEE ROAD
PROFESSOR COLONY
PALTAN BAZAR
GHY-8
DIST- KAMRUP METRO
ASSAM
VERSUS

THE STATE OF ASSAM AND 2 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE GOVT.
OF ASSAM

DEPARTMENT OF REVENUE
DISPUR
GHY-6

2:THE DY. COMMISSIONER
KAMRUP METRO
PANBAZAR
GHY-01
3:THE ADDL. DY. COMMISSIONER
KAMRUP METRO
PANBAZAR
GHY-01

For the Petitioner(s) : Mr. S. P. Roy, Advocate
For the Respondent(s) : Ms. U. Das, Addl. Sr. GA
: Mr. R. Borpujari, Standing Counsel

Date of Hearing : **29.01.2024**

Date of Judgment : **29.01.2024**

BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH

JUDGMENT AND ORDER (ORAL)

1. The writ petition as well as the contempt application are taken up together for disposal by this common judgment and order.

2. The Petitioners herein claims that they were in possession of a plot of land measuring 1 Katha 10 Lechas covered by Dag No.1882 and 1312 (Kha) of village Sahar Guwahati Dwitiya Khanda Mouza Guwahati. Upon the said land, the Petitioners had constructed a house which was assessed to the GMC bearing Holding No.28 of Ward No.XX of the GMC. The Petitioners also had electricity connection to their house. Sometime in the year 1994, the

Petitioners applied for settlement of the said land. The same is evidenced from Annexure-5 to the writ petition. The said settlement application was pending when the Petitioners received a notice dated 25.01.2013 under Rule 18(2) of the Settlement Rules read with Section 165(1), 165(2) and 165(3) of the Assam Land and Revenue Regulations, 1886. In the said notice, it was specifically mentioned that the said notice was issued in connection with Eviction Case No.4/2013 wherein it was mentioned that the Petitioners were in occupation of Government wetland measuring 1 Katha 10 Lechas covered by Dag No.1312 and the Petitioners were directed to be evicted forthwith.

3. The record reveals that the Petitioners thereupon filed a writ petition challenging the said notice which was registered and numbered as WP(C) No.1920/2013. The said writ petition was disposed of vide an order dated 09.04.2013 observing inter alia that the Petitioners be permitted to file an objection within 15 days and upon filing of the said objection within the period stated therein, the Additional Deputy Commissioner shall consider the same in accordance with law and pass necessary orders within 30 days thereafter. It was further mandated that any order so passed shall be duly communicated to the Petitioners. This Court further finds it pertinent to observe that in the order dated 09.04.2013, this Court had specifically observed that status quo as regards the possession shall be maintained for 45 days (15 days for filing the application and 30 days for disposal).

4. It is very significant to take note of that prior to the filing of the writ petition, an Act namely Guwahati Water Bodies (Preservation and Conservation) Act, 2008 (for short "the Act of 2008") was enacted whereby there were various restrictions imposed upon the lands which have been

described in Schedule I, II, III and IV of the said Act of 2008. Section 4 of the said Act of 2008 stipulated that no person after the coming into force of the said Act of 2008 shall construct or erect any structure in the said water bodies, undertake any activities including filling up of the water bodies, dump or throw solid waste or garbage in the water bodies, extend or reinforce of any building standing over the water bodies etc. The said Section is quoted herein under:

“4. Notwithstanding anything contained in any other laws enacted by the State Legislature which are for the time being in force in Assam, the area of land specified in the Schedule I, II, III and IV of this Act shall be used as waterbodies and no person after coming into force of this Act shall –

- (i) undertake any activities including the filling up of waterbodies which may cause damage or reduce the size of the waterbodies;*
- (ii) construct or erect any structure in the waterbodies;*
- (iii) dump or throw solid waste or garbage in the waterbodies;*
- (iv) extend or reinforce of any building standing upon the waterbodies;*
- (v) carry out any kind of business except fish curing, aqua culture, conservation measure and flood control measures, that too with the specific previous permission of the Competent Authority.”*

5. A perusal of the Schedule to the said Act of 2008 would show that the land in question in the present writ petition was included within Schedule-II of the said Act of 2008. It is not known as to whether the said Act of 2008 was at all placed before this Court at the time of passing the order dated 09.04.2013 inasmuch as the said order does not reflect about the Act of 2008. Be that as it may, the Petitioners duly submitted an application on 23.04.2013 requesting the Respondent Authorities to recall/withdraw the notice dated 25.01.2013. It

is the further case of the Petitioners that subsequently another notice was issued in respect of Eviction Case No.14/2014. The said eviction notice has been enclosed as Annexure-9 to the writ petition. Interestingly, the said eviction notice does not contain any date. The Petitioners thereupon challenged this eviction notice by filing the present writ petition on 30.05.2014. This Court vide an order dated 04.06.2014 issued notice and further observed that until the next date, without disposing of the petitioners' objection dated 23.04.2013, the eviction notice enclosed as Annexure-9 to the writ petition shall not be enforced against the noticee.

6. The records further reveals that vide an order 23.06.2014, as no instructions was placed before this Court, the interim order was directed to continue. It is the categorical case of the Petitioners that the Petitioners were evicted on 28.04.2015 for which the Petitioners filed an Interlocutory Application in the writ petition which have been registered and numbered as I.A. No.336/2015 praying inter alia that directions be issued upon the Opposite Parties therein to put the Petitioners into the possession of the land as described in the schedule by evicting the persons and removing the constructions made over the Petitioners' land. The said Interlocutory Application was filed on 22.05.2015.

7. Simultaneously, the contempt proceedings being Contempt Case No.293/2015 was filed by the Petitioners alleging violation of the order dated 04.06.2014. In the said contempt proceedings, the then Deputy Commissioner as well as the Additional Deputy Commissioner were arrayed as Respondents. The record reveals that the Respondent No.1 in the contempt proceedings had filed an affidavit-in-opposition stating inter alia that Eviction Case No.04/2013

was initiated against the Petitioners as the Petitioners had encroached the land measuring 1 Katha 5 Lechas covered by Dag No.1312 of village Sahar, Guwahati Part-II under Mouza Guwahati which falls within the water bodies as notified in the Act of 2008. It was specifically mentioned that after the order dated 04.06.2014 passed by this Court, no further action was taken by the Respondent No.1 in the contempt proceedings against the Petitioners. This Court also finds it pertinent to take note of that various documents were placed before this Court on various occasions along with notices issued to various persons pertaining to Eviction Case No.04/2013. Vide a communication dated 27.09.2019, it was informed to this Court that the records pertaining to Eviction Case No.14/2014 could not be found. It was also mentioned that there were records pertaining to Eviction Case No.4/2013 relating to the eviction of the illegal encroachers from the land of Borsola Beel and the Petitioners' name were included in the name of encroachers regarding encroachment of the land of Borsola Beel.

8. In the backdrop of the above, this Court has also heard the learned counsels for the Petitioners as well as the Revenue Department of the Government of Assam. As already noted hereinabove, the Act of 2008 categorically mandated that the said Act was enacted to provide for preservation, protection, conservation, regulation and maintenance of water bodies and to develop water bodies into natural water reservoir and convert into eco-tourism recreation centre to suit the ecological balance within the jurisdiction of Guwahati Metropolitan Development Authority and to protect the water body from the encroachers and damages. The said Act of 2008 categorically imposes restrictions on the use of the land and as such the question of granting a settlement over the land in question to any person does

not arise. Not only that, Section 6 of the Act of 2008 further mandates that if there is a violation to the provisions of Section 4, by any person, the same is punishable with imprisonment for a term which may extend to three years or with fine which may extend to fifty thousand rupees or both. Even punishment would be imposed upon a person who abates any of the offences. In that view of the matter, the question of consideration of the application of the Petitioners for settlement over the land which admittedly falls in Schedule-II of the Act of 2008 does not arise.

9. This Court has duly noted the order dated 09.04.2013 passed in WP(C) No.1920/2013. With due respect to the Co-ordinate Bench of this Court, the said order does not reflect as to whether the Act of 2008 was at all taken into consideration inasmuch as had the Act of 2008 been taken into consideration, the question of passing the said directions would not have arisen. Be that as it may, the status quo which was directed was only for a period of 45 days from 09.04.2013. It is also an admitted fact as could be seen from I.A. No.336/2015 that the Petitioners have already been evicted on 28.04.2015. Under such circumstances, the question of any adjudication on the legality or validity of the impugned notice in respect to Eviction Case No.14/2014 does not arise.

10. Moving forward, this Court also finds it relevant to take note of that the order which was passed in the instant writ petition i.e. WP(C) No.2764/2014 on 04.06.2014 categorically mandates that without disposing of the Petitioners' objection dated 23.04.2013, the eviction notice (Annexure-9) to the writ petition should not be enforced against the noticee. Though the said interim order has been extended but a perusal of the said order only restrains action to be taken on the basis of the undated eviction notice i.e. Annexure-9 to the

writ petition pertaining to Eviction Case No.14/2014.

11. From a perusal of the contempt application, it is also seen that the only allegation made therein is that during the pendency of the order dated 04.06.2014 which was extended by this Court, the Petitioners were evicted on 28.04.2015. However, as already noted, the order dated 04.06.2014 only restrained the concerned respondents in respect to the undated eviction notice i.e. Annexure-9. The allegations made in the contempt application does not show that the actions were taken on the basis of the impugned undated eviction notice i.e. Annexure-9 to the instant writ petition but the only allegation in the contempt application is that during the pendency of the order dated 04.06.2014, the Petitioners have been evicted. Under such circumstances, it is the opinion of this Court that no contempt is made out against the Respondents. In that view of the matter, the contempt proceedings so initiated against the Respondents stands dropped.

12. This Court also finds it relevant to observe that the relief which have been sought for in the Interlocutory Application being I.A. No.336/2015, cannot be granted taking into account that there are strict restrictions and prohibitions in respect to the land in question as per the Act of 2008. Consequently, this Court dismisses the instant writ petition as it has become infructuous and rejects the application being I.A. No.336/2015 on the ground that the said relief cannot be granted in view of the statutory prohibition contained in the Act of 2008.

13. Be that as it may, this Court before parting with the records finds it relevant to observe that the Petitioners duly claimed that they were in possession of the lands in question and they are landless persons. In that view

of the matter, as per the Land Policy of 2019, the Petitioners can very well be advised to apply before the competent authority for allotment and settlement of land as per the Schemes available. It is observed that if the Petitioners duly apply for such allotment/settlement of the land in terms with the Land Policy of 2019, the Respondent Authorities shall duly consider the same as per the existing policy and prescription of law.

14. In terms with the above, both the writ petition and the contempt proceedings stands dismissed. No costs.

JUDGE

Comparing Assistant