

GAHC010015012020



2024:GAU-AS:8310

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

Case No. : Crl.Pet./56/2020

SALEH AHMED CHOUDHURY AND 10 ORS.

S/O LATE ABDUL KADIR CHOUDHURY, R/O VILL-JABDA, P.S.-KARIMGANJ,
DIST-KARIMGANJ (ASSAM)

2: ALTAF HUSSAIN
S/O ABDUL LATIF
R/O VILL-SUPRAKANDI
P.O.-MANIKGANJ
P.S.-KARIMGANJ
DIST-KARIMGANJ (ASSAM)

3: ABDUL HAFIZ CHOUDHURY
S/O LATE FAIYAZ ALI
R/O VILL-HAMINDAPUR
P.O.-SUTARKANDI
P.S.-KARIMGANJ
DIST-KARIMGANJ (ASSAM)

4: FAKHRUL ISLAM
S/O LATE TAFAZZUL ALI
R/O VILL-SUPRAKNADI
P.O.-MANIKGANJ
P.S.-KARIMGANJ
DIST-KARIMGANJ (ASSAM)

5: SHAMIM UDDIN CHOUDHURY
S/O LATE SHAFIQU'R RAHMAN CHOUDHURY
R/O VILL-SUPRAKANDI
P.O.-MANIKGANJ
P.S.-KARIMGANJ
DIST-KARIMGANJ (ASSAM)

6: ALTAF HUSSAIN CHOUDHURY
S/O LATE ABDUR RAUF CHOUDHURY

R/O VILL-JABDA
P.O.-MANIKGANJ
P.S.-KARIMGANJ
DIST-KARIMGANJ (ASSAM)

7: FUZAIL AHMED
S/O LATE ABDUL MANNAN CHOWDHURY
R/O VILL-JABDA
P.S.-KARIMGANJ
DIST-KARIMGANJ (ASSAM)

8: SHALIM UDDIN CHOWDHURY
S/O LATE ABDUL HOQUE CHOWDHURY
R/O VILL-JABDA
P.S.-KARIMGANJ
DIST-KARIMGANJ (ASSAM)

9: MD. ABDUL SHUKUR
S/O LATE SURAJ ALI
R/O VILL-JABDA
P.S.-KARIMGANJ
DIST-KARIMGANJ (ASSAM)

10: QAMRUL HAQUE CHOWDHURY
S/O MD. SAMSUL HOQUE CHOWDHURY
R/O VILL-JABDA
P.S.-KARIMGANJ
DIST-KARIMGANJ (ASSAM)

11: JAKIR AHMED CHOWDHURY
S/O ABDUL KAYUM CHOWDHURY
R/O VILL-JABDA
P.S.-KARIMGANJ
DIST-KARIMGANJ (ASSAM)

VERSUS

THE STATE OF ASSAM AND ANR.
REPRESENTED BY THE PUBLIC PROSECUTOR, ASSAM

2:ER. B.P. DAS
EXECUTIVE ENGINEER
P.W.D. KARIMGANJ NH DIVISION
DIST-KARIMGANJ (ASSAM)
PIN-78871

Advocate for the Petitioner : MR. I A HAZARIKA, MR. I U CHOWDHURY

Advocate for the Respondent : PP, ASSAM, MS M DAS,MS B BORA,MR. M BISWAS

BEFORE

HON'BLE MR. JUSTICE MANASH RANJAN PATHAK

21/08/2024

Heard Mr. Intekhab Alam Hazarika, learned counsel for the petitioners and Mr. B. Sarma, learned Additional Public Prosecutor, Assam for the State respondent No.1. Also heard Ms. J. Singhpho, learned counsel appearing on behalf of Mr. Monojit Biswas, learned counsel for the opposite party No.2/informant.

2) Petitioners are accused in Karimganj Police Station Case No. 39/2020 under Sections 120(B)/447/420/34 IPC read with Section 4(2)/5(a) of the Assam Lang Grabbing (Prohibition) Act, 2010 corresponding to G.R. No. 127/2020.

3) Brief facts of the case is that the opposite party No.2, Executive Engineer, PWD, National Highway Division, Karimganj on 06.01.2020 submitted a written FIR before the Officer-in-Charge of Karimganj Police Station relating to encroachment of Government land beside NH-151 (Karimganj-Sutarkandi Road) at Fakirabazar near SBI, Fakirabazar stating that approximately about 3 kathas of land with one kaccha house located at the said Government land have been encroached by some miscreants and it is found that said land is being filled up with soil/earth by truck carriage by the miscreants. In the said FIR, the concerned Executive Engineer, PWD also stated that the construction work of the said road will be started soon and it has been targeted to complete the said road prior to the ensuing monsoon and that the said land will be required for placing materials and machineries related to the said construction work.

4) The said FIR was accordingly registered as Karimganj Police Station Case No. 39/2020 under Sections 120(B)/447/420/34 IPC read with Section 4(2)/5(a) of the Assam Lang Grabbing (Prohibition) Act, 2010 corresponding to G.R. No. 127/2020.

5) The petitioners have filed this petition under Section 482 CrPC read with Article 227 of the Constitution for quashing the said FIR dated 06.01.2020 filed by the opposite party No.2 relating to said Karimganj P.S. Case No. 39/2020 stating that they have established socio culture club in the year 2000 under the name and style 'Simanta Juba Parishad' that was registered in the year 2000 itself bearing Registration No. Karim/258/D/140 under S.R. Act with many members and the club is established on Government land measuring 9 kathas-10 Chatak under Dag No. 93(old)/100(new) for which they have paid Touzi Holding and enjoying peaceful possession. The said land includes 3 Kathas of land mentioned in the said FIR pertaining to Karimganj P.S. Case No. 39/2020 and in that regard the Circle Officer on 07.12.2017 clarified the possession of the said Club of the petitioners over the said land.

6) Petitioners also contended that one Abu Ahmed Choudhury with his political connection is trying to take 3 Kathas of said land to set up a market. Since, said Abu Ahmed Choudhury is trying to oust them from said land for his personal benefit, the petitioners filed a Title Suit for declaration of the possession of the said land being T.S. No. 32/2018 that is pending before the learned Civil Judge, Karimganj and by order dated 21.02.2019, passed in said T.S. No. 32/2018 directed the parties to the said suit to maintain status quo.

7) The said Abu Ahmed Choudhury on coming to know about the said injunction order dated 21.02.2019, influenced the informant to lodge the FIR of said Karimganj P.S. Case No. 39/2020, though the case is totally false, fabricated and afterthought having no basis.

8) It is stated that the petitioners have filed this criminal petition for the above reasons and also stated that the authorities concerned cannot take any action on the Assam Land Grabbing Act, 2010 without there being a proper enquiry by the Special Tribunal constituted under the said 2010 Act as provided under Section 7 of said 2010 Act.

9) It is further stated by the petitioner that the said FIR dated 06.01.2020 lodged by the opposite party No.2 pertaining to said Karimganj P.S. Case No. 39/2020, if taken at its face value and accepted in its entirety prima facie do not disclose commission of any offence by the petitioners and neither justified the necessity for investigation of said Karimganj P.S. Case by police.

10) By order dated 27.01.2020, the Court while issuing notice called for the records of said Karimganj P.S. Case No. 39/2020 and in the interim directed not to take any coercive action against the petitioners till the returnable date which was extended up to 18.07.2024 by order dated 13.07.2024. However, the said interim protection has not been extended by the Court since 18.07.2024.

11) The petitioners have also filed the connected I.A.(Crl) No. 618/2024 for stay of the proceeding of the G.R. Case No. 127/2020 corresponding to PRC No. 1255/2020 arising out of said Karimganj P.S. Case No. 39/2020 stating that on completion of the investigation of the case, the concerned Investigating Officer submitted the Charge Sheet in said Karimganj P.S. Case No. 39/2020 against the petitioners vide C.S. No. 744/21 dated 31.12.2020 under Sections 120(B)/447/420/34 IPC read with Section 4(2)/5(A) of the Assam Lang Grabbing (Prohibition) Act, 2010.

12) After filing of the Charge Sheet in said Karimganj P.S. Case No. 39/2020, the learned Additional CJM by order dated 06.01.2023 in said PRC No. 1255/2020 took cognizance of the offence under Sections 120(B)/447/420/34 IPC read with Section 4(2)/5(A) of the Assam Lang Grabbing (Prohibition) Act, 2010 against the petitioners and issued summons to them for their appearance.

13) In the case in hand, though petitioners named one Abu Ahmed Choudhury, but he has not made a party respondent in the present proceeding.

14) The petitioners have also not placed anything before the Court that in the said Suit preferred by the petitioners, the PWD Department NH Division of the State, Karimganj has been made a party defendant or not.

15) From the records of the case, it is seen that the land record of Government Land of NH-151 Karimganj-Sutarkandi Road at Fakirabazar near SBI, Fakirabazar contains land measuring 04 Katha-13-Chatak covered by Dag No. 99 classified as 'Jalatak' (pond) of Mouza-Amtali, Pargana-Kushiarkul recorded in the name of the State Government clearly mentioning it as PWD Pukur and the land having an area of 09-Katha 10-Chatak, covered by Dag No. 100 has been classified as 'Bari' of Amtoli Mouza has also been recorded in the name of State

Government as PWS quarter.

16) The case diary placed before the Court indicates sufficient incriminating materials against the petitioners of trying to grab the said Government land allotted to PWD forcefully.

17) Law is well settled that no one take possession of any Government Khas land without obtaining prior written approval of the authorities of the State Government and any such occupation amounts to illegal possession.

18) The Challan of Touzi Holding No.9 of the Dag No.100, Mouza-Amtali, Pargana-Kushiarkul annexed by the petitioners clearly indicates that it is *Bedakhaliya Touzi* that means Encroachment Penalty of fine for unauthorized and illegal occupation of Government land without having any written approval for occupation of such land from the Government. Further, law is well settled that making any payment of such *Bedakhaliya Touzi/Touzi Bahira/Revenue* does not confer any such right of the unauthorized and illegal land holder on the land for which such *Bedakhaliya Touzi/Touzi Bahira/Revenue* is paid. [Emphasis provided — *State of Assam and others Vs. Radha Kanoo (Smt.) and others* reported in (1996) 8 SCC 692, *Jagpal Singh and others Vs. State of Punjab* reported in (2011) 11 SCC 396, *Sanjay Gogoi and others Vs. State of Assam and others* reported in 2022 (2) GLT 228].

19) The case diary placed before the Court indicates sufficient incriminating materials against the petitioners with regard to their involvement in the crime.

20) After hearing the learned counsels for the parties and considering the case diary of said Karimganj P.S. Case No. 39/2020, the Court is of the opinion that that it is not a fit case for exercise the power of the Court under Section 482 CrPC to set aside and quash the FIR dated 06.01.2020 lodged by the opposite party No.2 pertaining to Karimganj P.S. Case No.39/2020 against the accused petitioners under Sections 120(B)/447/420/34 IPC read with Section 4(2)(5(a) of the Assam Lang Grabbing (Prohibition) Act, 2010.

21) Accordingly, the prayer of the petitioners made in this criminal petition to set aside and quash the FIR dated 06.01.2020 lodged by the opposite party No.2 pertaining to Karimganj P.S. Case No.39/2020 against the accused petitioners under Sections 120(B)/447/420/34 IPC

read with Section 4(2)/5(a) of the Assam Lang Grabbing (Prohibition) Act, 2010 stands rejected.

22) For the reasons above, this criminal petition preferred by the petitioners being devoid of merit, stands dismissed.

23) Return the case diary of Karimganj P.S. Case No.39/2020 to the Public Prosecutor of the High Court, obtaining necessary acknowledgment from the said authority.

JUDGE

Comparing Assistant