

GAHC010017482015



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

Case No. : WP(C)/4121/2015

SUNIL CH. DEY and ANR
S/O- LT. MOTILAL DEY, R/O VILL. and P.O.- DUBAPARA, DIST.- GOALPARA,
ASSAM.

2: BHAJAN CH. DEY
S/O- LT. RANJIT DEY
R/O VILL. and P.O.- DUBAPARA
DIST.- GOALPARA
ASSAM

VERSUS

THE STATE OF ASSAM AND 5 ORS
REP. BY THE COMMISSIONER AND SECY. TO THE GOVT. OF ASSAM,
PANCHAYAT AND RURAL DEVELOPMENT DEPTT., DISPUR, GHY- 6.

2: THE DY. COMMISSIONER
GOALPARA
P.O. and DIST.- GOALPARA
ASSAM.

3: THE CHIEF EXECUTIVE OFFICER
GOALPARA ZILLA PARISHAD
P.O. and DIST.- GOALPARA
ASSAM.

4: THE MATIA ANCHALIK PANCHAYAT
REP. BY ITS PRESIDENT
SHRI A. HUSSIAN
P.O.- MATIA
DIST.- GOALPARA
ASSAM.

5: THE BDO-CUM-EXECUTIVE OFFICER

MATIA DEVELOPMENT BLOCK
P.O.- MATIA
GOALPARA
ASSAM.

6:THE CIRCLE OFFICER
MATIA REVENUE CIRCLE
P.O.- MATIA
DIST.- GOALPARA
ASSAM

Advocate for the Petitioner : MS.M DEKA, MR.M H TALUKDAR,MR.A R SIKDAR,MR. S ALAM

Advocate for the Respondent : GA, ASSAM, ,,MR. M NATH (SC, PANCHAYAT & RURAL DEVELOPMENT DEPT.)

BEFORE
HONOURABLE MR. JUSTICE MICHAEL ZOTHANKHUMA

ORDER

06.11.2024

1. Heard Mr. S. I. Talukdar, learned counsel for the petitioners. Also heard Mr. S. Dutta, learned counsel for the respondent nos.1, 3, 4 & 5 and Mr. S.R. Baruah, learned counsel for the respondent nos.2 & 6.

2. Mr. S.I. Talukdar submits that the petitioner No. 1 has land area 3B-1K-7L covered by Patta No. 271, Dag No. 21 and 40 in village- Dubapara. The petitioner No. 2 has land area 3B-3K13L covered by Patta No. 241 and Dag No. 24, 33, 43, 491 and 693 adjacent to the land of the petitioner No. 1.

3. The petitioners counsel submits that the Matia Anchalik Panchayat have been running the Dubapara Weekly Market on their lands and had also constructed the Matia Medical Sub-Centre on the lands of the petitioners.

Though the petitioners had allowed the Matia Anchalik Panchayat to run their Hat temporarily, the petitioners are not willing to allow the Anchalik Panchayat to run their Hat on the petitioners' lands any longer.

4. The petitioners thus pray that the respondents should either acquire their lands and pay compensation for the same or in the alternative, to pay monthly rent to the petitioners for use of their lands or vacate their lands.

5. Mr. S. Dutta, learned counsel for the respondent nos.1, 3, 4 & 5 submits that the Dubapara Weekly Market is being run by the Matia Anchalik Panchayat for the last 50 years without objection from the landholders. He submits that the Bazars are given by way of settlement through a tender process and the petitioners cannot run the Hat/Bazar without the permission of the Government. He further submits that the Matia Anchalik Panchayat has no interest in encroaching on the lands of the petitioners and the Weekly Market can be shifted to Government land, without disturbing the land of the petitioners. He further submits that the Matia Anchalik Panchayat do not have the capacity to give any compensation to the petitioners for the petitioners lands, without the approval of the State Government.

6. The affidavit filed by the respondent no.3 is to the effect that the Dubapara Weekly Market is being run by the Matia Anchalik Panchayat, after getting the approval from the Zilla Parishad, for the last 50 years, without any objection from the landowners or from the public. It however states that the market covers Government land, measuring 1.5 Bigha and it is also on the land of the petitioners. The respondent No. 3 in his affidavit has also stated in

paragraph 13 that the Matia Anchalik Panchayat has not encroached upon the land of the petitioners and the place of the weekly market will be shifted to the Government land, without harming the petitioners.

7. I have heard the learned counsels for the parties.

8. The affidavits of the respondent nos.3 & 5 gives rise to an inference that the Dubapara Weekly Market is being run by the Anchalik Panchayat, not only on Government land but also on the lands of the petitioners, without any objection from the landowners. However, the petitioners are now not willing to allow the respondents to run the Weekly Market on their lands any further.

9. On considering the above facts, this Court is of the view that if the respondents are running a weekly market on the land of the petitioners without further permission being granted by the petitioners, they would have to immediately vacate the land of the petitioners. In the event the respondents want to utilise the land of the petitioners for running the weekly market, they can acquire the land of the petitioners, in terms of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (RFCTLARR) Act, 2013 [hereinafter referred to as the "2013 Act"] or take the land on lease from the petitioners by executing a Lease Deed, which is acceptable to both the parties.

10. The above decisions would however have to be made after the respondent no.2 & 6 make a Verification/Survey Report, demarcating the lands of the petitioners and coming to a finding as to whether the weekly market

encroaches upon the petitioners' lands. The Verification/Demarcation Report should be made by the respondent nos.2 & 6, after informing the petitioners the date of the verification to be made, so that they can participate in the same.

11. Accordingly, this writ petition is disposed of with the following directions :

(i) The respondent nos.2 & 6 shall cause a verification to be made, demarcating the land of the petitioners, within a period of one month from the date of receipt of a certified copy of this order.

(ii) After the Verification Report is made, a decision should be taken by the respondent no.3, as to whether the lands of the petitioners have been encroached by the running of the Dubapara Weekly Market, which should be done within a further period of 2 (two) weeks, from the date of making of the Verification Report.

(iii) If the decision of the respondent no.3 is to the effect that the lands of the petitioners have been encroached by the running of the Dubapara Weekly Market, the respondent no.3 shall take a decision as to whether they want to continue utilizing the lands of the petitioners or to vacate the lands.

(iv) If the respondent no.3 comes to a decision that they want to utilize the lands of the petitioners, they should either enter into a Lease Agreement with the petitioners, on terms and conditions which are acceptable to both the parties or else they should take steps with the Government for acquiring the lands of the petitioners, in terms of the 2013 Act.

(v) In the event the respondents decide not to utilize the lands of the petitioners any further, for running the weekly market, they should vacate the lands of the petitioners.

12. The entire exercise should be concluded within a period of four months from the date of receipt of a certified copy of this order. If a decision is not taken by the respondents in terms of the directions passed by this Court and the Verification Report indicates that the petitioners' lands are being used to run the market, rent will have to be paid as per the rate prescribed by the petitioners, after the period of 4 months indicated above, is over.

JUDGE

Comparing Assistant