

GAHC010055072021



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

Case No. : Cont.Cas(C)/189/2021

JOYDEEP BHATTACHARJEE AND 2 ORS
S/O- LATE JADABESWAR BHATTACHARJEE, R/O- SUBACHANI ROAD,
TINSUKIA, ASSAM, PRESENTLY RESIDING AT FLAT NO. 203A, ASWINI
ANJALI APARTMENT, BAPUJI NAGAR, 2ND MATHGHARIA, GUWAHATI,
ASSAM, PIN- 781026.

2: JAYANTA BHATTACHARJEE
S/O- LATE JADABESWAR BHATTACHARJEE
R/O- SUBACHANI ROAD
TINSUKIA
ASSAM
PRESENTLY RESIDING AT FLAT NO. 203A
ASWINI ANJALI APARTMENT
BAPUJI NAGAR
2ND MATHGHARIA
GUWAHATI
ASSAM
PIN- 781026.

3: SMT. DIPTI BHATTACHARJEE
W/O- LATE JADABESWAR BHATTACHARJEE
R/O- SUBACHANI ROAD
TINSUKIA
ASSAM
PRESENTLY RESIDING AT FLAT NO. 203A
ASWINI ANJALI APARTMENT
BAPUJI NAGAR
2ND MATHGHARIA
GUWAHATI
ASSAM
PIN- 781026

VERSUS

DIGANTA SAIKIA AND 10 ORS.
DEPUTY COMMISSIONER, TINSUKIA, DIST.- TINSUKIA, ASSAM- 786125.

2:MANJIT BORKAKOTY
ADDITIONAL DEPUTY COMMISSIONER
TINSUKIA DISTRICT
TINSUKIA
ASSAM- 786125.

3:SANJIB KR. PHUKAN
CIRCLE OFFICER
TINSUKIA REVENUE CIRCLE
TINSUKIA
ASSAM- 786126.

4:ANIL GOGOI
LOT MONDAL
OFFICE OF THE CIRCLE OFFICER
TINSUKIA REVENUE CIRCLE
TINSUKIA
ASSAM- 786126.

5:NIMBALKAR VAIBHAV CHANDRAKANT
SUPERINTENDENT OF POLICE
TINSUKIA
DIST.- TINSUKIA
ASSAM- 786125.

6:BIREN BARUAH
INSPECTOR
OFFICER-IN-CHARGE
TINSUKIA POLICE STATION
TINSUKIA DISTRICT
TINSUKIA
ASSAM- 786126.

7:SMTI. SUKANYA GOGOI
MUNSIFF NO. 1
MARGHERITA
JUDICIAL MAGISTRATE
1ST CLASS IN THE COURT OF MUNSIFF NO. 1
AT MARGHERITA
DIST.- TINSUKIA
ASSAM- 786181.

8:CHANDAN DAS
DISTRICT AND SESSION JUDGE
IN THE DISTRICT COURT OF TINSUKIA

ASSAM
DIST.- TINSUKIA
ASSAM- 786125.

9:MANJU MAZUMDAR
W/O- LATE BHUPENDRA KUMAR MAZUMDAR
R/O- SUBACHANI ROAD
TINSUKIA DISTRICT
TINSUKIA
ASSAM- 786126.

10:RANJIT KUMAR MAZUMDAR
S/O- LATE UPENDRA KUMAR MAZUMDAR
STATE BANK COLONY
SUBACHANI ROAD
TINSUKIA DISTRICT
TINSUKIA
ASSAM- 786126.

11:GANESH CHANDRA MAZUMDAR
HUSBAND OF LATE SIMA RANI MAZUMDAR
STATE BANK COLONY
SUBACHANI ROAD
TINSUKIA DISTRICT
TINSUKIA
ASSAM- 786126

Advocate for the Petitioner : PETITIONER IN PERSON, MR. A BHATTACHARYA,MR. J BHATTACHARJEE,MR A BHATTACHARJEE,LEGAL AID COUNSEL,MR J BHATTACHARJEE,

Advocate for the Respondent : MR H RAHMAN (R-1,2,3,4), MR R CHAKRAVORTY,MS R BORUAH (R6),MR. M K DAS (R6),MS. L DEVI,MR. R S MISHRA (R9, R10),MR. A K GUPTA (R9, R10),MS. B HAZARIKA (R-1,2,3,4),MR. B J GHOSH (R-1,2,3,4)

BEFORE
HONOURABLE MR. JUSTICE MICHAEL ZOTHANKHUMA

ORDER

12.08.2024

Heard Mr. Joydeep Bhattacharjee, petitioner No. 1 in person and Mr. A. Bhattacharya, learned counsel for the petitioner Nos. 2 & 3. Also heard Ms. L. Devi, learned counsel for the respondent No. 7, Mr. R. Chakravorty, learned

counsel for the respondent No. 8, Mr. A. K. Gupta, learned counsel for the respondent Nos. 9 & 10 and Mr. H. Rahman, learned counsel for the respondent Nos. 1 to 4.

2. The matter pertains to encroachment of land. While the respondent Nos. 9, 10 & 11 are the owners of land covered by Dag No. 295 PP No. 2, the petitioners are the owner of land covered by Dag No. 293, PP No. 1133.

3. The genesis to the present case is with regard to the allegation of encroachment made by the parties against each other, which resulted in the respondent Nos. 9, 10 & 11 filing WP(C) 2407/1999, which was dismissed. The dismissal of WP(C) 2407/1999 was challenged by way of a writ appeal, being WA 167/1999 and a consequential Misc. Case No. 717/2004 in WA 167/1999.

4. The petitioners, on the other hand, filed WP(C) 6991/2003 against the respondent Nos. 9, 10 & 11, praying for protection of their land, life and liberty. The petitioner in person submits that in terms of the order dated 02.09.2003 passed in WP(C) 6991/2003, the Deputy Commissioner was directed to demarcate the land covered by Dag No. 293 PP No. 1133. The petitioner in person submits that after the demarcation of his land, the petitioner had made a boundary wall over his land. However, the Division Bench of this Court in its judgment dated 23.12.2005 passed in WA 167/1999 passed the following direction in para 35:-

“35. Bearing in mind, the respective claims on the right, title and interest and possession of the land involved, we are firmly of the opinion that the resolution of the controversy warrants adversial adjudication in a forum recognized by law. Admittedly as on date there has been none. The private respondents' allegation of encroachment of their purchased land have not yet been tested by such a process. The suit filed by

them had been withdrawn at their instance as marked hereinabove. In absence of a well articulated adjudication on the issue bearing on the title in and possession of the land involved, no summary procedure as adopted by the respondent authorities and that too in contravention of the orders of this Court can be countenanced. In the wake of the above, it is ordered that the respondent authorities would forthwith restore the appellants' possession in respect of the following land:-

:Land measuring more or less 2-kathas under part of Dag No. 295 (New) P.P. No. 2 (New), situated in Tinsukia Town Sheet No. 2, Ward No. 8, under Tinsukia Mouza, P.S. Tinsukia, in the District of Tinsukia, Assam and the said plot of land is bounded as follows:-

North : Ten feet wide existing road

South : Part of Dag No. 265

East : Part of Dag No. 295 in possession of the Applicant Nos. 1 & 2 with residential building.

West : Part of Dag No. 293 demarcated with pucca boundary wall which has been demolished in 19.02.2004

The private respondents, more particularly, the respondent No. 10 would remove the constructions raised by him with the tube well therefrom. The District Magistrate and Deputy Commissioner, Tinsukia District and the Superintendent of Police, Tinsukia District and Circle Officer, Tinsukia Revenue Circle, Tinsukia would ensure that the above direction is carried out without fail. In view of the considerable lapse of time in between, we are not inclined to issue any consequential directions, vis-à-vis the incidents before 19.02.04. We are however making it absolutely clear that we have not hereby expressed any opinion on the rival claims bearing on the right, title and interest in or possession of the parties, vis-à-vis the land in dispute. We reiterate that keeping in mind, the background of the litigation and the competing claims, no summary exercise in the matter would be made by the respondent authorities and that any measurement or demarcation of the land involved if necessary would be undertaken only pursuant to the orders passed by a legally recognized forum in a proceeding participated by both the parties on any issue relatable thereto."

5. Consequent to the judgment dated 23.12.2005 passed in WA 167/1999, the Deputy Commissioner, Tinsukia restored possession of the appellants' land.

6. Being aggrieved by the judgment dated 23.12.2005 passed in WA 167/1999, the petitioner filed SLP(C) No. 2457-2458/2009 before the Hon'ble Supreme Court, which was disposed of to the following effect:-

“4. The High Court directed restoration as writ petitioners were dispossessed during the pendency of the writ appeal, and such dispossession was by exceeding the ambit of the order dated 2.9.2003 in W.P. (C) No. 6991/2003 filed by the petitioner without disclosing the pendency of the writ appeal (WA No. 167/199). We find that the division bench of the High Court has not decided or expressed any opinion in regard to merits, but has merely relegated the parties to approach the Civil Court in accordance with law, subject to restoration. There is, therefore, no need to interfere with the said order except to provide the following safeguards :-

(a) Respondents 1 to 3 herein, to whom possession has restored on 25.1.2006 in pursuance of the order dated 23.12.2005 of the High Court, shall not put up any structure nor alienate the same for a period of six months from today. Either party may approach the civil court or other appropriate forum in accordance with law within the said period and seek appropriate interim relief;

(b) If and when either party approaches the civil court or other alternative forum, such court or forum shall decide the subject matter of such suit or proceedings on the basis of the pleadings before it and the evidence let in and will not be influenced by any observations that might have been made by either the learned single Judge or the Division Bench in their orders dated 20.5.1999 and 23.12.2005.

(c) Having regard to the nature of disputes and the allegation of

forcibly dispossession etc., the civil Court / appropriate forum shall endeavour to dispose of the suit or proceedings expeditiously preferably within one year."

7. A review petition was thereafter filed by the petitioner in person against the order dated 25.10.2010 passed in SLP(C) No. 2457-2458/2009, which was dismissed. Subsequent to the above, the petitioner filed Title Suit No. 20/2011 before the Court of learned Munsiff No. 1, Tinsukia, which was subsequently renumbered as Title Suit No. 1/2017 (Margherita) and thereafter again renumbered as Title Suit No. 9/2017 when it was transferred to the Court of learned Civil Judge Senior Division, Tinsukia.

8. To cut a long story short, the case has been again renumbered with original number of T.S. No. 20/2011 and the same is pending before the Court of learned Civil Judge Junior Division, Tinsukia.

9. As T.S. No. 20/2011 had not been disposed of, the petitioner in person filed WP(C) 7011/2016. WP(C) 7011/2016 was disposed of, vide order dated 13.08.2013, which is as follows:-

"There is no dispute at bar that there is a direction of the Hon'ble Apex Court giving liberty to the present petitioner to file a civil suit and thereafter a direction was therefrom the said court for disposal of the suit within a period of 1 (one) year from the date of filing Keeping in view the said direction this court also feels that the dispute is a long pending one between the parties to the writ petition As such, the Title Suit No. 1/2017 pending in the court of learned Munsiff. Margherita be disposed of preferably within a period of 6 (six) months from 20.08.2018. However, it is made clear that in order to stick to the said time frame of 6 (six) months, the parties must have due diligence in participating in the said trial before the learned trial court Accordingly, this writ petition stands disposed of The order dated 30.07.2018 passed by the learned

Munsiff, Margherita in Title Suit No. 1/2017 is kept on record)."

10. The petitioner has filed the present contempt petition against the respondents, namely, 1. Shri Diganta Saikia, ACS. Deputy Commissioner, Tinsukia, 2. Shri Manjit Borkakoty, ACS Additional Deputy Commissioner, Tinsukia, 3. Shri Sanjib Kr. Phukan, ACS Circle Officer, Tinsukia Revenue Circle, Tinsukia, 4. Shri Anil Gogoi. Lot Mondal, Office of the Circle Officer, Tinsukia Revenue Circle, Tinsukia, 5. Shri Nimbalkar Vaibhav Chandrakant, IPS, Superintendent of Police, Tinsukia, 6. Shri Biren Baruah, Inspector. Officer-inCharge, Tinsukia Police Station, Tinsukia, 7. Smti Sukanya Gogoi. Munsiff No. 1, Margherita, Judicial Magistrate, 1st Class in the Court of Munsiff No. 1, at Margherita, Tinsukia, 8. Shri Chandan Das, District and Session Judge, Tinsukia, 9. Shri Manju Mazumdar, wife of Late Bhupendra Kumar Mazumdar Resident of Subachani Road, Tinsukia, 10. Ranjit Kumar Mazumdar, Son of Late Upendra Kumar Mazumdar, State Bank Colony, Subachani Road, Tinsukia and 11. Shri Ganesh Chandra Mazumdar, Husband of Late Sima Rani Mazumdar, State Bank Colony, Subachani Road, Tinsukia, on the ground that the title suit was to be disposed of preferably within a period of six months from 20.08.2018 and the same has not been done till date.

11. The petitioner's grievance against the Deputy Commissioner, Tinsukia is that though the Division Bench of this Court in WA 167/1999 had directed the Deputy Commissioner to restore certain land to the respondent Nos. 9, 10 & 11, no land being available, the same could not have been restored by the Deputy Commissioner.

12. The petitioner in person thus submits that as the statement made by the

Deputy Commissioner that he has complied with the order of the Division Bench in WA 167/1999, is thus incorrect and accordingly should be punished for Contempt of Court.

13. Mr. A. K. Gupta, learned counsel for the respondent Nos. 9 & 10, on the other hand, submits that that the delay in the disposal of the case by the learned Trial Court is due to the fault on the part of the petitioner in person, who wastes a lot of time in the Court by submitting applications and giving complaints against the Judges, who are sitting on the Bench.

14. Mr. H. Rahman, learned counsel for the respondent Nos. 1-4 submits that at the time of passing of the various orders by the High Court, the respondents were not the officers in the Deputy Commissioner's office and as such, they have got no role to play in this case.

15. Ms. L. Devi, learned counsel for the respondent No. 7 submits that initially the respondent No.7 was the Munsiff/Judicial Magistrate First Class, Margherita. However, the Covid-19 Pandemic started and subsequent to the pandemic, the respondent No.7 has been transferred out from the said place and is no more involved in the proceedings of the said case.

16. Mr. R. Chakravorty, learned counsel for the respondent No. 8 submits that the respondent No.8 was a District Judge for some time in Tinsukia. However, the respondent No.8 being the District Judge, he could not take up the matter and the respondent No.8 has subsequently been transferred.

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

18. The issue pertains to the Title Suit No.1/2017 not being decided till date, despite the observations of the Supreme Court in SLP(C) 2457-2458/2009, wherein it had held that if and when either of the party approaches the Civil Court, the Civil Court shall endeavour to dispose of the suit or proceedings expeditiously and preferably within 1 year. Further, in the order dated 13.08.2013 passed in WP(C) 2011/2016, this Court had observed that Title Suit No.1/2017 pending in the Court of learned Munsiff, Margherita, should be disposed of preferably within a period of 6 months from 20.08.2018. It is noticed that the said Title Suit No.1/2017 is now pending before the learned Civil Judge, Junior Division, Tinsukia, wherein it has been renumbered as Title Suit No.20/2011. There is no requirement for this Court to make any further observation, with regard to the fact that Title Suit No.20/2011 is required to be disposed of expeditiously, keeping in view the observations made by the Hon'ble Supreme Court and this Court in WP(C) 7011/2016.

19. On considering the fact that there has been no intentional or deliberate violation of the observations made by the Hon'ble Supreme Court in SLP(C) 2457-2458/2009 and this Court in the order dated 13.08.2013 passed in WP(C) 7011/2016, this Court is of the view that no case of contempt had been made out. Accordingly, the contempt petition stands closed. The petitioner may bring to the notice of the learned Civil Judge deciding Title Suit No. 20/2011 the order passed today, so that the observations made by the Supreme Court and this Court are made known to the Presiding Judge.

JUDGE

Comparing Assistant