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

Case No. : WP(C)/2162/2021

SABITA PAUL
W/O- LT. BIDYA PAUL, R/O- WARD NO. 10, KOKRAJHAR TOWN, P.O., P.S.
AND DIST.- KOKRAJHAR, BTR, ASSAM, PIN- 783370

VERSUS

THE STATE OF ASSAM AND 7 ORS
REP. BY THE PRINCIPAL SECY./ COMMISSIONER AND SECY., GOVT. OF
ASSAM, HOME AND POLITICAL DEPTT., DISPUR, GHY-6

2:THE DY. COMMISSIONER
DISTRICT KOKRAJHAR
KOKRAJHAR
BTR
ASSAM
PIN- 783370

3:THE ADDL. DY. COMMISSIONER
DISTRICT KOKRAJHAR
KOKRAJHAR
BTR
ASSAM
PIN- 783370

4:THE SUPERINTENDENT OF POLICE
KOKRAJHAR
KOKRAJHAR
BTR
ASSAM
PIN- 783370

5:THE OFFICER-IN-CHARGE

KOKRAJHAR P.S.
KOKRAJHAR
BTR
ASSAM
INDIA
PIN- 783370

6:SNEHALATA DAS
W/O- LT. NITYANANDA DAS
R/O- KACHARI ROAD
WARD NO. 6
KOKRAJHAR
P.O.
P.S. AND DIST.- KOKRAJHAR
BTR
ASSAM
PIN- 783370

7:NITUL CH. DAS
S/O- LT. NITYANANDA DAS
R/O- KACHARI ROAD
WARD NO. 6
KOKRAJHAR
P.O.
P.S. AND DIST.- KOKRAJHAR
BTR
ASSAM
PIN- 783370

8:ANITA DAS
W/O- SRI NITUL DAS
R/O- KACHARI ROAD
WARD NO. 6
KOKRAJHAR
P.O.
P.S. AND DIST.- KOKRAJHAR
BTR
ASSAM
PIN- 78337

Advocate for the Petitioner : MR. B J MUKHERJEE, MS R SAHA

Advocate for the Respondent : GA, ASSAM, J M BAISHYA(R-8),H THAKURIYA (R-8),MS. B D SARMAH(R-8),MR. U K DAS(R-8),SC, BTC

**BEFORE
HONOURABLE MR. JUSTICE ARUN DEV CHOUDHURY**

ORDER

04.04-2026

1. The present writ petition raises a question that goes beyond the confines of a private dispute between a tenant and a landlord. At its core lies a constitutional concern about whether the coercive machinery of the State can be employed to dispossess a tenant of settled possession in the absence of lawful authority.
2. The facts giving rise to the present petition are neither complicated nor seriously disputed, but their implication strikes at the very foundation of the Rule of Law.
3. The petitioner asserts that she was in occupation of the tenanted room under respondent No.6.
4. The private respondent, landlord, instituted a Civil Suit registered as T.S. No. 2/2020, seeking a decree for *Khas* possession of the rented premises and for a decree of Rs. 49,280/- as arrears of house rent for the months of October 2018 to December 2019, as well as for a decree of Rs. 5,000/- as damages.
5. The tenanted premise is a room measuring 12ft x 24ft, as described in the schedule of the plaint.
6. Thus, by instituting said Suit, the landlord necessarily acknowledged the petitioner's possession and invoked the jurisdiction of the Civil Court for recovery of possession as well as arrears of house rent.
7. While the aforementioned Suit was pending for adjudication, the landlord

approached the local police authority on 25.12.2020, *inter alia*, alleging that, after the dissolution of the tenancy on its expiry in 2016, the tenant continued to run his business and paid rent only till September 2018 and that when the tenant was asked for rent, the tenant fled away to an unknown place; the tenant was also untraceable at her phone number; accordingly, having no alternative, the FIR was filed.

8. Aforesaid FIR was registered as Kokrajhar P.S. Case No. 790/2020. Upon completion of the investigation, the police submitted a charge sheet under Sections 406/420/506 of the IPC, and the matter was placed before the learned Chief Judicial Magistrate (CJM), Kokrajhar.
9. Accordingly, CJM, Kokrajhar, under its order dated 30.01.2021, took cognisance of the offence. A summon was issued to the accused person.
10. While the matter was pending at that stage, the Inspector of Police-cum-Officer-in-Charge, Kokrajhar police station, by its communication dated 29.01.2021, requested the District Magistrate, Kokrajhar, to depute one Executive Magistrate to vacate the rented premise.
11. The aforesaid communication indicates that the eviction was sought because the tenant wilfully and deliberately defaulted on the monthly house rent, and the room has been locked since September 2018.
12. Based on such a request, the impugned order dated 09.02.2021 was passed by the Additional Deputy Commissioner, Kokrajhar, by which the Circle Officer-cum-Executive Magistrate, Kokrajhar, was detailed to attend to law and order during the eviction of the tenant.
13. On 10.02.2021, the Officer-in-Charge issued a notice to the petitioner,

asking her to present at the tenanted premises on 11.02.2021 at 10:00 am. However, the petitioner was not present on the tenanted premises that day. Subsequently, the respondent No. 7, along with some police personnel from Kokrajhar Police Station, broke the shutter lock and entered the room in her absence.

14. The central issue that arises in the present lis is whether the police and the district administration have jurisdiction to evict a tenant from possession of tenanted premises merely on the basis of a police complaint by the landlord, in the absence of any decree, warrant, or statutory order authorising such eviction.
15. The answer to this question is settled.
16. It is by now well settled that, even in a situation where a person in possession has no legal title, the owner cannot dispossess such a person except by due process of law. The law does not permit a person to take the law into his own hands and effect dispossession by force.
17. The aforesaid principle lies at the heart of civilised legal order and the Rule of Law.
18. It is also well settled that the true owner must seek recovery of possession through lawful proceedings rather than self-help measures. The rationale underlying this doctrine is not to reward illegality but to preserve public order and to ensure that administration of justice remains within the executive province of the courts.
19. A person entitled to possession must obtain such possession through the process recognised by law and cannot resort to forcible entry. Permitting individuals to recover possession by force would undermine the rule of

law and invite disorder.

- 20.** Tested against these settled principles, the events of the present case revealed a disturbing departure from the discipline of law.
- 21.** By instituting a Civil Suit for eviction, the landlord had submitted himself to the jurisdiction of the Court and acknowledged that recovery of possession required adjudication.
- 22.** Instead of waiting for the outcome of the process, the landlord invokes the assistance of police authorities, who, without any judicial mandate, facilitated the dispossession of the petitioner.
- 23.** The police have no adjudicatory authority in matters relating to civil possession or tenancy. Their function is confined to the maintenance of law and order and the enforcement of the lawful commands of the Courts and statutes. They cannot assume the role of arbiters of civil disputes or instruments for the enforcement of private claims of possession.
- 24.** Article 300A of the Constitution of India provides that no person shall be deprived of his property save by authority of law.
- 25.** The expression of authority of law is not a mere formal requirement; it demands a lawful source of power and adherence to procedures established by law.
- 26.** Dispossession effected by executive fiat or police intervention, without judicial sanction or statutory backing, cannot be regarded as "deprivation of right of possession by authority of law".
- 27.** The petitioner's dispossession, therefore, constitutes a direct

infringement of a constitutional guarantee embodied under Article 300A of the Constitution of India. Such action is also manifestly arbitrary and hence violative of Article 14 of the Constitution of India.

- 28.** The withdrawal of the eviction suit after the petitioner was dispossessed is a circumstance of considerable significance. It reveals that once possession had been secured through executive intervention, the pending judicial process was unnecessary for the landlords.
- 29.** The Courts must remain vigilant against such attempts to circumvent the discipline of legal procedure.
- 30.** If parties are permitted to achieve through executive/police force, what they cannot obtain through judicial determination, the authority of the Courts would be gravely undermined.
- 31.** The stand taken in the affidavit by the landlord/respondent No.6, that the petitioner should pursue a civil remedy for the restoration/recovery of possession, cannot be accepted in the peculiar facts of the present case.
- 32.** When prima facie, the State and its officers become an instrument of unlawful dispossession, the injury ceases to be a matter of private law and enters the domain of constitutional wrong.
- 33.** In such circumstances, the writ jurisdiction of this Court must be exercised to restore the rule of law and prevent abuse of executive power.
- 34.** A writ Court cannot countenance a situation in which the police/civil administration becomes an instrument for enforcing private rights. To

permit such conduct would effectively convert such authorities into executing Courts and render judicial process redundant. The constitution envisages clear demarcations; rights are adjudicated by courts and enforced through procedures sanctioned by law.

- 35.** The executive/police cannot arrogate to itself the function of adjudication and execution in civil disputes.
- 36.** In view of the foregoing discussion, this Court is of the prima facie opinion that the dispossession of the petitioner was illegal, unconstitutional and in clear violation of settled principles of law.
- 37.** At this stage, it is submitted by the learned counsel for the petitioner that a settlement has been arrived at between the petitioner and the respondent landlord, inasmuch as the respondent No.6 has duly compensated the petitioner for the illegal action and the petitioner is not interested in claiming restoration of possession over the tenanted premise and an affidavit is also filed to that effect.
- 38.** Based on such an assertion, this Court could have closed this matter.
- 39.** However, taking note of the legal issue and the purported excess in the exercise of power, this Court deems it appropriate to implead the Officer-in-Charge of Kokrajhar Police Station, under whose authority the communication seeking the presence of a magistrate was issued, and the Additional Deputy Commissioner, Kokrajhar, under whose authority the Magistrate was deputed to oversee the eviction.
- 40.** Accordingly, this Court, under its order dated 06.03.2026, had requested Mr. D. Nath, learned Senior Government Advocate, Assam, to obtain the details of these two officers, so that this Court can implead

them for proper adjudication of this proceeding after hearing them.

41. Referring to this Court's earlier order dated 06.03.2026, Mr D. Nath, learned Senior Government Advocate, Assam, and Mr B. Goswami, learned Additional Advocate General, Assam, have furnished the detailed particulars of the officers in question.
42. Accordingly, **Sri Bhaskar Das, ACS, presently posted as Additional Secretary to the Government of Assam, Social Justice and Empowerment Department, Dispur, Guwahati-6**, be impleaded as respondent No.9.
43. The then Officer-in-Charge, Kokrajhar Police Station, namely, **Sri Binanda Basumatary, presently posted as Deputy Superintendent of Police (Border), at Kokrajhar DEF**, be impleaded as respondent No. 10.
44. Mr B. J. Mukherjee, learned counsel for the petitioner, is to file an amended memo of parties before the Registry with an advance copy to be furnished to all the learned counsel for the parties.
45. After such amendment, let a notice be issued to the newly impleaded respondents Nos. 9 and 10 within 10 days from today, by Speed Post with A/D as well as by the usual process.
46. Notice is returnable on 16.06.2026.
47. List this matter again on **16.06.2026** for further hearing.

JUDGE

Comparing Assistant