

GAHC010181042024



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

Case No. : WP(C)/4477/2024

SUMAN CHETIA AND 3 ORS
SON OF LATE DILIPESWAR BORA,
RESIDENT OF KHARGHULI, GUWAHATI-04.

2: RUPOM CHETIA BORA
SON OF LATE DILIPESWAR BORA

RESIDENT OF AJANTA PATH
BELTOLA

GUWAHATI-06.

3: PRITI BORA
WIFE OF LATE DILIPESWAR BORA

RESIDENT OF KHARGHULI
GUWAHATI-04.

4: MOUSAM CHETIA BORA
DAUGHTER OF LATE DILIPESWAR BORA

RESIDENT OF BAGHORBARI
GUWAHATI

VERSUS

THE STATE OF ASSAM AND 6 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY,
HOME AND POLITICAL AFFAIRS DEPARTMENT,
GOVERNMENT OF ASSAM,
DISPUR, GUWAHATI-6.

2: THE DEPUTY COMMISSIONER
JORHAT

ASSAM.

3:THE DIRECTOR GENERAL OF POLICE
ASSAM
ULUBARI
GUWAHATI.

4:THE SUPERINTENDENT OF POLICE
JORHAT
ASSAM.

5:THE OFFICER-IN-CHARGE
LICHUBARI POLICE STATION
JORHAT
ASSAM.

6:KAILASH BORTHAKRU
SON OF LATE BIPIN CHANDRA BORTHAKUR

RESIDENT OF NA-ALI
BONGAL PUKHURI

P.O.- JORHAT
P.S. JORHAT
PIN- 785001.

7:JAMUNA MADHAB BORTHAKUR
SON OF LATE BIPIN CHANDRA BORTHAKUR

RESIDENT OF NA-ALI
BONGAL PUKHURI

P.O.- JORHAT
P.S. JORHAT
PIN- 785001

Advocate for the Petitioner : MR. A GOYAL, MR. A CHOUDHURY

Advocate for the Respondent : GA, ASSAM, MR. J P MORE

BEFORE

THE HON'BLE MR. JUSTICE ARUN DEV CHOUDHURY

Order

03.09.2024

1. Heard Dr. A K Saraf, learned Senior counsel assisted by Mr. M Dutta, learned counsel for the petitioner. Also heard Mr. Goswami, learned counsel for the State.
2. The present petition is filed by the petitioners alleging police inaction as well as collusion of the police authorities with the respondent Nos. 6 and 7.
3. From the material available on record, it is seen that the respondent Nos. 6 and 7 filed a suit against the care taker of the land, claimed to be owned by the petitioners, for a declaration of right, title and interest and confirmation of possession and in alternate recovery of possession and mandatory permanent injunction. Along with the suit, application seeking injunction was also filed, which was registered as Misc (J) Case No. 67/2024. However, no injunction has been granted. The petitioners have also filed written statement through their care taker.
4. It is also on record that the dispute was earlier dealt by the Execution Magistrate, Jorhat in exercise of its power under Section 145, it was directed that until the petitioners are legally dispossessed and till the parties approach the Higher Court and such order of possession in favour of the care taker of the petitioners was to continue.
5. Alleging that having support from the local police officer, the respondents had forcefully entered into the house of the petitioners and stolen certain properties and accordingly an FIR was also lodged.
6. According to Dr. Saraf, learned Senior counsel such FIR has not been registered and rather the police is supporting the respondent Nos. 6 and 7, who are trying to dispossess the petitioners from their ancestral land.
7. While the matter was taken up in the first part of the day, this court asked Mr. Goswami, learned counsel to obtain instruction. On instruction, he stated that the police has not registered any case as the matter is of civil nature.
8. This court from the reading of the FIR, prima-facie finds that cognizable offences are made out, subject to however further deliberation in this case. Considering the nature of allegation and the backdrop of the litigation, this court is of the view that the petitioners are required to be protected at this stage till further deliberation.

9. Accordingly, let a notice be issued, returnable on 04.10.2024.
10. Mr. Goswami, learned State counsel accepts notice on behalf of respondent Nos. 1 to 5. Petitioners to take steps for service of notice upon the respondent Nos. 6 and 7 by way of registered post with A/D as well as usual process within a period of one week from today. In addition, dasti is permitted. However, same should be routed through the Registry of this court and the petitioners shall file an affidavit affecting such service.
11. Considering the nature of allegation more particularly the allegation of collusion between the police and the respondent Nos. 6 and 7, it is provided that the possession of the petitioners should be protected till the returnable date and the local police station, more particularly the O/C, Lichubari PS shall ensure that the possession of the petitioners are not be disturbed.
12. List accordingly.

JUDGE

Comparing Assistant