

GAHC040009132020



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

Case No. : WP(C) 267/2020

1:Raman Taloh
S/O LT. TAKOM TALOH
VILLAGE-BILAT-BAMIN
PO BILAT
PS RUKSIN
EAST SIANG DISTRICT
AP.

2: GIANT TALOH
S/O LT. TAKOM TALOH
VILLAGE-BILAT-BAMIN
PO BILAT
PS RUKSIN
EAST SIANG DISTRICT
AP.

3: TATOR TALOH
S/OLT. TAPUN TALOH
VILLAGE-BILAT-BAMIN
PO BILAT
PS RUKSIN
EAST SIANG DISTRICT
AP.

4: TABONG TALOH
S/O LT. TAKIT TALOH
VILLAGE-BILAT-BAMIN
PO BILAT
PS RUKSIN
EAST SIANG DISTRICT
AP.
VERSUS

1:The State of AP and Others
REPRESENTED BY THE CHIEF SECRETARY
GOVT. OF AP
ITANAGAR.

2:THE DEPUTY COMMISSIONER
EAST SIANG DISTRICT
PASIGHAT
ITANAGAR.

3:THE CIRCLE OFFICER
BILAT
EAST SIANG DISTRICT
AP.

4:TAGET TALOH
S/O LT. TALUNG TALOH
VILLAGE-BILAT-BAMIN
PO BILAT
PS RUKSIN
EAST SIANG DISTRICT
AP.

5:TAKEN TALOH
S/O LT. TALUNG TALOH
VILLAGE-BILAT-BAMIN
PO BILAT
PS RUKSIN
EAST SIANG DISTRICT
AP.

Advocate for the Petitioner : Ninnong Ratan
Advocate for the Respondent : GA (AP)

BEFORE
HONBLE MR. JUSTICE NELSON SAILO

ORDER

Date : 24-02-2021

Heard Mr. N. Ratan, learned counsel for the petitioners, who submits that
the Kebang decision dated 10.05.2012 was sought to be executed before the

Court of Deputy Commissioner, Pasighat in Execution Case No.01/2013. The Deputy Commissioner accordingly, vide order dated 13.08.2013 have directed the Decree Holder to take possession and occupation of the land in question by acting as Chief Judicial Magistrate (before separation of judiciary). The applicants to the Execution application thereafter started to claim the entire land as settled in the Kebang decision to be their own land by excluding other Taloh Clan members. Aggrieved with the steps being taken by them, the petitioners approached the Deputy Commissioner with a Review application and the Deputy Commissioner has referred the matter to the Circle Officer. The Circle Officer vide notice dated 30.01.2020 directed all the parties including the petitioners to appear in person along with their relevant documents. The said notice has been challenged by the private respondents herein in WP(C) No.53(AP)/2020 and this Court vide order dated 11.02.2020 has stayed the notice of the Circle Officer.

Mr. N. Ratan, learned counsel submits that the very fact of the Kebang being executed by the Deputy Commissioner is irregular and not cognizable in view of the Regulation 45(1) of the Assam Frontier (Administration of Justice) Regulation, 1945. He also submits that the present writ petition challenging the order passed in the Execution case will also be maintainable and in support of his submission, he has relied upon the Apex Court's decision of *Radhey Shyam & Anr. Vs. Chhabi Nath & Ors.*, reported in (2015) 5 SCC 423. The relevant portion of the said decision at Paragraph No.25 may be abstracted hereinbelow:

“...25. It is true that this Court has laid down that technicalities associated with the prerogative writs in England have no role to play under our constitutional scheme.

There is no parallel system of King's Court in India and of all the other courts having limited jurisdiction subject to the supervision of King's Court. Courts are set up under the Constitution or the laws. All courts in the jurisdiction of a High Court are subordinate to it and subject to its control and supervision under [Article 227](#). Writ jurisdiction is constitutionally conferred on all the High Courts. Broad principles of writ jurisdiction followed in England are applicable to India and a writ of certiorari lies against patently erroneous or without jurisdiction orders of Tribunals or authorities or courts other than judicial courts. There are no precedents in India for the High Courts to issue writs to the subordinate courts. Control of working of the subordinate courts in dealing with their judicial orders is exercised by way of appellate or revisional powers or power of superintendence under Article 227. Orders of the civil court stand on different footing from the orders of authorities or Tribunals or courts other than judicial/civil courts. While appellate or revisional jurisdiction is regulated by the statutes, power of superintendence under [Article 227](#) is constitutional. The expression "inferior court" is not referable to the judicial courts, as rightly observed in the referring order in paras 26 and 27 quoted above..."

Considering the submission and in view of the above decision, it appears that the present writ petition would be maintainable, but the same requires further examination.

Mr. D. Soki, learned Additional Senior Govt. Advocate appears for the respondents No.1, 2 and 3, but the private respondents No. 4 and 5 are unrepresented today.

On the prayer made by Mr. D. Soki, learned Additional Senior Govt. Advocate, 3(three) weeks time is granted to file counter affidavit. The respondents No.4 and 5

may also file their affidavit-in-opposition.

Having regard to the projection made by the petitioners, the order dated 13.08.2013 passed by the Deputy Commissioner, East Siang District, Pasighat in Execution Case No.01/2013 shall remain suspended until further order(s).

List the matter again **after 3(three) weeks.**

JUDGE

Comparing Assistant