
(2004) 08 GAU CK 0035
In the Gauhati High Court
Case No : WP (C) No. 2503 of 2004

Association to Uplift Rural Undertaking Action, Training and Education (Aureate) and Another APPELLANT

Vs

State of Assam and Others RESPONDENT

Date of Decision : 12-08-2004

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2005) 3 GLR 203

Hon'ble Judges : I.A. Ansari, J

Bench : Single Bench

Advocate : B.R. Das and C. Sarma, for the Appellant; D. Das, A. Das and P.K. Mushahary, for the Respondent

Final Decision : Dismissed

Judgement

I.A. Ansari, J.—Heard Mr. S.P. Roy, learned counsel for the petitioners, and Mr. D. Das, learned counsel for the respondent No. 5. Also heard Mr. P K Mushahary, learned Senior Government Advocate, Assam, for the respondent Nos. 1 to 4.

2. By making this application, the petitioners have approached this Court seeking issuance of appropriate writ or writs prohibiting, restraining and forbidding the respondents from evicting the petitioners from the land and house described in schedule to the application, their case being, in brief, thus : The petitioner No. 1 is a registered society engaged in social works for upliftment of down trodden people with petitioner No. 2 as its Secretary. The petitioner society came into existence in the year 1995 and has been in occupation of the said land by erecting boundary walls around the same and also by constructing one Assam-type house thereon since 1995. On 25.03.2004, the officials of the respondent No. 5 alongwith the local police attempted to forcibly evict the petitioners, but did not succeed and it is on that day, i.e. on 25.03.2004, that the petitioners came to know that the said land had been settled by the Government in favour of the respondent No. 5 by order, dated 29.04.2003, though under the Assam Land

and Revenue Regulations, 1836, a person, who is in possession of the Government land, is entitled to settlement and, hence, the land, in question, ought to have been settled with the petitioners. Having not given any notice either under the Asam Land and Revenue Regulations or under the Assam Public Premises (Eviction and Unauthorised Occupants) Act, 1971, the petitioners cannot be evicted.

3. The respondents have contested proceeding and the affidavit-in-opposition filed by the respondent No. 5 indicates that the case of the respondents is, in brief, thus : The land, in question, was settled with the respondent No. 5 by the State Government as early as on 29.04.2003 and 07.05.2003, the possession of the land was handed over to the respondent No. 5 by the Settlement Officer concerned and since then they have been in possession of the said land. The settlement rules framed under the Assam Land and Revenue Regulations do not cast any obligation on the authority concerned to settle the land in favour of the occupant of the land. The provisions of the Assam Public Premises (Eviction of Unauthorised Occupants) Act, 1971, are not applicable to the facts of the present case. Had the petitioners been in occupation of the said land, they would have approached this Court in May 2003, itself, when the possession of the said land was handed over to the respondent No. 5 in pursuance of the said settlement order.

4. From what have been pointed out above, what clearly emerges is that the entire claim of the petitioners rests upon their assertion that the petitioner No. 1 is in occupation of the land, in question. This assertion is vehemently denied and disputed by the respondents. The land, in question, stands, admittedly, settled in favour of the respondent No. 5 by the appropriate authority. The records produced by the learned Government Advocate, Assam, and also the documents annexed to the affidavit-in-opposition aforementioned indicate that the possession of the land was handed over to the respondent No. 5 as far back as on 07.05.2003 and this aspect of the matter was recorded in the certificate of the Assistant Settlement Officer, Guwahati, contained in Memo No. SCCR 23/2002/783-84, dated 02.06.2003. There is no counter allegation made by the petitioners that this certificate contained in memorandum aforementioned is a fabricated one.

5. At the time of the admission hearing of the writ petition, it is, however, contended, on behalf of the writ petitioners, that the transaction of handing over of possession of the said land is a mere paper transaction. This submission of the petitioners indicates that so far as the documents are concerned, the documents are entirely in favour of the respondent No. 5.

6. Thus, the whole controversy raised in the writ petition boils down to the question as to who was in possession of the land on the date of institution of the writ petition. While the petitioners claim that it is the petitioner No. 1, who is in possession of the said land, the respondents assert that it is the respondent No. 5, who is in possession of the said land since 07.05.2003 in pursuance of the

settlement order, dated 29.04.2003. Thus, the material question raised in this writ petition is entirely a question of fact. This position is, in fact, not in dispute.

7. In the above back drop, Mr. D. Das, learned counsel for the respondent No. 5, relying on the decision of the Apex Court in General Manager, Kisan Sahkari Chini Mills Ltd., Sultanpur, U.P. Vs. Satrughan Nishad and Others, submits that since the writ petition raises disputed questions of fact, such a dispute is not amenable to the writ jurisdiction.

8. Controverting the above submission so made, Mr. S.P. Roy, learned counsel for the petitioners, submits, placing reliance on the decision in H.S.E.B. and Ors. v. Ram Nath and Ors. reported in : (2004)5SCC793 , and Hindustan Petroleum Corporation Ltd. and Another Vs. Dolly Das, that even in a case, which raises disputed question of fact, writ jurisdiction can be exercised if such a question does not required elaborate investigation.

9. While considering the question as to whether in any disputed question of fact, a writ Court shall assume jurisdiction, it is of immense importance to note that a careful reading of the decision of the Apex Court Chini Mills Ltd. (supra) shows that when disputed questions of fact are raised, the same cannot be decided in writ jurisdiction and exercise of jurisdiction by the High Court in such cases is not justified. So far as the case of H.S.E.B. and Ors. (supra) is concerned, it, nowhere, lays down that the High Court shall interfere even in disputed question of fact. What, as a matter of fact, has been laid down in H.S.E.B. and Ors. (supra) is that the said case did not involve any disputed question of fact and, hence, exercise of writ jurisdiction, in such a case, was not improper. Thus, the case of H.S.E.B. and Ors. (supra) does not help the case of the present petitioners.

10. Turning to the case of Hindustan Petroleum Corporation Ltd. (supra), it needs to be noted that in this case, the Apex Court has laid down that if the facts pleaded before the Court are of such a nature, which do not involve any complicated questions of fact needing elaborate investigation of the same, the High Court can exercise writ jurisdiction under Article 226 of the Constitution in such matters and that there can be no hard and fast rule in such matters.

11. From a bare reading of the authorities cited and discussed, it is amply clear that there is no absolute bar on the powers of the High Court to exercise writ jurisdiction in even disputed questions of fact; but when questions of facts need elaborate investigation and/or collection of evidence, the High Court can choose not to exercise of its powers under Article 226 of the Constitution and such refusal to exercise the discretion vested in the High Court by Article 226 cannot be treated as incorrect.

12. In the case at hand, as already indicated hereinabove, the primary question raised in this writ petition is the possession of the disputed land. This question is purely a question of fact and determination of this question will require investigation and placing of oral as well as documentary evidence on record.

Such an exercise should not be undertaken by the High Court when appropriate remedy can be availed by the writ petitioners from a Civil Court of competent jurisdiction.

13. Because of what have been discussed and pointed out above I do not find that the present one is a fit case, where the High Court shall exercise its jurisdiction. No exceptional circumstances for interference by High Court in exercise of its writ jurisdiction under Article 226 of the Constitution has been made out by the petitioners.

14. In the result and for the foregoing reasons, this writ petition is not admitted and the same shall accordingly stand dismissed.

15. Interim direction passed in this case earlier shall accordingly stand vacated.

16. Hand over the relevant records to the learned Government Advocate.