
(2009) 05 GAU CK 0021
In the Gauhati High Court
Case No : Writ Petition (C) No. 4301 of 2006

Mrs. Lona Sarma (Barua)

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 26-05-2009

Acts Referred:

Constitution of India, 1950 — Article 226, 227

Criminal Procedure Code, 1973 (CrPC) — Section 144, 145

Citation : (2009) 1 GLD 281 Supp : (2011) 2 GLR 62 : (2010) 3 GLT 465

Hon'ble Judges : B.K. Sharma, J

Bench : Single Bench

Final Decision : Allowed

Judgement

B.K. Sharma, J.—Both the writ petitions involving same set of facts and the same cause of action, have been heard analogously and are being disposed of by this common judgment and order.

2. While the petitioners have contended that they have been evicted from their patta land at the behest of district and police administration, it is the case of the private respondents, who are the beneficiaries of such eviction of the petitioners, that the petitioners should pursue their remedy elsewhere other than the writ jurisdiction.

3. Each one of the petitioners had purchased land measuring 1 katha-10 lachas covered by Dag No. 317(c) and 317{S1. No. 4) of K.P. Patta No. 88 of village Borsojai under Beltola mouza of Kamrup district, Assam from Pragjyotish Housing Cooperative Society by registered deed bearing No. 1978 and 1979 respectively. The respective land of the petitioners had been mutated by orders dated 22.8.1988. The petitioners have annexed to the writ petition the copies of Jamabandi, land revenue paying receipts, municipal tax receipts, electricity bill receipt etc. to show that the respective plots of their land were under their occupation till they were forcefully evicted. The municipal tax receipt (Annexure-6) and electricity bill receipts are dated 17.4.2006 and 15.6.2006.

4. In the year 1999, one Sri Gunua Maji filed Title Suit No. 250/1999 against the aforementioned Pragjyotish Housing Cooperative Society from whom the petitioners had purchased the land, challenging the sale deed and other documents. Be it stated here that the society had purchased the land of Sri Gunua Maji from his attorney by sale deed No. 1454 dated 7.7.1987. The said attorney was one Sri Dhananjoy Singh, whom Sri Gunua Maji had appointed by registered power of attorney bearing No. 183 of 1987. In the title suit, said Sri Gunua Maji challenged the power of attorney and other documents made on the strength of the said power of attorney.

5. The title suit filed by Sri Gunua Maji was decreed ex parte on 13.9.2000 and thereafter, he filed VVP(C) No. 6687/2001 seeking a direction to execute the ex parte order dated 13.9.2000. The writ petition was disposed of by order dated 24.9.2001 issuing direction to execute the ex parte order dated 13.9.2000 passed by the learned Civil Judge (Junior Division) No. 4 in Title Suit No. 40/2000.

6. The petitioners having come to know about the aforesaid order passed by this Court filed Review Application No. 8/2002 seeking review of the order dated 24.9.2001 passed in WP(C) No. 6687/2001. The review application was disposed of by order dated 27.1.2003 reviewing the earlier order dated 24.9.2001 and a cost was imposed on Sri Gunua Maji for suppression of material fact. Further, mutations in respect of the land earlier granted in favour of the petitioners were also restored.

7. Learned Civil Judge (Junior Division) vacated the ex parte order earlier passed in Title Suit No. 40/2000. The order to that effect was passed on 18.9.2003 in Misc. Case No. 73/2003. Thereafter, the petitioners initiated the proceedings u/s 144, Cr PC against the respondent N. 5 and others before the Respondent No. 2 i.e. the Deputy Commissioner, Kamrup (Metro), Guwahati. On the basis of such proceedings, the Respondent No. 5 was restrained from entering into the land of the petitioners. The order to that effect was passed on 1.4.2006. Being aggrieved, it was the turn of the Respondent No. 5 to file Criminal Revision Petition No. 28/2006 before the learned Sessions Judge challenging the order passed in the said proceeding. The learned Sessions Judge by his order dated 12.4.2006 suspended the order dated 1.4.2006.

8. After the aforesaid developments, the Respondent No. 5 filed Title Suit No. 206/2006 and 224/2006 respectively against the petitioners before the learned Civil Judge (Junior Division) No. 1 and 2, Kamrup, Guwahati respectively for declaration of right, title and interest over the land in question and declaration of the sale deeds through which the land was purchased by the petitioners as void, illegal and not binding.

9. On the basis of the aforesaid Title Suits filed by the Respondent No. 5, the learned Civil Judge issued direction to maintain status quo by the parties. While in Title Suit No. 206/2006, involving the Respondent No. 5 and the petitioner in

WP(C) No. 4301/2006, the order to maintain status quo was passed on 18.4.2006 in Misc. (J) Case No. 139/2006, such order was passed in Title Suit No. 224/2006 involving the Respondent No. 5 and the petitioner in WP(C) No. 4534/2006 on 18.7.2006 in Misc. (J) Case No. 145/2006.

10. It is the case of both the petitioners that they have been evicted by the district and police administration at the behest of the Respondent No. 5 in both the writ petitions after the aforesaid orders of the learned Civil Judge directing to maintain status quo by the parties were passed. The facts brought on record to that effect are as follows.

11. That on 25.7.2006, the Respondent No. 3 i.e. the Additional Deputy Commissioner, Kamrup (Metro), Guwahati informed the Superintendent of Police, Kamrup, Guwahati by his Annexure 11 letter dated 24.7.2006 (Annexure-10 in WP(C) No. 4534/2006) that the petitioners involved in the writ petitions took forcible occupation of the land in question on 19.3.2006, although the land actually belonged to the respective Respondent No. 5 in the writ petitions. In the letter, it was also stated that the parties i.e. the Respondent No. 5 had approached the Basistha Police Station (the respondent No. 4) on the basis of which one Shri P.K. Nath, S.I. of Police took some initiative and warned the forcible occupiers to vacate the land. The letter also reveals that as per the report of the Circle Officer, the forcible occupiers had raised tin/bamboo sheds on the land and some unknown persons had been kept in the sheds. By the letter, direction was issued to enquire into the matter and thereafter, to take necessary action. Interestingly, the letter also enclosed the land documents concerning each of the Respondent No. 5. They are (1) copy/photocopy of the petition, (2) Xerox copy of sale deed, (3) Xerox copy of Jamabandi, (4) revenue paying receipts, (5) Xerox copy of Trace Map and (6) Katcha Patta (Xerox copy).

12. On 29.7.2006, the caretaker of the petitioners' land Sri Bahar Ali informed the petitioners over phone that the police personnel of Basistha Police Station forcibly evicted him that day from the petitioners' land and also destroyed their houses. It was also informed that the Respondent No. 4 took forcible undertaking from the caretaker that he had voluntarily vacated the land.

13. After the eviction of the petitioners in the above manner, the respective Respondent No. 5 immediately started construction of bamboo house in the respective plots of land. The petitioners having no other alternative, filed the appeal petition dated 31.7.2006 before the Respondent No. 2 i.e. the Deputy Commissioner, Kamrup (Metro), Guwahati informing him about the illegal eviction and demolition of houses and requesting him to restore possession of the land to the petitioners. There being no action on the part of the district as well as the police administration, the petitioners invoked the writ jurisdiction of this Court by filing the instant writ petitions.

14. While the Deputy Commissioner and the Addl. Deputy Commissioner i.e. the Respondents No. 2 and 3 have filed individual affidavits in WP(C) No. 4301/2006,

a single affidavit has been filed on behalf of the Respondents No. 1, 2 and 3 in W.P. (C) No. 4534/2006. While the respondent No. 4 in WP(C) No. 4301/2006 has not filed any affidavit, but he has filed counter affidavit in WP(C) No. 4534/2006. The private respondents i.e. the Respondent No. 5 in both the writ petitions have filed their individual affidavits in the writ petitions.

15. In the affidavits filed by the official respondents No. 1, 2 and 3 which include individual affidavits filed by the Respondents No. 2 and 3, they have not dealt with the specific plea of the petitioners that they have been evicted from their respective plot of land forcefully and unauthorisedly by the Respondent No. 4. Their affidavits are cryptic and do not deal with the basic contention raised in the writ petitions that in spite of the status quo order passed by the Civil Court, they have been evicted from the land by the district and police administration at the behest of the Respondent No. 5.

16. In the counter affidavit filed by the respective Respondent(s) No. 5, it is their stand that the two plots of land belong to them, which they had purchased from Sri Gunua Maji in the year 2003. According to them, they were in occupation of the land by erecting boundary walls. However, in March 2006, they came to know that the petitioners tried to encroach upon the land and that when they tried to dissuade the petitioners from trespassing into the land, the Respondent No. 5 was informed by the petitioners that they had already purchased the land and were in possession of the same. In such a situation, both the respondents approached said Sri Gunua Maji, the landlord from whom they could gather about the aforesaid fact of fraudulent execution of power of attorney and filing of Title Suit etc. In their affidavits, they have also stated about the filing of Title Suit No. 40/2000 by Sri Gunua Maji, about which mention has been made above. According to the Respondent No. 5, eventually, the said Title Suit was decided in favour of the plaintiff declaring the particular power of attorney to be illegal. Thus, according to both the respondents, the petitioners cannot claim possession over the land on the strength of sale deed executed in 1987. Be it stated here that in the said Title Suit, the petitioners are not party defendants.

17. In paragraph 11 of the counter affidavit, it is the specific case of the Respondent(s) No. 5 that taking advantage of their absence from Guwahati, the petitioners encroached upon the respective plots of land and when they came to know about the same, brought the matter to the notice of the Deputy Commissioner, Kamrup (Metro) (the Respondent No. 2) vide their application dated 5.6.2006, copy of which was also forwarded to the Revenue Department. On the basis of such application, the Circle Officer, Dispur Revenue Circle conducted a local enquiry into the matter during which he also examined the sale deeds, revenue receipts etc. of the Respondent(s) No. 5. Therefore, he submitted his report dated 30.6.2006 informing the Deputy Commissioner that both the respondents had purchased the plots of land in question, but the petitioners encroached upon the land and kept some persons there.

18. According to the Respondent(s) No. 5, on the basis of the aforesaid report,

the Addl. Deputy Commissioner, Kamrup i.e. the Respondent No. 3 addressed a letter dated 25.7.2006 to the Superintendent of Police, Kamrup, Guwahati requesting him to enquire into the matter and take necessary action. It is the stand of the private respondents that the district administration found it to be a clear case of forceful occupation of patta land and the respondent No. 3 issued the aforesaid instruction by his letter dated 25.7.2006 after conducting all the necessary enquiries.

19. In paragraph 12 of the counter affidavit, it has been stated that the Superintendent of Police, Kamrup, Guwahati after receipt of the aforesaid letter dated 25.7.2006 from the Respondent No. 3, instructed the Respondent No. 4 i.e. the Officer-in-Charge, Basistha Police Station vide his letter dated 26.7.2006 to take necessary action in the matter against the persons involved in forceful occupation of patta land. Copy of the letter dated 26.7.2006 was also forwarded to the Deputy Superintendent of Police, Dispur division to supervise the matter. According to the private respondents, no eviction was carried out and the caretaker of the petitioners' land namely, Bahar Ali vacated the land on being asked to do so by the Respondent No. 4.

20. Dealing with the aforesaid two title suits, in which the learned Civil Judge has passed the order of status quo, it is the stand of the private respondents that the petitioners should have pursued their remedy in the said proceeding instead of invoking the writ jurisdiction. It has also been brought on record that the petitioners have also filed Title Suit No. 136/2007 and Title Suit No. 137/2007 respectively against the private respondents before the learned Civil Judge (junior Division), Kamrup, Guwahati for appropriate relief in the matter. Thus, according to the private respondents, the writ petition is not maintainable.

21. The Respondent No. 4 in his counter affidavit filed in WP(C) No. 4534/2006 has generally dealt with the aforesaid factual aspects of the matter. He has admitted that on enquiry, it was found that the respective plots of land were occupied by the petitioners about 3 months before and that they also constructed boundaries and small sheds. It has also been admitted that the caretaker of the land was one Shri Baharul Islam alias Bahar Ali, who was staying there with his family. According to the Respondent No. 4, no force was applied to Shri Bahar Ali and that he having come to know about the real state of affairs from the police, vacated the land willingly.

22. In the aforesaid affidavit of the Respondent No. 4, he has also mentioned about non FIR proceedings No. 9/2006 (Part-I) u/s 145, Cr PC dated 22.3.2006 initiated on the basis of a complaint lodged by the private respondents along with others. He has also enclosed the enquiry report dated 30.6.2006.

23. In paragraph 12 of the counter affidavit, the Respondent No. 4 has stated thus:

12. That with regard to the statements made in paragraph No. 13 of the writ petition, the deponent begs to state that the then O/C Basistha Police Station

made an enquiry as per the direction dated 25.7.2006 and found that the present petitioner and his associate occupied the land in question on 19.3.2006 and started activities thereon. The Respondent No. 5 and others filed a petition before the then Officer-in-Charge, Basistha P.S. against the forcible occupation. The matter was enquired locally by the O/C Basistha P.S. and apprehending further complicity, submitted a non-FIR proceeding u/s 145, Cr PC before the competent Court of taking legal action against the 2nd party i.e. the present petitioner and others. Therefore, the allegation of dispossession from the land in question by the police of Basistha P.S. as stated in this paragraph is not true.

24. Mr. B.C. Das, learned Counsel for the petitioners along with Mr. H.K. Sarma, learned advocate, referring to the aforesaid facts, submitted that it is a clear case of exercising jurisdiction by the district and police administration not vested in it by law. It is a clear case of aiding and abetting illegal action of the Respondent(s) No. 5 by the police administration on extraneous consideration. As regards the plea of the Respondent No. 5 that since the civil suits by and between the parties are pending, the writ petitions are not maintainable, Mr. Das, learned Counsel for the petitioners submitted that while the said civil proceedings are pending between the private parties, the instant writ petitions are against the illegal action on the part of the district and police administration.

25. Mr. S.P. Deka, learned Counsel representing the respondent No. 5 in both the writ petitions, while admitting the basic facts submitted that the disputed questions of fact will not be gone into by the Writ Court. According to him, it is not a case of any illegal eviction at the behest of the police administration. He has placed reliance on certain decisions, which are reported in (1) Noorali Abdulla Modi Vs . Suresh Moti Lal (2) (2007) 2 GLR (NOC) 30 (Tripura Truck Owners Syndicate v. State of Tripura and (3) the unreported judgment dated 9.4.2009 in writ appeal passed in Writ Appeal No. 73/2009 (Md. Moin Uddin Ahmed v. State of Assam and Ors.). The decisions have been pressed to buttress his argument that when the disputed questions of fact are involved, the Writ Court will be reluctant to exercise its jurisdiction.

26. While there is no quarrel with the aforesaid proposition of law in respect of the writ jurisdiction, but the said proposition will have to be tested in the touchstone of facts and circumstances involved in each case. When the facts speak for itself and no in-depth study of the facts to arrive at a conclusion is involved, the writ Court cannot absolve itself from the responsibility to decide the issue raised on the ground of disputed questions of fact being involved. Further, as has been held by the Apex Court in Roshan Deen Vs. Preeti Lal, the power conferred on the High Court under Articles 226 and 227 of the Constitution is to advice justice and not to thwart it. In paragraph 12 of the judgment, it has been observed thus:

12. We are greatly disturbed by the insensitivity reflected in the impugned judgment rendered by the learned Single Judge in a case where judicial mind would be tempted to utilise all possible legal measures to impart justice to a man

mutilated so outrageously by his cruel destiny. The High Court non-suited him in exercise of a supervisory and extraordinary jurisdiction envisaged under Article 227 of the Constitution. Time and again this Court has reminded that the power conferred on the High Court under Articles 226 and 227 of the Constitution is to advance justice and not to thwart it (vide *State of U.P. v. District Judge, Unnao*). The very purpose of such constitutional powers being conferred on the High Court is that no man should be subjected to injustice by violating the law. The lookout of the High Court is, therefore, not merely to pick out any error of law through an academic angle but to see whether injustice has resulted on account of any erroneous interpretation of law. If justice became the by-product of an erroneous view of law the High Court is not expected to erase such justice in the name of correcting the error of law.

27. In *Secy, Secretary, O.N.G.C. Ltd. and Another Vs. V.U. Warriar*, the Apex Court reiterated the well settled legal position that the jurisdiction of the High Court under Article 226 of the Constitution is equitable and discretionary. The power under that Article can be exercised by the High Court-"to reach injustice wherever it is found." In *Veerappa Pillai v. Raman and Hainan Limited* reported in AIR 1951 SC 192, the Constitution Bench of the Apex Court observed that the writs referred to in Article 226 of the Constitution are obviously intended to enable the High Court to issue them "in grave cases where the subordinate tribunals or bodies or officers act wholly without jurisdiction, or in excess of it, or in violation of the principles of natural justice, or refuse to exercise a jurisdiction vested in them, or there is an error apparent on the face of the record, and such act, omission error, or excess has resulted in manifest injustice." (emphasis supplied).

28. I now proceed to deal with the factual aspect of the matter which is so glaring and staring on the face of it. In this proceeding, we are not concerned with the right, title and interest over the two plots of land in question. The question involved is as to whether the district and police administration exceeded in its jurisdiction or acted beyond its jurisdiction in evicting the petitioners from the land in question. Even if there was no order of injunction directing the parties to maintain status quo, it was not within the competence and jurisdiction of the police administration to evict the petitioners from the land, a task which is vested to be carried out only by following due procedure established by law.

29. In the instant case, the learned Civil Judge issued the order of injunction dated 18.4.2006 in Title Suit No. 206/2006 filed by the Respondent No. 5 in WP(C) No. 4301/2006. By the said order, direction was issued to maintain status quo. If the status quo was to be maintained, there was no question of evicting the petitioner who was already in occupation of the land. Same is the case in respect of the petitioner in the 2nd writ petition i.e. WP(C) No. 4534/2006 in which case also, in the title suit filed by the Respondent No. 5 being Title Suit No. 224/2006, the injunction order was passed on 18.7.2006 directing the parties to maintain status quo. It has been brought to my notice that the said orders of

status quo are still holding the field.

30. After the aforesaid orders of status quo, things moved in quick succession. It was on 25.7.2006, the Addl. Deputy Commissioner, Kamrup i.e. the Respondent No. 3 informed the Superintendent of Police, Kamrup, Guwahati about the purported illegal possession of the plots of land belonging to the Respondent No. 5 by the petitioners. In the letter, the date of such encroachment and/or illegal occupation of the land was indicated as 19.3.2006. It was stated in the letter that the approach being made by the private respondents to the Basistha Police Station, one Shri P.K. Nath, S.I. of Police had warned the forcible occupiers i.e. the petitioners to vacate the land. Thereafter, the report etc. was called for from the Circle Officer. By the said letter, the district administration i.e. the Addl. Deputy Commissioner, Kamrup (the Respondent No. 3) directed the Superintendent of Police, Kamrup, Guwahati to take appropriate action in the matter. As noted above, along with the letter, certain documents (photocopies) pertaining to alleged title of the private respondents were also enclosed, as if the Addl. Deputy Commissioner was entrusted with the jurisdiction and power to decide the right, title and interest of the private respondents over the two plots of land.

31. After the aforesaid letter dated 25.7.2006, the police personnel of Basistha Police Station (the Respondent No. 4) evicted the petitioners from their respective land which they had been possessing through their caretaker Shri Bahar Ali. Not only they were evicted but their houses were also demolished. The appeal filed by the petitioners before the Deputy Commissioner, Kamrup on 31.7.2006 did not yield any result which forced the petitioners to approach this Court.

32. Although a feeble plea has been made by the private respondents as well as the Respondent No. 4 that there was no forcible eviction, but such a plea is wholly untenable as the facts including the documents available on records speak for itself and otherwise. Coupled with this, other official respondents i.e. the respondents No. 1, 2 and 3 have not even dealt with the fact of forcible eviction of the petitioners at the behest of the police administration so vividly stated in both the writ petitions.

33. The stand in the affidavit has been referred to above. In the counter affidavit filed by the Respondent No. 4, it is his stand that the caretaker of the petitioners Shri Bahar Ali voluntarily vacated the land. A little discussion about the stand in the affidavit of the Respondent No. 4 will bring out the real story behind. This affidavit has also been referred to above. In paragraph 3 of the affidavit, the Respondent No. 4 admitted of having received the aforesaid letter dated 25.7.2006 addressed to the Superintendent of Police by the Addl. Deputy Commissioner. The letter was received by the Respondent No. 4 on 27.7.2006. According to the Respondent No. 4, the private respondents lodged a complaint before the district administration alleging forcible occupation of their land by the petitioners.

34. In paragraph 4 of the counter affidavit, it is the own stand of the respondent No. 4 that on enquiry, it was found that the land was occupied by the petitioners about 3 months before and they also constructed boundary and sheds over the plots of land. If that be so, coupled with the aforesaid orders of status quo passed by the learned Civil Judge much thereafter i.e. on 18.4.2006 and 18.7.2006 respectively, the police could not have interfered with the matter, which was purely a private dispute between the parties. Even in case of illegal trespass, proper criminal proceeding ought to have been launched instead of acting like a Civil Court and bypassing the procedure established by law.

35. It is in the affidavit of the Respondent No. 4 that on the basis of the complaint lodged by the private respondents on 21.6.2007 alleging forceful occupation of the land by the petitioners on the basis of which non-FIR proceeding No. 9/2006 (Part-I) u/s 145, Cr PC was submitted for taking action as per law. In the affidavit, the Respondent No. 4 has referred to sale deeds etc. which according to him, confer title of the land on the private respondents. In paragraph 10 of the counter affidavit, it is the own case of the Respondent No. 4 that the petitioners took forceful possession of the land on 19.3.2006. His stand in paragraph 12 of the affidavit has been quoted above.

36. Annexure-2 to the counter affidavit filed by the Respondent No. .4 is the G.D. Entry No. 736 dated 29.7.2006, which clearly bears the testimony of the fact that the petitioners even on that date were in possession of their respective plots of land. The said G.D. Entry is quoted below:

As per G.D. Entry No. 736, Sri A.S. Choudhury visited and made enquiry and reported that he found "Tarza Wall" and "Tin Sheds" over the plot of land under patta No. 44 and dag No. 317, mentioned in the memo. He also found that one Islam s/o Md. Samed Ali of Bongaigaon District is living there along with his family member. On being asked he informed that Dr. P.K. Sarmah of Bhargash allowed him to stay there by paying salary of Rs. 8000/-per month and he is living there since 22 years. He left the place with his bag and badges after knowing that the land is not belong to Dr. P.K. Sarmah. On enquiry, the neighbours informed that land was originally belonged to Banu Mazi and Smti. Anjali Hazarika and Smti. Phuleswari Hazarika purchased the land long back from him and erected boundary wall. But 3 months before one Sri Lona Sarmah illegally possessed the land. Therefore, it was directed to said Lona Sarmah Baruah to vacate the land and accordingly made entry in the diary.

37. From the aforesaid G.D. Entry, it will be seen that the caretaker of the petitioners was in receipt of salary and he had been living in the land for about 22 years. As reported in G.D. Entry, he left the place with his family after knowing that the land did not belong to the petitioners. In G.D. Entry itself, it was stated that the petitioners came to occupy the land 3 months before and that, direction was issued to the petitioners to vacate the land. It is not known where from such an authority was derived by the Respondent No. 4 so as to issue direction to the petitioners to vacate the land. It is unbelievable that the

caretaker of the petitioners would have left the place with his family with bags and baggages as recorded in the G.D. Entry, after staying in the land for last 22 years. Atleast he would not have demolished the houses. Thus, the falsity of the story projected by the Respondent No. 4 stares on the face of it.

38. In the counter affidavit filed by the private respondents also, the fact of unauthorised eviction and demolition of houses of the petitioners is well established. The stand in the affidavits has been discussed above. It is the own stand of the private respondents that they had informed the district administration by their letter dated 5.6.2006 about the purported unauthorised occupation of the land by the petitioners. It is their stand that on the basis of such letter, the Circle Officer carried out the enquiry and found the private respondents to be the real owners of the land. It was on that basis, the district administration issued letter dated 25.7.2006 to the Superintendent of Police to take appropriate action in the matter who in turn instructed the Respondent No. 4 i.e. the Officer-in-charge of Basistha Police Station to take necessary action. As per the own admission of the private respondents in their counter affidavit, it was a case of forceful occupation of their land by the petitioners. In paragraph 12 of the counter affidavit, the private respondent have admitted the fact of visiting the place by the police personnel of the Respondent No. 4. According to the private respondents, whatever action was taken by the Respondent No. 4 was in compliance of the letter dated 26.7.2006 addressed to the Officer-in-Charge of the Basistha Police Station by the Superintendent of Police, Kamrup, Guwahati.

39. From the above materials on record, it is a clear case of official highhandedness on the part of the district administration as well as police administration. Even if the petitioners were in possession of the land unauthorizedly, that was a matter to be decided in the title suits filed by the respondents in which the prayer made is for declaring right, title and interest over the suit land in favour of the private respondents and permanent injunction. In the suit, the order of status quo having been passed, it was incumbent on the part of the plaintiffs/private respondents to maintain the same. Instead, in the garb of the said status quo order and the shameless misuse of official power vested in the district and police administration, the petitioners were forcibly evicted from the land in question even to the extent of demolishing their houses standing thereon.

40. Under somewhat similar circumstances, this Court in *Sujit Kumar Das v. State of Assam* reported in (2007) 2 GLJ 171, issued direction for restoration of possession of the petitioner involved in he said case. As in the instant case, in the said case also, in the garb of the order passed by the District Magistrate u/s 144, Cr PC, the private respondents took possession of the land and house in question the district administration remained a mere silent spectator. Having regard to the facts and circumstances involved, direction for restoration of possession of the petitioner over the land was issued.

41. The aforesaid decision was carried on appeal and the Division Bench of this Court by its judgment reported in (2009) 2 GLR 158 (Some Jahan Saikia v. Sujit Kumar Das) confirmed the judgment. It was observed that a proceeding u/s 144, Cr PC cannot be the short circuit process replacing a civil action.

42. As in the aforesaid case, in the instant case also, the private respondents with the active aid of the district and police administration, more particularly, the Respondent No. 4 not only evicted the petitioners from the land in their possession but also demolished their houses. The counter affidavits filed by the respondents bear the testimony of the same. During the course of hearing, the learned Counsel for the petitioners produced the photographs so as to establish that unauthorised construction was being carried out by the private respondents over the land.

43. Mr. S. Borah, learned Standing Counsel, Guwahati Municipal Corporation was requested to obtain instructions in the matter, who in turn submitted that the private respondents were directed to furnish reply vide GMDA's letter dated 11.8.2006 in respect of unauthorised construction of boundary walls over the land. The letter reveals that such construction was carried out without requisite approval of the G.M.D.A. The letter dated 11.8.2006 also demonstrates that the private respondents immediately after forceful occupation of the land of the petitioners with the aid and active assistance of the district and police administration and demolishing the structures erected by the petitioners, started construction of boundary walls unauthorisedly, which was objected to by the G.M.D.A. Mr. Borah, learned Standing Counsel, G.M.C., also submitted that the permission for construction of house has been accorded to the private respondents by the G.M.C. It is not understood as to how such permission could be accorded when the civil disputes between the parties in respect of the land are pending with orders of status quo which are still operating and holding the field.

44. From all the aforesaid materials on record, there is no manner of doubt that the official respondents and the private respondents are hands in gloves. It is really unfortunate that the district and police administration could go to the extent of evicting the petitioners from the land in question in the manner and method in which they have done so completely ignoring the procedure established by law. The police has really shown its might and power with the resultant benefit to the private respondents in no time substituting the procedure envisaged in CPC. If such is the helping hands of police, the people will readily prefer the same instead of following the procedure established by law. Such a trend at the behest of the police cannot be allowed to spread and must be arrested.

45. Writ petitions are allowed awarding compensation and cost of Rs. 25,000/- (Rupees twenty thousand) to each one of the writ petitioners to be borne by the respondents jointly and severally. Further, the Government of Assam may initiate departmental proceedings against the erring officials involved in the entire

episode. The compensation awarded may also be recovered from such of the officials found responsible for illegal eviction of the petitioners and demolition of their houses, which, needless to say shall be in addition to appropriate penalty which may be found awardable pursuant to the departmental proceedings.

46. For all the aforesaid reasons, both the writ petitions are allowed directing the respondents, more particularly, the Superintendent of Police, Kamrup, Guwahati and the Officer in-charge, Basistha Police Station i.e. the Respondent No. 4 to restore back the possession of the petitioners over the land forthwith. I hasten to add that this judgment and order shall in no way prejudice the rights and contentions of the parties involved in the case in their private law remedy.

47. Let a copy of this judgment be sent to the Chief Secretary, Government of Assam.