
(2003) 02 GAU CK 0009
In the Gauhati High Court
Case No : Civil Rule No. 3767 of 1997

Narendra Chandra Kalita and Another	APPELLANT
Vs	
State of Assam and Others	RESPONDENT

Date of Decision : 13-02-2003

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2003) 2 GLR 473

Hon'ble Judges : Ranjan Gogoi, J

Bench : Single Bench

Advocate : M.K. Chaudhury, for the Appellant; P.K. Bora and G.A. Assam, for the Respondent

Judgement

Ranjan Gogoi, J.—Both the writ petitioners claiming to be owners of patta land measuring 1 (one) Katha 12 (twelve) Ls and 3 (three) Ks 14 (fourteen) Ls respectively covered by Dag No. 844 of Periodic Patta No. 488 in Dharapur Village under Rani Charani Mouza, have instituted the present proceeding assailing the action of the authority in demolishing, a part of their dwelling houses standing on the aforesaid land. Appropriate intervention of this Court to arrest the ongoing eviction proceeding and to restrain the authorities from proceeding any further with such eviction and to compensate the writ petitioners for the loss suffered by them on account of the unauthorised demolition carried out on 27.6.1997 are the specific prayers made in the writ petition.

2. According to the writ petitioners, they are the owners of the aforesaid land as described hereinabove and have been in possession of the said land by constructing their dwelling houses standing thereon. Portions of the aforesaid land are contended to be in possession of the tenants to whom the structures standing thereon are said to have been let out by the writ petitioners. According to the writ petitioners, the respondent authorities, after serving undated notices on some of the tenants, and in other cases without any prior notice, had resorted to an illegal demolition on 27.6.1997 causing amongst others pecuniary loss to

the writ petitioners. The action of the Respondent authorities are alleged to be absolutely unauthorised, arbitrary and hence appropriate for interference by this Court.

3. As no affidavit was forthcoming from the State respondents and the stand of the Respondents in the matter was not being revealed, this Court by order dated 12.11.2002 directed the Deputy Commissioner, Kamrup, Guwahati to cause an enquiry to be made by competent authority with regard to the matters enumerated in the aforesaid order dated 12.11.2002, Pursuant thereto, an enquiry was conducted by the Additional Deputy Commissioner, Kamrup, Guwahati and a report of such enquiry has been filed. The report of the said enquiry has been placed on record by Mr. R. K. Bora, learned Government Advocate, Assam, who has also furnished a copy of the same to Mr. M. K. Chaudhury, learned counsel for the writ petitioners.

4. A perusal of the report of the enquiry submitted by the learned Additional Deputy Commissioner, Kamrup, Guwahati would go to show that while the writ petitioners are owners of patta land measuring 1 K 12 Ls and 3 Ks 14 Ls respectively covered by Dag No. 844 of Periodic Patta No. 488 situated in Dharapur Village under Ram Charani Mouza, the petitioners in the course of the construction of their dwelling houses had encroached upon a part of the adjoining land covered by Dag No. 1016 which is the road-side reserved land. As part of the construction of the writ petitioners on such land had been made without any authority, the impugned eviction proceeding was initiated on 27.6.1997. It is specifically mentioned in the enquiry report that such eviction process was confined only to the structures standing on the encroached land and no part of the dwelling houses of the writ petitioners as well as structures standing on the patta land of the writ petitioners were affected by the eviction process. In the aforesaid enquiry report it has also been mentioned that the building materials removed after demolition valued at about Rs. 7,000 and Rs. 5,000 respectively, were sold in auction to one of the tenants of the writ petitioners. In the aforesaid facts and circumstances, it has been mentioned in the enquiry report by the enquiry authority that the claims made in the writ petition are not tenable,

5. The rival stands reflected in the pleadings of the parties of the present case would go to show that a disputed question of fact has arisen in the present proceeding, i.e., whether demolition/eviction carried out on 27.6.1997 was in respect of structures standing on the patta land of the writ petitioners or on the adjoining land in respect of which allegations of encroachment has been made by the State authority. Contrary to the allegations of the writ petitioners that eviction/demolition was carried out on the patta land, the authority has clearly indicated in the enquiry report that only those structures or part thereof standing on the land encroached by the writ petitioners had been touched in course of the eviction carried out on 27.6.1997. The dispute that has arisen cannot be effectively resolved in a proceeding under Article 226 of the Constitution of India

by affidavit evidence. The same would require a detailed consideration of very many facts and circumstances, which can only be established by the parties in a proceeding by way of a suit. Consequently, while declining to grant any relief to the writ petitioners, as prayed for, this Court considers it appropriate to close the present writ proceeding by observing that if the writ petitioners are in any way aggrieved by the stand taken by the State in the enquiry report, it will be open for them to approach the appropriate Civil Court for such reliefs as claimed by them in the present writ petition.

The writ petition stands closed in terms of the above directions.