



GAHC010207002022

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

Case No. : CRP(IO)/241/2022

ANIL PANTATI AND 16 ORS

S/O. LT. BIHU PANTATI, R/O. NEAR CHARAIDEO G/P OFFICE CHARATDEO 1
NO. LINE P.O. AND P.S. MATHURAPUR, DIST. CHARAIDEO, ASSAM.

2: NIPEN SAIKIA

S/O. SRI GONGADHAR SAIKIA
VILL. 3 NO. BAKUPOKHURI
P.O. NAMAIGARH HABI (DHOLBAGAN)
P.S. MATHURAPUR
DIST. CHARAIDEO
ASSAM.

3: PRADIP RAJKHOWA

S/O. LT. GAYRALA RAJKONWAR
R/O. MAHON GAON
P.O. DHOLBAGAN
P.S. MATHURAPUR
DIST. CHARAIDEO
ASSAM.

4: ATUL MAHON

S/O. LT. MAZARA MAHON
R/O. MAHON GAON
P.O. TENGAPUKHURI
P.S. MATHURAPUR
DIST. CHARAIDEO
ASSAM.

5: ROBIN MAHON (LAY)

S/O. SURESH MOHAN
R/O. MAHON GAON
P.O. TENGAPUKHURI



P.S. MATHURAPUR
DIST. CHARAIDEO
ASSAM.

6: PHUNU GANJU
S/O. LT. JAY GANJU
R/O. BAKUPUKHURI LENGIBOR GRANT JUNGLE MATI
P.O. MULAIGHAR HABI
P.S. MATHURAPUR
DIST. CHARAIDEO
ASSAM.

7: RAJEN GONJU
S/O. LT. JOY GONJU
R/O. BAKUPUKHURI LENGIBOR GRANT JUNGLE MATI
P.O. MULAIGHAR HABI
P.S. MATHURAPUR
DIST. CHARAIDEO
ASSAM.

8: NAREN KANDULA

S/O. LT. AMRUS KANDULA
R/O. BAKUPUKHURI LENGIBOR GRANT JUNGLE MATI
P.O. MULAIGHAR HABI
P.S. MATHURAPUR
DIST. CHARAIDEO
ASSAM.

9: DEBA PHUKON
S/O. LT. DEHIRAM PHUKAN
R/O. MAHONGAON
P.O. TENGAPUKHURI
P.S. MATHURAPUR
DIST. CHARAIDEO
ASSAM.

10: SHASIN SASONI
S/O. SRI GHANA SASONI
R/O. RAJBARI LINE (NEAR CO-OPERATIVE GODOWN)
P.O. DHOLBAGAN
P.S. MATHURAPUR
DIST. CHARAIDEO
ASSAM.

11: BIBLOP DOWARA

S/O. SRI NUMAL DOWARA



R/O. DOWARA GAON
P.O. TENGAPUKHURI
P.S. MATHURAPUR
DIST. CHARAIDEO
ASSAM.

12: SHANKOR PANTATI
S/O. LT. JITNA PANTATI
R/O. CHARAIDEO 1 NO. LINE
P.O. DHOLBAGAN
P.S. MATHURAPUR
DIST. CHARAIDEO
ASSAM.

13: HAMANTA (BAPO) PANTATI

S/O. LT. BELASON PANTATI
R/O. CHARAIDEO MONKHUSI
P.O. DHOLBAGAN
P.S. MATHURAPUR
DIST. CHARAIDEO
ASSAM.

14: ANIRUDHA NAHOK
S/O. SRI GHANA NAHOK
R/O. CHARAIDEO 8 NO. LINE
P.O. DHOLBAGAN
P.S. MATHURAPUR
DIST. CHARAIDEO
ASSAM.

15: PUTU (INDASWAR) BORUAH
S/O. LT. JUWARAM BORUAH
R/O. P.D. CHALIHA ROAD
AMOLAPATY
P.O. AND P.S. SIVASAGAR
DIST. SIVASAGAR
ASSAM.

16: BHASKOR JYOTI BORUAH
S/O. SRI PUTU BORUAH
R/O. P.D. CHALIHA ROAD
AMOLAPATY
P.O. AND P.S. SIVASAGAR
DIST. SIVASAGAR
ASSAM.

17: MISS DAMAYANTI SAIKIA BORUAH



D/O. SRI PUTU BORUAH
R/O. P.D. CHALIHA ROAD
AMOLAPATY
P.O. AND P.S. SIVASAGAR
DIST. SIVASAGAR
ASSAM

VERSUS

UPEN KUMAR SAIKIA
S/O. LT. LAKHI PRASAD SAIKIA, R/O. AMGURIKHAT GAON, P.O. AND P.S.
TITABOR, DIST. JORHAT, ASSAM, PIN-785630.

Advocate for the Petitioner : MR. B K DAS

Advocate for the Respondent :

BEFORE

THE HON'BLE MR JUSTICE ARUN DEV CHOUDHURY

For the petitioners : Mr. BK Das, Advocate

Date of Hearing : 19.10.2022

Date of Judgment & Order : 19.10.2022

JUDGEMENT & ORDER (ORAL)

Heard Mr. BK Das, learned counsel for the petitioners.

2. This revision petition is filed against the order dated 01.09.2022 passed by the learned court below of Munisiff, Charaideo at Sonari in TS No. 10/2022 whereby the application of the petitioner for rejection of the plaint was refused.

3. The brief fact leading to the filing of the present application can be summarized as follows:

- I. The respondent herein filed a suit for declaration and confirmation of possession and for temporary and permanent injunction.
- II. The basic case pleaded by the plaintiff is that a plot of land measuring 30 Bighas of ceiling sarkari land covered by Dag No. 28 of Lengibor grant village under Dhupabor Mouza of Nazira Revenue Circle was settled with the plaintiff by the proforma defendant No. 19 i.e. the Deputy Commissioner, Charaideo, Assam on payment of premium for the purpose of cultivation of tea.
- III. The further case of the plaintiff is that without any just cause and reason, the defendant Nos. 1 to 17 on 18.02.2022 tried to illegally trespass into the suit land and tried to dispossess the plaintiff from his land.
- IV. Accordingly, the suit was filed with the following prayer:
 - i. Declaring the right, interest and possession of the plaintiff over the suit land i.e. schedule land;
 - ii. Declaring the plaintiff is in exclusive possession over the suit land which is also confirmed in Government documents;
 - iii. Declaring all the acts done by the defendants against the plaintiff for forcefully trying to grab the suit land as illegal;
 - iv. Declaring that if any construction already being constructed before filing of the suit and during the pendency of the suit by the defendants or anybody else over the schedule land of the plaintiff shall be treated as illegal and shall be demolished as such;



- v. Grant a temporary injunction restraining the defendants or anybody else acting for and on behalf of the defendants from entering into the suit land or any of its parts and make any permanent construction over it till disposal of the main suit;
 - vi. Grant a permanent injunction restraining the defendants or anybody else acting for and on behalf of the defendants to enter into the suit land and disturb the peaceful possession of the plaintiff therefrom in future;
 - vii. Cost of the suit may be granted in favour of the plaintiff;
 - viii. Any other relief or reliefs as this Hon'ble Court may deem fit and proper;"
4. In the suit, the plaintiff had arrayed the Circle Officer, Nazira Revenue Circle as proforma defendant No. 18 and the Deputy Commissioner, Charaideo as proforma defendant No. 19. However, no statement claiming anything against the said two proforma defendants were made in the present petition. The basic grievance of the plaintiff was that the petitioner is sought to be dispossessed from the suit land by the defendant Nos. 1 to 17 which was settled with the plaintiff by the proforma defendant No. 19.
5. The present petitioners as defendants filed written statement in the suit touching the merit of the claim as well as raising question of non-adherence of Section 80 of the CPC before filing the suit. Subsequently, the present petitioners had preferred an application under Order 7 Rule 11 read with Section 151 of the CPC for rejection of the plaint on the ground that the suit is barred for non-adherence of the provision of Section 80 CPC. The learned court below by way of the impugned order dated 01.09.2022 rejected such claim of the plaintiff.

6. The reason for rejection by the learned trial court below can be summarized as follows:
 - I. After perusal of the pleadings of the parties, the learned trial court below came to a conclusion that no relief is claimed as against the proforma defendant, who are public officers and the plaintiff has not disputed or challenged the validity or legality of any order or the decision of the revenue authority.
 - II. Rather the suit was filed for declaration of right, interest and possession of the plaintiff over the suit land and the said defendants are proforma defendants only.

7. Assailing the impugned order, Mr. Das submits the following:
 - I. That the learned court below has erred while holding that there was no need of issuance of any notice under Section 80 CPC as the Deputy Commissioner and Circle Officer were proforma respondents inasmuch as the reading of Section 80 CPC clearly shows that the said provision has not made any distinction between the status of a defendant or a proforma defendant.
 - II. When a suit is filed against public officer, irrespective of whether it is principal defendant or proforma defendant, a notice under Section 80 is a pre-requisite. In support of his contention, Mr. Das relies upon the judgment of this court in the case of ***Sudarsan Chandra Paul vs. Chitta Ranjan Das reported in 1990 (1) GLJ 225*** and the judgment of the pre-independent era Madras High in the case of the ***Province of Madras vs Sri Sri Sri Vikrama Deo Verma reported in (1943) 1 MLJ 53.***

8. This court has given anxious consideration to the submissions made by the learned counsel for the petitioner. Perused the plaint, written statement and the application filed under Order 7 Rule 11 of the CPC. A perusal of the material, clearly discloses that no claim has been made against the any public officer in the suit. Rather the case of the plaintiff is that the proforma defendant Nos. 17 and 18, who are public officers, favoured the plaintiff by settling the land for special cultivation of tea, whereas the defendants are trying to dispossess him from such settled land. No prayer or relief is being made/ sought against the said two defendants nor any orders passed by them are under challenge in the suit.
9. In the aforesaid backdrop, now this court is to determine whether learned court below has committed error in not allowing the petition. The law is by now well settled that a notice under Section 80 (1) of the CPC is a mandatory requirement before institution of a suit against a public officer. It is also well settled that the object of giving such a notice is to afford an opportunity to the Government/ public officer to reconsider the matter and to settle the claim and if even after giving such notice and after elapse of period mandated therein, the Government/ public officer fails to act or redress the grievance, the aggrieved person shall be entitled to claim the same through a court of law. The Hon'ble Apex court in the case of ***State of AP vs Pioneer Builders reported in (2006) 12 SCC 119*** held that service of notice under Section 80 is a condition precedent for the institution of a suit against the Government. The Hon'ble Apex court further held that the object of Section 80 is for advancement of justice, for securing public good by avoidance unnecessary litigation. In the case in hand, no claim is made against the public officer. Therefore, notice under Section 80 was not at all necessary inasmuch as suit is filed for protection of right of the



plaintiff, which the plaintiff alleges that the principal defendant Nos. 1 to 16 are trying to take away. Therefore, in the present case there will be no necessity of giving the public officer a chance to settle the claim of the plaintiff inasmuch as no claim has been made against such officers.

10. In the case of ***Sudarsan Chandra Paul (supra)*** the ratio laid down is that the true test to determine if notice was necessary is whether the suit was in respect of 'act' done by a public officer. If it was, notice is necessary even though the plaintiff describes the defendants as proforma defendants. This court is in total agreement with such view and of the considered opinion that the suit is not in respect of any act done by the proforma defendant Nos. 17 and 18. Therefore, the ratio of ***Sudarsan Chandra Paul (supra)*** don't support the argument of Mr. Das, learned counsel and rather it goes against his argument.
11. The decision of Madras High Court in ***Vikrama Deo Verma (supra)*** relied upon by the learned counsel for the petitioner, is not a binding precedent but having only persuasive value for this court. This court respectfully disagrees with such view inasmuch as the consideration for determination is that whether any claim is made against the public officer. The word "against" shall necessarily mean "a claim against" the Public Officer. It is further clarified under Section 80 itself that amongst other particulars, the notice shall contain the relief claimed. Therefore, when a suit is filed against public officer without any relief being claimed, no notice shall be required and even if the public officers are made as proforma defendants but relief is claimed, notice under Section 80 shall be required.



12. In view of the above discussion and reason, this court finds no merit in this case and this is not a fit case to exercise its supervisory jurisdiction under Article 227 of the Constitution of India. Accordingly, this petition is dismissed. However, nor order as to cost.

JUDGE

Comparing Assistant