



GAHC010176682023

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

Case No. : CRP/121/2023

RAJU SARKAR AND 13 ORS.
S/O SRI YUDHISTHIR SARKAR
R/O PALTAN BAZAR, OLD CANTONMENT WARD, DIBRUGARH, P.S. AND
DISTRICT- DIBRUGARH, ASSAM.

2: SMT KIRAN DEVI
W/O LATE SURANJAN RAJAK
R/O PALTAN BAZAR
OLD CANTONMENT WARD
DIBRUGARH
P.S. AND DISTRICT- DIBRUGARH
ASSAM.

3: SRI ABDESH KUMAR SINGH
R/O PALTAN BAZAR
OLD CANTONMENT WARD
DIBRUGARH
P.S. AND DISTRICT- DIBRUGARH
ASSAM.

4: DEEPA MONI DEY MALAKAR @ DIPPA MALAKAR
W/O LT. PINTU MALAKAR
R/O PALTAN BAZAR
OLD CANTONMENT WARD
DIBRUGARH
P.S. AND DISTRICT- DIBRUGARH
ASSAM.

5: SRI GOPAL BARDHAN
S/O LT. SURENDRA BARDHAN
R/O PALTAN BAZAR
OLD CANTONMENT WARD
DIBRUGARH
P.S. AND DISTRICT- DIBRUGARH



ASSAM.

6: SRI ASHOK KUMAR SHAH
S/O SRI DASHARATH SHAH
R/O PALTAN BAZAR
OLD CANTONMENT WARD
DIBRUGARH
P.S. AND DISTRICT- DIBRUGARH
ASSAM.

7: SRI RATISH CHOUDHURY
S/O LT. SHIV KANTA CHOUDHURY
R/O PALTAN BAZAR
OLD CANTONMENT WARD
DIBRUGARH
P.S. AND DISTRICT- DIBRUGARH
ASSAM.

8: SRI ASHOK CHOUDHURY
S/O LATE SHIV KANTA CHOUDHURY
R/O PALTAN BAZAR
OLD CANTONMENT WARD
DIBRUGARH
P.S. AND DISTRICT- DIBRUGARH
ASSAM.

9: SRI DILIP DEBNATH
S/O LT. RAMESH DEBNATH
R/O PALTAN BAZAR
OLD CANTONMENT WARD
DIBRUGARH
P.S. AND DISTRICT- DIBRUGARH
ASSAM.

10: SMT BABY MISHRA @ BABY DEVI
W/O SRI SURAJ MISHRA
R/O PALTAN BAZAR
OLD CANTONMENT WARD
DIBRUGARH
P.S. AND DISTRICT- DIBRUGARH
ASSAM.

11: SRI SUNIL CHOUDHURY
S/O SRI JUGEN SINGH
R/O PALTAN BAZAR
OLD CANTONMENT WARD
DIBRUGARH
P.S. AND DISTRICT- DIBRUGARH



ASSAM.

12: SRI RAJENDRA SINGH
S/O SRI JUGEN SINGH
R/O PALTAN BAZAR
OLD CANTONMENT WARD
DIBRUGARH
P.S. AND DISTRICT- DIBRUGARH
ASSAM.

13: SRI KISHAN RAI
S/O SRI KANAI RAI
R/O PALTAN BAZAR
OLD CANTONMENT WARD
DIBRUGARH
P.S. AND DISTRICT- DIBRUGARH
ASSAM.

14: SRI DILIP SINGH
S/O LATE JANAK SINGH
R/O PALTAN BAZAR
OLD CANTONMENT WARD
DIBRUGARH
P.S. AND DISTRICT- DIBRUGARH
ASSAM

VERSUS

THE UNION OF INDIA AND 4 ORS
THROUGH THE SECRETARY MINISTRY OF DEFENSE, NEW DELHI.

2:THE COLONEL

OFFICIATING ADMINISTRATIVE COMMANDANT FOR STATION
COMMANDER STATION HEADQUARTERS
PANITOLA
DINJAN
DISTRICT- DIBRUGARH
ASSAM.

3:THE STATE OF ASSAM
THROUGH THE SECRETARY TO THE GOVERNMENT OF ASSAM
DEPARTMENT OF REVENUE
ASSAM
DISPUR
GAUHATI-6

4:THE COMMISSIONER AND SECRETARY TO THE GOVERNMENT OF



ASSAM
REVENUE DEPARTMENT
ASSAM
DISPUR
GAUHATI-6

5:THE DEPUTY COMMISSIONER
DIBRUGARH
DISTRICT- DIBRUGARH
ASSAM
PIN

B E F O R E
HON'BLE MR. JUSTICE SANJAY KUMAR MEDHI

JUDGMENT & ORDER

Advocates for the petitioners : Shri J. Ahmed, Advocate

Advocates for respondents : Shri K. Gogoi, learned C.G.C,
Shri A. Bhattacharyya, Advocate,
Ms. K. Phukan, Advocate.

Date of hearing : 17.08.2023

Date of judgment : 17.08.2023

1. Heard Shri J. Ahmed, learned counsel for the petitioners. Also heard Shri K. Gogoi, learned C.G.C. appearing for the respondent nos. 1 & 2, Shri A. Bhattacharyya, learned Standing Counsel, Revenue Department appearing for respondent no. 4 and Ms. K. Phukan, learned State Counsel appearing for respondent no. 5-Deputy Commissioner, Dibrugarh.

2. The revisionary jurisdiction of this Court under Article 227 of the Constitution of India has been sought to be invoked in this present petition whereby a challenge has been made to a judgment and order dated 05.01.2023 passed by the learned District Judge, Dibrugarh acting as the Appellate Authority under the Public Premises (Eviction of Unauthorized Occupants) Act, 1971. The appeal was preferred under Section 9 of the said Act against a notice of demolition and vacation dated 31.12.2016 issued by the Colonel, Officiating Administrative Commandant for Station Commander under Section 5 (B) (1) of the Act. The eviction notice was issued after giving show cause.

3. Shri Ahmed, the learned counsel for the petitioners has submitted that there is a civil suit instituted by the petitioners along with others for declaration of right, title and interest over the plot of land in question which is pending. Under those circumstances, if the petitioners are evicted from the plot of land in question, not only grave prejudice and inconvenience would be caused to them, their entire suit would be frustrated. The learned counsel has also cited two earlier instances where similarly situated persons had approached the Appellate Authority under Section 9 of the Act in which the learned District Judge, Dibrugarh had interfered and allowed the appeal by holding the eviction orders to be not tenable in law. It is further submitted that in one of the orders dated 10.04.1974, the learned District Judge acting as the Appellate Authority had also observed that the appellant cannot be put to trouble again by issue of fresh notices. Shri Ahmed, the learned counsel submits that though the present petitioners were not amongst those appellants, they are similarly situated as the plot of land involved is adjacent and forms part of the large plot. He accordingly submits that interference is required at least to such stage till the civil suit is disposed of.

4. *Per contra*, Shri Gogoi, the learned C.G.C. has submitted that a case for

interference under Article 227 of Constitution of India would be made out only when there is any error of jurisdiction or the impugned judgment suffers from patent illegality or irregularity which is apparent on the face of the records. He submits that in the instant case the District Judge is the designated Appellate Authority under Section 9 of the Act and therefore, the question of any error in jurisdiction in deciding the appeal does not arise and in fact the same has also not been taken as a ground of appeal. It is submitted that the impugned order is an exhaustive one containing adequate reasons and based on the materials on record which are relevant to the issue and therefore there is no scope for interference with the same. Additionally, he submits that the requirement of the land is for greater public interest and the petitioners were unauthorized occupants against whom lawful orders of eviction has been passed.

5. Endorsing the submission of Shri Gogoi, learned C.G.C., Shri Bhattacharyaa, the learned Standing Counsel, Revenue has additionally submitted that the instances cited by the petitioners of two earlier cases pertain to different circumstances and cannot be equated with the present case. While the case decided in the year 1974 was mainly on the concessions given by the Government that the notices were withdrawn in the subsequent case, the Appellate Authority had come to a definite finding that there was violation of the procedure laid down in the Act and under those circumstances, interference was made and the said cases therefore cannot be cited as precedence in the present case.

6. Ms. K. Phukan, the learned State Counsel has supported the stand taken by Shri Gogoi, learned C.G.C. and Shri Bhattacharya, learned Standing Counsel, Revenue and has submitted that the impugned judgment has been passed in accordance with law and does not warrant any interference.

7. The rival contentions of the learned counsel have been duly considered and the materials placed before this Court have been carefully examined. The judgment passed by the learned District Judge, Dibrugarh is in exercise of powers conferred by Section 9 of the Act as per which the District Judge of the concerned district is vested with the powers of an Appellate Authority. A perusal of the judgment would show that the same is a reasoned one and all the materials and relevant aspects have been taken into consideration.

8. It also transpires that in the civil suit referred to on behalf of the petitioner, an injunction application was filed which however was rejected.

9. This Court also cannot be oblivious of the fact that such rejection could have been challenged by way of a statutory appeal which does not appear to have been done. Therefore, the submissions made that the impugned judgment is required to be interfered with only on the ground that a civil suit is pending does not appear to have any merits.

10. So far as the two earlier cases cited, those judgments were rendered on entirely different circumstances and in any case cannot be binding as the reasons for allowing the appeal in those judgments were not present in the instant case. As rightly pointed out by Shri Bhattacharya, the learned Standing Counsel of the Revenue Department, in the judgment rendered in the year 1974, the eviction notice itself was withdrawn by the Government and in the subsequent judgment, the Appellate Authority had noticed violation of the procedures laid down which however is not seen in the present case.

11. It is a settled law that under Article 227 of the Constitution of India, this Court exercises a supervisory jurisdiction with the objective to keep the Subordinate Courts within its bound.

12. In the case of ***Rafat Ali v. Sugni Bai, reported in (1999) 1 SCC 133***, the Hon'ble Supreme Court with regard to revisionary powers has laid down as follows.

“8. The appellation given to the section makes it unmistakably clear that the power conferred thereunder is revisional which means, it is a power of supervision. It is well-nigh settled that a revisional jurisdiction cannot be equated with appeal powers in all its parameters. The power to call for and examine the records is for the purpose of the High Court to satisfy itself as to the "legality, regularity or propriety" of the order of the lower authority. Even such a widely-worded frame of the section may at best indicate that the revisional powers are not so restricted as in the enactments wherein the words are not so widely framed. Nonetheless, they remain in the realm of supervisory jurisdiction...”

13. In the instant case, there is no jurisdictional error in the judgment and neither the judgment suffers from any illegality or material irregularity and rather all the relevant facts and circumstances have been taken into consideration.

14. In view of the above and also the fact that powers under Article 227 of the Constitution of India are to be exercised with circumspection, this Court is of the considered opinion that no case for interference is made out and accordingly the petition stands dismissed.

15. At this stage, Shri Ahmed, the learned counsel for the petitioner prays for a liberty to file an injunction application in the pending suit.

16. The scope of filing an injunction application would decide on the facts and circumstances and therefore it is upto the petitioners to approach the learned Court with such petition.



17. In the interest of justice, this Court observes that to facilitate filing of such petition, the impugned order of eviction may not be given effect to for a period of one month from today.

18. Petition accordingly stands disposed of with the observations made above.

JUDGE

Comparing Assistant