

GAHC010289812019



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

Case No. : I.A.(Civil)/3965/2019

KHUKOMONI SINHA AND 5 ORS
S/O- LATE MONISANA SINHA, R/O- VILL.- DHOLIDAHAR, P.O. JANAKI
BAZAR, DIST.- HAILAKANDI, ASSAM, PIN- 788801.

2: AJOY DAS LASKAR
S/O- LATE JAYANTA DAS LASKAR
R/O- VILL.- UTTARKANCHANPUR
P.O. JANAKI BAZAR
DIST.- HAILAKANDI
PIN- 788801.

3: KHASRU AHMED CHOUDHURY
S/O- FAKAR UDDIN CHOUDHURY
R/O- VILL.- DHOLIDAHAR
P.O. JANAKI BAZAR
DIST.- HAILAKANDI
PIN- 788801.

4: SULTAN UDDIN CHOUDHURY
S/O- ASAR UDDIN CHOUDHURY
R/O- VILL.- CHANDIPUR PART-1
P.O. JANAKI BAZAR
DIST.- HAILAKANDI
PIN- 788801.

5: AJMAL HUSSAIN LASKAR
S/O- LATE ABDUS SATTAR LASKAR
R/O- VILL.- CHIPARSANGAN PART-II
P.O. JANAKI BAZAR
DIST.- HAILAKANDI
PIN- 788801.

6: KAMRUL ISLAM MAZUMDER
S/O- LATE SIRAJ UDDIN MAZUMDER

R/O- VILL.- UTTARKANCHANPUR
P.O. JANAKI BAZAR
DIST.- HAILAKANDI
PIN- 788801

VERSUS

ABUL HUSSAIN CHOUDHURY AND 10 ORS.
S/O- JUNAB ALI CHOUDHURY, R/O- VILL.- UTTARKANCHANPUR PART-II,
P.O. JANAKI BAZAR, P.S. PANCHGRAM, DIST.- HAILAKANDI, PIN- 788801.

2:ALTAF HUSSAIN BARBHUIYA
S/O- JAMIR ALI BARBHUIYA
R/O- VILL.- CHIPORSANGAN PART-I
P.O. JANAKI BAZAR
P.S. ALGAPUR
DIST.- HAILAKANDI
ASSAM
PIN- 788801.

3:SAHAB UDDIN CHOUDHURY
S/O- LATE ABDUL HAKIM CHOUDHURY
R/O- VILL.- UTTARKANCHANPUR PART-II
P.O. JANAKI BAZAR
P.S. PANCHGRAM
DIST.- HAILAKANDI
PIN- 788801.

4:ROFIQUE UDDIN CHOUDHURY
S/O- AZIR UDDIN CHOUDHURY
R/O- VILL.- BOKRIHAWAR PART-II
P.O. JANAKI BAZAR
P.S. PANCHGRAM
DIST.- HAILAKANDI
PIN- 788801.

5:THE STATE OF ASSAM
TO BE REP BY THE COMMISSIONER AND SECRETARY TO THE GOVT. OF
ASSAM
PANCHAYAT AND RURAL DEVELOPMENT DEPARTMENT
DISPUR
GHY-6.

6:THE COMMISSIONER

PANCHAYAT AND RURAL DEVELOPMENT DEPARTMENT
PANJABARI
JURIPAR

GHY-37.

7:THE DEPUTY COMMISSIONER
HAILAKANDI
P.O. AND DIST.- HAILAKANDI
ASSAM
PIN- 788151.

8:THE CHIEF EXECUTIVE OFFICER ZILLA PARISHAD
HAILAKANDI
P.O. AND DIST.- HAILAKANDI
ASSAM
PIN- 788151.

9:THE BLOCK DEVELOPMENT OFFICER
ALGAPUR DEVELOPEMENT BLOCK
P.O. KALIBARIBAZAR
DIST.- HAILAKANDI
ASSAM
PIN- 788150.

10:THE UTTARKANCHANPUR GAON PANCHAYAT
REP. BY ITS SECRETARY
SITUATED AT VILL.- JANAKIBAZAR
P.O. JANAKIBAZAR
P.S. PANCHGRAM
DIST.- HAILAKANDI
ASSAM
PIN- 788801.

11:THE PRESIDENT

UTTARKANCHANPUR GAON PANCHAYAT VILL. AND P.O. JANAKIBAZAR
P.S. PANCHGRAM
DIST.- HAILAKANDI
ASSAM
PIN- 788801

Advocate for the Petitioner : MR. P K ROYCHOUDHURY

Advocate for the Respondent : GA, ASSAM

Linked Case :

KUKUMONI SINHA AND 5 ORS

VERSUS

ABUL HUSSAIN CHOUDHURY AND 10 ORS

Advocate for :

Advocate for : appearing for ABUL HUSSAIN CHOUDHURY AND 10 ORS

BEFORE
HONOURABLE THE CHIEF JUSTICE
HONOURABLE MR. JUSTICE MANASH RANJAN PATHAK

ORDER

Date : 26-02-2021

(Sudhanshu Dhulia, CJ)

By an order passed today in I.A. (Civil) 3965/2019 the delay in filing the present appeal has been condoned.

Heard Mr. P. K. Roychoudhury, learned counsel for the appellants. Also heard Mr. M. Nath, learned Standing counsel, Panchayat and Rural Development Department, representing the State respondents.

The present writ appeal has been filed against the order dated 15.03.2019, passed by the learned Single Judge in WP(C) 499/2018 as well as the order dated 25.10.2019 passed by the learned Single Judge in Review Petition no. 90/2019.

The brief facts of the case are that certain shop premises were constructed on a plot of land under the Uttar Kanchanpur Gaon Panchayat of Algapur Anchalik Panchayat in the district of Karimganj, Assam. The writ petitioners had approached this court stating that some anomalies were going on in the allotment of these shops. In the writ petition, counter-affidavit was filed by the concerned Deputy Commissioner giving an undertaking that the rules and procedure for sale and settlement of markets are governed by the Assam Panchayat (Financial) Rules, 2002 (hereinafter referred to as "the 2002 Rules") and the shops would be allotted under the provisions of Rule 47 of the 2002 Rules. The writ petition was disposed of by directing the respondent authorities to strictly adhere to the process of Notice Inviting

Tender while make allotment/settlement of the shops in question.

The present appellants before this court claim that they are the ones who had constructed those shops with the permission of the concerned Panchayat and these shops have been allotted to them and they are running business in the aforesaid shops. Learned counsel for the writ appellants has made a statement before this court that the appellants are admittedly the occupants of the said land since prior to 2017 and, thereafter, without obtaining any permission from any authority, they constructed shops on the land, which is a *khaas land*. Learned counsel for the appellants has drawn the attention of this court to the minutes of the meeting of the Algapur Anchalik Panchayat, held on 21.12.2017, wherein one of the resolutions adopted by the Anchalik Panchayat was that since the appellants, who were unemployed youths, had constructed the said shop with their own money and, therefore, they be allowed to run their business in the shops. As regards the admitted fact that those shops were constructed unauthorisedly, without any permission from any authority, it was resolved that “....after enquiry necessary action will be taken and the Block Development Officer is authorized to take step in this regard”. In other words, this aspect has been clearly brushed aside as it is an admitted position that no action has been taken against any of the appellants so far even after three years. Rest of the resolutions are immaterial for the purpose of this case. On the strength of this resolution the appellants have based a claim on occupying the said shops and running their businesses.

Initially, when the writ petitioners failed, they filed a review petition (Review Petition No. 90/2019), which did not find favour with the learned Single Judge and the review petition was dismissed.

Having heard the learned counsel for the parties, we are of the view that the admitted position is that the shop premises, which are on Panchayat land, have to be allotted in terms of Rule 47 of the 2002 Rules. There is no dispute regarding this fact. As to the issue of the appellants being in occupation of the land and their claim to run their businesses in those shops are concerned, we have no doubt in our mind that they have absolutely no claim on those shops for the simple reason that they were in unauthorized occupation of the land and they had constructed the shops without any permission from any authority. The resolution dated 21.12.2017 is of no consequence as it has not dealt with the important aspect of the matter. All it says is that since the applicants (appellants) are unemployed youths they may

be allowed to occupy the shops. Most importantly, the Anchalik Panchayat did not take any action in spite of having knowledge of the fact that the shops had been constructed by the appellants unauthorisedly. Now the Deputy Commissioner of the concerned district has already given an undertaking that these shops will be allotted in accordance with the prescribed Rules.

We have no doubt in our mind that the appellants have no right to occupy these shops. In view of the above, we are not inclined to grant any relief to the appellants. We also find no scope to interfere with the order of the learned Single Judge. Accordingly, the writ appeal is dismissed.

At this stage, learned counsel for the appellants would argue that since in the resolution dated 21.12.2017 the Anchalik Panchayat has admitted the fact that the appellants are unemployed youths and they had constructed the shop premises from their own cost, the appellants may be given the liberty to move application before the Panchayat concerned for appropriate monetary relief, if any, in this regard.

The appellants will be at liberty to file application before the authority concerned as stated by the learned counsel for the appellants. If such application(s) is filed, the Panchayat authorities shall deal with it in accordance with law.

JUDGE

CHIEF JUSTICE

Comparing Assistant