

Assam Schedule VII. Form No. 143

HIGH COURT FORM NO. (J) 13

Form of Order Sheet

DISTRICT- SONITPUR

IN THE COURT OF MUNSIFF NO. 1, SONITPUR, TEZPUR

PRESENT : Triza P M Baruah

Misc(J) Case No. 62 of 2018

(In connection with T.S No. 71 of 2018)

Md. Anowar Hussain - Versus – State of Assam & others

Sl No. of Orders	Date	Order	Signature
	01.06.2022	<p>Both parties are represented.</p> <p>With the following order, I intend to dispose of this Misc(J) Case.</p> <p>The instant Misc(J) Case arises out of petition no. 1115/2018 under Order XXXIX Rules 1 & 2 read with section 151 of the Code of Civil Procedure (CPC).</p> <p>Petitioner's case in succinct is that the petitioner has been running a meat shop in Mahabhairab Bazar since 18 years. Petitioner has submitted that he has been paying Municipal Tax regularly and has also been issued trade license by the Tezpur Municipal Board. Petitioner has further submitted that Govt. of Assam, Commissionerate of Food safety, Assam (Health and Family Welfare Department) registered the business of the petitioner under Food Safety and Standard Act 2006 on 19.08.2016. That the petitioner has constructed pucca shop room, C.I. sheet roofed, tiles fittings in floor and</p>	Contd...

01.06.2022 Contd...	<p>walls by investing more than Rs. 5,00,000/- (Rupees Five Lakhs only/-). Petitioner has submitted that he received a notice in Eviction Case No. 787 dated 25.05.2018 under provisions of the Assam Land and Revenue Regulation Settlement Rules 18(2) and 18(3) issued by the Circle Officer, Tezpur Revenue Circle to vacate the land within three days on receipt of notice otherwise to take action under Rules 18(2) and 18(3) of the Assam Land Revenue Regulation Settlement Rules. Hence, the petitioner has filed this case against the opposite parties to restrain the opposite parties from demolishing the shop premises of the petitioner.</p> <p>Summons were served upon the opposite parties. Opposite parties no. 1 and 2 submitted written objection contending that the notice for eviction served upon the petitioner is not ultravires under Rules 18(2) and 18(3) of the Assam Land Revenue Regulation Settlement Rules.</p> <p>To support his claim, petitioner has submitted photostat copies of notice in Eviction Case No. 787 issued by Circle Officer, Tezpur, petition to Deputy Commissioner, petition to Circle officer, Tezpur, registration under Food Safety and Standards Act 2006, Demand notice of Tezpur Municipal Board, Trade licence of Tezpur Municipal Board, Trade Licence fee payment receipts, petition by Mahaldar to chairman, Tezpur Municipal Board, registration card Lower Assam Electricity Distribution Co. Ltd,</p>	Contd...
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01.06.2022 Contd...	<p>application form for new service connection, electricity bills.</p> <p>In the written objection submitted by the opposite parties it is contended that the notice for eviction served upon the petitioner is not ultravires under Rules 18(2) and 18(3) of the Assam Land Revenue Regulation Settlement Rules.</p> <p>I have perused the case record. I have also heard the learned advocates for both the parties.</p> <p>The petitioner has instituted a corresponding Title Suit no. 71/2018 for a decree of declaration and for consequential relief of permanent injunction.</p> <p>Perusal of the petition along with other aforementioned submitted documents regarding the suit land prima facie reveal that there is a bona fide contention between the parties with respect to judicial possession of the petitioner on the suit land and the claim by the opposite parties on the suit land.</p> <p>Therefore, any attempt by the opposite parties to evict the petitioner during the pendency of the corresponding Title Suit would prejudice the petitioner in the event of success in the corresponding Title Suit.</p> <p>Considering the above circumstances, it can be seen that the petitioner has shown a clear necessity for affording immediate protection to his alleged</p>	Contd...
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	<p>01.06.2022 Contd...</p>	<p>right/interest which otherwise would be seriously injured.</p> <p>For the grant of equitable relief in favour of the petitioner, he should have right, title or interest in the property. Also, plaintiff must show that in the event of his success in the suit, he will not have the proper remedy in being awarded adequate damages. Therefore, in such a scenario, any attempt by the opposite parties to evict the petitioner from the suit land which is a source of his livelihood shall cause irreparable damage to the petitioner. Further, along with presence of a prima facie case, likelihood of irreparable injury to the petitioner for the grant of injunction, it is also for the Court to be satisfied and take into consideration the comparative mischief or inconvenience likely to arise from withholding injunction will be greater than which is likely to arise from granting injunction.</p> <p><i>In Dalpat Kumar Vs Prahlad Singh & Ors, AIR 1993 SC 276 , the Hon'ble Supreme Court of India while considering the balance of convenience observed that the Court while exercising discretion in granting or refusing injunction should exercise sound judicial discretion and should attempt to weigh substantial mischief or injury likely to be caused to the parties, and in the case of refusal of injunction should compare it with that which is likely to be caused to the opposite parties, if the injunction is</i></p>	<p>Contd...</p>
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	<p>01.06.2022 Contd...</p>	<p>granted.</p> <p>Considering the aforesaid position in law along with perusal of the case record and submitted documents, it is seen that the mischief likely to be caused to the petitioner in the event of non grant of temporary injunction outweighs any prejudice likely to be caused to the Opposite parties.</p> <p>Further, as observed in Colgate Palmolive (India) Ltd. Vs. Hindustan Lever Ltd., AIR 1999 SC 3105, the Hon'ble Supreme Court observed -</p> <p><i>"that the other considerations which ought to weigh with the Court hearing the application or petition for the grant of injunctions are as below:</i></p> <p><i>i) Extent of damages being an adequate remedy;</i></p> <p><i>ii) Protect the plaintiff's interest for violation of his rights though however having regard to the injury that may be suffered by the defendants by reason therefore;</i></p> <p><i>iii) The Court while dealing with the matter ought not to ignore the factum of strength of one party's case being stronger than the others;</i></p> <p><i>iv) No fixed rules or notions ought to be had in the matter of grant of injunction but on the facts and circumstances of each case the relief being kept flexible;</i></p> <p><i>v) The issue is to be looked from the point of view as to whether on refusal of the injunction the plaintiff would suffer irreparable loss and injury keeping in view the strength of the parties' case;</i></p>	<p>Contd...</p>
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<p>01.06.2022 Contd...</p>	<p><i>vi) Balance of convenience or inconvenience ought to be considered as an important requirement even if there is a serious question or prima facie case in support of the grant;</i></p> <p><i>vii) Whether the grant or refusal of injunction will adversely affect the interest of general public which can or cannot be compensated otherwise.</i></p> <p>Hence, considering the surrounding facts and circumstances and on basis of preponderance of probabilities it is seen that balance of convenience lies in favour of the petitioner as irreparable injury would be caused to him in the event of success in the corresponding Title Suit as he will not have the proper remedy in being awarded adequate damages.</p> <p>Therefore, on the grounds of satisfaction of prima facie case, balance of convenience in favour of the petitioner and likelihood of irreparable loss and injury to be caused to the petitioner, there appears lucid necessity to afford immediate protection to the alleged right or interest of the petitioner in the suit land.</p> <p>With the submitted documents and on the face of allegations by the petitioner and counter allegations by the opposite parties, it is deemed fit to pass an order of status quo till the final disposal of Title Suit No. 71/2018.</p> <p>Therefore, it is deemed fit by the Court to pass an order directing the parties to</p>	<p>Contd...</p>
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	01.06.2022 Contd...	<p>maintain status quo with respect to the suit premises. By order of status quo it is specified that both parties shall refrain from initiating any construction, sale or attempt to evict. With respect to the suit premises and both parties shall maintain peace till the disposal of the corresponding Title Suit no. 71/2018.</p> <p>The prayer for temporary injunction by the petitioner is hereby allowed to the extent of maintaining status quo as specified above with respect to the suit land.</p> <p>The instant Misc(J) Case is hereby disposed of.</p>	
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