

**In The Court of Smt. Priyanka Saikia, Munsiff No. 2,  
Sonitpur, Tezpur**

**Case No: Misc(J)case No. 20/2020**

**(I/c Title Suit No. 14/2020)**

**Sri Mosu Chouhan & others**

**-versus-**

**Sri Gope Bahadur Thapa & others**

**15.12.2022**

Petitioners are represented.

Today the day is fixed for order.

I have already heard the learned counsel for the petitioners.

This instant Misc (J) case has registered on petition no. 339/2020 dated 14.02.2020 filed by the petitioners under Order XXXIX Rule 1 and 2 read with Section 151 of the CPC.

The main contention of the petitioners is that originally petitioners were the resident of village-Kacomari, Mouza-Borsola, District-Sonitpur, Assam and being citizen of India they were living in the said place since time immemorial and accordingly their names have been entered in the voter list and they have been casting their votes under the Borsola Assembly constituency.

In the year 1983 due to the Erosion by the Brahmaputra River lands of the petitioners became landless overnight. The Authorities of the Sonitpur District as well

as the Govt. of Assam has arranged some reliefs and allotted 8 bighas of land to the each petitioners and accordingly the petitioners started living in the scheduled mentioned lands since the year 1983.

In course of time the Govt. of Assam has recognized the possession of the petitioners and started collecting land revenues of the land accordingly the petitioners have been paying the land revenue of the land regularly up to date.

The opposite parties were not happy with the decision of the Govt. as well as authority and they have been conspiringly trying to evict the petitioners from their possession and with the help of some vested interest persons and some powerful persons those in the power and with their men and associates and agents have been again and again trespassed to the scheduled lands with an intention to disposes the petitioners from their legal rights.

The opposite parties equipped with arms have been disturbing the petitioners sometimes by destroying the crops petitioners and by taking away live stocks and sometimes damaging the houses of the petitioners with the help of their agents, associates however petitioners have lodged complaint matter to the MLA of Borsola Assembly Constituency for protecting them from the atrocities opposite parties no. 1 to 7 on 21.06.2018, moreover the petitioner no. 1 had also lodged complaint before the Singri Police on 22.06.2018 as well as before the Dhekiajuli police station against the illegal acts of the opposite parties no. 1 to 7 but the police never helped the petitioners.

On 21.06.2018 the opposite parties no. 1 to 7 have illegally trespassed to the premises of the petitioner no. 1 and thereafter taken away the Tin Roof, Bamboo Pillar by breaking the house of the petitioner no. 1 and also threatened other petitioners with dire consequences if the petitioners constructs houses any more in the said place, therefore due to such acts of the opposite parties no. 1 to 7 this petitioner lodged FIR on 22.06.2018 before the Singri Police out post for taking legal action against the opposite parties no. 1 to 7 but no actions have been taken against the opposite parties for their illegal acts.

The petitioners have been living in the said schedule mentioned lands since last 25 years and accordingly paying the land revenue of the land regularly and till today the petitioners are well in possession over the scheduled lands despite constant threats from the opposite parties and their men and associates.

On 20.03.2019 the opp. parties constructed some huts by occupying some portion of lands from the schedule lands and thereafter settled opposite parties no. 8 to 14 who are actually doubtful citizens, perhaps the opposite parties no.8 to 14 have illegally entered in the area without any valid documents.

The petitioners are very much apprehensive with the activities of the opposite parties as they have been showing the lands to the various persons and it is learned that the opposite parties have convened a meeting to hand over the said land for construction of a school by

dispossessing the defendants from the land, therefore such illegal attempts may also be prohibited which the petitioners are entitled and liable to be protected under law and facts.

That as the matter is so urgent and emergent in nature insistence upon issuance of notice under Order XXXIX Rule 3 prior to the order of the injunction may defeat the justice and therefore, it is necessary to grant ad-interim injunction.

Under the facts and circumstances above, it is prayed therefore that the Hon'ble Court may be graciously Pleased to grant injunction prohibiting and restraining the opposite parties and their men, associates, agents, servants from entering and going into the schedule lands mentioned in the schedule below during pendency of the suit under Order XXXIX Rule 1 & 2 of CPC.

The opposite parties appear initially but did not file any written objection and thereafter remained absent without any steps.

Heard and perused the case record and the documents submitted by the petitioners.

Also perused the case record along with the injunction petition, and the other documents filed by the petitioners.

In the light of the pleadings of the parties to decide the injunction prayer filed under Order XXXIX Rule 1 of CPC, the followings are appears to be the points for determination:

- (i) Whether there is a prima-facie case in favour of the plaintiffs/ petitioners?
- (ii) Whether balance of convenience is in favour of the plaintiffs/petitioners?
- (iii) Whether the plaintiffs/petitioners are going to suffer irreparable injury/loss in the event of court not granted temporary injunction against the defendants/opposite parties?

Order XXXIX, Rule 1 (c) of C.P.C. provides that “ temporary injunction may be granted where, in any suit, it is proved that the Opposite Party threatens to dispossess the plaintiff or otherwise cause injury to the plaintiff in relation to any property in dispute in the suit, the court may by order grant a temporary injunction to restrain such act or make such other order for the purpose of staying and preventing or dispossessing the plaintiff or otherwise causing injury to the plaintiff in relation to any property in dispute in the suit as the court thinks fit until the disposal of the suit or until further orders”.

It is settled law that relief for granting of temporary injunction is subject to the court’s satisfying that:

(1) there is a serious disputed question to be tried in the suit and that an act, on the facts before the court, there is probability of being entitled to the relief asked for by the plaintiff/defendant;

(2) the court's interference is necessary to protect the party from the species of injury. In other words,

irreparable injury or damage would ensue before the legal right would be established at trial; and

(3) that the comparative hardship or mischief or inconvenience which is likely to occur from withholding the injunction will be greater than that would be likely to arise from granting it.

Now to decide whether the petitioners have abled to establish the presence of three golden principles of granting injunction in their favour or not let the materials available on the case record be carefully perused or scrutinized.

**Prima-Facie Case:** On going through the contents of documents as submitted by the petitioners side it is clearly apparent that the Authorities of the Sonitpur District as well as the Govt. of Assam has allotted 8 bighas of land to the each petitioners i.e. lands mentioned in the schedule and accordingly the petitioners started living in the scheduled mentioned lands since the year 1983, which itself draws a prima facie case in favour of petitioners.

**Balance Of Convenience:** The second element of granting injunction i.e. balance of convenience is also apparent to be present in favour of the petitioners side as the contents of documents as submitted by the petitioners side reveals the fact that by dint of relevant documents the petitioners have been possessing the Schedule land for last 25 years and accordingly paying the land revenue of the land regularly and till today and on the other hand the opposite parties trying to evict the petitioners from their

possession with the help of some vested interest persons and some powerful persons and with their men and associates and agents. The opposite parties have failed to rebut such contention of the petitioners by adducing any satisfactory documents before this Court.

**Irreparable Loss:** Be it mentionable here that although the petitioners have claiming their respective possession and occupation right over the suit land, but the same will be decided after disposal of the main suit and hence, in my considered view, till then the Schedule land has to be preserved in its original form. Further, ongoing through the contents of documents as submitted by the petitioners side it is also apparent that petitioners have been living in the said schedule mentioned lands since last 25 years and accordingly paying the land revenue of the land regularly and till today the petitioners are well in possession over the scheduled lands despite constant threats from the opposite parties and their men and associates. On 20.03.2019 the defendants constructed some huts by occupying some portion of lands from the schedule lands and thereafter settled opposite parties no. 8 to 14 have illegally entered in the area without any valid documents. If the same is not protected from the opposite parties then it will create an irreparable loss to the petitioners.

Therefore, in view of the above it is clearly apparent that the petitioners have successfully established the

presence of three golden principles of granting injunction in their favour.

As such considering the aforesaid reason, I deem it fit to allow the prayer for temporary injunction and accordingly, the opposite parties are hereby restrained from entering and going into the suit land during pendency of this schedule land. The decision in this case will not affect the merit of the main suit.

Accordingly, this Misc (J) case is disposed of without cost.