

GAHC010014332017



2026:GAU-AS:12056

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

Case No. : WP(C)/1192/2017

ON THE DEATH OF INDRASAN PRASAD CHOUDHURY, HIS LEGAL HEIRS
REPRESENTED BY-

1.1: KALAWATI DEVI
W/O. LT. INDRASAN PRASAD CHOUDHURY
R/O. WARD NO. 2
NETAJI ROAD
LANKA
DIST. HOJAI
ASSAM
PIN - 782446

1.2: BIJAY CHOUDHURY
S/O. LT. INDRASAN PRASAD CHOUDHURY
R/O. WARD NO. 2
NETAJI ROAD
LANKA
DIST. HOJAI
ASSAM
PIN - 782446

1.3: SANJIT CHOUDHURY
S/O. LT. INDRASAN PRASAD CHOUDHURY
R/O. WARD NO. 2
NETAJI ROAD
LANKA
DIST. HOJAI
ASSAM
PIN - 782446

1.4: RANJIT CHOUDHURY
S/O. LT. INDRASAN PRASAD CHOUDHURY
R/O. WARD NO. 2
NETAJI ROAD

LANKA
DIST. HOJAI
ASSAM
PIN - 782446

1.5: MANJEET KUMAR CHOUDHURY
S/O. LT. INDRASAN PRASAD CHOUDHURY
R/O. WARD NO. 2
NETAJI ROAD
LANKA
DIST. HOJAI
ASSAM
PIN - 782446

1.6: AJAY CHOUDHURY
S/O. LT. INDRASAN PRASAD CHOUDHURY
R/O. WARD NO. 2
NETAJI ROAD
LANKA
DIST. HOJAI
ASSAM
PIN - 78244

VERSUS

THE STATE OF ASSAM AND 6 ORS
REP. BY THE CHIEF SECRETARY TO THE GOVT. OF ASSAM, DISPUR, GHY.-
06.

2:THE DEPUTY COMMISSIONER

SHANKARDEV NAGAR
HOJAI
DIST. HOJAI
ASSAM.

3:THE LANKA MUNICIPAL BOARD

REP. BY ITS CHAIRMAN
LANKA
DIST. HOJAI
ASSAM.

4:THE CIRCLE OFFICER

LANKA REVENUE CIRCLE
DIST. HOJAI
ASSAM.

5:SRI BIJU BHATTACHARYYA

CHAIRMAN OF LANKA MUNICIPAL BOARD
LANHA
DIST. HOJAI
ASSAM.

6:SRI PRASANTA BARUAH

CIRCLE OFFICER
LANKA REVENUE CIRCLE
LANKA
DIST. HOJAI
ASSAM.

7:SRI SUSHIL KUMAR DUTTA

OFFICER-IN-CHARGE
LANKA POLICE STATION
LANKA
DIST. HOJAI
ASSAM

BEFORE

HON'BLE MR. JUSTICE DEVASHIS BARUAH

For the Petitioner(s) : Mr. S. Gautam, Advocate

For the Respondent(s) : Mr. H. Sharma, Addl. Sr. GA, Assam
: Mr. J. M. A. Choudhury, Advocate
: Mr. S. R. Baruah, Standing Counsel

- Date on which Judgment was reserved : N/A
- Date of Pronouncement of Judgment : **21.08.2026**
- Whether the pronouncement is of the Operative Part of the Judgment : Yes
- Whether the full Judgment has been Pronounced : No

JUDGMENT AND ORDER (ORAL)

Heard Mr. S. Gautam, the learned counsel appearing on behalf of the Petitioner and Mr. H. Sharma, the learned Additional Senior Government Advocate appearing on behalf of the Respondent Nos. 2 & 4. I have also heard Mr. J. M. A. Choudhury, the learned counsel appearing on behalf of the Respondent Nos. 3 & 5 and Mr. S. R. Baruah, the learned Standing counsel appearing on behalf of the Respondent Nos. 6 & 7.

2. The present writ petition has been filed by the Petitioner which is presently being pursued by the legal heirs of the original Petitioner seeking compensation from the Respondent Authorities for assaulting and damaging his life and property over a plot of land under Dag No.1049, 1636 of Patta No.53 and 97 of village Lanka Town, Lanka Revenue Circle in the District of Hojai.

3. The case of the original Petitioner herein is that the said Petitioner was the absolute owner of a plot of land admeasuring 2 Kathas 7 Lechas covered by Patta No.53 and 97 and Dag Nos. 1049, 1636 under Mouza Lanka within Lanka Revenue Circle in the District of Hojai. In that regard, the Petitioner had enclosed the copy of the Jamabandi as Annexure-1 and 1A to the writ petition.

4. It is the further case of the Petitioner that the Petitioner had constructed a two storey RCC building over the said plot of land. On 19.02.2017 at around 9 AM, the Respondent Nos. 5, 6 and 7 and few other officials working in the offices of the Deputy Commissioner, Hojai, Lanka Municipal Board, Lanka Revenue Circle and Lanka Police Station arrived at in front of the building with armed police and demolished a portion of the Petitioner's building. Photographs in that regard have been enclosed.

5. Being aggrieved by the action on the part of the Respondent Authorities as well as the private respondent who are the officials of the Lanka Municipal Board, Lanka Revenue Circle as well as the Lanka Police Station, the present writ petition was filed seeking the reliefs as aforementioned.

6. An affidavit-in-opposition was filed by the Respondent No.2 on 26.07.2017 wherein at paragraph No.4, it was categorically mentioned that the Petitioner had incorrectly stated in the writ petition that the Petitioner is the owner of 2 Kathas 7 Lechas of land. It was mentioned in the said affidavit-in-opposition with details that the Petitioner's ownership was limited to 2 Kathas 2 Lechas of land and in that regard, have enclosed the letters dated 08.05.2017 and 19.06.2017. Further to that, it was also mentioned that a portion of the Petitioner's building was standing over a

Government Dag being Dag No.1038 which is a Government reserve land and reserved as "Gobat". It is in exercise of powers conferred by the Settlement Rules framed under the Assam Land and Revenue Regulation, 1886, eviction proceedings were initiated against the Petitioner. It was also mentioned that the Lanka Municipal Board had also issued a General Notice on 13.01.2017. Apart from the above, it is the categorical stand that no portion of the Petitioner's building standing on the Petitioner's land was demolished.

7. The Respondent No.7 filed an affidavit-in-opposition on 30.11.2017 wherein he stated that he was present at the place as per the direction of the S.P. Hojai along with a police team consisting of CRPF, AP Bn, WP/C and Thana Police headed by Dy. S.P. (HQ), Hojai executing the law and order duty at the spot of eviction on 19.02.2017. It was further mentioned that an Ejahar was filed against the original Petitioner and 3 others for illegally obstructing the Government servants to do their official duty and pelting stones to the persons who were engaged in eviction duty. The said F.I.R. was registered as Lanka P.S. Case No.109/07.

8. It was further mentioned that under no circumstances, the Respondent No.7 can be personally liable taking into account that he was present in the eviction while discharging his duty to

maintain the law and order as per the requisition of the Circle Officer.

9. These affidavits were filed in the year 2017 and the Petitioner or the substituted Petitioners thereupon did not file any reply.

10. When the matter was listed before this Court on 24.07.2026, this Court granted a final opportunity to the substituted Petitioners to file a reply to the affidavits-in-opposition filed by the Respondent Nos. 2 and 7. However, in spite of that, no affidavit-in-reply was/were filed.

11. The question arises in the present facts as to whether the action on the part of the Respondent Authorities constitutes a constitutional tort for awarding compensation in favour of the Petitioners.

12. The materials on record clearly show that though the Petitioner claimed in the writ petition that he was the owner of 2 Kathas 7 Lechas of land, but the said aspect was denied and it was categorically mentioned that the Petitioner's land was only to the extent of 2 Kathas 2 Lechas. In addition to that, it was also mentioned that the Petitioner's building was encroaching upon the Government Dag No.1038 which is reserved as Gobat. Under such circumstances, if any portion of the Petitioner's building was standing upon a Government land bearing Dag No.1038 and the

said aspect having not been denied, this Court cannot hold that the Respondent Authorities have violated the Petitioner's constitutional rights and thereby to impose compensation against the Respondents on the commission of constitutional tort. Apart from that, another important aspect needs to be taken note of. The original Petitioner sought for compensation on commission of constitutional tort upon his life and property. The right to seek such compensation is personal to the original Petitioner. Though, the original Petitioner was substituted upon his death by the present Petitioners, the loss sustained by the original Petitioner do not survive upon the death of the original Petitioner or in other words, the right to sue does not survive.

13. In addition to the above, another aspect is whether any damage was caused to the Petitioner's building and to what extent and how much, are questions of facts which can only be decided in a competent Court of Civil Jurisdiction. Therefore, it is the opinion of this Court that this is not a case which would come within the ambit of a constitutional tort. Apart from that, any other loss or damages caused on account of demolition of the Petitioners' building is a question of assessment which can only be done before a Court wherein evidence can be led.

14. Accordingly, the instant writ petition stands disposed of with

the following observations and directions:

- (i) This Court is of the opinion that no case of constitutional tort is made out in the facts and circumstances of the present case. Accordingly, the question of directing the Respondent Authorities to make payment of compensation to the Petitioners does not arise. Accordingly, the writ petition stands dismissed.
- (ii) The dismissal of the instant writ petition however shall not preclude the Petitioners to approach the competent Court of Civil Jurisdiction for claiming compensation for the loss suffered by them on account of so much of the demolition of their building which stood within the land of the Petitioners. It is further observed that in the circumstance, such suit is filed, the period from 28.02.2017 till date be excluded while computing the period of limitation.

JUDGE

Comparing Assistant