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GAHC010054742021

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

Case No. : WP(C)/2162/2021

SABITA PAUL
W/O- LT. BIDYA PAUL, R/O- WARD NO. 10, KOKRAJHAR TOWN, P.O., P.S. AND DIST.- KOKRAJHAR, BTR, ASSAM, PIN- 783370

VERSUS

THE STATE OF ASSAM AND 9 ORS
REP. BY THE PRINCIPAL SECY./ COMMISSIONER AND SECY., GOVT. OF ASSAM, HOME AND POLITICAL DEPTT., DISPUR, GHY-6

2:THE DY. COMMISSIONER
DISTRICT KOKRAJHAR
KOKRAJHAR
BTR
ASSAM
PIN- 783370

3:THE ADDL. DY. COMMISSIONER
DISTRICT KOKRAJHAR
KOKRAJHAR
BTR
ASSAM
PIN- 783370

4:THE SUPERINTENDENT OF POLICE
KOKRAJHAR
KOKRAJHAR
BTR
ASSAM
PIN- 783370

5:THE OFFICER-IN-CHARGE

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KOKRAJHAR P.S.
KOKRAJHAR
BTR
ASSAM
INDIA
PIN- 783370

6:SNEHALATA DAS
W/O- LT. NITYANANDA DAS
R/O- KACHARI ROAD
WARD NO. 6
KOKRAJHAR
P.O.
P.S. AND DIST.- KOKRAJHAR
BTR
ASSAM
PIN- 783370

7:NITUL CH. DAS
S/O- LT. NITYANANDA DAS
R/O- KACHARI ROAD
WARD NO. 6
KOKRAJHAR
P.O.
P.S. AND DIST.- KOKRAJHAR
BTR
ASSAM
PIN- 783370

8:ANITA DAS
W/O- SRI NITUL DAS
R/O- KACHARI ROAD
WARD NO. 6
KOKRAJHAR
P.O.
P.S. AND DIST.- KOKRAJHAR
BTR
ASSAM
PIN- 783370

9:SRI BHASKAR DAS
ACS
PRESENTLY POSTED AS

ADDL. SECRETARY TO THE GOVT. OF ASSAM

SOCIAL JUSTICE AND EMPOWERMENT DEPARTMENT

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DISPUR
GUWAHATI -6

10:SRI BINANDA BASUMATARY
PRESENTLY POSTED AS-
DEPUTY SUPERINTENDENT OF POLICE (BORDER)

KOKRAJHAR DEF
OFFICE OF THE SUPERINTENDENT OF POLICE
KOKRAJHAR TOWN
ASSAM. PIN-78337

Advocate for the Petitioner : MR. B J MUKHERJEE, MS R SAHA

Advocate for the Respondent : GA, ASSAM, MR. R GHOSH (R-10),MR. C SHARMA (R-10),MS. N PODDAR (R-10),S K PODDAR (R-10),J M BAISHYA(R-8),H THAKURIYA (R-8),MS. B D SARMAH(R-8),MR. U K DAS(R-8),SC, BTC

BEFORE

HON'BLE MR JUSTICE ARUN DEV CHOUDHURY

For the Petitioner : Mr. B. J. Mukherjee, Advocate.

For the Respondents : Mr. B. Goswami, Additional Advocate General, Assam,

Mr. D. Nath, Senior Government Advocate, Assam, representing the respondent Nos. 1 to 5.

Mr. U. K. Das, Advocate for the respondent No. 8.

Mr. S. K. Poddar, Advocate for the respondent No. 10.

Mr. B. C. Muchahary, Standing Counsel, BTC.

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Date on which Judgment is Reserved : 28.09.2026.

Date of pronouncement of Judgment : **03.11.2026**

Whether the pronouncement is of the operative part of the Judgment : NA.

Whether the full Judgment has been pronounced : Yes.

JUDGMENT & ORDER (CAV)

(A.D.Choudhury, J)

1. Heard Mr. B. J. Mukherjee, learned counsel for the petitioner. Also heard Mr. B. Goswami, learned Additional Advocate General, Assam, and Mr. D. Nath, learned Senior Government Advocate, Assam, for the respondent Nos. 1 to 5; Mr. U. K. Das, learned counsel for the respondent No. 8; Mr. S. K. Poddar, learned counsel for the respondent No. 10; and Mr. B. C. Muchahary, learned Standing Counsel, BTC, for the respondents.

2. The present petition raises an important question concerning the limits of police and executive authority in matters involving civil possessions.

3. The issue is significant because it involves using state machinery to aid a private claim to recover possession from a tenant during the pendency of a civil suit for recovery of possession, which strikes at the foundation of the rule of law.

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4. The facts giving rise to the present petition are neither complicated nor seriously disputed.

The petitioner was in occupation of a tenanted room under Respondent No. 6. The said respondent instituted Title Suit No. 2/2020 seeking a decree of khas possession of the rented premises, recovery of Rs. 49,280/- towards arrears of rent for the period from October 2018 to December 2019, and a further sum of Rs. 5,000/- as damages. The tenanted premises comprise a room measuring 12 feet X 24 feet as described in the schedule to the plaint.

5. Thus, by approaching the competent civil court to recover possession, the landlord invoked the adjudicatory process established by law to determine the dispute. The right to recover possession, if any, was thus required to be pursued through that process.

6. However, while the suit was pending, respondent No. 6 approached the local police authority on 25.12.2020, alleging, inter alia, that the tenancy had expired in 2016, that the petitioner had paid rent only up to September 2018, and that when asked to pay the outstanding rent, she could not be traced.

Based on the complaint, Kokrajhar PS registered case number 790/2020. Upon completing the investigation, the police submitted a charge sheet under Sections 406/420/506 of the Indian Penal Code.

The learned Chief Judicial Magistrate, Kokrajhar, took cognizance of the offenses by an order dated 30.01.2021 and issued a summons to the accused.

7. Meanwhile, the then Inspector of Police-cum-Officer-in-Charge, Kokrajhar police station, by a communication dated 29.01.2021, requested the District Magistrate, Kokrajhar, to depute an Executive Magistrate to assist in vacating the tenanted premises. The communication stated that eviction was sought on the ground that the tenant had defaulted in rent payment and that the premises had remained locked since September 2018.

8. Acting on the aforesaid request, the Additional Deputy Commissioner, Kokrajhar, by order dated 09.02.2021, deputed the Circle Officer-cum-Executive Magistrate, Kokrajhar, to attend to the law-and-order situation during the proposed eviction.

9. On 10.02.2021, the Officer-in-Charge issued a notice requiring the petitioner to remain present at the tenanted premises on 11.02.2021 at 10 a.m. The petitioner was not present at the premises

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on the appointed day. Thereafter, respondent No. **7**, accompanied by police personnel from the Kokrajhar police station, broke open the shutter lock and entered the premises in her absence.

10. Accordingly, the petitioner challenged such action before this Court by filing the present writ petition.

11. This Court, under its order dated 04.04.2026, while examining the circumstances leading to the dispossession, recorded its prima facie view that the action was illegal and unconstitutional.

This court further noted that the landlord had already instituted a civil suit for recovery of possession, but the adjudication process was circumvented by resorting to police and executive intervention.

The court also noted that Respondent No. 7's subsequent withdrawal of the eviction suit, after the petitioner had been dispossessed, was a significant circumstance.

12. During that deliberation, the learned counsel for the petitioner submitted that the petitioner and respondent No. 6 had arrived at a settlement. It was also submitted that the petitioner had been compensated for the action complained of and was no longer interested in seeking restoration of possession. However, this court considered it necessary to examine the conduct of the public officials involved in the incident, particularly in the circumstances noted.

13. Accordingly, by the aforesaid order dated 04.04.2026, the then Additional Deputy Commissioner, Kokrajhar, who had passed the order dated 09.02.2021, was impleaded as respondent No. 9 and the then Officer-in-Charge, Kokrajhar police station, who had initiated the process of deputation of an Executive Magistrate, was impleaded as respondent No. 10.

14. The Court issued notices to both officers so they could explain their respective roles. Despite service of notice, respondent No. 9 has neither entered an appearance nor filed any response explaining the circumstances in which the order dated 09.02.2021 was passed.

15. The respondent No. 10, on the other hand, has filed an affidavit-in-opposition. He stated that the police personnel were present at the relevant time pursuant to the order dated 09.02.2021 passed by the Additional Deputy Commissioner, Kokrajhar, whereby an Executive Magistrate was deputed to maintain law and order and prevent any untoward incident.

The respondent No. 10 further stated that he had considered the petitioner's grievance regarding

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the events of 11.02.2021 and that his mistake was unintentional.

He has further tendered an unconditional apology to this court and to the petitioner for any hardship, inconvenience or distress caused to her.

He has also undertaken that he and the police personnel under his control shall exercise due care, restraint, and sensitivity while dealing with matters involving possession of premises, particularly where the dispute is essentially between private parties and concerns civil rights.

The affidavit further states that police authority shall not be used to adjudicate or determine private civil disputes or to confer any civil right upon any party.

Respondent No. 10 has also relied on his service record and the recognition he received during his service in the police department.

16. In the aforesaid factual background, the principal question for determination is whether the dispossession of the petitioner, facilitated by police and executive intervention, was carried out with demonstrated lawful authority and was consistent with the Constitution and the rule of law; and, if not, what consequences should follow for the public officials concerned.

17. The law governing forcible dispossession is well settled.

18. In **Lallu Yeshwant Singh v. Rao Jagdish Singh,** reported in **(1968) 2 SCR 203**, the Supreme Court considered whether a landlord could forcibly eject tenants on the ground that their rights in the holding had been extinguished for non-payment of rent. The Supreme Court held that even where the law recognizes a consequence of default, the person claiming entitlement to possession cannot take possession by force and must follow the procedure established by law.

The decision affirms the fundamental principle that a claim to possession, however substantial, does not confer a right to enforce it by force or self-help.

19. The aforesaid principle was reiterated in **Krishna Ram Mahale v. Mrs. Shobha Venkat Rao** reported in **(1989) 4 SCC 131**. The Supreme Court held that a person in settled possession cannot be dispossessed by another, even by the owner, except by recourse to law.

20. The principles rest on the need to maintain public order and preserve the authority of the judicial process. It is not intended to confer an indefeasible right upon a person in possession,

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nor does it prevent the true owner from recovering possession. It requires that the right be enforced through the procedure recognized and established by law.

21. The ratio of the aforesaid decisions squarely governs the controversy in the present case.

The landlord had already approached the competent civil court to recover possession. Whether the tenancy had expired, whether the rent was due, and whether the landlord was entitled to recover the premises were matters to be determined in accordance with the law. The police had no jurisdiction to decide those questions, and the pendency of a criminal proceeding arising from the landlord's complaint did not confer on the police, any authority to execute an eviction without a lawful order authorizing it.

22. The order dated 09.02.2021, under which the Executive Magistrate was deputed to maintain law and order during the proposed eviction, must be understood within the limits of the authority it could lawfully exercise. The Additional Deputy Commissioner was duty-bound to apply its mind while passing such an order; more particularly, when the police request clearly disclosed the facts necessitating the deputation of police personnel, which was nothing but a private civil dispute.

23. An order to maintain law and order cannot become an instrument for delivering possession of premises to a private party, especially when the dispute is under adjudication. The authority to prevent an untoward incident is distinct from the authority to evict a person. The former cannot be used to assume the latter.

24. The Executive administration may take steps authorized by law to prevent a breach of peace, and the police may act in accordance with their statutory duties. Neither is empowered to adjudicate competing civil rights or to facilitate a private party's recovery of possession in disregard of the procedure prescribed by law. The presence of an Executive Magistrate and police personnel cannot make legal, an act for which no independent lawful authority exists.

25. Tested against these principles, the events of 11.02.2021 reveal a serious departure from the discipline of law. The premises were entered after the shutter lock was broken, in the petitioner's absence, and as part of an exercise undertaken with police assistance. No decree of eviction, warrant for delivery of possession, or statutory order authorizing dispossession was admittedly available.

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26. Therefore, the action cannot be characterized as a mere procedural illegality in the execution of an otherwise lawful eviction, but must instead be viewed as an act without any sanction or authority under the law.

27. The absence of lawful authority goes to the very root of the action itself. The State's coercive machinery was employed in a matter concerning private civil rights, resulting in an interference with possession without the intervention of a competent court.

Such conduct amounts to a high-handed exercise of public authority and cannot be countenanced in a constitutional system governed by the rule of law.

28. The rule of law requires that public power be exercised only for the purposes and within the limits within which it has been conferred. It requires the State and its instrumentalities to act in accordance with law, regardless of the perceived merits of a private claim.

If the police and executive authorities are permitted to assist one party in securing possession of premises solely because the party asserts a right to recover it, the distinction between adjudication by courts and enforcement by the executive would be obliterated.

A party could then achieve by official force what must be obtained through judicial determination.

29. The constitutional implications of such action are serious.

Article 300A of the Constitution of India provides that no person shall be deprived of property save by authority of law. This requirement is substantive and demands that the deprivation must have a lawful source and be carried out in accordance with the procedure authorized by law.

An administrative arrangement made to maintain law and order cannot be treated as an authority of law for eviction where the arrangement is not legally authorized.

Therefore, such dispossession of the petitioner, in the circumstances recorded hereinabove, cannot be sustained.

30. The action also attracts scrutiny under Article 14 of the Constitution.

Using State machinery to facilitate a private claim to possession without lawful authority, and

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without recourse to pending judicial process is arbitrary.

Public authorities have a constitutional obligation to act fairly within their jurisdiction and in accordance with law, and not to become instruments for enforcing private claims.

31. In **Satrughna Atmaram Patil v. Vinod Dodu Choudhari (2024 INSC 75),** the Supreme Court considered proceedings arising from allegations of unlawful detention of tenants and demolition of premises with police assistance without an order of a competent court.

During the pendency of the proceedings, the private parties reached a settlement, and the tenants were compensated. The Supreme Court, nevertheless, addressed the role of the police personnel concerned and directed the imposition of personal costs in the circumstances of that case.

32. The said decision is particularly relevant in the present case, as it demonstrates that settling a private dispute does not necessarily end the courts' concern about the misuse of public authority.

The exercise of coercive state power remains subject to judicial scrutiny, and appropriate consequences follow where public officials facilitate the circumvention of lawful process.

33. Therefore, the submission that the petitioner has already settled her dispute with respondent No.6 and has received compensation does not alter the conclusion reached hereinabove.

The settlement may resolve the private dispute and may make any further direction for restoration of possession unnecessary; however, it cannot retrospectively validate the public authorities' action or extinguish the constitutional concern arising from the use of state machinery without lawful authority.

34. Another significant fact is that the petitioner withdrew the eviction suit after being dispossessed.

Such a fact underscores the importance of maintaining the distinction between lawful adjudication and executive intervention. Once the parties have invoked the jurisdiction of the civil court, the appropriate course is to let the proceedings run their course and abide by the outcome.

Therefore, Executive and Police intervention to secure possession, followed by the withdrawal

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of the suit, cannot be recognized as a substitute for adjudication.

35. In view of the foregoing discussion, this court holds that the dispossession of the petitioner was effected without demonstrated legal authority and by circumventing the process available before the competent civil court.

The action was arbitrary and inconsistent with constitutional protection under Article 300A and the guarantee against arbitrariness under Article 14 of the Constitution.

The use of police and executive machinery to facilitate the petitioner's dispossession, under the circumstances established on record, constitutes a high-handed exercise of authority and a serious attack on the rule of law.

36. Having recorded the aforesaid findings, in the opinion of this Court, consequences must also follow upon the public officials concerned, which, in the further opinion of this Court, can be achieved by the imposition of costs.

37. The purpose of imposing costs is to mark the court's disapproval of the unlawful use of public authority and to reinforce the principle that the coercive powers of the State cannot be employed to secure possession for a private party in disregard of the judicial process. It also serves as a deterrent against similar conduct in the future.

38. Despite the service of notice, the respondent No. 9, who passed the order dated 09.02.2021, has neither appeared nor furnished any explanation for the legality of the order or the circumstances in which it was passed.

Though his non-appearance cannot be treated as proof of every allegation made in the petition, the order passed by him must be assessed in the context of subsequent events and the absence of any demonstrated lawful authority for the dispossession.

Similarly, the explanation given by respondent No. 10 in his affidavit does not absolve him of the responsibility to ensure that police assistance remains within the bounds of law.

39. Having regard to the nature of the illegality, the constitutional implications of the action, the respective roles of respondent Nos. 9 and 10, and the need to deter any recurrence of such conduct, this court considers it appropriate to impose a cost of Rs. 75,000/- upon respondent No. 9 and Rs. 25,000/- upon respondent No. 10.

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The comparatively lesser amount imposed on respondent No. 10 takes into account the apology and undertaking furnished by him, while ensuring the consequence remains meaningful and proportionate.

40. Accordingly, the writ petition stands disposed of with the following direction:

I. Respondent No. 9 shall deposit Rs. 75,000/- and respondent No. 10 shall deposit Rs. 25,000/- before the High Court Legal Services Authority, within six weeks from the date of this judgment.

II. The unconditional apology tendered by respondent No. 10 is accepted, subject to the findings recorded hereinabove.

III. In view of the settlement between the petitioner and respondent No. 6 and the petitioner's disinclination to seek restoration of possession, no further direction for restoration of possession is called for in the present proceedings.

IV. Let a copy of the judgment be furnished to the learned Senior Government Advocate, Assam, for communication to the Chief Secretary to the Government of Assam and the Director General of Police, Assam, who shall also ensure that respondent Nos. 9 and 10 comply with the order passed today, respectively.

V. If the order is not complied with within the period stipulated hereinabove, the Registry shall list this matter before this court.

JUDGE

Comparing Assistant