

GAHC010006322016



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

Case No. : WP(C)/226/2016

SHRI SHRI HANUMAN MANDIR and ANR.
REP. BY THE PRIEST SRI PREM CHAND JHA, DIMAPUR RAILWAY STATION,
DIMAPUR-797112, NAGALAND.

2: SRI PREM CHAND JHA

PRIEST OF SRI SRI HANUMAN MANDIR
DIMAPUR RAILWAY STATION
DIMAPUR-797112
NAGALAND

VERSUS

THE UNION OF INDIA and 3 ORS
REP. BY THE SECY. TO THE GOVT. OF INDIA, MINISTRY OF RAILWAYS,
RAIL BHAWAN, RAFI MARG, NEW DELHI-110001.

2:THE DIVISIONAL RAILWAY MANAGER

NR RAILWAY
LUMDING DIVN.
KARBI ANGLONG
ASSAM.

3:THE ESTATE OFFICER

NF RAILWAY
LUMDING DIVN.
KARBI ANGLONG
ASSAM.

4:THE DY. COMMISSIONER

DIMAPUR

NAGALAND

For the Petitioners : Ms. B.S. Goyal, Advocate.

For the Respondents : Ms. M.Kechii, Govt. Advocate, Nagaland.
Mr. D.K. Dey, SC, Railway.

BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH
ORDER

04.08.2023

The instant writ petition has been filed challenging the order dated 18.12.2015 passed by the Estate Officer, N.F. Railway, Lumding under the provisions of Section 5 (1) of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 (in short 'the Act of 1971'). The case of the Petitioner herein is that the land in question was allotted to the Petitioner by the Government of Nagaland and in that regard have placed on record a Jamabandi for the surveyed village pertaining to Dag No. 472/1531 of Patta No. 1241. From a perusal of the said Jamabandi for the surveyed village, it reveals that on 14th of May, 2010, the said land was regularised in favour of the Hanuman Mandir.

2. The Railways have also filed an affidavit, wherein it has been mentioned that the land wherein the Hamuman Mandir is situated was allotted to the Railways prior to construction of the Hanuman Mandir inasmuch as, the land was allotted to the Railways in the year 1963 and the Hanuman Mandir was constructed in the year 1970-71. It was further mentioned that the proceedings under the Act of 1971 against the Petitioner was carried out by following the due formalities and by issuing notice to the Petitioner which was duly received on 04.11.2011 and having not found the reply satisfactory, the impugned order

dated 18.12.2015 was issued.

3. Ms. M.Kechii, the learned Government Advocate appearing on behalf of the State of Nagaland had drawn the attention of this Court to the affidavit-in-opposition filed by the Respondent No. 4, wherein interalia it was stated that at the time of regularising the land in favour of the Petitioner on 14th of May, 2010 there was a complete ban on settlement or allotment of land except upon prior approval of the State Government. She further submitted that the DC's Order No. Rev-91D-(Part-I) 1996-700 dated 14.04.2010 is silent as to whether confirmation or prior approval has been taken from the State Government. The learned counsel for the State of Nagaland therefore submitted that no rights had accrued upon the Petitioner on the basis of the allotment/regularisation done by the Deputy Commissioner, Dimapur or his office with the necessary prior approval of the Government of Nagaland.

4. On the other hand, Ms. B.S. Goyal, the learned counsel appearing on behalf of the Petitioner submitted that there is no materials that the land in question was allotted to the Railways in the year 1963 or at any point of time and as such the exercise of authority by the Estate Officer under the Act of 1971 treating the said land to be public premises was erroneous.

5. Upon hearing the parties, it appears that there are serious disputes as to whether the Petitioner have been allotted the land in accordance with law and further as to whether the Railways are the settlement holders of the land in question. Taking into account the said aspect of the matter and also Section 9 of the Act of 1971, it is the opinion of this Court that such facts can be adjudicated upon by the Appellate Authority i.e. the District Judge, Dimapur. In that view of the matter, as the question raised in the present proceedings involve disputed

question of facts, this Court therefore is not inclined to interfere the order dated 18.12.2015 passed by the Estate Officer, N.F. Railway, Lumding. This Court however grants liberty to the Petitioner to prefer an appeal under Section 9 of the Act of 1971. If the said appeal is preferred within 12 days from the date of the instant order, the Appellate Authority, i.e. the District Judge, Dimapur shall decide the Appeal on the merits without insisting on any application for condonation of delay.

6. The interim order so passed earlier by this Court shall remain operational till 17th of August, 2023.

7. With the above observations and directions, the instant Petition stands disposed.

JUDGE

Comparing Assistant