

GAHC010021032015



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

Case No. : WP(C)/5447/2015

SUKHENDU NANDI @ SUKHENDU BIKASH NANDI
S/O JYOTINDRA MOHAN NANDI R/O KARIMGANJ P.O. and P.S. KARIMGANJ
DIST. KARIMGANJ, ASSAM.

VERSUS

THE UNION OF INDIA and 2 ORS
REP. BY THE GENERAL MANAGER, N.F. RAILWAY, MALIGAON, GUWAHATI
-11, DIST. KAMRUP M, ASSAM.

2:THE ESTATE OFFICER

N.F. RAILWAY LUMDING DISTRICT NAGOAN
ASSAM.

3:THE ASSISTANT DIVISIONAL ENGINEER

ADEN/11/BPG
N.F. RAILWAY
BADARPURGHAT
KARIMGANJ ASSAM

Advocate for the Petitioner : MS.R SARKAR

Advocate for the Respondent : MS.M DASR-1 to 3

**BEFORE
HONOURABLE MR. JUSTICE SANJAY KUMAR MEDHI**

ORDER

23.11.2023

Heard Shri B.P. Sinha, learned counsel for the petitioner. Also heard Dr. B.N. Gogoi, learned Standing Counsel, Railways.

2. Considering that this matter is pending since the year 2015 and also the fact that the Railways have filed necessary affidavit, this case is taken up for disposal.

3. The petitioner claims to be in possession of a plot of land by constructing a house and running a business. It is claimed that in the year 1973, the Railway Authorities had given him a receipt for the said plot of land which was numbered as No. 1. However on 10.09.1993, the Estate Officer, N.F. Railway, Lumding had issued a notice of eviction. The said notice of eviction was the subject matter of an appeal preferred before the learned District Judge, Karimganj in Misc. Appeal No. 3 of 1993 and vide judgment dated 03.06.1996, the notice was set aside.

4. The case of the petitioner is that the aforesaid plot was re-numbered as No. 27 whereafter another eviction notice was issued on 01.09.2004 followed by orders of eviction. The petitioner had again filed an appeal before the learned District Judge, Karimganj being Misc. Appeal No. 01 of 2004. The learned

District Judge however vide judgment dated 24.03.2009 had directed disposal of the entire proceedings within 4 (four) weeks.

5. The Railways thereafter had approached this Court by filing a number of writ petitions against similarly situated matters. The learned counsel for the petitioner submits that those writ petitions were dismissed for default and no steps were taken for its restoration. However, another eviction notice was issued in respect of the said land followed by an order of eviction on 24.08.2015. The aforesaid order is the subject matter of challenge in the present writ petition.

6. Shri Sinha, the learned counsel for the petitioner has submitted that the issue of eviction was raised earlier and has been conclusively decided by the Appellate Court and therefore subsequent orders of eviction is barred in law.

7. He accordingly submits that the proceedings initiated vide the impugned order be set aside.

8. *Per contra*, Dr. Gogoi, the learned Standing Counsel, Railways while denying the projection made by the petitioner on facts has submitted that there is an independent cause of action in initiating the present eviction proceeding and without the same being adjudicated properly, the petitioner is trying to pre-empt the matter by approaching this Court. Dr. Gogoi, the learned counsel has also placed before this Court an order dated 08.08.2023 passed by this Court in WP(C)/816/2016. By submitting that the facts of the said case are identical, this Court has been informed that the aforesaid writ petition was disposed of without interfering on merits, however making an observation that the Estate

Officer of the Railways would pass necessary orders by observing all the formalities under the Assam Public Premises (Eviction of Unauthorized Occupants) Act, 1971.

9. After hearing the parties and also considering the order dated 08.08.2023 which admittedly has been passed on identical situation, the present writ petition is disposed of by directing the Estate Officer of the Railways to consider the matter and pass appropriate orders by following the procedure laid down in the aforesaid Act of 1971. To facilitate such consideration, the interim order passed in this writ petition is vacated.

JUDGE

Comparing Assistant