

GAHC010038702023



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

Case No. : WP(C)/1007/2023

DIPAK KARMAKAR AND ANR
S/O- LT. HIMANSHU KARMAKAR, R/O- VILL- CHOKITUP, P.O.
CHOTOHAIBOR, PIN- 782001, DIST.- NAGAON, ASSAM

2: PRADIP SUTRADHAR
D/O- DINESH CH SUTRADHAR
R/O- VILL- CHOKITUP
P.O. CHOTOHAIBOR
PIN- 782001
DIST.- NAGAON
ASSA

VERSUS

THE UNION OF INDIA AND 5 ORS
REP. BY THE GENERAL MANAGER, M.F.RAILWAY, P.O. MALIGAON
HEADQUARTERS, PIN- 781011, GUWAHATI, ASSAM

2:THE DIVISIONAL MANAGER (ADMINISTRATION)
N.F.RAILWAY
LUMDING
P.O. LUMDING
PIN- 782447 ASSAM

3:THE DY. RAILWAY MANAGER
LUMDING
N.F.RAILWAY
PIN- 782447
KARBI ANGLONG
ASSAM

4:THE ESTATE OFFICER
N.F.RAILWAY
LUMDING

PIN- 782447
ASSAM

5:THE SR. SECTION ENGINEER (WORKS)
I/C N.F.RAILWAY
CHAPARMUKH

6:THE DY. COMMISSIONER
NAGAON
ASSAM PIN- 78200

Advocate for the Petitioner : MR B P BORAH
Advocate for the Respondent : DY.S.G.I.

**BEFORE
HONOURABLE MR. JUSTICE MANISH CHOUDHURY
ORDER**

12.04.2023

Heard Mr. B.P. Borah, learned counsel for the petitioners; Mr. D.J. Das, learned Central Government Counsel [CGC] for the respondent nos. 1 – 5; and Mr. C.K.S. Baruah, learned Junior Government Advocate, Assam for the respondent no. 6.

2. The 2 [two] petitioners have approached this Court assailing a notice dated 16.02.2023 issued by the respondent no. 5, that is, the Senior Section Engineer [Works] In-Charge, NF Railway, Chaparmukh, whereby, the petitioners have been asked to demolish the RCC structure constructed by the petitioners and to vacate the Railway land they were allegedly occupying, within a period of 7 [seven] days from 16.02.2023.

3. One of the prime contentions advanced by the learned counsel for the petitioners is that the respondent no. 5 is not an authorized official i.e. an Estate Officer under the Public Premises [Eviction of Unauthorized Occupants] Act, 1971 and as such, the notice dated 16.02.2022 is to be considered as void because of lack of authority and jurisdiction on the part of the respondent no. 5 to issue such eviction notice. It is further submitted by the learned counsel for the petitioners that the petitioners are in occupation of the plots of land in

question since many decades and by constructing houses thereon, they are living with their families.

4. Mr. Das, learned CGC has submitted that there is no dispute to the fact that the plot of land where the petitioners are staying are Railway lands and as the petitioners have failed to produce any valid and supporting documents with regard to their occupation, they are unauthorized encroachers/trespassers.

5. While issuing notice to the respondents on 22.02.2023, this Court having regard to the projection made on behalf of the petitioners inter alia that the respondent no. 5 is not an Estate Office under the Public Premises [Eviction of Unauthorized Occupants] Act, 1971, had directed, as an ad-interim measure, that no coercive action should be taken against the petitioners till the returnable date. Mr. Das, learned CGC has submitted that the respondent no. 5 has not been appointed as an Estate Office under the Public Premises [Eviction of Unauthorized Occupants] Act, 1971.

As it is not in dispute that the notice dated 16.02.2023 was issued by an authority who does not have the authority and jurisdiction to act in the capacity of an Estate Office under the Public Premises [Eviction of Unauthorized Occupants] Act, 1971, the notice dated 16.02.2022 is set aside.

6. Since the allegation against the petitioners is that they are unauthorized occupants/trespassers of Railway land, setting aside of the notice dated 16.02.2023 shall not preclude the respondent authorities to proceed against the petitioners in accordance with law. It is further made clear that this Court has not made any observation as regards the other aspects urged by the learned counsel for the parties.

7. This order disposes of the writ petition. No cost.

JUDGE

Comparing Assistant