

GAHC010088612018



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

Case No. : WP(C)/2694/2018

EXECUTION COMMITTEE OF PURBOTTAR HINDUSTANI SAMMELAN AND ANR.

DISTRICT COMMITTEE HAVING ITS OFFICE AND PRINCIPAL PLACE OF PROFESSION AT T R P ROAD, FANCY BAZAR, GUWAHATI-1, REP. BY ITS SECRETARY

2: THE MANAGEMENT COMMITTEE OF HINDUSTANI KENDRIYA VIDYALAYA
10 PLUS 2 CBSE AFFILIATED SCHOOL HAVING ITS OFFICE AT DINESH OJHA PATH
BHANGAGARH, GHY-

VERSUS

THE STATE OF ASSAM AND 4 ORS.
REP. BY THE COMMISSIONER AND SECRETARY, GUWAHATI
DEVELOPMENT DEPTT OF GOVT OF ASSAM, DISPUR, GHY- 06

2:THE COMMISSIONER AND SECRETARY
PWD DEPTT (ROADS) DIV-I
GOVT OF ASSAM
DISPUR, GHY- 6

3:THE GUWAHATI METROPOLITAN DEVELOPMENT AUTHORITY
REP. BY CHIEF EXECUTIVE OFFICER
STATEFED BUILDING
GMC ROAD, GHY- 05

4:THE COMMISSIONER
GUWAHATI MUNICIPAL CORPORATION
REP. BY ITS COMMISSIONER
PANBAZAR, GHY- 01

5:THE DEPUTY COMMISSIONER

KAMRUP(M)
PANBAZAR
GUWAHATI- 0

Advocate for the Petitioner : MR. S P ROY

Advocate for the Respondent : GA, ASSAM

BEFORE
HON'BLE MR. JUSTICE DEVASHIS BARUAH
O R D E R

25.09.2023.

The instant writ petition is filed by the petitioners challenging the actions of the respondent Gauhati Municipal Corporation as well as the Public Works Department in taking steps in proposing to dig out a public drain in the land belonging to the petitioners.

2. A perusal of the instant writ petition reveals that the petitioner No.1 is the owner of a plot of land measuring 4 Bighas 2 Kathas covered by K.P. Patta No.1119, Dag No.2013, 2121, 2196 and 2220 of village No.2 Japorigog under Beltola Mouza. Upon the said land there is a school known as the Hindustani Kendriya Vidyalaya. On 19.04.2018, an Assistant Engineer of the PWD (Roads) Division No.1 had come to the school campus of the petitioner and met the Principal and told the Principal that he have been assigned the work to dig out over the patta land of the petitioner for taking the rain water, waste, latrines, bathroom and kitchen water of the Tarun Nagar Bye Lane No.1, to which the petitioners objected. It has been also mentioned that the PWD, GMC, GMDA and the Deputy Commissioner, Kamrup (M) had prepared a plan for digging out a drain over the patta land of the petitioners to take waste and rain water of the

Tarun Nagar Bye Lane No.1 but till date no notice had been issued by the State Government to the petitioners. Under such circumstances, the petitioner had also lodged an FIR before the Bhangagarh Police Station on 20.04.2018 and also represented before the Chief Engineer of the PWD, Mayor of the GMC, DGP, Assam as well as to the Minister of the Gauhati Development Department. However the respondent authorities had not given any heed to the representation so submitted and as such the instant Writ Petition was filed by the petitioner on 22.05.2018.

3. This Court by the order dated 03.05.2018, issued notice and in the interim, directed that till the returnable date no construction of the drain shall be carried out over the patta land of the petitioner. It was also made clear in the said order that the interim direction would not come in the way of the GMC authorities to clean any existing public drain without disturbing the possession of the petitioners over their patta land. The said interim order have been extended from time to time and in presently still in force.

4. The record reveals that the respondent No.4 had filed an affidavit-in-opposition. In the said affidavit-in-opposition, it was mentioned that there is an existing drain flowing by the eastern side of Hindustani Kendriya Vidyalaya since long. In order to overcome water logging problem of the Tarun Nagar Bye Lane No.1, a fresh modified proposal was prepared by the State PWD, as per the proposal submitted by the Gauhati Municipal Corporation to the State Government over the existing drain. It is also mentioned that there was no conspiracy to dig out a drain over the patta land of the petitioners but it is a modification of the existing drain which was there since long for proper drainage of the rainy water. It was also mentioned that as the modified drain would be an RCC one, as such there would be no obnoxious smell. It was stated that the

authorities are going to modify the existing drain by making it RCC one which is flowing by the eastern side of the Hindustani Kendriya Vidyalaya since long.

5. Further to that, it was also mentioned that the Tarun Nagar Bye Lane No.1 is adjacent to the side of Rajiv Bhawan near the ABC. This area has fifty families residing since long. As the G.S. Road side level is higher, the drain/waste/rain water are flowing through a natural drain by the side of lane of Tarun Nagar Masjid and the Hindustani Kendriya Vidyalaya upto river Bharalu via Dinesh Ojha Path. It was mentioned that this is the one and only outlet of the drain water of that locality.

6. It was stated that the cross-section of the drain by the side of the Masjid and the Hindustani Kendriya Vidyalaya compound wall is much smaller than the required size and therefore, regular water logging occurred in Tarun Nagar Bye Lane No.1. In order to mitigate the said artificial flood, the Gauhati Municipal Corporation suggested reconstruction of the drain with proper size under the Mission Flood Free Project. According to the said proposal, the PWD City Division No.1 had taken up the construction work of reconstruction.

7. To the said affidavit-in-opposition, there are two enclosures i.e. Annexure-A and Annexure-B. A perusal of Annexure-B reveals that Schematic Map of the Tarun Nagar Bye Lane No.1 and the inner drain by the side of Tarun Nagar Masjid and Hindustani Kendriya Vidyalaya upto Bharalu River via Dinesh Ojha Path.

8. The petitioners thereupon filed an affidavit-in-reply. In the said affidavit-in-reply, it was mentioned that on the eastern side of the land of the Hindustani Kendriya Vidyalaya, there is a private drain of the school on its patta land touching the boundary wall of the school and the respondents cannot claim it to

be a public drain. It was further mentioned that the Gauhati Municipal Corporation authority or other officials have no right to dig out the drain dividing the school into two parts which is not permissible as per the CBSE Affiliation Byelaws and if the school plot is divided into two parts, the CBSE would cancel the affiliation of the school, as per the Affiliation Byelaws. Further to that, it would cause environmental and air pollution because after the boundary wall of the school on both sides of the Tarun Nagar Bye Lane No.1, there are more than one hundred residential houses of the residents of Tarun Nagar Bye Lane No.1 and in that event all the latrine water, wash water, bathroom water, kitchen water and rain water of both sides of Tarun Nagar Bye Lane No.1 will pass through the school campus which will cause nuisance. It was also mentioned that the residents of the Tarun Nagar Bye Lane No.1 had also requested the GMC and the Executive Engineer, PWD (R) not to construct any drain over the school land. The claim of the GMC that there is a natural drain through the school campus is baseless, incorrect and false. This Court has also taken note of Annexure-1 to the said affidavit-in-reply and from a perusal thereof, it is seen that seven persons have requested the Commissioner, Gauhati Municipal Corporation as well as the Executive Engineer, PWD (R) not to construct the drain through the school premises but to construct the drain at the Tarun Nagar Bye Lane No.1, where there is no pucca drain.

9. I have heard the learned counsels for the petitioner as well as the learned counsels appearing on behalf of the GMC. The PWD Department of the Government of Assam have neither filed any affidavit nor represented before this Court.

10. From a perusal of the pleadings and the documents enclosed, it is clear that the respondent authorities are taking certain steps for the purpose of

tackling artificial floods in the Tarun Nagar area. From Annexure-B to the affidavit filed by the respondent GMC, it reveals that the respondent authorities have planned to divert the rain water from the Tarun Nagar Bye Lane No.1, by the side of Tarun Nagar Masjid and then to drain it to the Dinesh Ojha Path by using the private drain belonging to the petitioners' school.

11. It is the opinion of this Court that the respondent authorities cannot in the name of tackling the artificial floods use the private drain of the petitioners in as much as that would amount to infraction to the petitioners' right under Article 300(A) of the Constitution. This Court is also of the opinion that if the respondent authorities want to use the private drain belonging to the petitioners, the same has to be done by following the due process.

12. Under such circumstances, this Court is of the opinion that the apprehension of the petitioner as has been raised in the instant Writ Petition is a justified apprehension, more so taking into account the affidavit filed by the respondent No.4.

13. This Court, therefore, disposes of the instant Writ Petition restraining the respondents from digging out any drain over the land of the petitioners or even using the private drain of the petitioners to drain out the water, unless the land or the right to use the private drain have been acquired by the respondent authorities, by following the due process of law.

14. With the above, the writ petition stands disposed of.

JUDGE

Comparing Assistant