

GAHC010094242023



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

Case No. : WP(C)/2449/2023

HIMMAT ALI
S/O- LATE ABDUL MUTALEB, R/O- UTTAR KHATOWAL, P.O- UTTAR
KHATOWAL, P.S RUPAHIHAT, DIST- NAG.

VERSUS

THE STATE OF ASSAM AND 9 ORS
REPRESENTED BY THE CHIEF SECRETARY, DISPUR, GUWAHATI -06

2:THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM
PUBLIC HEALTH ENGINEERING DEPARTMENT
ASSAM. DISPUR
GUWAHATI-06

3:THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM
PANCHAYAT AND RURAL DEVELOPMENT
DISPUR
GUWAHATI-06

4:THE DEPUTY COMMISSIONER
NAGAON. ASSAM.

5:THE CHIEF ENGINEER
(PHE)
HENGRABARI
GUWAHATI-36

6:THE EXECUTIVE ENGINEER
(PHE) KALIABOR
DIVISION. P.O- KUWARITOL
NAGAON
PIN- 782137

7:THE ASSISTANT EXECUTIVE ENGINEER (SO)
SAIDARIA SECTION (PHE)
KALIABOR DIVISION
NAGAON
ASSAM. PIN- 782137

8:THE SECRETARY
UTTAR KHATOWAL GAON PANCHAYAT
P.O- UTTAR KHATOWAL
P.S- RUPAHIHAT
DIST- NAGAON
ASSAM
PIN- 782124

9:PRESIDENT
UTTAR KHATOWAL GAON PANCHAYAT
P.O- UTTAR KHATOWAL
P.S- RUPAHIHAT
DIST- NAGAON
ASSAM. PIN- 782124

10:ASAR ALI
S/O- LATE DANESH ALI
R/O- UTTAR KHATOWAL
P.O. UTTAR KHATOWAL
P.S- RUPAHIHAT
DIST- NAGAON
ASSAM. PIN- 782124

Advocate for the Petitioner : MD. S HUDA

Advocate for the Respondent : GA, ASSAM

BEFORE
HONOURABLE MR. JUSTICE MICHAEL ZOTHANKHUMA

ORDER

Date : 11-05-2023

Heard Mr. S Huda, learned counsel for the petitioner. Also heard Mr. D Gogoi, learned counsel for the PHE Department, Mr. S Baruah, learned counsel for the respondent Nos. 1 & 4 as well as Ms. N Borah, learned

counsel for the respondent Nos. 3 & 8.

2. The petitioner's case is that the petitioner had donated his land for installation of the Master Para PWSS (Pipe Water Supply Scheme) under the Jal Jeevan Mission (JJM). He submits that instead of making the construction required for the scheme on the petitioner's land, the State respondents have started construction of the same on the land of the respondent No. 10.

3. Mr. D Gogoi, learned counsel for the PHE Department submits that he has received instructions vide letter dated 10.05.2023 issued by the Assistant Executive Engineer (PHE), Jakhalabandha Sub-Division, Kaliabor and letter dated 09.05.2023 issued by the SO(PHE), Saidoria Section.

4. The learned counsel for the PHE Department submits that the PHE cannot be forced to accept the land allegedly donated by the petitioner. It is up to the respondent authorities as to whether they want to accept or refuse the donation with respect to the petitioner's land.

5. On perusing the instructions received by the respondents in pursuance to the above letter dated 09.05.2023, it is seen that the land offered by the petitioner was not within the coverage area of original Masterpara PWSS. As the area of Pubpara PWSS was merged with Masterpara PWSS, the petitioner's plot of land fell towards the lower end of the PWSS, with pipe line length of about 10 kms. Though the President of the Uttor Khatowal GP was requested to provide a separate suitable land for the said PWSS, he wanted the scheme to be executed in the land of the petitioner.

6. On 18.03.2023, the contractor, Sri Ripan Mondol dug a pit of 1 meter depth at the proposed land of the petitioner and when the work started, the whole pit was inundated by underground water. All the sides of the pit broke

and fell into the pit. In the letter dated 09.05.2023 issued by the SO(PHE), Saidoria Section, it has been stated that to execute the scheme, the PHE has to construct an Elevated Service Reservoir of 70000 ltrs. capacity and Underground Service Reservoir of 30000 ltrs., both having a foundation depth of 2.50 meters, below existing ground level. This however cannot be done in the petitioner's plot of land. The aforesaid condition of the petitioner's land was informed to the Executive Engineer (PHE), Kaliabor Division as well as President of Uttor Khatowal GP, wherein the President replied that he would arrange a separate site for the PWSS.

7. Though a Gaon Sabha was organised and people were asked to raise their hands in support of the land of the petitioner, such a procedure could not be followed for a Government scheme, which was to be made for the benefit of the general public. The letter dated 09.05.2023 also states that the respondent No. 10 offered a plot of land for the scheme, which was on a higher ground and in the middle of the coverage area of the said scheme. As such, the contractor was asked to execute the scheme in the land of the respondent No. 10, observing all the departmental procedures. The contractor accordingly successfully installed the 150 mm diameter deep tube well of 280 meter depth on 30.04.2023 for Masterpara PWSS. The SO(PHE) has also stated that no soil test was done on the land of the petitioner and it was not selected for the same.

8. On considering the submissions made by the counsels for the parties, this Court is in complete agreement with the counsel for the PHE Department that no person can be forced to accept a gift, if he does not want to accept the same. In that view of the matter, the writ petition, being devoid of any merit is dismissed.

9. The letter dated 10.05.2023 issued by the Assistant Executive Engineer (PHE), Jakhalabandha Sub-Division, Kaliabor and the letter dated 09.05.2023 issued by the SO(PHE), Saidoria Section is made a part of the record and marked as Annexure "X" and Annexure "Y" of the writ petition.

JUDGE

Comparing Assistant