

GAHC010104382023



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

Case No. : WP(C)/2701/2023

TAPAN PAUL AND 19 ORS
S/O RAKHAL CH PAUL
4527, COLLEGE ROAD , WARD NO. 15,
NATUN PARA, DOLAIGAON, BONGAIGAON,
ASSAM- 783380

2: NANI GOPAL DEY
C/O BHUBAN MOHAN DEY
SALBARI
BONGAIGAON

ASSAM-783380

3: PRABHAT CH. DUTTA
S/O MUDIRA CH DUTTA
ADDRESS- VILL./TOWN-53 BONGAIGAON TOWN
W.NO.IV
P.S.-BONGAIGAON

SUB-DIVN.-BONGAIGAON

DIST.-BONGAIGAON
(ASSAM)

4: MOTILAL SAH
VILL/TOWN-53 BONGAIGAON TOWN
W.NO.IV
P.S.-BONGAIGAON

SUB-DIVN.-BONGAIGAON

DIST.-BONGAIGAON
(ASSAM)

5: KRISHNA SAH
VILL./TOWN-53 BONGAIGAON TOWN
W.NO.IV
P.S.-BONGAIGAON
SUB-DIVN.-BONGAIGAON
DIST.-BONGAIGAON
(ASSAM)

6: SUBRATA DAS GUPTA
C/O- TILAK DAS
JAY PRAKASH SINGH
ADDRESS- VILL/TOWN-40 DOLAIGAON
P.S.-BONGAIGAON
SUB-DIVN.-BONGAIGAON
DIST.-BONGAIGAON
(ASSAM)

7: LALAN SHAH
S/O- LT. PANLAL SAH
ADDRESS - VILL. / TOWN-53 BONGAIGAON TOWN
W.NO.IV
P.S.-BONGAIGAON

SUB-DIVN.-BONGAIGAON

DIST.-BONGAIGAON
(ASSAM)

8: SAMIR PODDAR
C/O RAJESH KUMAR SAH
ADDRESS- VILL./TOWN-53 BONGAIGAON TOWN
W.NO.IV
P.S.-BONGAIGAON

SUB-DIVN.-BONGAIGAON

DIST.-BONGAIGAON
(ASSAM)

9: SANKAR GHOSH
S/O- LT PHANI CHANDRA GHOSH
1536
CHAPAGURI ROAD
NEAR LEELA GAS AGENCY
NORTH BONGAIGAON
BONGAIGAON
BONGAIGAON
ASSAM - 783380

10: RAM NATH SAH
S/O RUDAL SAH
ADDRESS- VILL./TOWN-53 BONGAIGAON TOWN
W.NO.IV
P.S.-BONGAIGAON
SUB-DIVN.-BONGAIGAON
DIST.- BONGAIGAON
(ASSAM)

11: SWAPAN DAS
VILL/TOWN-53 BONGAIGAON TOWN
W.NO.IV
P.S.-BONGAIGAON
SUB-DIVN-BONGAIGAON

DIST.-BONGAIGAON
(ASSAM)

12: MANGAL SAH
S/O- JAGARNATH SAH
SIO- JAGARNATH SAH
GRAM- DUMARSAN
POST DUMARSAN . BANGRA
DUMARSAN. SARAN
BIHAR - 841410

13: SATYA NARAYAN DAS
S/O LT. SANKAR DAS
ADDRESS- VIL/TOWN-52 BONGAIGAON TOWN
W.NO.I
P.S.BONGAIGAON
SUB-DIVN. BONGAIGAON
DIST- BONGAIGAON
(ASSAM)

14: ASHOK MANDAL
S/O RAM PRASAD MANDAL
ADDRESS- VILL./TOWN-53 BONGAIGAON TOWN
W.NO.IV
P.S.-BONGAIGAON
SUB-DIVN.-BONGAIGAON
DIST. BONGAIGAON
(ASSAM)

15: LAL BABU SAH
VILL./TOWN- RAILWAY NEW COLONY
P.S. BONGAIGAON

DIST- BONGAIGAON
ASSAM - 783380

16: DILIP KR.SAH
VILL./TOWN-53 BONGAIGAON TOWN
W.NO.IV
P.S.-BONGAIGAON
SUB-DIVN.-BONGAIGAON
DIST.-BONGAIGAON
(ASSAM)

17: SURESH RABI DAS
S/O- J RABI DAS
ADDRESS- VILL/TOWN BHAKARIBHITA WARD NO. 19
P.S. BONGAIGAON
SUS DIVN. BONGAIGAON
DIST BONGAIGACH
ASSAN-783380

18: RAJAT CHATTERJEE
S/O SHYAM PADU CHATTERJEE
ADDRESS- VILL/TOWN-52 BONGAIGAON TOWN
W.NO. III
P.S. - BONGAIGAON
SUB-DIVN.-BONGAIGAON
DIST. - BONGAIGAON
(ASSAM)

19: NARAYAN CH. DAS
VILL./TOWN-53 BONGAIGAON TOWN
W.NO.IV
P.S.-BONGAIGAON
SUB-DIVN.-BONGAIGAON
DIST.-BONGAIGAON
(ASSAM)

20: MANTOO SAH
S/O CHAHILA SAH
ADDRESS - VILL. / TOWN-53 BONGAIGAON TOWN
W.NO.IV
P.S.-BONGAIGAON
SUB-DIVN.-BONGAIGAON
DIST.- BONGAIGAON
(ASSAM)

VERSUS

THE UNION OF INDIA AND 3 ORS

REPRESENTED BY THE GENERAL MANAGER, N.F. RAILWAY, MALIGAON,
GUWAHATI -11, DISTRICT- KAMRUP (M), ASSAM

2:GENERAL MANAGER
N.F. RAILWAY
MALIGAON
GUWAHATI - 11
DISTRICT- KAMRUP (M)
ASSAM

3:THE ESTATE OFFICER
N.F. RAILWAY
RANGIA
ASSAM

4:THE BONGAIGAON MUNICIPAL BOARD
REPRESENTED BY ITS CHAIRMAN
NEAR DC OFFICE
WARD NO-02
BONGAIGAON-783380
ASSA

Advocate for the Petitioner : MR. S BISWAS

Advocate for the Respondent : DY.S.G.I.

BEFORE
HONOURABLE MR. JUSTICE MANISH CHOUDHURY

ORDER

18.05.2023

Heard Mr. S. Biswas, learned counsel for the petitioners and Mr. K. Gogoi, learned Central Government Counsel [CGC] for the respondent nos. 1 -3.

2. The petitioners who have claimed that they have been running their shops for more than 50 years at a market named 'Paglasthan Daily Market', operated under the aegis of Bongaigaon Municipal Board, were earlier with served a show cause notice on 01.03.2023 by the respondent no. 3 under sub-section [1] and clause [b][ii] of sub-section [2] of Section 4 of the Public Premises [Eviction of Unauthorized Occupants] Act, 1971 to show cause on or

before 14.03.2023 as to why an order of eviction should not be made against them. The petitioners claimed that the show cause notices were served upon them only after 14.03.2023. They had raised a dispute that the plot of land wherefrom they were running their shops, was under Bongaigaon Municipal Board. With such projections, the petitioners had earlier approached this Court by way of a writ petition, W.P.[C] no. 1947/2023.

3. When the writ petition, W.P.[C] no. 1947/2023 came up for consideration on 03.04.2023, this Court after hearing the learned counsel for the parties, disposed of the writ petition by an order of even date. The operative part of the order dated 03.04.2023 reads as under :-

6. With the consent of the parties, the petitioners are directed to approach the respondent no. 3 on 19.04.2023, with regard to the Show-Cause-Notice dated 01.03.2023. The respondent no. 3 shall also communicate with the respondent no. 4, with regard to whether the respondent no.4 claims any right, title and interest over the land, which is used by the petitioners as Paglasthan Daily Market. In the event, the respondent no. 4 claim any right, title over the said Paglasthan Daily Market, the respondent no. 4 shall produce documents in support of their claim. The respondent no. 3 while making a decision shall also reflect the land documents in favour of the Railways. The respondent no. 3 shall thereafter take a decision and communicate his decision to the petitioners. Till a decision is taken by the respondent no. 3, status quo as on today, shall be maintained.

4. After disposal of the writ petition, W.P.[C] no. 1947/2023 by the order dated 03.04.2023, the petitioners have once again approached this Court by this writ petition with the grievance that they have been served eviction orders in Form-B dated 04.05.2023 under sub-section [1] of Section 5 of the Public Premises [Eviction of Unauthorized Occupants] Act, 1971 whereby they have been asked by the respondent no. 3 to vacate their respective premises within 15 [fifteen] days from the date of publication of the said order.

5. Mr. Biswas, learned counsel for the petitioners has contended that the order dated 04.05.2023 has been passed by the respondent no. 3 without following the directions

contained in the order dated 03.04.2023 [supra]. The eviction orders do not reflect that the respondent no. 3 had considered the documents as regards the plot of land in the order dated 04.05.2023. There is no reflection in the order to the effect that there was effective consultation between Bongaigaon Municipal Board and the respondent Railway authorities as regards the right, title and interest over the plot of land. It is his submission that the petitioners have been running their shops at a plot of land known as Paglasthan Daily Market since about 50 years. As there is a dispute as regards the ownership of the plot of land, the respondent Railway authorities should have established their title prior to passing of the eviction orders which, he has contended, was evidently not done in the proceedings held before the respondent no. 3.

6. Mr. Gogoi, learned CGC appearing for the respondent nos. 1 - 3 has submitted that subsequent to the order dated 03.04.2023, letters, dated 11.04.2023 & dated 12.05.2023, were sent to the Bongaigaon Municipal Board asking the Board authorities as to whether the Bongaigaon Municipal Board claims any right, title and interest over the plot of land which is being used by the petitioners as Paglasthan Daily Market and in the event it claims any right, title and interest, the Bongaigaon Municipal Board would require to produce documents, if any, in support of their claims on the said plot of land in respect of which notices dated 01.03.2023 were served upon the petitioners under the Public Premises [Eviction of Unauthorized Occupants] Act, 1971. It is submitted by Mr. Gogoi that despite receipt of the afore-mentioned letters, no communication has been received from the Bongaigaon Municipal Board till date.

7. Taking note of the direction contained in the order dated 03.04.2023 and having understood its purport, the respondent no. 3, in the meantime, has passed office orders, all dated 17.05.2023, addressed to the petitioners herein and the petitioners in the previous writ petition, W.P.[C] no. 1947/2023, whereby the Eviction Notices dated 04.05.2023 have been kept in abeyance till a decision is taken by the Railway authority as per the direction contained in the order dated 03.04.2023 passed in the writ petition, W.P.[C] no. 1947/2023. The office orders, all similarly worded, have further mentioned that the decision taken by the Railway authority would be communicated to the petitioners in terms of the directions of the

Court.

8. From the case papers annexed to the writ petition, it has emerged that the Bongaigaon Municipal Board has, in the meantime, issued a Tender Notice on 10.04.2023 inviting tenders for settlement of a market named 'Paglasthan Daily Market' with definite boundaries mentioned therein, for the period : 2023-2024. From the publication of the Tender Notice for settlement of Paglasthan Daily Market, it can be inferred that the Bongaigaon Municipal Board might have some claim in respect of the plot of land wherefrom the market named Paglasthan Daily Market is being operated. From the office orders dated 17.05.2023, it transpires that the Bongaigaon Municipal Board has not yet responded to the letters sent by the Railway authorities on 11.04.2023 and 12.05.2023. The eviction orders dated 04.05.2023 do not reflect that the Railway authorities had produced any land documents in its favour before the respondent no. 3 in the proceedings and the respondent no. 3 had proceeded with the matter by extracting a purported admission from the petitioners that the land in question belonged to the Railways, which fact is vehemently disputed by the learned counsel for the petitioners.

9. Mr. Gogoi has fairly submitted that from the orders dated 04.05.2023, it does not appear that the directions made in the order dated 03.04.2022 passed in the writ petition, W.P.[C] no. 1947/2023 is followed in letter and spirit. Given an opportunity, the directions made in the order dated 04.05.2023 would be followed in letter and spirit in the proceedings before the respondent no. 3.

10. In view of the submissions made by the learned counsel for the parties in the afore-stated manner and after perusal of the materials placed on record, this Court is of the view that the writ petition can be disposed of at the motion stage itself in the line of the submissions made by the learned Central Government Counsel, by allowing the respondent Railway authorities to proceed with the matter afresh by following firstly, the provisions of the Public Premises [Eviction of Unauthorized Occupants] Act, 1971 and secondly, the directions made in the order dated 03.04.2023 passed in the writ petition, W.P.[C] no. 1947/2023 in letter and spirit. Taking note of the submissions made by the learned Central

Government Counsel, it is directed that the respondent authorities shall proceed with the proceedings afresh by recalling the ejection orders dated 04.05.2023 and in the proceedings, the petitioners be given adequate opportunities to represent their case. In the proceedings, the respondent no. 3 shall also look into the land documents regarding the ownership of the plot of land under reference.

11. This order disposes of the writ petition.

JUDGE

Comparing Assistant