

GAHC010120772015



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

Case No. : WP(C)/5471/2015

ON THE DEATH OF NURUL ISLAM BORBHUIYA HIS LEGAL HEIRS- RINA ISLAM BARBHUIYA AND ORS.

W/O- LATE NURUL ISLAM BORBHUIYA, AMBICAPUR, PART- 10,
MEHERPUR, P.O.- SILCHAR- 788015, DIST.- CACHAR, ASSAM.

1.1: MINHAJUL ISLAM BARBHUIYA
S/O- LATE NURUL ISLAM BORBHUIYA
AMBICAPUR
PART- 10
MEHERPUR
P.O.- SILCHAR- 788015
DIST.- CACHAR
ASSAM.

1.2: SHAHIDUL ISLAM BARBHUIYA
S/O- LATE NURUL ISLAM BORBHUIYA
AMBICAPUR
PART- 10
MEHERPUR
P.O.- SILCHAR- 788015
DIST.- CACHAR
ASSAM.

1.3: MOHIDUL ISLAM BARBHUIYA
S/O- LATE NURUL ISLAM BORBHUIYA
AMBICAPUR
PART- 10
MEHERPUR
P.O.- SILCHAR- 788015
DIST.- CACHAR
ASSAM.

1.4: SABINA YASMIN BARBHUIYA
D/O- LATE NURUL ISLAM BORBHUIYA
AMBICAPUR
PART- 10
MEHERPUR
P.O.- SILCHAR- 788015
DIST.- CACHAR
ASSAM

VERSUS

THE STATE OF ASSAM AND 4 ORS
REP. BY THE SECY. TO THE GOVT. OF ASSAM, TOWN AND COUNTRY
PLANNING DEPTT., DISPUR, GHY- 6.

2:THE DY. COMMISSIONER
CACHAR DIST.
P.O.- SILCHAR- 788001
ASSAM.

3:THE SILCHAR DEVELOPMENT AUTHORITY
REP. BY THE CHAIRMAN
SILCHAR DEVELOPMENT AUTHORITY
P.O.- SILCHAR- 788001
ASSAM.

4:THE CHAIRMAN
SILCHAR DEVELOPMENT AUTHORITY
P.O.- SILCHAR- 78800...
ASSAM.

5:SAJAL BANIK
SIB COLONY
RANGIRKHARI
P.O.- SILCHAR- 788005
DIST.- CACHAR
ASSAM

Advocate for the Petitioner : MR. N. DHAR, MS.S DASGUPTA

Advocate for the Respondent : FOR CAVEATOR

**BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH**

ORDER

Date : 18-12-2023

The instant writ petition has been filed by the petitioner challenging the order dated 12.08.2015 as well as the communication/Demand Notice dated 09.10.2015, issued by the Chairman, Silchar Development Authority. By the order dated 12.08.2015, the Chairman, Silchar Development Authority, on the basis of the survey/field verification so conducted, came to an opinion that the Iron Gate with RCC pillars, which was constructed by the petitioner encroached upon the public path and was 8.2 feet ahead of the previous gate and it was therefore observed in the impugned order dated 12.08.2015 that the petitioner, who was the opposite party therein, had illegally made that construction. Accordingly a direction was issued to remove/demolish the Iron Gate along with the RCC pillars and boundary wall within seven days from the date of receipt of the said order, failing which the authority would remove/demolish the said illegal construction and the expenses incurred for such demolition would be recovered/realised from the opposite party therein, i.e. the petitioner herein. In pursuance to the said order, the demolition was carried out on 04.09.2015. In the impugned communication dated 09.10.2015, an amount of Rs. 11,500/- was demanded from the petitioner on account of the expenses incurred in removing/demolishing the Iron Gate in question on 04.09.2015 by the Silchar Development Authority.

2. Mr. N. Dhar, learned counsel appearing on behalf of the petitioner submitted that the respondent Silchar Development Authority did not have the jurisdiction to pass the order dated 12.08.2015 and, as such, the said order was without authority in law and therefore the consequential notice dated 09.10.2015 was also bad in law.

3. Mr. S.P. Choudhury, learned counsel appearing on behalf of the Silchar Development Authority submitted that the Silchar Development Authority had the

jurisdiction and authority to pass the impugned orders inasmuch as due permission is required from the Silchar Development Authority before carrying out any construction within the Silchar Municipality area, which was not obtained by the petitioner for construction of the Iron Gate in question. He further submitted that a civil suit, being Title Suit No. 40/2000, was instituted in the Court of the Civil Judge, Cachar, with regard to right of use and enjoyment of the path, over which the petitioner constructed the Iron Gate. However, the petitioner had constructed the Iron Gate along with RCC pillars 2.5 metres towards the western side of the previous gate before disposal of the aforesaid Title Suit and, that too, without permission. Learned counsel however submits upon instructions that the Silchar Development Authority would not insist upon the impugned communication/Demand Notice dated 09.10.2015.

4. Mr. S.D. Purkayastha, learned counsel appearing on behalf of the private respondents submits that the impugned order dated 12.08.2015 was passed after carrying out necessary survey /field verification and, as such, the question of interfering with the factual findings does not arise in the proceedings under Article 226 of the Constitution. He further submitted that there being no error apparent on the exercise of jurisdiction, the question of exercise of jurisdiction as well as on the facts, this Court ought not to issue a writ in the nature of certiorari.

5. I have heard the learned counsel for the parties and have also perused the materials available on record.

6. This Court, upon perusal of the documents, more particularly, the plaint and the terms of the decree, which was passed in Title Suit No. 40/2000 as well as the affidavit which had been filed by the Chairman, Silchar Development Authority, is of the opinion that the Chairman of the Silchar Development Authority had passed the order dated 12.08.2015 after the necessary field verification being carried out. Under such circumstances, whether the Iron Gate in question is towards the eastern or

western side of the previous gate cannot be agitated in a proceeding under Article 226 of the Constitution. Further, this Court has duly taken note of the submission of Mr. S.P. Choudhury, learned counsel appearing for the Silchar Development Authority, that the Silchar Development Authority would not insist upon the communication/Demand Notice dated 09.10.2015.

7. Taking into account the above submission, this Court finds no reason to interfere with the order dated 12.08.2015. The impugned communication dated 09.10.2015 is however set aside on the ground that the Silchar Development Authority would not insist upon the said communication.

8. The instant writ petition stands disposed of in terms of the above.

JUDGE

Comparing Assistant