

GAHC010123912021



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

Case No. : WP(C)/4104/2021

DHIRAJ GUPTA AND 2 ORS
S/O LATE LAXMI NARAYAN GUPTA, R/O OPP. PURNIMALAYA, 2ND FLOOR,
K.R.C. ROAD, BHARALUMUKH, GUWAHATI-781009, KAMRUP(M), ASSAM

2: NARESH KUMAR
S/O LATE BHIKHU RAM AGGARWAL
R/O N.S ROAD
BHARALUMUKH
GUWAHATI-781009
KAMRUP(M)
ASSAM

3: UTTAM KUMAR JIWRAJKA
S/O OM PRAKASH JIWRAJKA
R/O ASHIRBAD APARTMENT
EAST INDIA GALI
GUWAHATI-781001
KAMRUP(M)
ASSA

VERSUS

ASSAM STATE TRANSPORT CORPORATION AND 4 ORS
A BODY CORPORATE CONSTITUTED UNDER THE PROVISIONS OF ROAD
TRANSPORT ACT, 1950 AND HAVING ITS HEAD OFFICE AT PARIBAHAN
BHAWAN, PALTANBAZAR, GUWAHATI-781008, ASSAM, AND IS
REPRESENTED BY ITS MANAGING DIRECTOR

2: THE MANAGING DIRECTOR
ASTC
PARIBAHAN BHAWAN
PALTANBAZAR
GUWAHATI-781008
ASSAM

3:THE CHAIRPERSON
ASTC
PARIBAHAN BHAWAN
PALTANBAZAR
GUWAHATI-781008
ASSAM

4:THE STATE OF ASSAM
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE
GOVERNMENT OF ASSAM
DEPARTMENT OF TRANSPORT
DISPUR
GUWAHATI-781006
KAMRUP(M)
ASSAM

5:THE SECRETARY TO THE GOVERNMENT OF ASSAM
TRANSPORT DEPARTMENT
DISPUR
GUWAHATI-781006
KAMRUP(M)
ASSA

Advocate for the Petitioners : Mr. S. Ali, Advocate.
Mr. R. Baruah, Advocate.
Mrs. M. Nath, Advocate.

Advocate for the Respondents : Ms. M.D. Borah, SC, Transport.
Mr. R.M. Das, SC, ASTC.

Date of Hearing & Judgment : **03/08/2023**

BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH

JUDGMENT & ORDER (ORAL)

The three petitioners before this Court have jointly assailed the order

dated 16/6/2021 issued by the Respondent No. 5; the order dated 17.06.2021 issued by the Respondent No.2 and the order dated 29.06.2021 issued by the Respondent No. 2. The facts as could be discerned from the pleadings are that the Petitioners purchased a plot of land measuring 8.02 Ares i.e. land measuring 4.01 Ares of land covered by Dag No. 1120 of K.P. Patta No. 110 and land measuring 4.01 Ares covered by Dag No. 1119 of K.P. Patta No.417 of Revenue Village –Ulubari under Mouza – Ulubari in the district of Kamrup(Metro), Assam vide a registered Deed of Sale dated 21.09.2018. The said land belonging to the Petitioners has been specifically described in Schedule I of the writ petition. It is the case of the Petitioners that in order to egress and ingress to the Schedule I land from the main road i.e. Rupnagar Main Road, there are two paths which were specifically described in Schedule II and III to the writ petition.

2. It is the further case of the Petitioners that the State of Assam had allotted a plot of land measuring about 91 bighas to the Respondent No. 1/ Corporation covered by Dag Nos. 278, 279 and 280. On the said land, the Respondent No. 1/Corporation had constructed staff quarters and have left almost 60% vacant land on the southern side since for the last more than 30 years. This vacant area have been used by third parties.

3. On 22.12.2018, at around 8.30 AM, a representative of the Respondent No. 1 came alongwith workers for construction of a gate at the entrance point of the Schedule II path. The Petitioners alongwith other people in the locality requested the concerned contractor not to erect the gate. It was alleged that there were certain altercations between the Petitioners and the employees of the Respondent No. 1 which resulted in initiation of a proceedings under Section 147 of the Code of Criminal Procedure, 1973 before the learned Additional District Magistrate, Kamrup(Metro), Guwahati, which was registered and numbered as 26^M/2019. A police report was called by the Additional District Magistrate, Kamrup(Metro) as regards the incident and on 30.09.2019, the police officials submitted a report. Thereupon notice was issued to the Respondent No. 1. It is the further case of the Petitioners that the Schedule II path thereafter continued to remain blocked from 22.12.2018 and there was no effective order passed in Case No. 26^M/2019. Under such circumstances, the Petitioners proposed for amicable settlement of the entire dispute before the Additional District Magistrate, Kamrup(Metro). The learned Additional District Magistrate, Kamrup(Metro) thereupon informed the Petitioners that if they wanted any amicable settlement of the dispute, the Petitioners may approach the Respondent No. 2 directly. Accordingly, the Petitioner No. 1 approached the

Respondent No. 2, who in turn informed the Petitioner No. 1 that the decision can only be taken by the Board of Directors of the Respondent No. 1. Accordingly, the proposal of the Petitioners was placed in the 178th meeting of the Board of Directors of the Respondent No. 1 held on 21.05.2021 alongwith various other items. In the 178th meeting of the Board of Directors held on 21.05.2021 various items in the agenda were discussed. The item pertaining to the Petitioners' proposal was taken as a Miscellaneous Item. The Board of Directors upon discussions, decided and gave approval to the proposal of the Petitioners. Taking into account its importance for the purpose of deciding the instant dispute, the same is reproduced hereinunder :-

“Other : Miscellaneous Items discussed during the meeting.

The following miscellaneous agenda are placed before Board for its approval :

1. A dispute is going on between ASTC and Private owner over a piece of land in Rupnagar on the issue of approach road to the said piece of land through ASTC land via Kali Mandir on ASTC land. The piece of land is completely land locked and the said party was constructing physical infrastructure by using ASTC land as approach road. The matter was reported to concerned police station and criminal and civil case was filed in police station and District Magistrate Court. During hearing both parties were advised by the civil court to find a solution mutually and accordingly said party filed a petition to ASTC to provide approach road to said plot of land by using existing approach road of ASTC which is beside Kali Mandir of ASTC land. The matter is placed before Board of Directors and discussed in detail. Board has decided and given approval as follows :

(a) *The part may be given approval to utilise existing approach road of Kali Mandir for his land locked plot of land with condition that he cannot claim ownership at any stage at present or in future for the said route.*

(b) *No development/construction activities on the pathway can be taken on his own by the private party.*

(c) *ASTC may charge one time applicable fees for use of the said land as route. Committee to be formed constituting Chief Engineer (Civil), Advisor Technical to MD and DS, Rupnagar to determine the one time fees to be collected.*

Board has approved the utilization of the said land as approach to the landlocked plot."

4. From the above quoted Resolution, it would be seen that the Petitioners were only allowed to utilise the existing approach road of Kali Mandir from their landlocked plot of land with a condition that the Petitioners cannot claim ownership at any stage at present or in future for the said route. Another condition so imposed was that there shall be no development/constructions activities on the pathway by the Petitioners. Further to that, the Respondent No. 1 may charge one time applicable fees for use of the said land as route and a committee would be formed constituting the Chief Engineer(Civil), Adviser Technical to MD & DS, Rupnagar to determine the one time fees to be collected.

5. It is further seen from records that on 7th of June, 2021, the Managing Director of the Respondent No. 1 informed the Petitioner No. 1 that the Committee had fixed Rs. 18 lakhs as applicable fees for use of the approach

road and further stipulating the conditions which have been mentioned in the Resolution as quoted hereinabove. The records further shows that a Deed of Agreement dated 09.06.2021 was entered by and between the Respondent No. 1 through its Managing Director with the Petitioner No. 1, wherein various conditions were mentioned.

6. It is the case of the Petitioners that the Petitioners had duly paid the amount of Rs. 18 lakhs to the Respondent No. 1 pursuant to the said agreement. Thereupon all of a sudden, the Petitioner received a Communication issued by the Managing Director of the Respondent No. 1 dated 29.06.2021, wherein it was mentioned that in pursuance to the order and direction of the Government of Assam vide Order No. TMV.370/2015/Pt./261 dated 16.06.2021 and in view of the Office Order No. ASTC/BOD/2048/2021-22/1096 dated 17.06.2021, the right given to the Petitioners for use of the pathway measuring 25 feet wide approach road in ASTC, Rupnagar, Guwahati on payment of a one time applicable fee was cancelled with immediate affect. It was further mentioned that the agreement executed between the Petitioner No. 1 and the ASTC also stood cancelled and the Petitioner No. 1 was requested to contact the appropriate authority of the ASTC for refund of the one time applicable fee so paid by the Petitioner No.1 within 7(seven) days from the date of the receipt of the said letter.

7. The Petitioners thereupon could get hold of the order dated 16.06.2021 issued by the Secretary to the Government of Assam, Transport Department, whereby the said official cancelled the decisions taken in the 178th meeting of the Board of Directors held on 21.05.2021 with immediate effect as the said decisions so taken in the 178th meeting of the Board of Directors were inconsistent with the laid down Procedures and Rules. The Petitioners could also get hold of the copy of the order issued by the Managing Director of the Respondent Corporation, wherein, in pursuance to the order of the Secretary, Government of Assam, Transport Department dated 16.06.2021, all orders issued/actions initiated on the basis of the 178th meeting of the Board of Directors were cancelled with immediate effect.

8. The Petitioners being aggrieved by the order dated 16.06.2021 issued by the Secretary to the Government of Assam, Transport Department as well as the order dated 17.06.2021 issued by the Respondent No. 2 i.e. the Managing Director of the Respondent No. 1 Corporation and the Communication dated 29.06.2021 issued to the Petitioner No. 1 by the Managing Director of the Respondent No. 1 Corporation have approached this Court by filing the instant writ petition.

9. It appears on the records that the Respondent Nos. 1, 2 and 3 had filed

their affidavit-in-opposition on 3rd of March, 2022. In the said affidavit-in-opposition, various statements have been made refuting the claim of the Petitioners. But what is relevant to take note of is that the actions so taken by the Respondent Nos. 1 and 2 were based upon the order dated 16.06.2021 passed by the Respondent No. 5.

10. It is further relevant to take note of that the Respondent No. 5 had also filed an affidavit-in-opposition through the Joint Secretary, Government of Assam, Transport Department. It is relevant to take note of that from a perusal of the said affidavit-in-opposition, it transpires that the Secretary to the Government of Assam, Transport Department was present in the meeting as a member of the ASTC Board. During the meeting, he objected to the Agenda being taken and two vital members from the Finance Department and the Public Enterprise were not present in the meeting. However, the said Board of Directors passed the Resolution on 21.05.2021 in its 178th meeting of the Board of Directors.

11. It transpires from the Affidavit of the Respondent No. 5 that as the Secretary, Transport Department could not have his way in the meeting of the Board of Directors and the resolution so adopted were not palatable to him, he cancelled the entire decision taken in the meeting vide the impugned order

dated 16.06.2021. The Petitioners have also filed an affidavit-in-reply to the affidavit-in-opposition filed by the Respondent No. 5.

12. This Court have duly perused the pleadings and have heard the learned counsels for the parties. During the course of hearing a specific question arose as to whether the Secretary, Transport Department had any authority or jurisdiction to pass the order dated 16.06.2021 inasmuch as the land in question belongs to the Respondent No. 1 which is a Corporation established in terms of The Road Transport Corporation Act, 1950. This Court heard the matter at length on 1st of August, 2023. The learned counsel appearing on behalf of the Transport Department of the Government of Assam was asked to apprise this Court as to whether in terms with The Road Transport Corporation Act, 1950 as amended upto-date as well as the Rules and Regulations so framed thereinunder can the Secretary of the Transport Department, Government of Assam override the resolution so taken and adopted in the meeting of the Board of Directors of the Respondent No. 1 Corporation. Accordingly, the writ petition was directed to be listed today.

13. The learned counsel appearing on behalf of the Petitioners has also drawn the attention of this Court to Section 5 of The Road Transport Corporation Act, 1950 as was amended by The Road Transport Corporation (Amendment) Act of

1982, wherein the general superintendence, directions and management of the affairs and business of the Corporation have been vested upon the Board of Directors who with the assistance of its committees and Managing Director shall exercise such powers and do such acts and things as may be necessary by the Corporation.

14. Ms. M.D. Borah, the learned counsel appearing on behalf of the Respondent No. 5 with all fairness submitted that although the Government has various powers as could be seen from Section 34, 38, 44 and 45 of the Road Transport Corporation Act, 1950 but the said Act as well as the Rules and Regulations framed thereinunder do not empower the Secretary of the Transport Department of the Government of Assam to override the resolutions or decisions so adopted by the Board of Directors in its meeting.

15. This Court further finds it relevant to take note of the submission of Mr. R.M. Das, the learned counsel appearing on behalf of the Respondent Nos. 1, 2 & 3, who submits that pursuant to the decision so taken in the 178th meeting of the Board of Directors held on 21.05.2021 and the orders which have been impugned in the instant proceedings, the Board of Directors of the Respondent No. 1 had in its 179th meeting held on 05.10.2021 had nullified all the decisions so taken in the 178th meeting held on 21.05.2021, save and except the decision

which is the subject matter of dispute in the instant proceedings taking into account that the said dispute is presently pending before this Court. Mr. R. M.Das further submits that while drawing the attention of this Court to the minutes of the 179th meeting of the Board of Directors held on 05.10.2021 and more particularly to Clause (vi) (a), wherein the Board of Directors have categorically stated that as the matter is subjudice before this Court, the final decision would only be taken after the disposal of the petition by this Court. The said portion of the minutes of the Meeting dated 05.10.2021 being relevant is quoted herein below :-

“vi) Miscellaneous agenda :-

a) Thoroughfare to Kali Mandir on ASTC's land at Rupnagar Campus.

BOD deliberated upon the issue on the proposal for allotment of land. For giving access to any person/organization or leasing out to be done with due procedure. Hence, the BOD disapproved the MOM on this matter of the earlier BOD and in-principle approves the decision of the Govt. of Assam in Transport Department. However, as the matter is subjudice, the final decision may be taken up after disposal by Hon'ble Court.”

16. Mr. S. Ali, the learned counsel for the Petitioners rejoining submitted that the Respondent No. 1 Corporation is a statutory body incorporated on the basis of the Road Transport Corporation Act, 1950. Upon the land being allotted to the Respondent No. 1 Corporation, the State Government cannot have a say on the said land. Referring to the judgment of the Division Bench of this Court in the case of **Bongaigaon Municipality Vs. Assam State Transport**

Corporation reported in **2007 (4) GLR 616**, the learned counsel submitted that the Division Bench of this Court had also held on an earlier occasion that the State Government is not entitled to intrude into the properties vested in the Corporation at its will and pleasure.

17. From the above contentions so raised by the respective counsels appearing on behalf of the parties and there being no provision in the Road Transport Corporation Act, 1950 as well as the Rules and Regulations framed thereinunder whereby the Secretary to the Government of Assam, Transport Department have been confirmed a supervening power to override the resolution/decisions of the Board of Directors of the Respondent No. 1, this Court is of the opinion that the order dated 16.06.2021 passed by the Respondent No. 5 is on the face of it without any jurisdiction and authority and as such the said order dated 16.06.2021 is set aside and quashed. This Court is also of the opinion that taking into account the facts whereby it would be seen that as the Respondent No. 5 could not prevail over in the 178th Meeting of the Board of Directors of the Respondent No. 1 and thereupon issued the impugned order dated 16.06.2021, the said order dated 16.06.2021 apart from being without authority also suffers from malice in law.

18. Now coming to the orders dated 17.06.2021 and the letter dated

29.06.2021 issued by the Respondent No. 2, it transpires therefrom that the said order dated 17.06.2021 as well as the Communication dated 29.06.2021 are based upon an order passed by the Respondent No. 5 which is nonest in law. Accordingly, the orders dated 17.06.2021 as well as the Communication dated 29.06.2021 are therefore interfered with and accordingly set aside and quashed.

19. Before concluding, it is also relevant to take note of the submission of Mr. R.M. Das, the learned counsel appearing on behalf of the Respondent Nos. 1, 2 & 3, wherein he submits that the setting aside and quashing of the orders dated 16.06.2021, 17.06.2021 as well as the Communication dated 29.06.2021 should not prejudice the Respondent No. 1 Corporation and its Board of Directors to take any decision as permissible under law.

20. Taking into account that this Court have only interfered with the order dated 16.06.2021 passed by the Respondent No. 5 as well as the order dated 17.06.2021 and the Communication dated 29.06.2021 of the Respondent No. 2 for the reasons abovementioned, this Court clarifies that the instant judgment shall not bar the Respondent Authorities to take such decision as permissible under law. It is however observed that the Respondent No. 1 Corporation being a State within the meaning of Article 12 of the Constitution shall act fairly while

taking such decision and provide an opportunity of hearing to the Petitioner No. 1 before taking any action which would entail civil consequences.

21. With the above observations and directions, the instant writ petition stands disposed off.

JUDGE

Comparing Assistant