

GAHC010141002023



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

Case No. : WP(C)/3755/2023

JOGENDRA NATH KALITA
S/O LATE RAJAT CHANDRA KALITA, R/O HOUSE NO. 230, J.K STORE NEAR
UDAY PATH, R G BARUAH ROAD, P.O.-ZOO ROAD, P.S.-GEETANAGAR, ZOO
ROAD, GUWAHATI-781024, DIST-KAMRUP (M), ASSAM

VERSUS

THE STATE OF ASSAM AND 4 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE GOVT.
OF ASSAM IN THE DEPARTMENT OF PUBLIC WORKS, DISPUR,
GUWAHATI-6, ASSAM

2:THE DIRECTOR OF MUNICIPAL ADMINISTRATION
ASSAM
DISPUR
GUWAHATI

3:THE CHIEF ENGINEER
PWD
BUILDING DIVISION
CHANDMARI
GUWAHATI-781003
ASSAM

4:THE DEPUTY COMMISSIONER
KAMRUP (METRO) DISTRICT
GUWAHATI-(LAND ACQUISITION BRANCH)
ASSAM

5:THE EXECUTIVE ENGINEER
PWD
DISPUR AND EAST GUWAHATI TERRITORIAL BUILDING DIVISION

CHANDMARI
GUWAHATI-3
DIST- KAMRUP
ASSA

Advocate for the Petitioner : MR G CHOUDHURY

Advocate for the Respondent : SC, PWD

BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA

ORDER

Date : 28-06-2023

Heard Mr. G. Choudhury, learned counsel for the petitioner as well as Mr. B. Gogoi, learned standing counsel for the PWD representing respondent nos.1, 3 and 5 and Mr. K. Gogoi, learned Addl. Senior Govt. Advocate appearing for the respondent nos.2 and 4.

2. The petitioner has a ground + 2 storied RCC building located at RG Baruah road. A part of the land of the said building is proposed to be acquired by the appropriate authority under the provision of Assam Land (Requisition and Acquisition) Act, 1964, for which a notice under no.13/2022/278-465 dated 26.05.2023 was issued. Apprehension is expressed that if the said land which is a part of the property of the petitioner is taken over there is every likelihood of damage to the structure of the said building, for which the petitioner shall suffer irreparable loss and injury. Accordingly, the present writ petition has been filed under Article 226 of the Constitution of India to restrain the respondent authorities not to cause any damage to the building of the petitioner and without undertaking any acquisition proceedings.

3. The matter was previously listed on 27.06.2023 and the learned standing counsel for the PWD took time to obtain necessary instructions. Accordingly, the learned standing counsel for the PWD has obtained specific instruction to the effect that in order to maintain the required width of the service road below the flyover at ground level, a certain area of the land of the petitioner was acquired. However, there is no proposal to touch the main structure of the house of the petitioner and it is only a part of the verandah portion of the house that has been acquired.

4. It is also mentioned in the instructions that as the main structure would not be touched. Therefore, there appears to be no question of any damage to the building of the petitioner, except for the temporary shed constructed over the ground floor. It is also projected that if the petitioner has any doubt over the amount of compensation, that can easily be sorted out by re-assessing it, if so required. The instructions along with the photograph of the site is made a part of the record.

5. Having regard to the stand taken by the PWD authorities in clarifying that only a part of verandah portion of the property of the petitioner has been acquired, which is not likely to touch the main structure of the building, the Court is of the considered opinion that apprehension of the petitioner is put to rest that the structure of the building would not be touched except for the verandah portion. There is also likelihood that the temporary shed which is constructed over the verandah may also be damaged but such a temporary structure is not a part of the main structure of the building.

6. The learned counsel for the petitioner expresses that from the footpath, the entrance of the petitioner also exists. In this regard from the plan proposed by the PWD, it does not appear that the PWD would be barricading the entrance to the building and therefore, it is unlikely that the petitioner would not be able to have an access to his house from the main RG Baruah road.

7. As the Court finds that the respondent authorities are resorting to land acquisition proceedings for acquiring the part of verandah portion of the house of the petitioner to build/ create a service road below the proposed flyover, the Court is inclined to close this writ petition by observing that the authorities will not barricade the entry/ exit of the building of the petitioner.

8. With the aforesaid observation, this writ petition stands closed.

JUDGE

Comparing Assistant