

GAHC010141602023



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

Case No. : WA/247/2023

JAGANNATH KUMAR
S/O- LATE PITAMBER KUMAR, R/O- VILL. GOTANAGAR, MALIGAON, P.S.
JALUKBARI, P.O. GOTANAGAR, GUWAHATI-781001, KAMRUP METRO.

VERSUS

THE UNION OF INDIA AND ORS.
REPRESENTED BY THE GENERAL MANAGER, N.F RAILWAY, MALIGAON,
GUWAHATI, ASSAM 781011.

2:THE GENERAL MANAGER
N.F RAILWAY MALIGAON
GUWAHATI
ASSAM 781011.

3:THE DIVISIONAL MANAGER
N.F RAILWAY MALIGAON
GUWAHATI
ASSAM 781011.

4:THE STATE OF ASSAM
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE GOVT.
OF ASSAM
REVENUE DEPARTMENT
DISPUR
GUWAHATI

5:THE DEPUTY COMMISSIONER
KAMRUP METRO
GUWAHATI.

6:THE CIRCLE OFFICER

GUWAHATI REVENUE CIRCLE
GUWAHATI-781001.

7:THE LAT MANDAL
VILL. GOTANAGAR
MALIGAON
CIRCLE OFFICE
GUWAHATI
KAMRUP METRO.

8:KRISHNA DUTTA
W/O SRI KAMAL KANTI DUTTA

R/O MALIGAON
SARADA COLONY PRIVATE HOUSE

P.O. GOTANAGAR

P.S JALUKBARI

DISTRICT KAMRUP (M)
ASSAM 781033

9:SURAJIT ROY
S/O- LATE MANORANJAN ROY
R/O- MALIGAON
SARADA COLONY PRIVATE HOUSE
P.O. GOTANAGAR
P.S. JALUKBARI
PIN- 781033.

10:ARCHANA DUTTA
W/O- LATE PIJUSH KANTI DUTTA
R/O- MALIGAON
SARADA COLONY PRIVATE HOUSE
P.O. GOTANAGAR
P.S. JALUKBARI
PIN- 781033.

11:SANTI RANJAN ROY
S/O- LATE CHANDRA KANTI ROY
R/O- MALIGAON
SARADA COLONY PRIVATE HOUSE
P.O. GOTANAGAR
P.S. JALUKBARI
PIN- 781033.

12:NIRMAL KANTI ROY

S/O- LATE DHANANJAY ROY
R/O- MALIGAON
SARADA COLONY PRIVATE HOUSE
P.O. GOTANAGAR
P.S. JALUKBARI
PIN- 781033.

13:MALATI ROY
W/O- LATE SUSHIL RANJAN ROY
R/O- MALIGAON
SARADA COLONY PRIVATE HOUSE
P.O. GOTANAGAR
P.S. JALUKBARI
PIN- 781033.

14:ASHOK KUMAR GHOSH
S/O- LATE ANIL CH. GHOSH
R/O- MALIGAON
SARADA COLONY PRIVATE HOUSE
P.O. GOTANAGAR
P.S. JALUKBARI
PIN- 781033.

15:SMT. JUKU DEB
W/O- LATE GOPAL DEB
R/O- MALIGAON
SARADA COLONY PRIVATE HOUSE
P.O. GOTANAGAR
P.S. JALUKBARI
PIN- 781033.

16:SWAPAN KUMAR ROY
S/O- LATE RAM GOPAL ROY
R/O- MALIGAON
SARADA COLONY PRIVATE HOUSE
P.O. GOTANAGAR
P.S. JALUKBARI
PIN- 781033.

17:BABLU ROY
S/O LATE RAM GOPAL ROY
R/O- MALIGAON
SARADA COLONY PRIVATE HOUSE
P.O. GOTANAGAR
P.S. JALUKBARI
PIN- 781033.

18:SMT. MANJU DUTTA

R/O- MALIGAON
SARADA COLONY PRIVATE HOUSE
P.O. GOTANAGAR
P.S. JALUKBARI
PIN- 781033

Advocate for the Petitioner : MR. K SINGHA

Advocate for the Respondent : D.Y.S.G.I.

BEFORE
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE DEVASHIS BARUAH

27.06.2023

The instant intra-court appeal is directed against the common order dated 08.06.2023 passed in WP(C) No.1838/2022 and WP(C) No.1907/2022 whereby the learned Single Judge directed the Deputy Commissioner, Kamrup (Metro), Guwahati to demarcate the boundaries of the Railway land in terms of the Gazette Notification published on 03.08.1963.

2. The learned Single Judge further directed the concerned authorities under the establishment of the Deputy Commissioner, Kamrup (Metro), Guwahati to ascertain the correct position of the said land and record it in the order that would be passed in the Demarcation Case. It is also relevant to take note of that the learned Single Judge, vide the impugned order, had observed that the learned Single Judge did not adjudicate the right, title and interest of any of the parties to the writ petitions, and therefore, if there is any inter-se dispute between the parties as regards

the title or ownership of the land or right of the Railway Authorities to vacate the encroachers, the respective parties would be free to approach the competent Court of law or the forum as the case may be.

3. The learned Single Judge further directed that the demarcation process be brought to its logical conclusion preferably within a period of two months from the date of the said order and the N.F. Railways shall be ready and willing to provide the boundary pillars for the said demarcation of the land. Further to that, it was also observed that it would be open to the Deputy Commissioner, Kamrup (Metro), Guwahati to give the parties a reasonable opportunity of hearing, if so required.

4. As would be apparent from the impugned order dated 08.06.2023 that vide the said order, two writ petitions, i.e. WP(C) No.1838/2022 and WP(C) No.1907/2022 were disposed of, we find it relevant to briefly narrate the facts leading to the filing of the writ petitions.

5. The Union of India represented by the N.F. Railways had filed writ petition being WP(C) No.1838/2022. In the said writ petition, it was the case of the petitioners therein that the N.F. Railways had acquired about 502 Bighas 4 Kathas 2 Lechas of land in Maligaon and Gotanagar area under Ramsarani Mouza which is presently Jalukbari Mouza in the district of Kamrup in the year 1958 by virtue of land acquisition notifications dated 21.06.1958 and 25.06.1958. The case of the N.F. Railways is that they were provided advanced possession of the said land and in respect of such acquisition, the Railway Authorities had also deposited the estimated land acquisition compensation of Rs.11,53,912.06 vide cheque dated 25.09.1959. Subsequent thereto, there was a mutual agreement between the Railway Authorities and the Government of Assam whereby a portion

of land was handed over to the State of Assam for construction of Pandu Port and in lieu thereof, the State of Assam was required to settle in favour of N.F. Railway about 45 Bighas 0 Katha 14 Lechas of land at Revenue village Gotanagar and Maligaon under Ramsarani Mouza presently Jalukbari Mouza.

6. On 03.08.1963, a declaration was made in terms with Section 6 of the Land Acquisition Act, 1894 declaring that the land measuring more or less 45 Bighas 0 Katha 14 Lechas bounded with specific boundaries was required for public purposes. It is the further case of the N.F. Railways that the Government of Assam thereafter acquired the land and handed over possession of the said land to the Railway Authorities and since then, the Railway Authorities have been in possession. It is the further case of the N.F. Railways that the Railway Administration had been requesting the Deputy Commissioner, Kamrup (Metro) for initiating steps to demarcate and identify the Railway land measuring 45 Bighas 0 Kathas 14 Lechas in Revenue village Gotanagar and Maligaon provided by the Government of Assam in exchange of the land given to the Pandu Port and in that regard, various communications were issued from time to time. It is the further case of the Railway Authorities that in view of the respondent-the establishment of the Deputy Commissioner, Kamrup (Metro), Guwahati having not taken steps for demarcation, there were encroachers who tried to occupy the Railway land. It is under such circumstances, the writ petition was filed by the petitioners in WP(C) No.1838/2022 seeking a direction upon the State respondents to carry out the process of identification and demarcation of the Railway land measuring 45 Bighas 14 Lechas in Gotanagar area under Jalukbari Mouza.

7. In the said writ petition, the Circle Officer, Guwahati Revenue Circle had filed an additional affidavit stating inter-alia that in compliance to the order dated 24.02.2023 passed by the Writ Court, a report was prepared on the basis of a survey of the land in question by the Office of the Joint Director of Survey, Assam. It was stated inter-alia in the report dated 16.03.2023, part of the land recorded in Dag Nos.542 (old)/201, 204 (new) and land recorded in Dag No. 551 (old)/ 1817 (new) of revenue Village-Gotanagar under Mouza- Jalukbari was claimed by the Railway as per acquisition record. However, on field verification by the LR staff, it was seen that the land covered by Dag No. 542 (old)/ 201, 204 (new) was not under possession of Railway Department. It was, however, seen that as per the award list in respect of acquisition of Railway land, the land covered by Dag No. 542, 551 (old) was acquired Railway land. It was further mentioned that Dag No. 543 (old) was acquired Railway land and was under the possession of the Railway Administration. As regards the land covered by Dag Nos. 544, 545, 558, 559, 560, 545, 557, 556, 554,680, 681, 682, 684, 714, 688, 552 (old), the said lands were acquired Railway land wherein the Railway Administration was in possession. In respect to Dag Nos.546 & 715 (old), it was mentioned in the report that the said land was not acquired Railway land, but the Railway Administration was in possession. It was further mentioned that the land covered by Dag Nos.548, 679, 683, 687 (old) was not acquired Railway land but was claimed by the Railway Administration. As regards Dag Nos.459 (old)/317 (new) measuring 49.22 Are, it was mentioned that the said land was an acquired Railway land. However, the Railway Administration were not in possession and on the other hand, it was seen

during field verification by the LR staff that construction of an R.C.C. building was undergoing on the land covered by Dag No. 317 (new). It is relevant to mention that the Appellant herein was the respondent No.4 in WP(C) No.1838/2022. The appellant, however, did not file any affidavit-in-opposition.

8. Now coming to the facts involved in WP(C) No.1907/2022, it would reveal that 11 writ petitioners filed the said writ petition seeking inter-alia to make an enquiry by an independent authority regarding manipulation made by the respondent authorities in changing the position of Dag No.338/552/317 from its original position, i.e. south to the eastern side to a part of Dag No.549/322 and a part of Dag No.550/336; for a direction upon the respondents for correction of the trace map showing Dag Nos.338/552/317 to the original position in compliance of the Assam Gazette Notification dated 28.08.1963 and the trace map of 1966 and for a direction to the official respondents to demarcate the land of the petitioners therein vis-à-vis the respondent No.5/the Appellant herein.

9. In the said writ proceedings, the Circle Office, Guwahati Revenue Circle, i.e. the respondent No.3 had also filed an affidavit-in-opposition. In the said affidavit-in-opposition, it was stated inter-alia by the Circle Office, Guwahati Revenue Circle that during field verification, construction of an RCC building was noticed by the filed verification staff in Dag No.317 of KP Patta No.419 and it was also seen that a road measuring 8 feet was running in a portion of land belonging to Dag No. 317 of K.P. Patta No. 419. It was further mentioned that notice was issued to all concerned to stop construction activities until a joint demarcation process with N.F. Railways was completed. It was also mentioned in the affidavit-in-

opposition that during field verification when measurement was carried out by LR Staff, it was noticed that no portion of land recorded in the name of petitioners in WP(C) No.1907/2022 was included in the land of appellant herein and other pattadars recorded in Dag No 317 of K P Patta No. 419 of revenue village Gotanagar under Jalukbari Mouza. Further to that, it was also mentioned that the road measuring 8 feet in breadth is running on the land covered by Dag No 317 which was recorded in the name of the Appellant herein and other pattadars and no portion of the land of the writ petitioners of WP(C) No.1907/2022 were included in Dag No.317 of said village.

10. The N.F. Railway Authorities also filed an affidavit-in-opposition in WP(C) No.1907/2022. In the said affidavit-in-opposition, it was mentioned that encroachers tried to occupy Railway land under old Dag Nos. 319, 320 and 322 at revenue village Gotanagar, Jalukbari. The said land belonged to Railway Authorities as could be seen from the territorial map of village Maligaon and Gotanagar which was certified and countersigned by the land Acquisition Officer, B.B.A. and Railway ACO Branch, Guwahati dated 11.01.1967. It was mentioned that Dag No. 549 had come into existence from old Dag No. 322 of village Maligaon and Gotanagar which was also reflected in subsequent land plan No. 1612 dated 14.09.1997. Payments were also made to the pattadars by the Revenue Authority vide L.A.O.RQ/10095 dated 29.11.1969 against the land covered by Dag Nos. 322/549. Further to that, it was mentioned that the Government of Assam, Office of the Joint Director of Survey, Assam had initiated survey of land in question and submitted the survey report over a plot covered by Dag Nos. 322/549(old)/317(new) of village Gotanagar, Jalukbari. In the

said survey report, it was mentioned that the new Dag No. 317 emanated from old Dag No. 322 and intermediate Dag No. was 549 which belonged to the Railways. The said survey report also mentioned that the new Dag No. 317 is not only derived from old Dag No.322/549(old), it also consisted few other Dag Numbers which belonged to Railways.

11. On the basis of the above materials, the learned Single Judge vide the impugned order opined that the Railway land is public property and the land and revenue personnel under the establishment of the Deputy Commissioner, Kamrup (M), Guwahati were required to conclude the demarcation process which was initiated and was required to be brought to its logical conclusion by setting up the demarcation pillars. It was observed that the Revenue Authorities under the establishment of the Deputy Commissioner, Kamrup (Metro), Guwahati would have to carry out the demarcation in terms with the Notification under Section 6 of the Land Acquisition Act, 1894 dated 03.08.1963.

12. In so far as the relief sought for in WP(C) No.1907/2022 wherein the petitioners claimed that their land covered by Dag Nos.338/552/317 had been shifted from its original possession by claiming that the shifting was from south to eastern side of Dag Nos.549/332 and a part of Dag Nos.550/336, the learned Single Judge observed and directed that the concerned person undertaking the demarcation of the Railway land shall also ascertain as to whether any part of the land claimed by the petitioners in WP(C) No.1907/2022 formed a part of the Railway land and was directed to give specific finding with regard to the land claimed by the petitioners in WP(C) 1907/2022 and as to whether there was any shifting of the position of the land covered by Dag Nos.338/552/317 from its

original position as it existed when notification dated 28.08.1963 was published so as to bring a clarity of the land claimed by the petitioners in WP(C) 1907/2022 vis-à-vis the respondent No.5 herein. The learned Single Judge further stated that save and except to clarify that the possession, nothing more was required to be done by the Land Acquisition Authorities in as much as the inter-se dispute, if any, in between the petitioners in WP(C) No.1907/2022 and the respondent No.5/the appellant herein would have to be left to be decided by a competent Court having jurisdiction. It was further clarified that the land revenue staff attached to the Office of the Deputy Commissioner, Kamrup (Metro), Guwahati was only required to demarcate the boundaries of the Railway land in terms of Gazette Notification published on 03.08.1963 and they were not required to take any other steps. It was observed that Railway Authorities would be at liberty to adopt such course of action as deemed fit.

13. On the basis of the above findings, the learned Single Judge, therefore, directed the Office of the Deputy Commissioner, Kamrup (Metro), Guwahati to bring the demarcation process to its logical conclusion preferably within a period of two months and thereby granting the liberty to the Deputy Commissioner, Kamrup (Metro), Guwahati to give the private parties to the writ petitions, an opportunity of hearing, if so required.

14 The present writ appeal has been filed by the appellant primarily on the following grounds:-

- (i) The impugned order dated 08.06.2023 passed by the learned Single Judge was contrary to the judgment and order dated 03.10.2013 passed in WP(C) No.2908/2012 and WP(C)

No.5424/2012 and the issue so raised by the N.F. Railways in WP(C) No.1838/2022 was hit by the principle of res judicata.

(ii) The direction passed by the learned Single Judge vide the impugned order to demarcate the boundaries in terms with the land acquisition Notification dated 03.08.1963 was contrary to the learned Single Judge's observation that vide the impugned order, the right, title and interest of any of the parties to the writ petition was not decided.

(iii) The learned Single Judge had passed the impugned order without affording a reasonable opportunity of hearing to the appellant and thereby illegally allowed the demarcation of the land of the appellant.

15. As regards the first ground, we find it relevant to observe that the doctrine of res judicata is a universal doctrine laying down the finality to the litigation between the parties meaning thereby when a particular decision had become final and binding between the parties, therefore, so far as the parties are concerned, they would be bound by the said decision. The appellant herein was not a party either in WP(C) No.2908/2012 or in WP(C) No.5424/2012. Nothing has also been brought on record that the appellant had acquired rights from the parties in those proceedings.

16. We have also perused the judgment dated 03.10.2013 passed in WP(C) No.2908/2012 and WP(C) No.5424/2012. In WP(C) No.2908/2012, filed by the Railways, the land in question was 14 Bighas 1 Katha 16 lechas wherein demarcation was sought as well as the correction of land

records. However, during pendency of the said writ petition, i.e. WP(C) No.2908/2012, on 13.06.2012, the Revenue Authority had mutated the land in favour of the Railway Authorities.

17 This order dated 13.06.2012 was put to challenge in WP(C) No.5424/2012. The said order of mutation dated 13.06.2012 was set aside by the learned Single Judge vide the judgment and order dated 03.10.2013. It is further pertinent to mention herein that in paragraph No.8 of the said judgment dated 03.10.2013, the learned Single Judge has duly noted that the Railway Authorities had failed to produce a single document of acquisition of land and there was not even any mention of date and number of the Notification issued under Sections 4 & 6 of the Land Acquisition Act, 1894. In the instant case, however, the declaration made on 03.08.1963 was brought on record. Therefore, we are of the opinion that the said judgment dated 03.10.2013 passed in WP(C) No.2908/2012 and WP(C) No.5424/20112 would not be relevant for the present determination.

18. The second ground of objection taken in the instant Appeal is as regards the direction passed by the learned Single Judge to carry out the Demarcation on the basis of the declaration under Section 6 of the Land Acquisition Act dated 03.08.1963. It is also relevant that for a declaration under Section 6 of the Land Acquisition Act, it should contain the portion of land including its approximate area and the purpose for which it is needed. It is well settled that a declaration made under Section 6 of the Land Acquisition Act, 1894 shall be conclusive evidence that the land described therein is needed for a public purpose or for a Company. In the instant case, a perusal of Annexure-7 to the writ petition, it would

transpire that in the Declaration dated 03.08.1963, it was declared that the land was required for public purpose along with area of land measuring more or less 45 Bighas 14 Lechas of standard measurement and with specific boundaries. The materials on record also show that this very land of 45 Bighas 14 Lechas was acquired and the possession was duly handed over to the N.F. Railway Authorities. Under such circumstances, the direction passed by the learned Single Judge to demarcate the boundaries by taking note of the declaration dated 03.08.1963 is in accordance with law.

19. The third ground of objection so taken in the instant Appeal was that the Appellant was not given a reasonable opportunity. It is relevant to take note that the Appellant was the respondent No.4 in WP(C) No.1838/2022 and the respondent No.5 in WP(C) No.1907/2022. The appellant did not file any affidavit-in-opposition in either of the writ petitions though opportunity was duly given. Be that as it may, a perusal of the impugned order dated 08.06.2023 would show that the learned Single Judge only directed the Office of the Deputy Commissioner, Kamrup (Metro), Guwahati to conclude the demarcation process preferably within two months. It was mentioned that the respondent Revenue Authorities were only required to clarify the possession and nothing more was required to be done and the inter-se dispute, if any, between the petitioners of WP(C) No.1907/2022 and the respondent No.5/appellant herein can be decided only by a competent Court having jurisdiction. The learned Single Judge further clarified that the Office of the Deputy Commissioner, Kamrup (Metro), Guwahati was also required to demarcate the boundaries of the Railway land in terms with the declaration published

on 03.08.1963 and was not required to take any other steps. The learned Single Judge further observed that if there is any inter-se dispute between the parties regarding the title or ownership of the land or the right of the Railway Authorities to evict the encroachers, liberty was given to the parties to approach the competent Court of law and/or other forum. The learned Single Judge further provided that it would be upon the Deputy Commissioner, Kamrup (Metro), Guwahati to give reasonable opportunity of hearing to the private parties. Under such circumstances, we are of the opinion that the question of any of the right of the appellant being affected vide the impugned order dated 08.06.2023 does not arise.

20. Under such circumstances, we are of the opinion that the impugned order dated 08.03.2023 does not call for any interference and accordingly, the instant writ appeal stands dismissed.

21. We would also emphasize herein that the Railway lands are public property and as such the learned Single Judge was justified in issuing the direction for demarcation vide the impugned order dated 08.06.2023.

22. The Deputy Commissioner, Kamrup (Metro), Guwahati is therefore directed to comply with the direction of the learned Single Judge dated 08.06.2023 within the time stipulated therein, i.e. 2 (two) months.

JUDGE

CHIEF JUSTICE