

GAHC010153272021



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

Case No. : PIL/63/2021

1. KALIMOHAN ROAD DURGA PUJA COMMITTEE ,
REPRESENTED BY ITS GENERAL SECRETARY,
SHRI KALIKA PRASAD BHATTACHARJEE, AGED 38YEARS
S/O LATE PULENDRA BHATTACHARJEE,
R/O KALIMOHAN ROAD, TARAPUR, SILCHAR 03,
P.O. AND P.S. SILCHAR ,DIST CACHAR, ASSAM.

2: KALIKA PRASAD BHATTACHARJEE @ KANCHAN BHATTACHARJEE,
S/O LATE PULENDRA BHATTACHARJEE,
R/O KALIMOHAN ROAD, TARAPUR, SILCHAR 03,
P.O. AND P.S. SILCHAR, DIST CACHAR, ASSAM.

3: SRI HARENDRA CH. DAS,
S/O LATE GIRINDRA CH. DAS,
R/O KALIMOHAN ROAD, TARAPUR, SILCHAR 03,
P.O. AND P.S. SILCHAR, DIST CACHAR, ASSAM

4: DR. RAJIB KAR,
S/O LATE RAMENDRA KAR,
R/O KALIMOHAN ROAD, TARAPUR, SILCHAR 03,
P.O. AND P.S. SILCHAR, DIST CACHAR, ASSAM.

5: RANAJIT KR. KAR,
S/O LATE RAKESH KR. KAR,
R/O KALIMOHAN ROAD, TARAPUR, SILCHAR 03
P.O. AND P.S. SILCHAR, DIST CACHAR, ASSAM.

6: DEBAJIT DUTTA,
S/O SRI DIPTI BHUSAN DUTTA,
R/O KALIMOHAN ROAD, TARAPUR,
P.O. AND P.S. SILCHAR,DIST CACHAR, ASSAM
SILCHAR 03.

7: ABHIK DAS,
S/O LATE NIRMAL DAS,
R/O KALIMOHAN ROAD, TARAPUR,
P.O. AND P.S. SILCHAR, DIST CACHAR, ASSAM
SILCHAR 0.

VERSUS

1. THE STATE OF ASSAM,
REPRESENTED BY ITS SECRETARY,
DEPARTMENT OF URBAN DEVELOPMENT, GOVERNMENT OF
ASSAM, DISPUR, GUWAHATI 06.

2:THE DIRECTOR,
MUNICIPAL ADMINISTRATION DEPARTMENT,
GOVERNMENT OF ASSAM,
DISPUR, GUWAHATI 06.

3:THE SILCHAR MUNICIPAL BOARD,
REPRESENTED BY ITS EXECUTIVE OFFICER,
P.O.P.S. SILCHAR, DISTRICT CACHAR, ASSAM.

4:THE DEPUTY COMMISSIONER, SILCHAR
DISTRICT CACHAR.

5:JYOTIRMOY SINGHA,
RESIDENTS OF TUKO RAMNAGAR,
TARAPUR PT IV, SILCHAR 03.

6:K.H. RUPMOHAN SINGHA,
RESIDENTS OF TUKO RAMNAGAR,
TARAPUR PT IV, SILCHAR 03.

7:MANI MOHAN SINGHA,
RESIDENTS OF TUKO RAMNAGAR,
TARAPUR PT IV, SILCHAR 03.

8:K.H. BRAJO MOHAN SINGHA,
S/O LATE BHIM SINGHA,
RESIDENTS OF TUKO RAMNAGAR,
TARAPUR PT IV, SILCHAR 03.

9:ANITA SINGHA,
W/O LATE RANJIT SINGHA,
RESIDENTS OF TUKO RAMNAGAR,
TARAPUR PT IV, SILCHAR 03.

10:RUPAM SINGHA,
RESIDENTS OF TUKO RAMNAGAR,
TARAPUR PT IV, SILCHAR 03.

11:RAJDEEB SINGHA,
S/O LATE RANJIT SINGHA,
RESIDENTS OF TUKO RAMNAGAR,
TARAPUR PT IV, SILCHAR 03.

12:RANAVIR SINGHA,
RESIDENTS OF TUKO RAMNAGAR,
TARAPUR PT IV, SILCHAR 03.

13:K.H. RAJENDRA SINGHA,
RESIDENTS OF TUKO RAMNAGAR,
TARAPUR PT IV, SILCHAR 03.

14:RAJESH SINGHA,
S/O LATE RUPCHAND SINGHA,
RESIDENTS OF TUKO RAMNAGAR,
TARAPUR PT IV, SILCHAR 03.

15:K.H. PRABIR SINGHA,
RESIDENTS OF TUKO RAMNAGAR,
TARAPUR PT IV, SILCHAR 03.

16:K.H. PRADIP KUMAR SINGHA,
RESIDENTS OF TUKO RAMNAGAR,
TARAPUR PT IV, SILCHAR 03

17:PRAMIN KUMAR SINGHA,
RESIDENTS OF TUKO RAMNAGAR,
TARAPUR PT IV, SILCHAR 03

18:PANKAJ SINGHA,
S/O LATE DEBOHARI SINGHA,
RESIDENTS OF TUKO RAMNAGAR,
TARAPUR PT IV, SILCHAR 03

19:SMTI. MAJULA SINGHA,
W/O LATE PRAKASH KUMAR SINGHA,
RESIDENTS OF TUKO RAMNAGAR,
TARAPUR PT IV, SILCHAR 03.

20:SMTI. MARTINA SINGHA,
D/O LATE K.H. PRAKASH KUMAR SINGHA,
RESIDENTS OF TUKO RAMNAGAR
TARAPUR PT IV, SILCHAR 03

For the Petitioners : Mr. S. Biswas, Advocate.

For the Respondents : Mr. P. Sarmah, Additional Senior Advocate, Assam for respondent Nos.1, 2 and 4.

Mr. Sisir Dutta, Senior Advocate assisted by Mr. K. Upamannya, Advocate for respondent No.3.

Mr. S. Choudhury, Advocate for respondent Nos.5 to 20.

- B E F O R E -

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE ARUN DEV CHOUDHURY

29.05.2023

(*Sandeep Mehta, CJ*)

The instant petition under Article 226 of the Constitution of India in the nature of Public Interest Litigation (PIL) has been filed by the petitioner Kalimohan Road Durga Puja Committee and six others claiming that they espouse the cause of the aggrieved people of Silchar town in general who are being illegally deprived of the right to use a vacant plot of land situated at Ukil Bazar, Kalimohan Road, Tarapur, Silchar for the purpose of organizing the annual Durga Puja celebration and alleged that the said plot is sought to be illegally usurped by the private respondent Nos.5 to 20.

2. The petitioners have assailed the order dated 18.05.2021 issued by the Executive Officer, Silchar Municipal Board, whereby the plot of land admeasuring 5 Kathas and 5 Chattaks which is the subject matter of dispute in this writ

petition allotted to the private respondent Nos.5 to 20 by way of a purported *ex post facto* lease renewal for the period beginning from the year 1930 to 2003 and 2004 to 2024.

3. The order under question has been challenged on various grounds, amongst others. The primary ground of challenge being that the plot in question is meant for use by people of the locality and Durga Puja was being performed on this plot by the petitioner Committee since the year 1990. As such, the Municipal Board was not authorized to issue any lease deed over the said plot of land in favour of private respondents.

4. Petitioners, before approaching this Court, filed an RTI application dated 14.07.2021 and in response, they have been provided certain informations including the xerox copy of a lease dated 04.07.1925. However, the petitioners have alleged that no details of any prior lease issued by the Municipal body to the private respondents or their predecessors were provided to the petitioners. The lease deed of 1925 which has been provided to the petitioners is nothing but an agreement between two persons named Sri Choudhury Singha and Surendra Mohan Deb and does not give rise to any right in favour of the respondent Nos.5 to 20.

5. The petitioners have further alleged that the lease deed/agreement of 1925 has no connection with the land in question. It has further been submitted that Title Suit No.1/2021 was instituted by one Sandipan Deb arraying the petitioner Committee seeking decree of possession over the premises over the plot of land in question, which was disposed of by way of compromise.

6. The order of extension of lease dated 18.05.2021 is also questioned on various other grounds. It has been alleged that the order of lease extension does not refer to the details of earlier lease which is sought to be extended/renewed, that too, with retrospective effect from the year 1930 onwards. On these grounds, the petitioners seek setting aside of the order dated 18.05.2021 alleging that the same is patently illegal.

7. The respondent Silchar Municipal Board has filed affidavit-in-opposition wherein, it has been asserted that the PIL contains vague allegations and has been filed without proper foundation. However, regarding the allegations made in the PIL questioning the veracity/legality of the order dated 18.05.2021, the affidavit is absolutely silent. Reference has been given in the affidavit to the lease deed originally held by Sri Choudhury Singha. However, there is no such indication in the affidavit that the said lease deed in any matter relates to the plot in question.

8. We have heard the learned counsel for the parties and gone through the material available on record.

9. Perusal of the order dated 18.05.2021 which is subjected to challenge in this PIL would indicate that it makes a reference to a petition filed by the private respondents; an order dated 21.11.2013 passed by the Gauhati High Court in Case No.259694 and also contains a recital that the existing lease was being extended in compliance of the above mentioned order of the High Court. The Clauses 1 and 2 thereof make very interesting reading and are reproduced hereinbelow for the sake of ready reference.

- “1. The renewal of lease right on transfer and renewal of Municipal Land as prescribed above for the period of 1930 to 2003 i.e., for a period of 73 (Seventy three) years @ Rs. 1.70 paise per katha per year as rent & Rs. 4000.00 (Four thousand) per deed as renewal fees.*
- 2. The renewal of lease right on transfer and renewal of Municipal Land as prescribed above for the period of year 2004 to 2024 i.e., for a period of 20(twenty) years @ Rs. 1000.00 (One thousand) per katha per year as rent & Rs. 7000.00 (Seven thousand) per katha per deed as renewal fees.”*

Perusal of the Condition No.1 indicates that the Executive Officer, proceeded to renew as well as transfer the Municipal land of above mentioned measurement for the period of 1930 to 2003, i.e. previous 73 years at the rate of Rs.1.70 paise per katha, per year, as rent and Rs.4,000/-, per katha as renewal fees. The renewal for the years 2004 to 2024, i.e. 20 years was done at the rate of Rs.1,000/- per katha, per year, as rent and Rs.7,000/-, per katha, as renewal fees.

Thus, the Executive Officer renewed the lease for the period even before the Silchar Municipal Board came to existence.

10. A perusal of the impugned order would further indicate that the same was issued by the Executive Officer, Silchar Municipal Board in his own capacity without there being any reference to the resolution of the Municipal Board authorizing issuance of such lease renewal order.

11. During the course of arguments, pertinent query was put to the learned counsel for the respondents and Mr. S. Dutta, learned Senior counsel representing the Silchar Municipal Board who frankly conceded that the order dated 18.05.2021 does not bear sanction of the Municipal Board and has been issued by the Executive Officer in his individual capacity and that he was not

authorized in law to issue such an order.

12. On a query regarding the order dated 21.11.2013 passed by the Gauhati High Court in reference where to the order dated 18.05.2021 was passed, learned Senior counsel Mr. Dutta candidly conceded that no such order exists. He submitted that the order which is referred to is probably the order of dismissal of the Second Appeal No.109/1991 filed by Sandip Mohan Deb and others against Rup Chand Singh and Others. The said second appeal was dismissed for want of prosecution as having abated by order dated 22.09.1997. The copy of this order was issued on 21.11.2013 and the Executive Officer treated the said date to be the date of the order.

13. Pertinent query was put to Mr. S. Choudhury learned counsel for the private respondents (respondent Nos.5 to 20) to show to the Court, the lease deed retrospective extension whereof was sanctioned by the Executive Officer. However, learned counsel for respondent Nos.5 to 20 failed to point out the existence of any such lease deed. Even in the affidavit-in-opposition filed by the respondent K.H. Brajo Mohan Singha on behalf of respondent Nos.5 to 20, there is no reference to any particular lease deed having been issued in favour of the predecessor of the deponent, namely, Shri Choudhury Singha.

14. In view of the above facts, it is crystal clear that no such lease as was proposed to be extended by the patently illegal order dated 18.05.2021 was ever in existence. If at all, any civil proceedings were instituted in relation to the land in question the same came to end with dismissal of the Second Appeal No.109/91 on the ground of abatement by the order dated 22.09.1997.

15. That apart, it cannot be denied the Executive Officer of the Silchar Municipal Board has no power whatsoever either to issue or renew the lease deed of any Municipal land or Government land within the jurisdiction of the Municipal Board. Such action can only be taken on the basis of a resolution of the Board or with the approval of the State Government in accordance with the procedure as laid down in Sections 62 and 63 of the Assam Municipal Act, 1956. The order impugned refers to an order dated 21.11.2013 passed by the Gauhati High Court in Case No.259694 and states that the lease was being extended in compliance of the above order of the High Court. However, as has been mentioned above, neither any such order exists nor any such direction was ever given by the High Court in any earlier proceeding. Furthermore, the retrospective renewal of the lease from the year 1930 to 2003 and thereafter from the year 2004 to 2024 is clear reflection of blatant misuse of office by the Executive Officer concerned. We are of the firm opinion that the order dated 18.05.2021 suffers from blatant misuse of power and is grossly illegal and hence, the same cannot be sustained.

Accordingly, order dated 18.05.2021 issued by the Executive Officer, Silchar Municipal Board is hereby quashed and set aside.

16. The plot of Government land in question shall forthwith be recorded in the name of Silchar Municipal Board. The Silchar Municipal Board shall take steps for developing the same for use of public at large. The petitioner society may file application at suitable point of time seeking permission to undertake Durga Puja celebrations on the said plot and the Silchar Municipal Board would objectively consider such application and may permit the petitioner to use the same for Durga Puja celebration after charging fees as may be prescribed by

law.

Needless to say that as soon as the Durga puja festival is over, the status of the land, shall be restored.

17. A copy of this order be transmitted to the Chief Secretary, Government of Assam for taking necessary proceedings against the Executive Officer, Silchar Municipal Board who passed the order dated 18.05.2021.

18. The writ petition is disposed of in the above terms.

JUDGE

CHIEF JUSTICE

Comparing Assistant