

GAHC010175402021



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

Case No. : WP(C)/5598/2021

PUTUL GOGOI
SON OF LATE DEBENDRA NATH
GOGOI,
R/O AMGURI COLLEGE TINALI, WARD NO. 7,
P.O. AMGURI, P.S. AMGURI
DIST. SIVASAGAR, ASSAM

VERSUS

ASSAM STATE TRANSPORT CORPORATION AND ANR.
REP. BY ITS MANAGING DIRECTOR,
HAVING ITS OFFICE AT PALTANBAZAR, GUWAHATI-08.

2:THE MANAGING DIRECTOR

ASSAM STATE TRANSPORT CORPORATION
PALTANBAZAR
GUWAHATI-78100

Advocate for the Petitioner : MR. P J SAIKIA

Advocate for the Respondent : SC, A S T C

Advocate for the Petitioner : Mr. P. J. Saikia, Advocate

Advocate for the Respondents : Mr. J. Roy, Senior Advocate

BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH

Date of Hearing : 03.08.2023

Date of Judgment : 03.08.2023

JUDGMENT AND ORDER (ORAL)

The instant writ petition has been filed by the petitioner challenging the order dated 07.10.2021 issued by the respondent No.2 with a further prayer that the respondent authorities should not disturb the possession of the petitioner over the Nandanban Resort situated within the campus of ASTC Bus Station, Jhanji, Sivasagar during the pendency of Title Suit No.9/2021 and Misc. (J) Case No.13/2021.

2. The facts of the case as could be seen from the perusal of the writ petition and the documents enclosed thereto are that a Deed of Agreement was entered into by and between the Assam State Transport Corporation (ASTC) and M/S Nandanban Resort on 05.02.2003. The period of the said Agreement was mentioned to be three years w.e.f 01.01.2003 to 31.12.2006 and the monthly rent payable was Rs.10,000/- per month subject to various conditions stipulated therein. On the basis of the said Deed of Agreement, the petitioner continued to use and occupy the land and building described in Schedule-A to the said Agreement for carrying the business of Highway Resort at the new building and the land of the respondent Corporation. It is further seen that even after the

period of the said agreement having expired, the relationship between the petitioner as well as the respondent Corporation continued. On 06.08.2021, a show cause notice was issued by the Managing Director of the respondent Corporation whereby the petitioner was asked to show cause as to why an order of eviction should not be made. It is however relevant to take note of that a perusal of the said show cause notice nowhere shows that the said show cause notice was issued in terms with the provisions of the Assam Public Premises (Eviction of Unauthorized Occupants) Act, 1971 (for short, 'the Act of 1971').

3. The Petitioner, upon receipt of the said show cause notice, submitted a reply on 09.08.2021 stating inter-alia that the petitioner is entitled to remain in possession of the premises as he had not violated any of the Clauses of the Agreement entered into on 05.02.2003. It further appears that on 17.08.2021, the petitioner filed a suit before the Court of the Civil Judge, Sivasagar against the respondent Nos.1 & 2 herein seeking inter-alia for a decree declaring that the Agreement dated 05.02.2003 entered into by and between the petitioner and the respondent Nos.1 & 2 (the defendants therein) was still existing as well as in force; for a declaration that the petitioner being in lawful occupation and possession of the schedule property, the respondent Nos.1 & 2 herein (the defendants therein) were not entitled to evict the petitioner from the said schedule property without following the due procedure of law as well as for permanent injunction. The said suit was registered and numbered as Title Suit No.9/2021. In the said suit, the petitioner had also filed an Injunction Application under Order XXXIX Rule 1 & 2 read with Section 151 of the Code of Civil Procedure praying inter-alia for grant of a temporary injunction restraining the respondent Nos.1 & 2 herein from evicting the petitioner as well as from disturbing the peaceful possession of the petitioner and his men and agents

over the schedule property appended to the application during the pendency of the suit. The said application was registered and numbered as Misc. (J) Case No.13/2021. It further reveals from the records that vide an order dated 18.08.2021, the learned Trial Court issued notice. This Court has also enquired with the learned counsels appearing on behalf of the parties who submitted that no order of injunction till date has been passed in Misc. (J) Case No.13/2021.

4. Be that as it may, on 21.08.2021, the respondent No.2 issued a communication stating inter-alia that the authorities of the ASTC had cancelled all the allotments/agreements (if any) issued earlier to the petitioner for occupying and running the business of motel/resort/dhaba named as Nandanban Resort at ASTC land premises at Jhanji, Sivasagar. Subsequent thereto, on 07.10.2021, the Managing Director of the respondent No.1 Corporation issued an order under Section 5 (1) of the Act of 1971 thereby directing all who may be in occupation of M/S Nandanban Resort (Jhanji Resort), ASTC premises, Jhanji to vacate within 30 days from the date of issuance of the said order. This order dated 07.10.2021 has been put to challenge in the instant writ petition.

5. This matter was heard at length on 02.08.2023 on which date an issue was raised as to whether the Managing Director of the respondent No.1 Corporation was appointed as an Estate Officer in terms with the Act of 1971 and the Rules framed therein under. Mr. J. Roy, the learned senior counsel appearing on behalf of the respondents sought for an accommodation yesterday (i.e. on 02.08.2023) to take appropriate instructions in the matter. Accordingly, the matter is listed before this Court today.

6. Mr. J. Roy, the learned senior counsel has produced a notification dated 21.08.2021 issued by the Government of Assam in exercise of the powers under

Section 3 of the Act of 1971 whereby the Governor was pleased to appoint Shri Rahul Chandra Das. ACS, MD, ASTC & Deputy Secretary, Transport Department as Estate Officer for the ASTC to protect the assets, property, land, buildings, public premises and all other physical/land assets held by the ASTC in the entire State with immediate effect and until further order. It is further relevant to take note of that the said notification was published in the Assam Gazette on 08.09.2021. The said notification dated 21.08.2021 as well as the publication in the Assam Gazette on 08.09.2021 are collectively kept on record and marked with the letter "X".

7. In the backdrop of the above, let this Court, therefore, take into account the provisions of the Act of 1971. Section 2 (b) of the Act of 1971 defines the term 'Estate Officer' to mean an officer appointed as such by the State Government under Section 3 of the Act of 1971. Section 3 of the Act of 1971 being relevant is reproduced herein under:-

“3. Appointment of Estate Officers.—The State Government may, by notification in the Official Gazette,—

(a) appoint such persons, being Gazetted Officers of Government as it thinks fit, to be Estate Officers for the purposes of this Act; and

(b) define the local limits within which, or the categories of public premises in respect of which, each Estate Officer shall exercise the powers conferred, and perform the duties imposed, on Estate Officers by or under this Act.”

8. From the above quoted Section 3 of the Act of 1971, it transpires that the State Government may by notification in the Official Gazette appoint such persons, being Gazetted Officers of Government to be 'Estate Officer' for the purposes of the Act of 1971 within the defined local limit within which or the categories of public premises in respect of which, each Estate Officer shall

exercise the powers conferred, and perform the duties imposed, on Estate Officers by or under the Act of 1971. Therefore, from the above, it would be seen that it is only after the notification is published in the Official Gazette, a Gazetted Officer can be appointed as an Estate Officer.

9. Now coming back to the facts of the present case, from the documents as kept on record and marked with the letter "X", it would be seen that although the notification was issued on 21.08.2021, but the said notification was published in the Official Gazette on 08.09.2021, and as such w.e.f 08.09.2021, Shri Rahul Chandra Das. ACS, MD, ASTC & Deputy Secretary, Transport Department was appointed as Estate Officer for the ASTC.

10. This Court further finds it relevant to take note of that Section 4 of the Act of 1971 stipulates the requirement of issuance of notice to show cause against order of eviction by the Estate Officer upon forming an opinion that any persons are in unauthorised occupation of any public premises. It would further be seen from Section 5 of the Act of 1971 that it is in pursuance to a notice issued under Section 4 of the Act of 1971 by an Estate Officer any order can be passed in terms with Section 5 of the Act of 1971.

11. In the instant case, a perusal of the order dated 07.10.2021 would show that the respondent No.2 acting as an Estate Officer had relied upon the notice dated 06.08.2021 as a notice under Section 4 of the Act of 1971 and it is on the basis thereof had passed the order dated 07.10.2021. However, from the above noted facts as well as the documents kept on record and marked with the letter "X", the Managing Director of the Respondent Corporation who exercised the jurisdiction under the Act of 1971 did not have the authority or jurisdiction to issue the show cause notice dated 06.08.2021 under Section 4 of the Act of 1971 as the said Officer was not an Estate Officer within the meaning of Section

2 (b) read with Section 3 of the Act of 1971 till 08.09.2021.

12. In that view of the matter as a show cause notice issued by an Estate Officer is a condition precedent for passing an order under Section 5 of the Act of 1971 and the show cause notice so issued in the instant case dated 06.08.2021 is nonest in law as the same was issued by an authority having no authority or jurisdiction, this Court is of the opinion that the order dated 07.10.2021 also is without jurisdiction and authority of law.

13. Accordingly, this Court, therefore, sets aside the order dated 07.10.2021.

14. It is however made clear that the observation made herein above shall not prejudice the respondent Corporation to take such action as permissible under the law.

15. With the above observations and directions, the instant writ petition stands allowed to the extent stated.

JUDGE

Comparing Assistant