

GAHC010179902015



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

Case No. : WP(C)/7260/2015

ULUBARI SMASHAN COMMITTEE
R.K. MISSION, ULUBARI, GHY- 7, REP. BY ITS PRESIDENT SRI SANJIB
DEKA.

VERSUS

THE STATE OF ASSAM AND 6 ORS
REP. BY THE SECY., GOVT. OF ASSAM, DEPTT. OF REVENUE, DISPUR,
ASSAM, GHY- 6.

2:THE COMMISSIONER AND SECY.
GOVT. OF ASSAM
GUWAHATI DEVELOPMENT DEPTT.
DISPUR
ASSAM
GHY- 6.

3:THE GUWAHATI MUNICIPAL CORPORATION
PANBAZAR
GHY- 1
ASSAM.

4:THE COMMISSIONER
GUWAHATI MUNICIPAL CORPORATION
PANBAZAR
GHY- 1
ASSAM.

5:THE GUWAHATI METROPOLITAN DEVELOPMENT AUTHORITY
BHANGAGARH
GHY- 5.

6:THE CHIEF EXECUTIVE OFFICER
GUWAHATI METROPOLITAN DEVELOPMENT AUTHORITY
BHANGAGARH
GHY- 5.

7:THE DY. COMMISSIONER
KAMRUP M
GUWAHATI

Advocate for the Petitioner : MS.A B KAYASTHA

Advocate for the Respondent : SC, GMC

BEFORE
HONOURABLE MR. JUSTICE SOUMITRA SAIKIA

ORDER

10.02.2023

Heard Mr. R. Dubey, learned counsel for the petitioner. Also heard Mr. S. Bora, learned Standing Counsel, GMC & GMDA appearing on behalf of respondent Nos. 1 to 6 and Ms. D.D. Barman, learned Government Advocate for the respondent No. 7.

2. The petitioner is a registered society which is working to establish and develop modern electronic crematorium. It is submitted by the petitioner that for the said purposes the Government in the Revenue Department allotted a plot of land measuring 9B-2K-2L covered under various Dags, namely 1082, 1083, 1084, 1123, 1124, 1132, 1133, 1146, 1147, 1182, 1183 and 62 under Ulubari Mouza for cremation ground and the same is duly reflected in the Chitha. The said land is situated at Ulubari near Bharalu. The continuous efforts of the petitioner society has been to develop the said cremation ground and to install modern cremation facilities for the benefit of the people of the locality and the surrounding locality. Several representations have been made from time

to time, the Government for taking up the project for development of electric crematorium. In response to such representations made by the petitioner society, the GMDA issued a tender on 25.02.2015 for construction of electric crematorium and pursuant thereto a firm by the name of M/S Zeleezhu was shortlisted and the work was allotted for construction of the electric crematorium. Although, the preliminary work of construction started, since nobody resided on the said land nor did the petitioner society appoint any person to supervise the said work, as it was undertaken under the aegis of GMDA, some illegal encroachers had encroached a part of the land and thereby causing hindrance to the smooth construction of the said crematorium proposed.

3. The petitioner society upon representing the concerned authorities found that an eviction drive was undertaken and the said illegal encroachers were driven away. The petitioner society expected the construction work undertaken to proceed in the right earnest for construction of the electric crematorium on the said land, however, to their surprise they came to realise that the GMC authorities had undertaken a decision to construct a waste management plant at the land which was allotted to the petitioner society for cremation for the cremation ground. Further enquiries revealed that it was the GMC authorities at the behest of which the land was freed from encroachers.

4. Being thus situated, the petitioner society represented before the Commissioner GMC requesting for relocation of the municipal waste plant and not to interfere with the construction work for the electric crematorium. Objections were raised before the Deputy Commissioner, Revenue, Kamrup (M) by representation stating that on the said land, Government had initiated construction of a modern crematorium and therefore, any construction relating

to the waste management plant should be stopped. The petitioner objected that the construction of the waste management is in total disregard to the religious sentiments to the people of the locality who wanted a modern electric crematorium to be constructed in the said land where cremation through traditional methods had been continued so far.

5. That an appeal came to be filed before the Board of Revenue by one Bikash Chakraborty under Sections 147/150/151 of the Assam Land Revenue Regulations against the threatened apprehension of eviction by the Deputy Commissioner, Kamrup (M). The Board of Revenue vide order dated 23.07.2007 admitted the appeal and passed orders to maintain status quo in respect of the possession of the appeal over the land in question and directed that the appellant shall not be evicted from the said land till disposal of the matter by the Deputy Commissioner, Kamrup(M)

6. Thereafter vide order dated 21.11.2008, the Additional Deputy Commissioner, Kamrup(M) disposed of the case rejecting the proposal of the said appellant namely, Bikash Chakraborty on the following grounds.

- i) As per land records proposed land of entire dag no 1084 of Sahar Ulubari Part-I under Ulubari Mouza is reserved for cremation Ground.*
- ii) The proposed land is at 2mtr, only from the edge of PWD Road.*
- iii) 8 mtr Distance from the middle of Bharalu River.*
- iv) Proposed land is situated on the river bank of Bharalu and in between the P.WD Road and Bharalu River.*
- v) Applicants family member has got patta land measuring 2.97 Acres covered by Dag No. 102 of Patta No. 378 of Sahar Ulubari Part-I under Ulubari Mouza in Guwahati Revenue Circle"*

7. It is the contention of the petitioner that by virtue of the said order, the

Addl. Deputy Commissioner, Kamrup(M) had confirmed that Dag No. 1084 was reserved for cremation ground.

8. Thereafter, several representations were again submitted by the petitioner before the respondent authorities requesting for appropriate intervention in the matter as the GMC authorities were undertaking construction work of Municipal Waste Management Plant without any authority of law. It is submitted on behalf of the petitioner that the said plot of land reserved for cremation ground as per the land records, were under illegal occupation of the GMC.

9. Having no alternative in respect of the proposed construction sought to be taken by the GMC for waste management plant on the land which is allotted for cremation and on which land the petitioner society wanted construction of modern crematorium services and having failed to evoke any response therefrom the petitioners have approached this Court by filing the present writ petition seeking a direction from this Court to the GMC authorities to restrain from proceeding with any construction on the land earmarked for the cremation ground which is covered under the Dag No. 1182, 1183 and 1184 of Ulubari Mouza.

10. This Court by order dated 13.11.2015 issued notice and in the interim directed that construction of electric crematorium on the reserved land should not be disturbed but status quo was ordered to be maintained in the meantime in respect of waste management plant.

11. Subsequently, by order dated 23.01.2019 this Court directed the Deputy Commissioner, Kamrup Guwahati to survey/inspect the said cremation ground of Ulubari as well as the land where the waste management plant is being setup by GMC by deputing a Circle Officer and other land revenue staff and to inform

the Court whether waste management plant is being set up on any part of the cremation ground of Ulubari Guwahati. The said survey and inspection was directed to be carried out within four weeks from the date of receipt of the certified copy of the order and by informing the parties about date and time of carrying out such inspection.

12. On 12.05.2020 when the matter was called up, a communication dated 05.02.2019 made by the Circle Officer, Guwahati Revenue Circle was presented before the Court and stated to be the report of the Circle Officer in terms of the earlier order of this Court vide the order dated 23.01.2019. This Court being unsatisfied with the report further directed the Circle Officer, Guwahati Revenue Circle to prepare a fresh report by stating firstly whether the proposed land is out of the purview of the track of land allotted for the purpose of cremation or whether the land allotted for cremation purposes is big enough to be segregated and a part thereof could be used for the purpose of waste management so that the balance land would still be adequate for the purpose of cremation,

13. In deference to the order dated 12.05.2020 passed by this Court, an affidavit was filed on 17.03.2022 by the Circle Officer, Guwahati Revenue Circle by enclosing the report prepared on the basis of the survey conducted by the Circle Officer pursuant to the order dated 12.05.2020 of this Court. By the said affidavit, the Circle Officer on the basis of the survey conducted and the report submitted stated that as per the available Chita records, land measuring 3K-12.27L covered by Government Dag No. 1182 and land measuring 4.85L covered by Government Dag No. 1183, in total 3K-17.12L situated at revenue village Sahar Ulubari, First part, Mouza Ulubari in the district Kamrup (M) has been reserved for "cremation ground". It was further stated that some portion

of the land reserved for the cremation ground have been eroded and had already submerged in the river Bharalu. Therefore, the land which is reserved for the cremation ground has been substantially reduced. The Circle Officer stated that in view of the land reserved for cremation ground being reduced by erosion it may not be convenient for construction of the transportation system for the purpose of waste management in the Guwahati City as intended by the GMC on the land reserved for cremation ground. The relevant paragraph of the affidavit is extracted below:

“2. That the Circle Officer, Guwahati Revenue Circle, Guwahati in compliance with the order dated 22.06.2020 passed by the Hon’ble Gauhati High Court in connection with the case under reference, on the same day alongwith the L.R. Staff caused an inspection of the land of cremation ground located at Revenue Village- Sahar Ulubari 1st Part, Mouza-Ulubari, in the District-Kamrup (M), Assam. It is to be mentioned that in the available Chitha records land measuring 3 (three) Kathas 12.27 (Twelve point two seven) Lechas covered by Govt. Dag No. 1182 and land measuring 4.85 (Four Point Eight Five) Lechas covered by Govt. Dag No. 1183 in total 3(three) Kathas 17.12 (Seventeen Point One Two) Lechas situated at Revenue Village Sahar Ulubari 1st Part, Mouza-Ulubari, in the District-Kamrup(M), Assam has been reserved for “Cremation Ground”.

During field inspection, it is seen that the land reserved for Cremation Ground covered by aforesaid Govt. Dag No. 1182 and 1183 is situated parallellly to the Bharalu River. Some parts of land of the reserved cremation ground has been eroded and already submerged in the River Bharalu. Again, a bridge of the prominent R.K. Mission Road connecting both sides of the River Bharalu is also existed on the land covered by Govt. Dag No. 1182 and the bridge bifurcated the land covered by Govt. Dag No. 1182 into two parts, therefore, after measurement it is seen that the recorded land reserved for the Cremation Ground has been substantially reduced.

Therefore, as seen during field inspection, it may not be convenient for construction of the Transportation Station for the purpose of waste management in the Guwahati city intended by the GMC on the land reserved for the Cremation Ground.

Again the Circle Officer, Guwahati Revenue Circle, Guwahati has made an

inquiry regarding non-receiving of the earlier orders dated 12.05.2020 and 04.06.2020 passed by the Hon'ble Gauhati High Court in respect of the matter under reference and gone through the Receipt Register maintained in the office of the Circle Officer, Guwahati Revenue Circle regarding letter/ communication received but it is seen that the aforesaid orders dated 12.05.2020 and 04.06.2020 have not been received by the office. The Circle Officer, Guwahati Revenue Circle, Guwahati has also seen the relevant page of the Dak Book of the office of the Senior Government Advocate, Gauhati High Court relating receiving of the above orders but the signature of the person receiving the orders is not the signature of any officials presently working in the office of the Circle Officer, Guwahati Revenue Circle."

14. This affidavit was filed pursuant to another affidavit which was filed on 18.03.2019 by the Circle Officer. In Para-4 of the said affidavit, it was stated that land covered by Government Dag Nos. 1182 and 1183 were lying vacant and covered by wire fencing and as per the Chita records available, this land is reserved for 'Samsan'.

15. The GMC has also filed an affidavit as far back as 05.01.2016. By the said affidavit, it is averred that though the land covered by Government Dag Nos. 1183 and 1184 is reserved for Samsan but the same is not allotted to the petitioner. According to the GMC, the construction of the Electric Cremation and the construction of the garbage transport station are on different lands and therefore it disputed the contention raised by the petitioner society.

16. On perusal of the pleadings on record, more particularly, the affidavit filed by the Circle Officer on 17.03.2022, it is clear that from the land records available, the plot of land covered by Dag Nos. 1182 and 1183 is reserved for the cremation ground. It is also noted that the Circle Officer in his affidavit has stated that a portion of the land reserved for cremation ground has been eroded into the Bharalu river and thereby substantially reducing the land reserved for cremation ground. The Circle Officer in his affidavit has further stated during

field inspection, it was seen that the said land available may not be convenient for construction of transport station for the purpose of waste management in the Guwahati City as intended by the GMC on the land reserved for cremation ground.

17. During the course of the hearing, Mr. S Bora learned Standing counsel, GMC has also submitted on instructions that the proposal for construction of waste transport system at Ulubari in the land in question has been abandoned by the GMC as it has been found to be not feasible as per the requirement of the GMC. If that be so then there is no reason to keep the present writ petition pending. This Court is, therefore, of the considered view that this writ petition can be disposed of recording the submissions of the learned Standing Counsel, GMC that the proposal for construction by the GMC of the waste transportation system at Ulubari which was proposed to be constructed on Government Dag No 1182 and 1183 will no longer be proceeded with on the said plot(s) of land. Furthermore, the affidavit of the Circle Officer based on the land survey conducted in terms of the direction of this Court, categorically states that the Chita record reveal that dag no. 1182 and 1183 are reserved for cremation ground.

18. In view of such averments brought on record by way of an affidavit by the Circle Officer and which is not disputed by the GMC authorities, as well as in view of the statement made by the learned Standing Counsel, GMC, Mr. S. Bora, this writ petition can be closed at this stage by directing the Revenue Authorities not to alter the Chita records in respect of Dag nos. 1182 and 1183 which was stated to be a cremation ground, without put to notice all persons affected including the petitioner society, if such a need arises in the future. The petitioner society is at liberty to approach the relevant department in the

government for construction of modern electric crematorium and the authorities concerned will also take up the cause in right earnest subject to fulfilment of all norms and procedures.

19. The writ petition, is accordingly, disposed of in terms of the above. No order as to cost. Interim order, if any stands vacated.

JUDGE

Comparing Assistant