

GAHC010198152017



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

Case No. : WP(C)/3870/2017

RATAN DUTTA AND 15 ORS.
S/O LATE SACHINDRA DUTTA

VERSUS

THE UNION OF INDIA and 3 ORS
REP. BY THE GENERAL MANAGER, N.F. RAILWAY, MALIGAON,
GUWAHATI-11, DIST. KAMRUP M, ASSAM

For the petitioner (s) : Mr. P. C. Dey, Advocate

For the respondent (s) : Mr. A. Borkotoki, Advocate

BEFORE
HON'BLE MR. JUSTICE DEVASHIS BARUAH
O R D E R

18.09.2023

Sixteen writ petitioners herein have approached this Court under Article 226 of the Constitution challenging the orders dated 21.05.2017 and 17.05.2017 under Section 5 of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 (for short, 'the Act of 1971').

2. It is seen from the records that each of the petitioners were issued notices by the Estate Officer, N.F. Railways, Lumding under Section 4 of the Act of 1971 asking the petitioners to submit replies as to why the petitioners should not be evicted from the land under their possession in as much as in terms with the notice, the land mentioned in the schedule therein were Railway land. The petitioners thereupon did not submit replies but only submitted certain land documents claiming that they are in possession of their own Patta land. Thereupon, the Estate Officer, N.F. Railways passed orders in terms with Section 5 of the Act of 1971 on various dates. These orders have been put to challenge by filing the instant writ petition.

3. From a perusal of the orders impugned in the instant writ petition, it reveals that the Estate Officer, N.F. Railways, Lumding who has the authority and jurisdiction in terms with the Act of 1971, had issued the notices under Section 4 of the Act of 1971 and had also passed orders under Section 5 of the Act of 1971. Therefore, as the Estate Officer, N.F. Railways, Lumding has the jurisdiction and authority to do so, the said orders cannot be set aside by this Court on the ground of being without jurisdiction.

4. Mr. P. C. Dey, the learned counsel for the petitioners submits that the petitioners are actually residing in their own land for which pattas have been issued to them and not within the land as mentioned in the notices under Section 4 of the Act of 1971 as well in the orders passed by the Estate Officer, N.F. Railways under Section 5 of the Act of 1971. These aspects as to whether the petitioners are in possession of their own land or Railway land cannot be entertained by this Court under Article 226 of

the Constitution as the same relates to the disputed question of facts. The learned counsel for the petitioners, therefore, submits that the petitioners may be granted the liberty to file appeal under Section 9 of the Act of 1971 assailing the orders passed under Section 5 of the Act of 1971 which have been impugned in the instant proceedings.

5. Taking into account as to whether the petitioners are in occupation of their own land or Railway land are question of facts and the Appellate Authority, i.e. the District Judge, Karbi Anglong shall be in a position to adjudicate the said question of facts, this Court disposes of the instant writ petition with the liberty to the petitioners to avail orders under Section 9 of the Act of 1971.

6. This Court makes it clear that if the petitioners approach the District Judge, Karbi Anglong within 12 (twelve) days from today, the appeal so filed shall be heard on merit without insisting on the question of limitation.

7. The interim order passed herein on 22.06.2017 shall continue for a period of 12 (twelve) days, i.e. till 29.09.2023.

8. This Court further observes that the learned District Judge, Karbi Anglong shall decide such appeal without being influenced by the observation made herein, if so filed.

JUDGE

Comparing Assistant