

GAHC010206322016



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

Case No. : WP(C)/4846/2016

ADARSH HINDI L.P. SCHOOL
HOLDING NO.53, NEAR POWER HOUSE, W/NO.1, DIPHU TOWN, REP. BY
ITS HEAD MISTRESS CUM SECY., NAMELY MRS. BASANTI KILLINGPI, D/O
SWARAN SINGH ENGTI, R/O D.C. COLONY, DIPHU, P.O. DIPHU, DIST-
KARBI ANGLONG, ASSAM

VERSUS

THE STATE OF ASSAM AND 4 ORS
REP. BY THE SECY. TO THE GOVT. OF ASSAM, REVENUE DEPTT., DISPUR,
GHY-6

2:THE NORTH EAST FRONTIER RAILWAY
REP. BY ESTATE OFFICER
N.F. RAILWAY
LUMDING OFFICER
N.F. RAILWAY
LUMDING
DIST- DIPHU
ASSAM

3:THE GENERAL MANAGER
N.F. RAILWAY
MALIGAON
P.O. and P.S. MALIGAON
DIST- KAMRUP
ASSAM

4:THE DY. COMMISSIONER
KARBI ANGLONG
P.O. DIPHU
DIST- KARBI ANGLONG

ASSAM

5:THE UNION OF INDIA
REP. BY THE SECY. TO THE MINISTRY OF RAILWAY DEPTT.
NEW DELH

For the petitioner (s) : Mr. A. R. Sikdar, Advocate

For the respondent (s) : Mr. B. Sarma, SC, Railway

BEFORE
HON'BLE MR. JUSTICE DEVASHIS BARUAH
ORDER

30.08.2023

The instant writ petition has been filed by the petitioner challenging the order dated 13.05.2016 passed under Section 5 of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 (for short, 'the Act of 1971').

2. It reveals from the records that on 16.03.2015, a notice was issued under Section 4 of the Act of 1971 by the Estate Officer, N. F. Railway, Lumding thereby asking the petitioner to show cause as to why the said school, i.e. the petitioner should not be evicted under the provisions of the Act of 1971. The petitioner, accordingly, submitted the reply stating inter-alia that the petitioner's school has been running for the last 50 years in the said land. However, from the perusal of the said reply it does not reflect that there was a denial that the land is not Railway land.

3. Be that as it may, an order was passed under Section 5 of the Act of 1971 dated 13.05.2016 wherein it was held that the petitioner's school was in unauthorized occupation of Railway land and thereby directed the

petitioner's school to vacate within 30 days from the date of publication of the said order.

4. It appears thereupon that the petitioner filed the instant writ petition on 10.08.2016. This Court vide an order dated 17.08.2016, taking into account the submission made by the petitioner that the land wherein the school is situated is a Government land and not a Railway plot of land had stayed the order dated 13.05.2016 passed by the Estate Officer until further order.

5. It further reveals from the records that an affidavit-in-opposition was filed by the respondent authorities wherein it was stated that the school has been established on Railway land which is clear from the certified Land Plan No.L/6/54/63 jointly signed by the Railway Authority and State Civil Authority for which the school of the petitioner is liable to be evicted as per the provisions of the Act of 1971. It was further mentioned in the said affidavit-in-opposition that as the school building was constructed illegally by trespassing upon the Railway land, the petitioner's school has no right to remain in unauthorized occupation of Railway land. It was also mentioned that it being an admitted fact that the school building is situated 235 feet away from the Railway line and the Railway land extends upto 300 feet from the Railway line which is ascertained by the certified land plan, the case of the petitioner that the school of the petitioner stands on Government land is baseless.

6. This Court duly heard the learned counsels for the parties. The question which arises for consideration is as to whether the land upon which the school stands is a Government land or Railway land. These are the disputed question of facts and the fact Finding Authority has already

ascertained the same.

7. The learned counsel for the petitioner, during the course of argument submitted that as the disputed question of facts are involved, the petitioner may be given an opportunity to avail remedy under Section 9 of the Act of 1971 before the learned District Judge, Diphu which is the Appellate Authority.

8. This Court upon taking into consideration that there are disputed question of facts which cannot be entertained by way of the instant writ petition, grants the liberty to the petitioner to avail remedy under Section 9 of the Act of 1971 before the learned District Judge, Karbi Anglong. It is made clear that if the petitioner files an Appeal within a period of 12 days from the date of the instant order, the learned Appellate Authority shall not insist on the question of limitation.

9. The interim order passed earlier will only be valid for a period of 12 days from today.

10. It is made clear that the above observations shall not affect the adjudication of the Appeal by the Appellate Authority, if any appeal is preferred by the petitioner.

11. With the above observations and directions, the instant writ petition stands disposed of.

JUDGE