

GAHC010120342023



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

Case No. : WP(C)/2016/2014

DILIP KR. DAS
S/O LT. RAKESH RANJAN DAS
R/O RAMKRISHNHA MISSION ROAD
BYE LANE NO.3
P.O. GOPINATH NAGAR
GHY-16
KAMRUP METRO
ASSAM
VERSUS
THE UNION OF INDIA and 2 ORS
REPRESENTED BY THE ITS SECRETARY
MINISTRY OF RAILWAY
RAIL BHAWAN
RAISINA ROAD
NEW DELHI-01
2:THE NORTH EAST FRONTIER RAILWAY
MALIGAON
REPRESENTED BY ITS GENERAL MANAGER
MALIGAON
GHY-12
KAMRUP METRO
ASSAM
3:THE ESTATE OFFICER
NORTH EAST FRONTIER RAILWAY
MALIGAON
GHY-12
KAMRUP METRO
ASSAM

Linked Case : WP(C)/2017/2014

MANOJIT DAS GUPTA
S/O BINODE BEHARI DAS GUPTA
R/O RGBS ROAD

BYE LANE NO.4
BINOVA NAGAR
KAHILIPARA
GHY-18
KAMRUP METRO
ASSAM

VERSUS

THE UNION OF INDIA and 2 ORS
REPRESENTED BY ITS SECRETARY
MINISTRY OF RAILWAY
RAIL BHAWAN
RAISINA ROAD
NEW DELHI-1

2:THE NORTH EAST FRONTIER RAILWAY
MALIGAON
REPRESENTED BY ITS GENERAL MANAGER
MALIGAON
GHY-12
KAMRUP METRO
ASSAM

3:THE ESTATE OFFICER
NORTH EAST FRONTIER RAILWAY
MALIGAON
GHY-12
KAMRUP METRO
ASSAM

BEFORE

HON'BLE MR. JUSTICE DEVASHIS BARUAH

For the Petitioner : Mr. B. Sinha Advocate.

For the respondents : Mr. S. Chakraborty Advocate.

Date of hearing & judgment : 22.08.2023

JUDGMENT & ORDER

1. This Court proposes to dispose off both the writ petitions by this common judgment and order taking into account that both the writ petitions emanate from a common judgment dated 10.03.2014 passed by the learned Additional District Judge No.II, Kamrup(M) in Misc. Appeal No.10/2012 and Misc. Appeal No.11/2012. The facts involved in both the writ petitions are that the petitioners in both the writ petitions claim to be running their business establishments on respective plots of land being Plot No.5 and Plot No.7 of Cat-III Plan No.T/5/2012 situated at Westside of Guwahati Station under Dag no.3189 at revenue village Westside Guwahati Station, Mauja-Jalukbari, Kamrup(M), Assam.

2. The writ petitioners in both the writ petitions claimed that they are running their business establishments for the last 30 years. In the year 2006, the petitioners along with other similarly situated persons submitted a representation before the Chief General Manager, North-East Frontier Railway, along with all necessary documents for registration of their tenancy of land and payment of necessary fees before the respondent authority. On the basis of the said representation, the Assistant Divisional Engineer, NF Railway had issued a communication dated 06.08.2008 thereby instructing the SSE(W)/Guwahati, N.F. Railway to submit a detailed report along with a sketch plan clarifying the details (i) whether the plot of land can be spared for licence basis and (ii) whether the land would be required for further development by the railway authorities on the area. Thereupon it is not known what has happened to the said communication

dated 26.08.2008. Be that as it may prior thereto on 02.11.2006, the Principal Chief Engineer issued a communication to the Senior DEN, Maligaon that there were some shops over the railway land. He further stated in the said communication that notice should be served on all occupants, either to remove such unauthorized structures or agree for regularization as per the Railway terms which will enable the Railway to get revenue.

3. The Senior Sectional Engineer, Guwahati had to the said communication dated 02.11.2006 submitted on 06.12.2006 a sketch-map along with a report to the Senior DEN, Maligaon stating that petitioners in both the writ petitions were occupying the Railway land for the last 25 years and that the Railway may collect the revenue by giving licence to them. It was also mentioned in the said report that the land was not required for further development by the Railway authority as because the State Government had already developed the land by making concrete footpath. It is also intimated that seven numbers of plots including the plots where the petitioners were carrying on their business, the Railway may collect licence fee from those person from the date of occupation. However, nothing further happened for which the petitioners submitted various representations.

4. It is the further case of the petitioners that the show-cause-notices were issued on 29.05.2012 under the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 (hereinafter referred to as "the Act of 1971") to the petitioners in terms with Section 4 of the said Act. The petitioners duly submitted their reply on 12.06.2012 admitting *inter alia*, the lands belong to the Railways. However they submitted that they may be permitted to continue their

business establishments by granting licences them for carrying out their businesses.

5. The Estate Officer of the NF Railway on 12.06.2012 itself after hearing the parties passed the order under Section 5 of the Act of 1971, thereby directing that the petitioners are required to be evicted.

6. Being aggrieved, the petitioner in WP(C) No.2016/2014 and the petitioner in WP(C) No.2017/2014 filed two appeals before the learned District Judge, Kamrup(M) under Section 9 of the Act of 1971 which were registered as Misc. Appeal No.10/2012 and Misc. Appeal No.11/2012 respectively. The said appeals thereupon were endorsed to the Court of the Additional District & Sessions Judge (FTC) No.1, Kamrup for disposal. In the meantime, there were two other appeals which were also filed by two other persons, which were tagged along with Misc. Appeal No.10/2012 as well as Misc. Appeal No.11/2012. All the four appeals were disposed off vide judgment and order dated 10.03.2014 thereby dismissing the appeals. It is further relevant to take note that while dismissing the appeals, the petitioners who were the appellants were directed to vacate the Railway land under their respective possession within 30 days from the date of passing of the order. Being aggrieved by that common judgment and order dated 10.03.2014, both the writ petitions have been filed.

7. I have heard the learned counsel for the parties and have perused the materials on record.

8. The fact that the lands in question belong to the NF Railway is not in

doubt as it is an admitted fact as could be even seen from the reply so submitted by the petitioners before the Estate Officer. Under such circumstances, this Court finds no infirmity in the orders dated 12.06.2012 passed by the Estate Officer, NF Railway against the petitioners as well as also the common judgment and order dated 10.03.2014 passed by the learned Additional District & Sessions Judge (FTC) No.1, Kamrup at Guwahati.

9. Mr. B. Sinha, learned counsel for the petitioners however submitted that the petitioners have been doing their business for the last 30 years and as per the reports submitted by the Officials of the Respondents have been the reference to which have been supra, the officials of the respondent Railways have themselves admitted that the petitioners can be granted licence. He submitted that the petitioners may be given the liberty to submit their representation to the respondent authorities so that they may consider their representation taking into account that for more than 30 years the petitioners have been carrying their the business establishments and the entire livelihood of the petitioners as well as the family depends on the said business. This Court has given due and anxious consideration to the said matter and have also perused the material on record which also shows that some of the officials of the respondent Railways have recommended that the petitioners and similarly situated persons could be accommodated by giving them the licence so that the Railways does not lose the revenue. Taking into account the above, this Court, therefore, without interfering with the order passed by the Estate Officer, NF Railway dated 12.06.2012 as well as also the judgment and order dated 10.03.2014 passed by the learned Additional District & Sessions Judge (FTC) No.1, Kamrup in Misc. Appeal No.10/2012 and Misc. Appeal No.11/2012

disposes off both the writ petitions by granting liberty to the petitioners to submit representations before the General Manager, NF Railways. Mr. B. Sinha, learned counsel for the petitioners submits that the said representations shall be submitted within 15 days from today.

10. Taking into account the above, this Court, therefore, requests the General Manager of the NF Railways to consider the representations if so submitted by the petitioners, compassionately and if permissible as per the extant Rules as well as the policies of the Railways.

11. With the above, both the writ petitions stand disposed off.

JUDGE

Comparing Assistant