

GAHC010239052023



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

Case No. : CRP(IO)/340/2023

DIPUL DEKA
SON OF LATE HARI CHARAN DEKA,
RESIDENT OF MORIKOLONG,
NEAR LOYLA SCHOOL, MOUZA- TOWN,
P.S.- SADAR, DISTRICT- NAGAON,
ASSAM, PIN- 782001.

VERSUS

THE STATE OF ASSAM AND 3 ORS
REPRESENTED BY THE CHIEF SECRETARY,
GOVERNMENT OF ASSAM,
DISPUR, ASSAM, PIN- 781006.

2:THE DISTRICT COLLECTOR CUM DEPUTY COMMISSIONER
NAGAON
DISTRICT OFFICE OF THE DEPUTY COMMISSIONER
NAGAON

ASSAM
PIN- 782001.

3:THE CIRCLE OFFICER
SADAR REVENUE CIRCLE
NAGAON
OFFICE OF THE CIRCLE OFFICER
NAGAON
ASSAM

PIN- 782001.

4:MUKUL DEKA

SON OF LATE HARI CHARAN DEKA

RESIDENT OF MORIKOLONG

NEAR LOYLA SCHOOL

MOUZA- TOWN

P.S.- SADAR

DISTRICT- NAGAON

ASSAM

PIN- 782001

Advocate for the Petitioner : MR. P DEKA

Advocate for the Respondent : GA, ASSAM

**BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA**

ORDER

Date : 19.10.2023

Heard Mr. P. Deka, learned counsel for the petitioner. Also heard Mr. T.R. Gogoi, learned Government Advocate appearing for the respondent nos. 1, 2 and 3.

2) By this application under Article 227 of the Constitution of India, the petitioner has assailed the order dated 15.09.2023, passed by the learned Civil Judge (Senior Division), Nagaon in Misc. (J) Case No. 18/2022 in Misc. Appeal No. 5/2022. By the said order *ad interim* injunction was refused.

3) The petitioner has also assailed the order dated 05.04.2022, passed by the learned Civil Judge (Junior Division) No.1, Nagaon in Misc. (J) Case No. 166/2019 in T.S. No. 204/2019. By the said order prayer for *ad interim* injunction was rejected.

4) In short, the case of the petitioner is that he was served with a final notice dated 25.11.2019, by the Circle Officer, Sadar Revenue Circle, informing him that he had constructed RCC building over 1 lessa Government land covered by Dag No. 831, which was reserved for road. Accordingly, the petitioner was asked to demolish the house extending on the Government land within 48 hours or consequences of eviction would follow. The petitioner then filed the herein before referred suit, being T.S. No. 204/2019, *inter alia*, praying for a decree of declaration of his right, title and interest over the suit land described in Schedule-A of the plaint, which included the said 1 lessa Government land covered by Dag No. 831.

5) Along with the said suit application for *ad interim* injunction was filed. However, by final order passed in Misc. (J) Case No. 166/2019, prayer for temporary injunction was rejected. The refusal of temporary injunction, amongst others, was on the ground that the said 1 lessa government land was required for road widening and strengthening of road, which would affect public interest and public inconvenience will be more. Accordingly, having not found *prima facie* case for trial and balance of convenience, prayer for *ad interim* injunction was rejected.

6) Against the said order, appeal under Order XLIII, Rule 1(r) CPC was preferred. Along with the said appeal, an application for *ad interim* injunction, referred herein before, was filed. By separate orders passed in Misc. Appeal No. 5/2022 and Misc. (J) Case No. 18/2022, the appeal was dismissed and the prayer for *ad interim* injunction was rejected, amongst others, considering public interest.

7) The learned counsel for the petitioner had submitted that the finding of the learned Courts below were perverse because they had failed to

consider that the petitioner, through his grand-father and father had been occupying the suit land including the so called government land since long before independence and the PWD of the State, the road centre-line, etc. came later. It was also submitted that the road had seen widening from time to time and in the process it now appears as if the petitioner had encroached the Government land. It was also submitted that it would be a travesty of justice if the house of the petitioner is demolished now and if he succeeds in the suit, the losses that the petitioner would have suffered in the meantime cannot be computed or compensated in terms of money. It was further submitted that the Court had found fault with the petitioner for taking time before the Circle Officer on medical grounds and then filing the suit and accordingly, it appears that injunction was refused merely for filing the suit first.

8) The learned Government advocate had justified the refusal of injunction and has opposed the prayer for *ad interim* injunction, which would affect infrastructure project of widening of road.

9) Considered the submissions made by the learned counsel for the petitioner, the learned Government Advocate. Also considered the materials on record.

10) It would be relevant to refer to the provisions of Section 41 of the Specific Relief Act, 1963, which is extracted below:-

“41. Injunction when refused.- *An injunction cannot be granted -*

(a) to restrain any person from prosecuting a judicial proceeding pending at the institution of the suit in which the injunction is sought, unless such restraint is necessary to prevent a multiplicity of proceedings;

(b) to restrain any person from instituting or prosecuting any proceeding in a court not subordinate to that from which the injunction is sought;

(c) to restrain any person from applying to any legislative body;

(d) to restrain any person from instituting or prosecuting any proceeding in a

criminal matter;

(e) to prevent the breach of a contract the performance of which would not be specifically enforced;

(f) to prevent, on the ground of nuisance, an act of which it is not reasonably clear that it will be a nuisance;

(g) to prevent a continuing breach in which the plaintiff has acquiesced;

(h) when equally efficacious relief can certainly be obtained by any other usual mode of proceeding except in case of breach of trust;

(ha) if it would impede or delay the progress or completion of any infrastructure project or interfere with the continued provision of relevant facility related thereto or services being the subject matter of such project.

(i) when the conduct of the plaintiff or his agents has been such as to disentitle him to be the assistance of the court;

(j) when the plaintiff has no personal interest in the matter."

11) Now from the pleaded case of the petitioner, he is claiming right, title and interest over the suit land described in Schedule-A of the plaint. The said land is inclusive of 1 lessa Government land covered by Dag No. 831. It is not in dispute that the said land was reserved for road and that the Government requires the said land for widening of the road and for strengthening of the road. This, in the opinion of the Court would constitute infrastructure project as envisaged under Clause (ha) of Section 41 of the Specific Relief Act, 1963. Therefore, the Court does not find any infirmity with the concurrent finding of the learned Civil Judge (Junior Division) No.1, Nagaon and the learned Civil Judge (Senior Division), Nagaon in rejecting the prayer for injunction.

12) This Court is also of the considered opinion that widening and strengthening of public road is in greater public interest and that the private interest of the appellant must make way for public interest. Therefore, no case is made out by the petitioner to interfere with the following two impugned orders dated (i) 15.09.2023, passed by the learned Civil Judge (Senior Division), Nagaon in Misc. (J) Case No. 18/2022 in Misc. Appeal No. 5/2022; and (ii)

05.04.2022, passed by the learned Civil Judge (Junior Division) No.1, Nagaon in Misc. (J) Case No. 166/2019 in T.S. No. 204/2019.

13) If the petitioner is so advised, it would be open to him to make such additional and / or alternative prayer in the suit which would take care of his interest in the event his right, title and interest is declared by the learned Trial Court in respect of the Govt. land.

14) However, before parting with the records, it is clarified that the opinion expressed by both the learned Courts below in the orders impugned herein, as well as the observations made by this Court in this order shall not prejudice the parties when the suit is heard and decided in its own merit.

15) The appeal is dismissed in the "motion stage" without issuance of notice of the respondents.

JUDGE

Comparing Assistant