

GAHC010262072022



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

Case No. : WP(C)/180/2023

MD. AKTHAR HUSSIAN
S/O- MIYA BOX,
R/O- VILLAGE -AKARABARI,
MOUZA- DHING,
DIST- NAGAON, ASSAM

VERSUS

THE STATE OF ASSAM AND 5 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE GOVT.
OF ASSAM, EDUCATION DEPARTMENT (ELEMENTARY), DISPUR,
GUWAHATI-6

2:THE DIRECTOR OF ELEMENTARY EDUCATION
KAHILIPARA
GUWAHATI-19

3:THE DEPUTY COMMISSIONER
NAGAON
ASSAM

4:THE DISTRICT ELEMENTARY EDUCATION OFFICER
NAGAON
ASSAM

5:THE BLOCK ELEMENTARY EDUCATION OFFICER
BATADRABA
NAGAON
ASSAM

6:SCHOOL MANAGING COMMITTEE
DAKHIN MOIRADHAZ L.P SCHOOL .

REP. BY THE PRESIDENT AND SECRETARY.
VILL- AKORABARI

MOUZA- DHING
DIST- NAGAON
ASSA

Advocate for the Petitioner : MR. D P CHALIHA

Advocate for the Respondent : SC, ELEM. EDU

BEFORE
HONOURABLE MR. JUSTICE MANASH RANJAN PATHAK

ORDER

28.04.2023

Heard Mr. U P Chaliha, learned counsel for the petitioner and Mr. P K Bora, learned Standing counsel, Department of School Education, Assam for the respondent Nos. 1, 2, 4 & 5. Also heard Mr. P Saikia, learned Government Advocate, Assam for the respondent No. 3.

2. Petitioner donated land measuring 1 Bigha covered by Dag No. 528 and Patta No. 26 of village-Akaraguri Kisamat under Dhing Mouza of district-Nagaon, of which he was the Pattadar in favour of Dakhin Moiradhaz Lower Primary School in the Batadrawa Education Block of District-Nagaon for establishment of said Venture School.

3. The said school along with the students operated for long from the said land.

4. Services of Two of the Teachers of said Dakhin Moiradhaz L.P. School, namely, Rabia Khatun and Rukia Khatun have been provincialised under the provisions of the Assam Education (Provincialisation of Services of Teachers and Re-Organization of Educational Institutions) Act, 2017 as Tutors and have now been posted in other schools.

5. Further, the said Dakhin Moiradhaz Lower Primary School that was established on the land of the petitioner donated by him has been amalgamated with one Lalung

Chuburi New L.P. School and all the students of Dakhin Moiradhaz L.P. School have been shifted to the Lalung Chuburi New L.P. School.

6. Presently, there are no students in said Dakhin Moiradhaz L.P. School after its amalgamation with said Lalung Chuburi New L.P. School and the entire school buildings along with the land of said Dakhin Moiradhaz Lower Primary School remained vacant, idle and fallow/un-utilized since the premises of the said school is no longer in use for the purpose of the concerned school.

7. The petitioner submitted that the land donated by him has also been mutated in the name of the said school, namely, Dakhin Moiradhaz L.P. School.

8. As such, the petitioner has filed this writ petition, praying amongst others, for a direction to the respondent authorities claiming for handing over his said land back to him, since the land donated by him is no longer in use for the purpose for which it was donated.

9. From the statements made by the petitioner, it is seen that the services of the two Tutors of said Dakhin Moiradhaz L.P. School have been provincialised under the provisions of the Assam Education (Provincialisation of Services of Teachers and Re-Organization of Educational Institutions) Act, 2017.

10. Section 5 of the said 2017 Act relates to "Land, building etc. to vest with the Government", which stipulates as follows:

“(1) With effect from the date of provincialisation of the services of the teachers and/or tutors of the Venture Educational Institutions under this Act, the land, building and other assets of the concerned educational institution shall vest with the Government.

(2) In case of merger/or amalgamation of one educational institution with other educational institution, the land, building and other asset vacated by any such merged educational institution shall be used by the Government for other suitable purpose whatsoever.”

11. Since the Dakhin Moiradhaz L.P. School, which was a Venture Educational Institution, has been provincialised under the provisions of the said 2017 Act and services of its Teachers namely, Rabia Khatun and Rukia Khatun have also been

provincialised under the said 2017 Act, noted above, said land of the petitioner measuring 1 Bigha covered by Dag No. 528 of Patta No. 26 at village-Akaraguri Kisamat under Dhing Mouza of district-Nagaon as provided under Section 5 of the said 2017 Act has now been vested with the Government.

12. Further, since said Dakhin Moiradhaz L.P. School has been merged with Lalung Chuburi New L.P. School as provided under Section 5 (2) of the said 2017 Act, the land donated by the petitioner in the name of Dakhin Moiradhaz L.P. School now can be used by the Government for other suitable purpose.

13. Donation cannot be conditional, as it is settled that donation is always unconditional.

14. After hearing the learned counsels for the parties and considering the entire aspect of the matter, the Court found that this writ petition is devoid of any merit and accordingly dismissed.

JUDGE

Comparing Assistant