

GAHC010031202024



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

Case No. : WP(C)/919/2024

ABUL KASHEM MIAH
SON OF LT. HASHEM ALI BEPARI, VILL.- MOIRAKUCHI, P.O. AIRKATA, P.S.
FAKIRGANJ, DISTRICT- DHUBRI, ASSAM

VERSUS

THE STATE OF ASSAM AND 6 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE
GOVERNMENT OF ASSAM, PUBLIC WORK DEPARTMENT (ROADS),
DISPUR, GUWAHATI-6

2:THE JOINT SECRETARY TO THE GOVERNMENT OF ASSAM
REVENUE AND DISASTER MANAGEMENT DEPARTMENT
DISPUR
GUWAHATI-6

3:THE CHIEF ENGINEER
PWD (ROADS)
ASSAM
CHANDMARI
P.S. AND P.O. CHANDMARI
DIST.- KAMRUP (M)
GUWAHATI-3

4:THE DISTRICT COMMISSIONER
DHUBRI
P.S. DHUBRI
P.O. DHUBRI
DIST.- DHUBRI
ASSAM
PIN- 783301

5:THE EXECUTIVE ENGINEER
PWD DHUBRI RURAL ROAD DIVISION
P.S. DHUBRI

P.O. DHUBRI
DIST.- DHUBRI
ASSAM
PIN- 783301

6:THE EXECUTIVE ENGINEER
PWRD
GOALPARA WEST AND JALESWAR TERRITORIAL ROAD DIVISION
P.S. LAKHIPUR
P.O. LAKHIPUR
DIST.- GOALPARA
ASSAM
PIN- 783129

7:THE ASSTT. EXECUTIVE ENGINEER
PWD
TERRITORIAL ROAD SUB-DIVISION
DHUBRI
P.S. DHUBRI
P.O. DHUBRI
DIST.- DHUBRI
ASSAM
PIN- 78330

Advocate for the Petitioner : MR. M I HUSSAIN, MR. S M RAHMAN,MS. P AHMED,N.
UDDIN

Advocate for the Respondent : GA, ASSAM, SC, REVENUE,SC, PWD

BEFORE
HONOURABLE MR. JUSTICE SANJAY KUMAR MEDHI

ORDER

06-09-2024

Heard Shri M. I. Hussain, learned counsel for the petitioner. Also heard Ms. S. Sarma, learned Standing Counsel, PWD; Shri S. Dutta, learned Standing Counsel, Revenue Department and Shri M. Chetia, learned State Counsel.

2. The instant petition has been filed with the following prayer:

“In the premises aforesaid, it is therefore, most respectfully prayed that Your Lordships would be pleased to admit this petition, call for the records, issue Rule upon the respondents to show cause as to why a writ of Mandamus

should not be issued by directing the respondent authorities to pay the contractual bill amount of Rs. 7,06,000.00/- and Rs. 9,47,000.00/- totaling Rs. 16,53,000.00/- for two contractual works as mentioned above; and / or to comply with the order dated 22-06-2022 passed in WP(C) No. 172/2022 and/or upon perusal of the records and after hearing the parties, Your Lordship may be pleased to make the Rule absolute by granting complete and adequate relief to the petitioner and / or pass such other or further order or orders as Your Lordships may deem fit and proper.

-AND-

In the interim, It is prayed that pending disposal of the writ petition, the respondents may be directed to dispose of the application that may be allowed to file by the petitioner in the interest of justice."

3. It is apparent from the above that with the same cause of action, the petitioner had earlier filed WP(C)/1728/2022 in which, this Court had passed an order dated 22.06.2022.

4. The learned counsel for the petitioner has however submitted that the copy of the order passed by this Court was refused to be accepted in spite of several attempts and therefore there is intentional violation. In this regard, he has referred the pleadings in paragraph 12 of the writ petition.

5. The learned counsel for the respondents however has submitted that a second writ petition on the same cause of action is not maintainable. It is also submitted that in the earlier writ petition, affidavit was filed by the Deputy Commissioner wherein it was stated that in terms of the Judgment of the Hon'ble Full Bench in the case of ***Tamsher Ali Vs State of Assam*** reported in ***2008 (4) GLT 1***, the case of the petitioner would be dealt with. It has been submitted that from the pleadings, it would appear that the copy of the order itself was not furnished. It is also submitted that even if the averments made in paragraph 12 of the petition are assumed to be correct, the petitioner could

have sent the copy of the order by registered post which has not been done.

6. Shri Chetia, the learned State Counsel has submitted that when all certified copies of the orders of this Court are accepted, it is difficult to believe that the copy pertaining to the petitioner would be refused to be accepted.

7. The cause of action sought be espoused was the exact cause of action which was espoused in the earlier writ petition, as mentioned above. The said writ petition was disposed of by this Court vide order dated 22.06.2022. It is not known as to why the petitioner did not approach this Court by an appropriate petition alleging violation if at all the order copy was not accepted and the directions not complied with within the time prescribed. Approaching this Court for the same cause of action is barred in law under the doctrine of *res judicata*. In any case, so far as the relief sought is concerned, a writ Court cannot be an Executing Court for an order passed earlier.

8. In view of the above, the writ petition is held to be not maintainable and accordingly dismissed.

9. It is however made clear that the earlier direction passed by this Court after an affidavit by the Department may be taken into consideration and steps be taken for enlisting the petitioner as per the direction of the Hon'ble Supreme Court in ***Tamsher Ali*** (supra) provided the petitioner furnishes a copy of the earlier order to the respective authorities.

JUDGE

Comparing Assistant