

GAHC010053442024



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

Case No. : WP(C)/1608/2024

DILIP KR. DAS
S/O- LATE RAKESH RANJAN DAS ,
R/O- RAMKRISHNA MISSION ROAD, BYE LANE NO-3,
P.O- GOPINATH NAGAR, GUWAHATI-16, KAMRUP (M), ASSAM

VERSUS

THE UNION OF INDIA AND 3 ORS
REP. BY ITS SECRETARY MINISTRY OF RAILWAY, RAIL BHAWAN, RAISINA
ROAD, NEW DELH- 01

2:THE NORTH EAST FRONTIER RAILWAY
MALIGAON

REP. BY ITS GENERAL MANAGER MALIGAON
GHY-11
KAMRUP (M)
ASSAM

3:THE GENERAL MANAGER
NORTH EAST FRONTIER RAILWAY
MALIGAON
GHY-11
KAMRUP (M)
ASSAM

4:THE RAILWAY LAND DEVELOPMENT AUTHORITY
REP. BY ITS CHAIRMAN
UNIT NO-702-B
7TH FLOOR
KONNECTUS TOWER -2
DMRC BUILDING

AJMERI GATE
DELHI-0

Advocate for the Petitioner : MR. S SAIKIA

Advocate for the Respondent : DY.S.G.I.

BEFORE
HONOURABLE MR. JUSTICE MICHAEL ZOTHANKHUMA

ORDER

20.03.2024

1. Heard Mr. B. Sihna, learned counsel for the petitioner. Also heard Mr. K. Gogoi, learned CGC for the respondents.
2. The prayer of the writ petitioner is for setting aside the letter dated 19.02.2024 issued by the respondent no.3 rejecting the petitioner's representation dated 06.09.2023 for granting licence and lease on railway land which is under the possession of the petitioner. The further prayer made by the petitioner is for a direction to be issued to the respondents not to evict the petitioner from the railway land under his possession.
3. The petitioner's case in brief is that he is earning his livelihood by running grocery shop on a plot of land measuring 3.50 x 2.70 metres land under Plot No.Cat-III Plane No.T/5/2012 situated at west side of Guwahati Station, Mouza-Jalukbari, Kamrup(M), Assam for the last 30 years. Sometime prior to 02.11.2006, the Principal Chief Engineer issued a communication to the Senior DEN, Maligaon that there were some shops over the railway land which should either be removed or regularized to enable the railways to get revenue. A report

was made which showed that some constructions had been made and if the railway land was not required, the railways may collect Licence Fee from those persons, who were in occupation of railway land.

4. It is the further case of the petitioner that Show-Cause-Notice was issued to him on 29.05.2012 under Section 4 of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 (hereinafter referred to as "the Act of 1971"). The petitioner submitted his reply on 12.06.2012 and prayed that he may be allowed to continue his business establishment by granting licence to him for the same. The Estate Officer of NF Railway, after hearing the petitioner passed order dated 12.06.2012 under Section 5 of the Act of 1971, directing that the petitioner be evicted from the railway land.

5. Being aggrieved, the petitioner filed Misc. Appeal No.10/2012 in the Court of the Additional District Judge No.2, Kamrup (M), Guwahati under Section 9 of the Act of 1971. The appeal was disposed of, vide a common judgment and order dated 10.03.2014, involving three other appeals by dismissing the petitioner's appeal. The petitioner was also directed to vacate the railway land within 30 (thirty) days from the date of passing of the order. Being aggrieved by the judgment and order dated 10.03.2014 passed in Misc. Appeal No.10/2012, the petitioner put the same to challenge in WP(C) No.2016/2014.

6. WP(C) No.2016/2014 was disposed of vide judgment and order dated 22.08.2023 by holding that as it was an admitted fact that the land in possession of the petitioner belonged to NF Railway, no infirmity could be found in the order dated 12.06.2012 passed by the Estate Officer, NF Railway against

the petitioner, as well as the common judgment and order dated 10.03.2014 passed in four Misc. Appeals, which included the Misc. Appeal No.10/2012 passed by the Additional District & Sessions Judge (FTC) No.1, Kamrup. However, considering the fact that the petitioner had been doing business for the last thirty years and as the petitioner's counsel had prayed to the Court, to give liberty to him to submit a representation to the railway authorities, to allow him to continue doing his business in railway land, this Court granted liberty to the petitioner to submit a representation before the General Manager, NF Railway (respondent no.3), who was requested thereafter to consider the petitioner's representation.

7. Paragraph nos.8 & 9 of the judgment and order dated 22.08.2023 passed in WP(C) No.2016/2014 are reproduced herein below as follows :

“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."

8. In pursuance to the judgment and order dated 22.08.2023 passed in WP(C) No.2016/2014, the petitioner submitted a representation dated 06.09.2023 to the respondent no.3, with a prayer to grant him licence and lease of the land under possession of the petitioner. The petitioner's representation dated 06.09.2023 was rejected by the respondent no.3, vide letter dated 19.02.2024.

9. Being aggrieved by the rejection of his representation dated 06.09.2023, the petitioner has approached this Court.

10. As can be seen from paragraph nos.8 & 9 of the judgment and order dated 22.08.2023 passed in WP(C) No.2016/2014, this Court has upheld the order dated 12.06.2012 passed by the Estate Officer, NF Railway as well as the judgment and order dated 10.03.2014 passed by the learned Additional District

Judge No.2, Kamrup(M), Guwahati in Misc. Appeal No.10/2012. Further, the petitioner's representation dated 06.09.2023 has also been rejected. The judgment and order dated 22.08.2023 passed in WP(C) No.2016/2014 has attained finality as on date and the same has not been put to challenge by the petitioner. In that view of the matter, this Court does not find any ground to allow the present writ petition.

11. The writ petition is accordingly dismissed.

JUDGE

Comparing Assistant