

GAHC010086662024



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

Case No. : WP(C)/2308/2024

NAZMA KHATUN
D/O- SAIJUDDIN SK, R/O- VILLAGE- BHIMAPARA, P.O. FULERCHAR, P.S.
SOUTH SALMARA, DIST.- SOUTH SALMARA MANKACHAR, ASSAM, PIN-
783135

VERSUS

THE STATE OF ASSAM AND 2 ORS
REPRESENTED BY THE COMMISSIONER AND SECY TO THE GOVT. OF
ASSAM, REVENUE AND DM (LR) DEPARTMENT, DISPUR, GHY-06

2:THE DISTRICT COMMISSIONER
SOUTH SALMARA MANKACHAR
HATSINGIMARI
PIN- 783135

3:THE CIRCLE OFFICER
MANKACHAR REVENUE CIRCLE
P.O. MANKACHAR
DISTRICT- SOUTH SALMARA MANKACHAR
ASSAM
PIN- 78313

Advocate for the Petitioner : MR M A ISLAM

Advocate for the Respondent : GA, ASSAM

BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA

ORDER**Date : 03-05-2024**

Heard Mr. MA Islam, learned counsel for the petitioner as well as Ms. P.R. Mahanta, learned standing counsel for the Revenue Department for the respondent no.1 and Mr. H. Sarma, learned Senior Govt. Advocate for the respondent nos.2 and 3.

2. The case projected by the petitioner is that she is running a stationery shop at a location opposite to the Office of the District Commissioner, South Salmara Mankachar, Hatsingimari since 2012. The petitioner was served with an eviction notice dated 03.02.2024 by the Circle Officer, Mankachar Revenue Circle for eviction of the road side shops for the purpose of the expansion of Hatsingimari Mankachar road. The petitioner has submitted representations dated 05.02.2024 and 06.02.2024 to the District Commissioner, South Salmara Mankachar, Hatsingimari and to the Assistant section Officer, Mankachar Circle Office, for allotment of a suitable plot of land to establish her stationery shop.

3. It is projected that the land revenue staff of the Circle Officer, Mankachar Revenue Circle has allotted a small plot of land to the petitioner near the office of the District Commissioner, Hatsingimari after demarcating the land where upon the petitioner had constructed a shop spending a substantial amount of money. However, on 25.04.2024, the Revenue Officials of the Circle Office, Mankachar Revenue Circle came with Bulldozers and attempted to demolish the shop of the petitioner.

4. The learned counsel for the petitioner submits that the petitioner was entitled to a fresh notice before making an attempt to evict her from her new shop. It is submitted that the right of being heard and to provide natural justice is an inherent facet of the Constitution of India. It is also submitted that the

respondent authorities had to first establish that the land was required for public purpose and only thereafter, by compliance with the requirement of issuance of prior notice under the Assam Public Premises (Eviction of Unauthorized Occupants) Act 1971, further steps could have been taken.

5. In support of her submissions, the learned counsel for the petitioner has cited the following three cases: (1) Century Spinning and Manufacturing Company Ltd. and another v The Ulhasnagar Municipal Council and another, AIR 1971 SC 1021; (2) State of Uttar Pradesh and ors v Maharaja Dharmender Prasad Singh and ors., AIR 1989 SC 997 and (3) The Government of Mysore and others v J.V. Bhat and others, AIR 1975 SC 596.

6. The learned Addl. Senior Govt. Advocate, pursuant to order passed on 01.05.2024, has produced a copy of instructions dated 02.05.2024, received from the Addl. District Commissioner, South Salmara, Mankachar, Hatsingimari whereby it is denied that the petitioner was allotted any land for the shop and it is specifically stated that after the petitioner was evicted from the original place of her shop, she had constructed shop on the other side of the road illegally.

7. At the outset, it would be appropriate to refer to the provision of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 as well as to deal with the three case laws cited by the learned counsel for the petitioner.

8. A Public Premises is defined under section 2(e) of the 1971 Act. The said provision is quoted below:

"(2) (e) public premises means-

(1) any premises belonging to, or taken on lease or requisitioned by, or on behalf of the Central Government, and includes any such premises which

have been placed by the Government, whether before or after the commencement of the Public Premises (Eviction of Unauthorized Occupants) Amendment Act, 1980 (61 of 1980), under the control of the Secretariat of either House of Parliament for providing residential accommodation to any member of the staff of that Secretariat;

(2) any premises belonging to, or taken on lease by, or on behalf of,-

(i) any company as defined in section 3 of the Companies Act, 2013 in which not less than fifty-one per cent of the paid up share capital held by the Central Government or any company which is a subsidiary (within the meaning of that Act) of the first-mentioned company;

(ii) any corporation (not being a company as defined in section 3 of the Companies Act, 2013, or a local authority) established by or under a Central Act and owned or controlled by the Central Government;

(iii) any company as defined in clause (20) of section 2 of the Companies Act, 2013 in which not less than fifty-one per cent. of the paid up capital is held partly by the Central Government and partly by one or more State Governments and includes a company which is a subsidiary (within the meaning of that Act) of the first mentioned company and which carries on the business of public transport including metro railway.

Explanation.- For the purpose of this item, 'metro railway' shall have the same meaning as assigned to it in clause (i) of sub-section (1) of section 2 of the Metro Railway (Operation and Maintenance) Act, 2002;

(iiia) any University established or incorporated by any Central Act,

*(iv) any Institute incorporated by the Institutes of Technology Act, 1961;
(v) any Board of Trustees or any successor company constituted under or referred to in the Major Port Trusts Act, 1963;*

(vi) the Bhakra Management Board contained under section 79 of the Punjab Reorganization Act, 1966 (31 of 1966), and that Board as and when re-named as the Bhakra-Beas Management Board under sub-section (6) of section 80 of that Act,

(vii) any State Government or the Government of any Union Territory situated in the National Capital Territory of Delhi or in any other Union Territory;

(viii) any Cantonment Board constituted under the Cantonments Act, 1924 (2 of 1924);

(4) any premises of the enemy property as defined in clause (c) of section 2 of the Enemy Property Act, 1968 (34 of 1968)."

9. Therefore, from the above there is no doubt that a public road or a road side land is not covered by the definition of Public premises.

10. In the case of Century Spinning and Manufacturing Company Limited and another (supra), the said case is related to the enforcement of the provisions of the Maharashtra Municipalities Act, 1965 relating to levy, assessment, collection recovery of octroi. It is in the said context that the said decision was passed by observing that the public bodies are as much bound as private individuals to carry out representations of facts and promises made by them.

11. In the present case in hand, there is no record of the district administration

or any representatives under it of having allotted road side land to the petitioner for setting up a shop. Therefore, it cannot be accepted that a promise was made by the responding authorities in allotment of land for establishing up a shop. If any such allotment was made that would be expressly illegal as the settlement of land within the exclusive jurisdiction of the State Govt., and all such actions are to be taken in the name of the Governor, which was not followed in this case.

12. In the case of the Government of Mysore and others (*supra*), the reference to the case of State of Orrisa v Dr. (Miss) Binapani Dei and ors., AIR 1967 SC 1269, was made, wherein observation was made that the rule that a party whose prejudice an order is intended to be passed is entitled to hearing applies alike to judicial tribunals and bodies of persons invested with authority to adjudicate upon matters involving civil consequences. We have no doubt that a citizen is protected from any arbitrary action of the State. However, in this case in hand, there is an admission by the petitioner on record that she was served with a notice of eviction and that the petitioner had merely moved her shop to a new location within the close vicinity of the Office of the District Commissioner, South Salmara Mankachar. Therefore if there is a repeated encroachment of a Govt. land after service of eviction notice, the Court is of the considered opinion that a fresh proceeding or notice for eviction would not be required for such cases. A person who has been threatened with eviction by issuing notice, cannot be permitted to make a fresh encroachment over a nearby locality and insist on being issued a fresh notice. Therefore, the said case of *Govt. of Mysore (supra)* does not help the petitioner in any manner.

13. With regard to the case of State of Uttar Pradesh and ors (*supra*), in the

said case, the State Govt. had granted lease to the affected persons and thereafter, the lease were canceled by the State Govt. In the said context, the Supreme Court of India had observed that a lessor has no right to resume possession extra-judicially by use of force. The said principle will not apply in the present case in hand where the petitioner has not been able to demonstrate that she is a lawful occupant in respect of the land where the shop of the petitioner has been located. Therefore the said case also does not help the petitioner.

14. The petitioner has not been able to show that there is any vested right to have an allotment of the road side land. It cannot be accepted that if the roadside land is encroached, the appropriate Govt. would not be able to evict the encroacher after issuance of notice, which was done in this case and it is the admitted case of the petitioner that after being issued with a notice of eviction, she has changed the site of the shop.

15. We have already held that once a notice of eviction was issued and thereafter, if the site is altered, eviction process against the petitioner will not be bad in law.

16. Therefore, the Court does not find this to be a fit case to entertain the writ petition as the petitioner has encroached another nearby road side land to which she has no fundamental or any other enforceable right, and that to after being served with an eviction notice, for which no fresh proceeding is required.

17. Accordingly, the writ petition stands dismissed at the motion stage without issuance of notice on the respondents.

JUDGE

Comparing Assistant