

GAHC010172192024



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

Case No. : WP(C)/4330/2024

RITA ROY
WIFE OF SRI DULAL CHANDRA ROY,
RESIDENT OF JOYMOTI NAGAR,
NEW COLONY, PANDU,
P.S.- JALUKBARI, GUWAHATI- 781012,
DISTRICT- KAMRUP(M), ASSAM.

VERSUS

THE UNION OF INDIA AND 3 ORS
REPRESENTED BY THE SECRETARY,
MINISTRY OF RAILWAY,
RAIL BHAWAN, NEW DELHI.

2:THE GENERAL MANAGER
NORTH EASTERN FRONTIER RAILWAY
GUWAHATI- 781011.

3:THE SENIOR DIVISIONAL ENGINEER
N.F. RAILWAY
MALIGAON
GUWAHATI- 781011.

4:THE ESTATE OFFICER
N.F. RAILWAY
MALIGAON
GUWAHATI- 781011

For the Petitioner(s) : Mr. G. Pathak, Advocate

For the Respondent(s) : Mr. K. Gogoi, CGC

Date of Hearing : **31.08.2024**

Date of Judgment : **31.08.2024**

**BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH**

JUDGMENT AND ORDER (ORAL)

Heard Mr. G. Pathak, the learned counsel appearing on behalf of the Petitioner and Mr. K. Gogoi, the learned CGC appearing on behalf of the Railway Authorities.

2. The instant writ petition has been filed challenging the eviction proceedings initiated against the Petitioner under the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 (for short, "the Act of 1971") as well as the judgment dated 19.06.2024 passed in Misc. Appeal No.4/2016 by the Court of the learned Additional District Judge, (FTC) No.3, Kamrup (M) at Guwahati.

3. From a perusal of the materials on record, it is seen that the Estate Officer of the N.F. Railway had issued two notices under Section 4 of the Act of 1971 to Shri Dulal Chandra Roy who is the husband of the Petitioner. Both the notices were in respect to different plots. In Eviction Case No. EO/MLG/4514/2015, the land in question was Plot No.1, 2 (Cat-1) and in Eviction Case No. EO/MLG/4515/2015, the land in question was plot No. 3, 4, 5 (Cat-1). To the said notices, the husband of the Petitioner duly submitted replies. Pursuant to the said replies and upon examination of the documents vide two separate orders both dated 09.02.2016 in both eviction cases, the Estate Officer directed the husband of the Petitioner to vacate the

land in question.

4. Being aggrieved by the said order, the Petitioner herein who is the wife of the said Shri Dulal Chandra Roy filed an appeal being Misc. Appeal No.4/2016 challenging both the orders of eviction. In the said appeal, the Petitioner as appellant submitted that the land is a Government khas land and not the Railway land and in that regard, she had applied for settlement of the said plot of land before the District Revenue Authority of the Government of Assam. It is the further case of the Petitioner that the Petitioner has been residing in the said plots of land since 1980 by constructing dwelling houses and the houses have been given municipal holding by the GMC Authorities. In addition to that, the Petitioner has also an electricity connection provided by the APDCL Authorities. The Petitioner further assailed the order of eviction passed by the Estate Officer on the ground of violation of the principles of natural justice.

5. The Railway Authorities challenged the maintainability of the said appeal on two grounds. First, Shri Dulal Chandra Roy did not assail the orders of eviction and as such the orders passed in the two eviction proceedings had attained finality. Secondly, filing of one single appeal against two separate orders of eviction in two separate proceedings was not permissible. It is seen from the judgment passed by the learned First Appellate Court dated 19.06.2024, that the learned First Appellate Court did not find merit in both the questions as regards the maintainability of the appeal and as such decided the said appeal on merits. On merits, the learned First Appellate Court came to a finding that the orders passed by the Estate Officer dated 09.02.2016 in both the eviction proceedings were in

accordance with law and did not require any interference and accordingly dismissed the appeal on merits vide the judgment dated 19.06.2024. Being aggrieved, the present writ petition has been filed.

6. This Court while entertaining the writ petition on 30.08.2024 and finding prima facie there being no illegality in the impugned order provided an opportunity to the Petitioner to file an undertaking if they wanted some reasonable time to vacate and accordingly, fixed the matter today. The learned counsel appearing on behalf of the Petitioner submitted to the Petitioner is not inclined to submit any undertaking and as such submitted that the matter be decided on its own merits.

7. Taking into account the above, let this court therefore take note of the respective submission of the parties.

8. The learned counsel appearing on behalf of the petitioner submitted that the Respondent Railway Authorities have singled out the Petitioner and there are many other houses wherein no such steps have been taken. Under such circumstances, as the Respondent Authorities had taken such an action arbitrarily to only evict the Petitioner, the impugned eviction proceedings is required to be set aside. He further submitted that this is not the case where the Railway requires the land for any infrastructure project. He submitted that if the Railway Authorities required the land for any infrastructure project, the Petitioner would have no objection in vacating the land. However, there being nothing but only an arbitrary action to evict the Petitioner for vested reasons.

9. On the other hand, Mr. K. Gogoi, the learned CGC appearing on behalf

of the Respondent Railways submitted that not only the Petitioner but also all the encroachers of the Railway land in and around the Petitioner houses would be evicted and in that regard, the process have already been initiated. However, in view of the order passed by this Court, the same was stalled. He submitted that the land which would be cleared from the eviction would be required for few infrastructural development of the Railways i.e. for the proposed new Rail cum Road over bridge on Brahmaputra River and also for better water supply project which is demanded by the occupants of the Railway Quarters as well as other public. He further submitted that in view of the proceedings before the First Appellate Authority going on for the last 8 years, the said projects had to be stalled. In that regard, he has placed before this Court an instruction issued by the Divisional Engineer/Guwahati, N.F. Railway which is kept on record and marked with the letter "X".

10. This Court has duly heard the learned counsels appearing on behalf of both the parties. Though various points were raised before the learned First Appellate Authority on the grounds of violation of natural justice; that the land is a Government land and not Railway land; as well as the notice under Section 4 was not in accordance with the provisions of the Act of 1971 but the counsel for the Petitioner in the instant proceedings is not raising the said issues taking into account the findings of fact arrived at. His sole submission was in respect to the alleged vindictive attitude of the Respondents to evict the Petitioner.

11. Be that as it may, this Court has perused the impugned judgment more particularly the analysis and determination of the point of determination No.(C) and this Court finds no infirmity in the judgment dated

19.06.2024 passed in Misc. Appeal No.4/2016. The reasons are two fold. First, the learned First Appellate Authority had duly considered the evidence on record as was placed and secondly, the Petitioner herein who was the Appellant completely failed to produce any document to the effect that the land in question is a Government land and not Railway land. Today also, this Court duly gave an opportunity for producing any document which would show that it is a Government land which the Petitioner had failed to do so. Under such circumstances, it is the opinion of this Court that the land in question would fall within the ambit of "Public Premises" as defined in Section 2(e) of the Act of 1971.

12. In the backdrop of the above, let this Court consider the submission of the learned counsel for the Petitioner. The learned counsel for the petitioner has submitted that the Petitioner had been singled out in carrying out the eviction proceedings. However, from the perusal of the instructions which was placed, the said submissions seems to be misconceived taking into account that the said Railway land along with the nearby vicinity lands wherein there are encroachers would be cleared for the purpose of carrying out the proposed new Rail cum Road over bridge on the Brahmaputra River as well as for better water supply project which is demanded by the occupants of the Railway Quarters as well as other public. It is also seen from the notices which were issued to Shri Dulal Chandra Roy that the said person who is the husband of the Petitioner was occupying 5 plots of land i.e. Plot No.1, 2 (Cat-1) and 3, 4, 5 (Cat-1) that too without any authorization from Railway Authorities. The materials on record further shows that the land in question are Railway lands and nothing could be shown on records that the Petitioner had any source of right over the said

lands. Merely having GMC Holding or Electricity connection cannot confer any right to remain in possession of Railway lands.

13. Consequently, this Court finds no reason for exercising powers of judicial review in the instant proceedings for which the writ petition stands dismissed.

14. Interim order passed on 30.08.2024 stands vacated.

JUDGE

Comparing Assistant