

GAHC010202112017



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

Case No. : WP(C)/6030/2017

GOPINATH BORDOLOI MEMORIAL HIGH SCHOOL AND ANR
REP. BY HEAD MASTER, BISHNU PRASAD BORKOTOKY

VERSUS

THE STATE OF ASSAM AND 9 ORS
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM,
EDUCATION, DEPARTMENT, DISPUR, GUWAHATI-6.

Advocate for the Petitioner : MRS.R BORBORA

Advocate for the Respondent : GA, ASSAM

BEFORE
HONOURABLE MR. JUSTICE N. UNNI KRISHNAN NAIR

ORDER

Date : 06.06.2024

Heard Mr. M. Smith, learned counsel for the petitioner. Also heard Mr. S.M.T. Chistie, learned standing counsel, Secondary Education Department, appearing on behalf of respondents No. 1 & 2; Ms. Usha Das, learned Addl. Senior Government Advocate, Assam, appearing on behalf of respondents No. 3, 4 & 5; and Ms. Chandana Sharma, learned counsel, appearing on behalf of respondents No. 6, 7, 8, 9 & 10.

2. The grievance as raised by the petitioner school, in the present proceeding, pertains to the encroachment of its land by the private respondents No. 6, 7, 8, 9 & 10, herein, and for their eviction therefrom; restoring to the school, the land, it originally so possessed.

3. The petitioner school i.e. Gopinath Bordoloi Memorial High School has instituted the present proceeding through its Headmaster. The said school was initially set-up in the year 1953 on a land belonging to a Tea Company. In terms of a lease agreement entered into by the Tea Company and the School Managing Committee(SMC) of the said school in the year 1956; a parcel of land measuring 6B 3K 18 L was handed-over to the said school. Although the said school was initially set-up as an Upper Primary School, however, the school over a period of time, was upgraded and the Board of Secondary Education, Assam, granted its permission for opening the Classes of the said school upto Class-X w.e.f. 01.01.1963.

4. It is contended in the writ petition that the ME Schools as well as the High Schools were provincialized w.e.f. 01.02.1985, and thereafter, the said schools were amalgamated and functioned in the name and style of Gopinath Bordoloi Memorial High School. It is also contended that over a period of time; various persons had started constructing temporary houses within the land ear-marked for the said school by demolishing the boundary posts. The petitioner school had approached the competent authorities for eviction of the encroachers of the school land. However, the respondent authorities have not taken the requisite steps as mandated in the matter and accordingly, the students studying in the said school are suffering on account of the school playground area being reduced to a smaller area because of such encroachment.

5. Having not found any response from the respondent authorities to the repeated pleas raised before them for eviction of the encroachers including the private respondents, herein, the petitioner school have instituted the present proceeding.

6. At the outset, it is to be noted that the said school is projected to be a school provincialized w.e.f. 01.02.1985. It has also been admitted in the writ petition that on provincialization of the said school, the land as possessed by the school and the premises

thereof, came to be vested with the State and was thereafter, treated as a Government property.

7. In view of the said position; the Headmaster of the said school i.e. Gopinath Bordoloi Memorial High School would have no locus to institute the present proceeding in-as-much as the school is not a private school but a Government school upon it being so provincialized by the respondent authorities.

8. In view of the fact that the present writ petition was not so instituted by the said school after having received requisite permission from the departmental authorities; this Court holds that the present writ petition would not be maintainable.

9. However, given the issue raised in the present proceeding and also keeping in view the interest of the students studying in the said school; this Court is not proceeding to dismiss this writ petition on the ground of the same having been so instituted by the petitioner school without any locus.

10. The present proceeding having brought to light, the encroachment of the land of the said school and the consequential effect of the same on the students studying therein; this Court is of the considered view that the grievance as raised by the petitioner school in the present proceeding, could be redressed by the district administration by acting in the matter in accordance with the provisions of law.

11. In view of the above conclusions reached by this Court; the School Managing Committee(SMC) of Gopinath Bordoloi Memorial High School, is now required to approach the jurisdictional Inspector of Schools by way of submitting a representation requesting the said authority for initiation of measures for eviction of the encroachers from

the land of the said school. In the said representation, the School Managing Committee(SMC) of the school, shall set-out in details in the matter, the particulars of the land that was so vested in the school along with description of the land. The necessary documents in this connection should also be annexed to the said representation by the School Managing Committee(SMC) of the said school.

12. The jurisdictional Inspector of Schools, on receipt of such representation, shall forward the same to the jurisdictional District Commissioner with a request to examine the grievance as raised by the School Managing Committee(SMC) of the said school therein and to take appropriate steps for restoring the land of the petitioner school.

13. The jurisdictional District Commissioner, on receipt of such representation from the School Managing Committee(SMC) of the said school through the jurisdictional Inspector of Schools; shall cause an inquiry in the matter by drawing appropriate proceedings as may be mandated under the law and by affording an opportunity of hearing to the School Managing Committee(SMC) of the school as well as the private respondents No. 6, 7, 8, 9 & 10 and/or any other person/persons interested in any manner in the matter and thereafter, proceed to arrive at its conclusions in the matter.

14. In the event, it is found that the private respondents No. 6, 7, 8, 9 & 10, are encroachers of the land of the petitioner school; appropriate steps as may be mandated in the matter for eviction of such encroachers from the Government land, shall be so taken and the land belonging to the said school be restored.

15. The decision that would be arrived at in the matter by the jurisdictional District Commissioner, shall be so communicated to the petitioner school as well as the private respondents No. 6, 7, 8, 9 & 10 and/or any other person/persons found to have interest in

the matter in the form of a speaking order.

16. It is required by this Court that the jurisdictional Inspector of Schools shall pursue the matter with the district administration till the matter is so resolved.

17. The exercise as now required to be carried-out in terms of the directions passed by this Court hereinabove, shall be so initiated and completed by the jurisdictional District Commissioner within a period of 3(three) months from the date of receipt of the representation along with a certified copy of this order from the jurisdictional Inspector of Schools.

18. With the above directions and observations, this writ petition stands disposed of.

JUDGE

Comparing Assistant