

GAHC010235062023



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

Case No. : WP(C)/6415/2023

HABIBUR RAHMAN
S/O- LATE MOSLEM UDDIN,
R/O- VILL.- TINSUKIA,
P.S.- JURIA,
P.O.- TINSUKIA,
DISTRICT- NAGAON, ASSAM,
PIN- 782124.

VERSUS

THE STATE OF ASSAM AND 12 ORS
REPRESENTED COMMISSIONER AND SECRETARY,
PUBLIC HEALTH ENGINEERING (WATER) DEPARTMENT,
DISPUR, GUWAHATI-06.

2:THE DEPUTY COMMISSIONER
DISTRICT NAGAON
ASSAM
PIN- 782002.

3:THE CHIEF ENGINEER
PUBLIC HEALTH ENGINEERING (WATER) DEPARTMENT
HENGRABARI
GUWAHATI-36.

4:THE ADDITIONAL CHIEF ENGINEER
PUBLIC HEALTH ENGINEERING (WATER) DEPARTMENT
ITACHALI
NAGAON
ASSAM

PIN- 782003.

5:THE EXECUTIVE ENGINEER
PUBLIC HEALTH ENGINEERING DEPARTMENT
NAGAON DIVISION
MOKHULI

DISTRICT- NAGAON
ASSAM

PIN- 782003.

6:THE ASSISTANT ENGINEER
PUBLIC HEALTH ENGINEERING DEPARTMENT
NAGAON
ITACHALI

DISTRICT- NAGAON
ASSAM

PIN- 782003.

7:THE SECTIONAL OFFICER
PUBLIC HEALTH ENGINEERING DEPARTMENT
SINGIA SECTION
NAGAON MOKHULI
ASSAM

PIN- 782003.

8:THE BLOCK DEVELOPMENT OFFICER
JURIA DEVELOPMENT BLOCK
DAGAON
NAGAON
ASSAM

PIN- 782124.

9:THE PRESIDENT
TINSUKIA GAON PANCHAYAT
DISTRICT- NAGAON
ASSAM

PIN- 782124.

10:MANDEEP BHORALEE (AEE)
KOLIABOR PUBLIC HEALTH ENGINEERING DEPARTMENT
NAGAON

KALIABOR DIVISION.
DISTRICT- NAGAON
ASSAM.
PIN- 782120.

11:SIRAJUL ISLAM
KHALASI PUBLIC HEALTH ENGINEERING DEPARTMENT

S/O- LT. AMJAD ALI

VILLAGE- DHING BORI PATHAR

DISTRICT- NAGAON (ASSAM)

PIN- 782124.

12:KAMRUN NEHAR
W/O- RABBUL HUSSAIN

PRESIDENT OF TINSUKIA GAON PANCHAYAT

DISTRICT- NAGAON
ASSAM

PIN- 782124.

13:RABBUL HUSSAIN
S/O- IBRAHIM ALI

VILLAGE AND P.O.- TINSUKIA

P.S.- JURIA
DISTRICT- NAGAON (ASSAM)

PIN- 782124

Advocate for the Petitioner : MR. S BANIK, MR. K ISLAM,MR A RASHID,MR M CHETIA

Advocate for the Respondent : SC, P H E, GA, ASSAM

**BEFORE
HONOURABLE MR. JUSTICE N. UNNI KRISHNAN NAIR**

Judgment & Order (Oral)

Date : 09.09.2024

Heard Mr. S. Banik, learned counsel for the petitioner. Also heard Mr. R. R. Gogoi, learned Standing Counsel for the Public Health Engineering (PHE) Department appearing for the respondents no. 1, 3, 4, 5, 6 & 7 and Mr. N. Goswami, learned Government Advocate, Assam for the respondent no. 2.

2. As consented to by the learned counsels appearing for the parties, the present writ petition is taken up for final consideration and disposal.

3. The petitioner, by way of instituting the present proceeding has sought for a direction upon the authorities of the Public Health Engineering (PHE) Department for implementation of a new Piped Water Supply Scheme (PWSS) under "Jal Jeevan Mission" on the land of the petitioner. The petitioner in the alternative has also prayed for a direction upon the respondent authorities for refund of an amount of Rs. 1,60,000/- (Rupees One Lakh and Sixty Thousand) purportedly, paid by the petitioner to the respondent authorities in connection with the implementation of the said scheme and also prayed for a compensation to the tune of Rs. 26, 00,000/- (Rupees Twenty Six Lakhs) for demolition of his dwelling houses.

4. As projected in the writ petition, the petitioner is a owner of a plot of land measuring 2 Katha 10 Lechas, covered by K. P. Patta No. 217, Dag No. 414 situated at village, Tinsukia, Mouza: Juria, Sub-Division: Nagaon. The petitioner further contends that for the purpose of implementation of PWSS

under the "Jal Jeevan Mission", the authorities of the PHED, Nagaon along with the President of Tinsukia Gaon Panchayat had inspected the plot of the land of the petitioner. It is also contended that on completion of such inspection, the petitioner was required to demolish his residential houses situated over the plot of land, so as to facilitate the implementation of the said scheme under the "Jal Jeevan Mission", therein. The petitioner contends that in terms of the requirement so made of him, he had demolished his dwelling places standing over the plot of land.

5. The petitioner further projects that in the month of December, 2022; a Water User Committee (WUC) was constituted with the petitioner, herein, as its President. Similar committees were also constituted for 08 other sites wherein such similar schemes were to be implemented. The petitioner, in terms of the requirements so made of him, had paid an amount of Rs. 1,20,000/- to the husband of the President of Tinsukia Gaon Panchayat and had also paid an amount of Rs. 10,000/- to the Section Officer, PHED, Singia Section, Nagaon. The petitioner further projects in the writ petition that after demolition of his dwelling houses and the development as noticed herein above, the respondent authorities had resiled from the promise so made to him and refused to implement the said scheme over the plot of land of the petitioner.

6. The petitioner, on being aggrieved, approached the Deputy Commissioner, Nagaon by way of a representation dated 02.07.2023. Similar representations were also made before the authorities of the PHED. The petitioner contends that in addition to the loss so sustained by him on account of demolition of his dwelling houses and also the payment of an

amount of 1, 60,000/- as per request made of him by the authorities for the purpose of implementation of the said scheme over the plot of land, a legitimate expectation had also arisen for having the said scheme implemented over his plot of land, however, the respondent authorities refused to implement the said scheme and had identified another plot of land for the purpose. The respondent authorities having not considered the entreaties made by the petitioner before them, the petitioner had instituted the present proceeding.

7. Mr. S. Banik, learned counsel for the petitioner by reiterating the facts as noticed herein above, submits that the projections as made by the petitioner in the writ petition would go to demonstrate that the respondent authorities had decided to implement the PWSS under "Jal Jeevan Mission" on his plot of land and to facilitate such implementation, the petitioner had also demolished his dwelling houses standing over the said plot of land, in addition to paying the respondent authorities an amount of Rs. 1,60,000/- for the purpose of early implementation of the said scheme. Mr. S. Banik, learned counsel for the petitioner has submitted that the amount so paid by the petitioner was with the assurance that the same would be refunded to him, on the necessary amount for implementation of the scheme being sanctioned by the competent authority. Mr. Banik, also submits that the materials brought on record would reveal that basing on the promise as held out by the respondent authorities in the matter, a legitimate expectation had arisen in the mind of the petitioner of the said scheme being implemented over his plot of land, however, the respondent authorities without any rhyme or reason had resiled from the promise held out to him and accordingly, the petitioner had to sustain losses in the

matter. It was further contended by Mr. Banik, that the respondents had altered their initial decision arrived at in the matter without providing for an opportunity of hearing to the petitioner. Accordingly, Mr. Banik, submits that the respondent authorities either be directed to implement the said scheme, as per their earlier promise, over the plot of land of the petitioner and/or compensate the petitioner for the loss so occasioning to him in the matter.

8. Mr. R. R. Gogoi, learned Standing Counsel appearing for the PHED by placing reliance on the instructions so received by him in the matter, has submitted that the respondent authorities had not issued any order and/or communication to the petitioner, intimating him that his land has been so selected for implementation of the said scheme. Mr. Gogoi, by relying upon the enquiry report as submitted by the Assistant Commissioner, Nagaon, contends that there was no order issued to the petitioner, herein, to demolish his dwelling houses rather, it is the contention of Mr. Gogoi, that the petitioner is a beneficiary covered under the PMAY-G scheme and a PMAY-G house is being constructed over the plot of land in question.

9. As regards the allegation of bribes being given by the petitioner in the matter, Mr. Gogoi, learned Standing Counsel submits that the enquiry so conducted had not unearthed any materials in support of such allegation leveled by the petitioner. Mr. Gogoi, further submits that the respondent authorities, on a detailed examination of the matter, had identified a site of one Mumtaz Ali as suitable, as per the technical specifications so prescribed, for implementation of the PWSS under the "Jal Jeevan Mission". It is further contended that the plot of land of the petitioner, on verification, was found to be not feasible for implementation of the said project.

10. I have heard the submissions so advanced by the learned counsels appearing for the parties and also perused the materials brought on record.

11. The petitioner, in the writ petition contends that his plot of land measuring 2 Katha 10 Lechas, covered by K. P. Patta No. 217, Dag No. 414 situated at village, Tinsukia, Mouza: Juria, Sub-Division: Nagaon was identified by the departmental authorities as well as by the authorities of the Tinsukia Gaon Panchayat for implementation of the PWSS under "Jal Jeevan Mission". The petitioner has further contended that on such selection of the said plot of land; the petitioner was required to demolish his two residential houses situated over the said plot of land. The petitioner contends that in terms of the requirement so made of him by the respondent authorities and for the purpose of smooth implementation of the scheme in question, the petitioner had demolished his two dwelling houses. The petitioner has further contended that for the purpose of implementation of the said scheme over his plot of land, a Water User Committee was so constituted in the month of December, 2022 with the petitioner as its President. Such Committee was contended to be constituted by the authorities of the Tinsukia Gaon Panchayat and the local people of the village in question. The petitioner has also contended that for the purpose of early implementation of the scheme, he had paid an amount of Rs. 1,60,000/- to the authorities, which amount was contended to be refundable to the petitioner on the amount for implementation of the scheme in question was sanctioned by the authorities. The said contentions as made in the writ petition, is not supported by any official documents issued either by the PHED and/or the authorities of the Tinsukia Gaon Panchayat. There is no material brought on record by the petitioner to

justify his contentions that his plot of land was so selected by the respondent authorities for the purpose of implementation of the said scheme. There is further no material brought on record to demonstrate that the respondent authorities had required the petitioner to demolish his two dwelling houses standing over the plot of land for the purpose of implementation of the said scheme.

12. A perusal of the instructions placed on record by Mr. R. R. Gogoi, learned Standing Counsel, Public Health Engineering Department would go to reveal that basing on the allegations so raised, with regard to the selection of site for implementation of the said scheme, a magisterial enquiry was so directed and the Assistant Commissioner, Nagaon, was entrusted with the responsibility of carrying out the said enquiry. The enquiring authority, on conclusion of the enquiry so involved, had submitted a report on 21.08.2023. A perusal of the said enquiry report reveals that a physical verification of the lands so offered by various persons including the petitioner, herein, was examined. The said lands so offered were so verified by the help of technical support from the officials of the PHED. The enquiry report further goes to bring on record that there was no order, issued towards requiring the petitioner to demolish his two dwelling houses situated over the plot of land. It is also mentioned in the said report, that the petitioner is a beneficiary under the PMAY-G scheme and a house under the said scheme is being constructed over the said plot of land. The plot of land of the petitioner, on verification, was held to be not suitable for implementation of the said project. The enquiry report, finally concluded that the land as offered by one Mumtaz Ali, was found, on physical verification, to be suitable as per the technical specifications and the said

site was recommended for implementation of the scheme in question.

13. The instructions also has its enclosure a communication dated 10.08.2023, wherein, a technical report for selection of land for implementation of the said scheme with regard to the various plots offered, including that offered by the petitioner, is so available. The said technical report also brings on record the fact that the petitioner was allotted a house under the PMAY-G scheme over the plot of land in question. It also proceeds to note that the land of the petitioner was not sufficient for encompassing all components of the scheme and accordingly, the plot of land so offered by the petitioner was found to be not suitable for implementation of the project.

14. A perusal of the said materials so brought on record by Mr. R. R. Gogoi, would go to reveal that the land of the petitioner was never formally selected by the authorities of the PHED for implementation of the said scheme. Further, there was no formal order issued to the petitioner for demolition of his dwelling houses standing over the plot of land.

15. It is a settled position of law that the doctrine of legitimate expectation emerged as a common law doctrine to guarantee procedural fairness and propriety in administrative actions. Legitimate expectation was developed by the Courts to require a degree of procedural fairness by public authorities in their dealings with individuals. Denial of an assured benefit or advantage was accepted as a ground to challenge the decision of a public authority. The courts have also held that whether the expectation of a claimant is legitimate or not is a question of fact which has to be decided after weighing the claimant's expectation against the larger public interest.

Thus, while dealing with the claims of legitimate expectations, the Court has to necessarily balance the legitimate expectation of a claimant against the larger public interest.

16. In this connection, the decision of the Hon'ble Supreme Court in the case of **Union of India Vs. Hindustan Development Corporation**, reported in **(2024) 3 SCC 799**, is relied upon, wherein, the Court had clarified the contours of the doctrine of legitimate expectation in the following terms:

- (i) Legitimate expectation arises based on a representation or past conduct of a public authority;
- (ii) Legitimacy of an expectation can be inferred only if it is founded on the sanction of law or custom or an established procedure followed in regular or natural sequence;
- (iii) Legitimate expectation provides locus standi to a claimant for judicial review;
- (iv) The doctrine is mostly confined to a right of a fair hearing before a decision and does not give scope to claim relief straightaway;
- (v) The public authority should justify the denial of a person's legitimate expectation by resorting to overriding public interest; and
- (vi) The Courts cannot interfere with the decision of an authority taken by way of policy or public interest unless such decision amounts to an abuse of power.

17. In the case of **Punjab Communications Ltd. Vs. Union of India**, reported in **(1999) 4 SCC 727**, the Hon'ble Supreme Court had explained

the difference between procedural and substantive legitimate expectation in Paragraph-27 of the said judgment in the following terms:

“27. The *procedural* part of it relates to a representation that a hearing or other appropriate procedure will be afforded before the decision is made. The *substantive* part of the principle is that if a representation is made that a benefit of a substantive nature will be granted or if the person is already in receipt of the benefit that it will be continued and not be substantially varied, then the same could be enforced.”

18. A claim based on the doctrine of procedural legitimate expectation arises where a claimant expects the public authority to follow a particular procedure before taking a decision. This is in contradistinction to the doctrine of substantive legitimate expectation where a claimant expects conferral of a substantive benefit based on the existing promise or practice of the public authority. The doctrine of substantive legitimate expectation has now been accepted as an integral part of both the common law as well as Indian jurisprudence.

19. The Hon'ble Supreme Court in the case of **Ram Pravesh Singh Vs. State of Bihar**, reported **(2006) 8 SCC 381**, had explained the concept of legitimate expectation as a reasonable, logical and valid expectation of certain benefit, relief or remedy. The relevant conclusions drawn by the Hon'ble Supreme Court in this connection, in Paragraph-15 of the said Judgment is quoted herein below:

“15. .. What is legitimate expectation? Obviously, it is not a legal right. It is an expectation of a benefit, relief or remedy that may ordinarily flow from a promise or established practice. The term

“established practice” refers to a regular, consistent, predictable and certain conduct, process or activity of the decision-making authority. The expectation should be legitimate, that is, reasonable, logical and valid. Any expectation which is based on sporadic or casual or random acts, or which is unreasonable, illogical or invalid cannot be a legitimate expectation.”

20. The Hon’ble Supreme Court in the case of **Ram Pravesh Singh** (supra) had noted that the efficacy of the doctrine of legitimate expectation is weak as the claimant is only entitled to the following two reliefs: (i) an opportunity to show cause before the expectation is negative; and (ii) an explanation as to the cause for denial. The Court had further clarified that a claim based on legitimate expectation can be negated on factors such as public interest, change in policy, conduct of the claimant, or any other valid or bona fide reason provided by the public authority.

21. At this stage, it is to be noted that while dealing with the doctrine of legitimate expectation, another important aspect that the Courts is determining the “legitimacy” of the expectation. The Court can infer the legitimacy of an expectation only if it is founded on the sanction of law. The legitimacy of expectation is a question of fact and has to be determined after weighing the claimant’s expectation against the larger public interest.

22. Having noticed the principle of legitimate expectation, its application in the facts of the present case, is now required to be so considered.

23. In the present case on hand, it is an admitted position that the petitioner, herein, was never issued with any order/communication intimating him that his land was so selected for the purpose of

implementation of the scheme in question. Further, the materials brought on record also do not reveal that the petitioner was directed by the authorities concerned to demolish his dwelling houses. The other contention of the petitioner that he had paid an amount of Rs. 1, 60,000/- for the purpose of early implementation of the scheme in question is also not supported from the materials on record. The said aspect of the matter would go to reveal that the legitimate expectation as projected by the petitioner for having the said scheme implemented over his plot of land, does not find support from the materials brought on record in the present proceeding. The steps taken by the petitioner in the matter seems to be one taken by him unilaterally, without the same being concurred and/or approved in any manner by the authorities of the PHED. Accordingly, the legitimacy of the legitimate expectation as projected in the matter by the petitioner is not established.

24. The contentions as raised by the petitioner in the writ petition not being supported by the enquiries carried out in the matter by the District Administration, this Court, in absence of any cogent materials being brought on record by the petitioner, to substantiate the claim so made by him in the writ petition, would not be in a position to exercise its discretion in the matter and grant to the petitioner, the relief as prayed for by him in the present proceeding.

25. The conclusions as reached by this Court, hereinabove, would go to show that the projections as made by the petitioner in the matter have not been established. The enquiry as carried out by the authorities of the District Administration as well as the feasibility reports, available on record

would go to demonstrate that the plot of land of the petitioner does not confirm to the technical specifications mandated for establishment of the project in question over it and also that there was no direction issued to the petitioner for demolition of his houses. Accordingly, the conclusions reached by the respondent authorities of the land of the petitioner not being feasible for the implementation of the project in question cannot be interfered with by this Court, in absence of materials being brought on record by the petitioner to dispute the same.

26. In view of the above position and also considering the materials brought on record, this Court is of the considered view that the present writ petition is devoid of any merit and accordingly, the same stands dismissed.

JUDGE

Comparing Assistant