

GAHC010169432024



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

Case No. : I.A.(Civil)/3717/2024

THE NATIONAL HIGHWAYS AND INFRASTRUCTURE DEVELOPMENT
CORPORATION LTD
REP BY ITS MANAGING DIRECTOR
1ST AND 2ND FLOOR
TOWER A
WORLD TRADE CENTRE
NAUROJI NAGAR
NEW DELHI-110029

2: THE NATIONAL HIGHWAYS AND INFRASTRUCTURE DEVELOPMENT
CORPORATION LTD
REPRESENTED BY ITS GENERAL MANAGER (PROJECT)
PROJECT MONITORING UNIT
BONGAIGAON
VERSUS

SMTI NILA N SANGMA
W/O- MURAD KHAN
R/O- KASUMARI
NAKMA KUNDI
GOALPARA
ASSAM PIN-783122

2:FELASIJA SANGMA
W/O- DILIP DUTTA

R/O- NAKMA KUNDI
GOALPARA
ASSAM PIN-783122

3:EMAN ALI
S/O- LATE MAJARUDDIN ALI

R/O- 122 GAROBADHA
WEST GARO HILLS
MEGHALAYA
PIN-794105

4:KRISTABEL SANGMA
W/O- KALAK MARAK

R/O- NAKMA KUNDI
GOALPARA
ASSAM PIN-783122

5:THE DEPUTY COMMISSIONER
P.O- BALADMARI
GOALPARA
ASSAM
PIN-783121

6:KELSON SANGMA

S/O- LATE INDONG MARAK

R/O- KASUMARI
NAKMA KUNDI
GOALPARA
ASSAM PIN-783122

7:THE STATE OF ASSAM

REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVERNMENT OF
ASSAM
REVENUE AND DISASTER MANAGEMENT DEPARTMENT JANATA BHAWAN
(ASSAM SECRETARIAT COMPLEX)
DISPUR
GUWAHATI- 781006.

8:THE CIRCLE OFFICER
DUDHNOI
P.O- DUDHNOI
GOALPARA
ASSAM
PIN-783124

9:THE CHIEF ENGINEER
PWD DEPARTMENT
CHANDMARI
GUWAHATI-03
ASSAM

10:THE EXECUTIVE ENGINEER
PWD
GOALPARA
RURAL ROAD DIVISION
DUDHNOI CIRCLE
GOALPARA
PIN-783124.
P.O- DUDHNOI
ASSAM

11:THE EXECUTIVE ENGINEER
PWD
GOALPARA
BUILDING DIVISION
DUDHNOI CIRCLE
GOALPARA
PIN-783124.
P.O- DUDHNOI
ASSAM

Advocate for : SC
NHIDC

Advocate for : MR P R SARMA appearing for SMTI NILA N SANGMA

**BEFORE
HONOURABLE MR. JUSTICE SOUMITRA SAIKIA**

ORDER

17.12.2024

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Heard Mr. P.R. Sarma, learned counsel for the petitioner. Also heard Mr. J. Handique, learned Government Advocate for the State.

The writ petition is directed by the petitioner challenging the notice dated 29.07.2024 issued by the Office of the Circle Officer, Dudhnoi of Goalpara District directing the petitioners to evict the land. In the terms of the Government land bearing Dag No. 516 of Nakma Kundi Revenue Village under Dudhnoi Revenu Circle Office has been directed to be vacated.

It is submitted that petitioners are in occupation of two Dag Nos, namely,

545 and 516. It is submitted that the petitioners have been regularly paying land revenue for these two lands the petitioners are carrying on their businesses by establishing shops. As such by the impugned eviction order the petitioners are sought to be evicted from the same land and thereby their shops establishments shall also be demolished and accordingly they approached this court praying for appropriate orders. This court by order dated 03.12.2024 was pleased to pass an interim direction. From the pleadings it was not clear whether the land in which the notice was issued namely the land covered by Dag No. 516 is "Roadside Reserve Land" or land mutated in the name of the writ petitioner.

In view of the interim order granted by order dated 30.08.2024 the NHIDCL had filed an Interlocutory Application being I.A.(Civil) 3717 of 2024 seeking vacation of the interim order. During the pendency of the writ petition the respondents were asked to file appropriate affidavits to apprise the court as to whether the land covered by Dag No.516 is "Roadside Reserve Land". An affidavit to that effect was filed by the District Commissioner of Goalpara where at para 5 the following averment was made:

"5. That, with regard to the statement made in paragraph No.3 of the writ petition, the answering deponent humbly submits that, as per the available records at Dudhnoi Revenue Circle, no land revenue is seen to be taken against Dag No.516, which is a Govt. Khas land at Nakmakundi revenue village. It is also humbly submits by the deponent that land measuring 1 Bigha- 3 Katha-7 Lecha under Dag No 516 having no land class and in the Chita in remark column it is mentioned as "P.W.D Kah". Further, in the draft chitha of the said Dag it is given as "P.W.D Rashta Kah".*

Moreover, as per the Rule 23 of The Assam Land and Revenue

Regulation, 1886, 35 (thirty five) Feet from the center of any PWD road to both the sides are kept as

reserved land. In view of this the land covering Dag No. 516 may be interpreted as previously roadside reserved land."

Notwithstanding the averment made in the affidavit this Court by subsequent order dated 11.12.2024 directed the respondent State authority to furnish clarifications as to the status of the land in question as to whether there is reserve for PWD.

Today when the matter is called up learned State Counsel placed before the Court the communication dated 12.12.2024 by the District Commissioner which reveals that land covered by Government Khas Dag No. 516 measuring 1 Bigha, 3 Katha, 7 Lecha having no land class under Nakmakundi Revenue village in Dudhnoi Revenue Circle is previously a Roadside Reserve Land. The Mandol report in respect of the same land is also included.

The learned counsel appearing for the applicant NHIDCL on the other submits that NHIDCL was never arrayed as a party and therefore the interim order granted by the Court was not issued in presence of the NHIDCL. Subsequently, they were impleaded as party respondent and thereafter this I.A. (Civil) No. 3717 of 2024 has been filed praying for vacating/ modification of the interim order.

Learned State Counsel also strongly submits that the claim of land stated to be under possession of the petitioner is "Roadside Reserve Land" and therefore the petitioner does not have any right or claim over the same plot of land.

Having heard the learned counsel for the parties and upon careful perusal of the pleadings available on record and also the averments made in the

Interlocutory Application it appears that notices were issued on 30.12.2024 in the Interlocutory Application and no objections were filed by the respondents.

From the documents available in the case record enclosed with the writ petition it is seen that the petitioner has paid land revenue in respect of Dag No. 545. However, although it is claimed that the land is under possession of the writ petitioner in respect of land covered by Dag No. 516, the petitioner has not placed any materials before the court to show that land revenue, which has been paid on the said plot of land by the writ petitioner.

From the affidavit filed by the State respondents as well as by the communication placed before the court dated 12.12.2024, it is abundantly clear that the land of 1 Bigha, 3 Katha, 7 Lecha covered by Dag No.516 in Nakma Kundi Revenue village under the Dudhnoi Revenue Circle is Government Khas land and marked as PWD roadside reserve land.

Under such circumstances the Court is of the view that the petitioner has not been able to place any material before the court to substantiate its claims that the land covered by Dag No. 516 belongs to the writ petitioner. The learned counsel for the petitioner also fairly submits that there is no material to show that land revenue in respect of land covered by Dag No. 516 has been paid by the writ petitioner. Under such circumstances it appears from the pleadings available in the case record that the notice issued in respect of land measuring 1 Bigha, 3 Katha, 7 Lechas covered by Dag No.516 is Government Khas land and is reserved as PWD roadside land. If that be so then the writ petitioner can have no claim on Government land unless they had approached before the authorities seeking allotment of the land in their name. During the course of the proceedings the learned counsel for the petitioner, however, submits that they have filed an application dated 20.09.2024 before the Circle Officer, Dudhnoi

Revenue Circle requesting for passing necessary orders for allotment of the land covered by Dag No.516 in the name of the petitioner on the basis that the petitioner has been in possession of the same land for last three decades or more.

From the discussions above it is clear that the petitioner was not allotted the land measuring 1 Bigha, 3 Katha, 7 Lechas covered by Dag No.516. Notwithstanding the claims of the petitioner that he has been in possession of the said land for last three decades or more, there is no attempt by the petitioner to file necessary applications before the competent authority for allotment of the said land, this application only came to be filed during the pendency of the writ petition.

Under such circumstances this Court is not inclined to continue the interim order which has been granted earlier. The interim order therefore, on the basis of the Interlocutory Application filed by the NHIDCL being I.A.(Civil) No. 3717 of 2024, stands vacated.

Interlocutory Application is accordingly stands allowed and disposed of.

JUDGE

Comparing Assistant