

GAHC010253572023



2024:GAU-AS:11536

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

Case No. : WP(C)/6522/2023

ANJAN CHAKRABORTY
S/O- LATE UPENDRA KUMAR CHAKRABORTY, R/O- VIDYASAGAR
SARANI, PARGONA BARAKPAR, SILCHAR, P.O. AND P.S. SILCHAR, DIST.
CACHAR, ASSAM, PIN- 788005, PRESENTLY RESIDING AT 370/1, R.N. GUHA
ROAD, KOLKATA-700074, WEST BENGAL.

VERSUS

THE SILCHAR MUNICIPAL BOARD AND 3 ORS
REPRESENTED BY ITS EXECUTIVE OFFICER, SILCHAR, CACHAR, ASSAM

2:THE DEPUTY COMMISSIONER
CACHAR
SILCHAR-01.

3:THE SUB-REGISTRAR

OFFICE OF THE SENIOR SUB-REGISTRAR
RRJ2 AND 4WF
COURT ROAD
TARAPUR
SILCHAR
ASSAM
PIN- 788001.

4:JHULAN DAS
S/O- LATE NIBARAN DAS
R/O- NATIONAL HIGHWAY
SILCHAR WARD NO. 17
PARGONABARAKPAR
SILCHAR
P.O. AND P.S SILCHAR

DIST. CACHAR
ASSA

For the Petitioner(s) : Ms. P. Chakraborty, Advocate

For the Respondent(s) : Mr. S. Dutta, Sr. Counsel, Silchar Municipal Board
Mr. S. Baruah, Govt. Advocate
Mr. S.D. Purkayastha for respondent No.4

Date of hearing : 20.11.2024

Date of Judgment : 20.11.2024

**BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH**

JUDGMENT & ORDER(ORAL)

Date : 20.11.2024

Heard Ms. P. Chakraborty, the learned Counsel appearing on behalf of the petitioner. Mr. S. Dutta, the learned Senior Counsel appears on behalf of the respondent No. 1, Mr. S. Baruah, the learned Govt. Advocate appears on behalf of respondent No. 2 and 3 Mr. S.D. Purkayastha appears on behalf of respondent No. 4.

2. The petitioner herein is aggrieved by the action on the part of the respondent No. 1 by issuance of a communication dated 02.02.2022, whereby the Senior Sub-Registrar, Silchar was directed to keep in abeyance the land sale permission No. MP/LS/NOC/02/2021-22/8163 dated 26.10.2021, on the ground that there is a complaint pending before the said authority.

3. Ms. P. Chakraborty, the learned counsel appearing on behalf of the

petitioner submitted that pursuant thereto the Additional Deputy Commissioner, Cachar has also written a letter to the Senior Sub-Registrar on 03.02.2022, that in view of the pendency of the Civil Suit being Title suit No. 157/2019, the NOC issued from the office be kept in abeyance until further orders.

4. Ms. P. Chakraborty, the learned counsel appearing on behalf of the petitioner submitted that though the suit was filed by the respondent No. 4 along with an injunction application but there was no injunction granted. She further submitted that the Revenue Authority as well as the Municipal Authority have taken the role of the Civil Court and is not permitting the execution and registration of the said sale deed which is nothing but an excessive executive over-reach.

5. Mr. S. Dutta, the learned Senior Counsel submitted that taking into account the pendency of the suit as well as the complaint filed by the respondent No. 4, the communication dated 02.02.2022 was issued.

6. Mr. S. Baruah, the learned Govt. Advocate appearing on behalf of the Additional Deputy Commissioner, Cachar submitted that in view of the pendency of the suit the direction was issued to the Senior Sub-Registrar to keep the No Objection Certificate in abeyance.

7. Mr. S.D. Purkayastha, the learned counsel appearing on behalf of the respondent No. 4, submitted that taking into account a suit is pending and any transfer so made during the pendency of the suit would amount to creation of third party rights which would result in complicity if any decree is passed in favour of the respondent No. 4, the requisition of the Deed of Sale was rightfully withheld by the Authorities.

8. I have heard the learned counsels appearing on behalf of the parties and

have also perused the materials on record.

9. From the communications dated 02.02.2022 and 03.02.2022, it reveal that both the respondent Nos. 1 and 2 have directed the Senior Sub-Registrar not to act on the permission so granted on the basis that there is a complaint pending as well as a pendency of the suit. Be that as it may, it is very pertinent to take note of that in the said suit being Title Suit No. 157/2019, an injunction application was filed before the learned Trial Court seeking injunction not to transfer. However, the said injunction has been refused. Under such circumstances, it is the opinion of this Court that the respondent No. 1 as well as the respondent 2, could not have injuncted in exercise of their powers on the basis that there is a pendency of the suit. The said exercise of powers, in the opinion of this Court by the respondent Nos. 1 and 2 is an abuse of powers conferred upon them.

10. This Court has also taken due consideration to the submission made by Mr. S.D. Purkayastha, the learned counsel appearing on behalf of the respondent No. 4, who submits that any transfer so made would lead to multiplicity of proceedings. In the opinion of this Court, the said submission is misconceived, taking into account the provisions of Section 52 of The Transfer of Property Act, 1882, *inasmuch as* any transfer made during the pendency of the suit shall be always subject to the outcome of the suit.

11. Under such circumstances, this Court is of the opinion that the impugned action of the respondent Nos. 1 and 2 to instruct the respondent No. 3 not to proceed with the execution of the deed of sale requires interference.

12. Accordingly the instant writ petition stands disposed of with the following observations and directions:

(i) The impugned communications dated 02.02.2022 as well as 03.02.2022, issued by the Executive Officer of the Silchar Municipal Board as well as by the Additional Deputy Commissioner, Cachar respectively are set aside and quashed.

(ii) The Sub-Registrar, i.e. the respondent No. 3 is directed to register the deed of sale upon its presentation by the petitioner. It is further directed that if in the meantime, the said land permission had expired, the respondent No. 2 shall do the needful so that the said permission is extended within 15 days from the date of service of a certified copy of this judgment.

(iii) This Court further observes that the transfer so made by the petitioner by execution of the Deed of Sale shall be subject to the outcome of Title Suit No. 157/2019.

JUDGE

Comparing Assistant