

GAHC010257962018



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

Case No. : WP(C)/8034/2018

SAMEER KUMAR ROY
S/O LATE SURENDRA NATH ROY,
R/O BOGIDOLA TEA ESTATE,
P.O. LETEKUJAN, MOUZA- MORONGI, UNDER P.S. GOLAGHAT, IN THE
DIST OF GOLAGHAT, ASSAM, PIN - 785613.

VERSUS

THE STATE OF ASSAM AND 9 ORS.
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM,
HOME AND POLITICAL DEPARTMENT,
DISPUR, GUWAHATI- 781006.

2:THE DEPUTY COMMISSIONER

GOLAGHAT- 785621
IN THE DIST. OF GOLAGHAT
ASSAM.

3:THE DIRECTOR GENERAL CIVIL DEFENCE AND COMMANDANT
GENERAL OF HOME GUARDS

ASSAM
GUWAHATI- 781028.

4:THE SUPERINTENDENT OF POLICE

GOLAGHAT- 785702
IN THE DIST. OF GOLAGHAT
ASSAM.

5:THE COMMANDANT

ASSAM SPECIAL RESERVE FORCE BN-II
KARAGAON
IN THE DIST. OF KARBI ANGLON
ASSAM
PIN - 782480.

6:SMTI. PREM KUMARI ROY
W/O LATE SURENDRA NATH ROY
R/O BOGIDHOLA TEA ESTATE
P.O. LETEKUJAN
MOUZA- MORONGI
P.S. GOLAGHAT
ASSAM
PIN - 785613.

7:SHRI PRAVIR KUMAR ROY
S/O LATE SURENDRA NATH ROY
R/O BOGIDHOLA TEA ESTATE P.O. LETEKUJAN
MOUZA- MORONGI
P.S. GOLAGHAT
IN THE DIST. OF GOLAGHAT
ASSAM

PIN - 785613

8:SHRI SUDHIR KUMAR ROY
S/O LATE SURENDRA NATH ROY
R/O BOGIDHOLA TEA ESTATE
P.O. LETEKUJAN
MOUZA- MORONGI
UNDER P.S. GOLAGHAT
IN THE DIST. OF GOLAGHAT
ASSAM

PIN - 785613

9:SMTI. IRANI ROY CHOUDHURY
W/O CAPT. GIRISH KUMAR SINGH CHOUDHURY
R/O ALPINE REGENCY
10TH-C MAIN
JAYANAGAR
1ST BLOCK
BENGALURU
PIN 560011.

10:SMTI. SHIVANI ROY SINGHAL
W/O LATE CHETAN SINGHAL
PRESENTLY RESIDING AT 40/1

CENTRAL EXCISE LAYOUT 5TH MAIN
KALPANA CHAWLA
ROAD
BHOOPSANDRA
BENGALURU
PIN -560094

Advocate for the Petitioner : MR. D BARUAH

Advocate for the Respondent : GA, ASSAM

BEFORE
HONOURABLE MR. JUSTICE KAUSHIK GOSWAMI

ORDER

24.06.2024

Heard Mr. B.D. Deka, learned counsel for the petitioner. Also heard Ms. S. Baruah, learned Government Advocate for the respondent Nos. 1 to 5.

2. By filing this petition under Article 226 of the Constitution of India, the petitioner is seeking inter-alia, direction to the respondent authorities for payment of a sum of Rs. 49,34,400/- to the petitioner as the compensation/rent for the use and occupation of the petitioner's premises by the Police Personnel of Assam Special Reserve Force (ASRF).

3. The facts of the case is that the petitioner is the owner in respect of one Assam Type building bearing Holding No. 1/172 situated at L.B Mills Compound, Surendra Nath Roy Path, G.D. Road, Ward No. 1, Golaghat Town, Assam on the length covered by Dag No. 5851 pertaining to Periodic Patta No. 1117 (herein after referred to as the 'said premises').

- 4.** The said premises was delivered to the Golaghat District Administration as a goodwill gesture at their request to provide accommodation and utilization by the Police Personnel of ASRF during the visit of the former Prime Minister of India, Late Rajiv Gandhi.
- 5.** It is the specific case of the petitioner that the District Administration had promised that they would pay consideration on account of occupation and utilization of the said premises and deliver vacant possession of the same whenever required. Accordingly, the said premises had been under occupation and utilization of Assam Special Reserve Force (ASRF), Battalion-II Personnel since 01.01.1986 onwards.
- 6.** Though various representations have been filed to the District Administration for payment of rent for the use of the petitioner's premises by the Police Personnel of ASRF, no rent whatsoever was paid to the petitioner.
- 7.** Since no rent was received by the petitioner against such possession of the petitioner's said premises, the petitioner requested before the District Administration for handing over the vacant possession of the said premises to the petitioner. However, the vacant possession of the said premises was not handed over to the petitioner.
- 8.** Finally, on 15.11.2015 after almost 29 years, the Company Commandant, ASRF, Bn-II, B-Coy, HQR handed over the possession of the said premises to the petitioner. After taking possession of the said premises, the petitioner submitted the valuation estimate of the said premises to the Executive Engineer, PWD, Golaghat Building Division by letter dated 07.06.2016. Thereafter, the Executive

Engineer, PWD, Golaghat Building Division valued the said premises. In terms of the aforesaid valuation, the petitioner served a bill amounting to Rs. 49,34,400/- to the Commandant, 2nd ASRF BN, Karagaon, Karbi-Anglong, Assam.

9. The said authority by letter dated 05.07.2016 returned the said bill to the petitioner by directing him to move it before the proper authorities, i.e., the District Administration. Since 2016, the petitioner has been representing before the District Administration for release of the bill in connection to the use of the said premises. However, since no payment has been received, the instant writ petition has been filed.

10. Heard the parties and perused the materials available on record.

11. It appears from the Possession Certificate dated 15.11.2015 (Annexure-D to the writ petition), that the petitioner's land had been in the possession of the ASRF, Bn-II, B-Coy, HQR from the year 1986 to 15.11.2015. It further appears that at the request of the District Administration that the petitioner had given his land to be used by the aforesaid authority. However, admitted position is that no payment whatsoever has been made by the District Administration in this regard to the petitioner.

12. It further appears that ASRF/respondent No. 5 both in the affidavit-in-opposition filed on 02.06.2022 and in the letter dated 05.07.2016 (Annexure-H to the writ petition) has admitted the factum of possession of the said premises from the year 1986 to 2015 and have informed the petitioner that his bill could not be entertained at their end because they are only deploying authority of Bn. Personnel under District Administration on receipt of requisition and it is the

office of the Deputy Commissioner and Superintendent of Police who are responsible to provide accommodation for utilization of their force at their end. Accordingly, the bill of the petitioner dated 05.07.2016 was sent back for submitting before the District Administration.

13. The right of the petitioner over the said premises though is not a fundamental right, but the same is a constitutional, statutory and human right. The same cannot be deprived by the authority without following the due process of law.

14. In the present case, it appears that the said premises of the petitioner was utilized for the Police Personnel of the Assam Special Reserve Force at the request of the District Administration for the last 29 years and not a single penny has been paid as rent to the petitioner. Shockingly, no procedure whatsoever of requisition of the said premises of the petitioner was undertaken by the respondent authorities. In fact, it is averred in the writ petition to which there is no rebuttal from the State authorities that the petitioner requested the Asst. Executive Engineer, PWD, Golaghat Building Sub-Divison for making assessment of the compensation amount on the basis of monthly rent in accordance with law by Communication dated 09.12.2015. It is further averred that the Asst. Executive Engineer, PWD, on 07.06.2016 submitted the valuation estimate for fixation/re-fixation of the house rent in respect to the said premises in terms with the period of occupation by the concerned respondent authorities. It is further averred, in terms of the aforesaid estimate, the petitioner is entitled to the amount of Rs. 49,34,400/- as the compensation cost for the used and occupation of the premises by the concerned respondent authorities on the

basis of the rates assessed and estimated by the said PWD authorities. Despite notices in the instant writ proceedings, have been issued to the State respondents way back on 22.11.2018 by this Court, the State respondents have not filed their return till date. Pertinent, that this Court by Order dated 19.04.2024 granted further 3 (three_ weeks time to the State respondents for filing necessary return positively before the next date of listing. Regrettably, today when the matter was called for hearing, no return has been filed on behalf of the State respondents. Therefore, non-denial of the facts averred in the writ petition, amounted to admission of the said facts.

15. Reference is made to the decision of the Apex Court in the case of *Tukaram Kana Joshi and Others Vs. Maharashtra Industrial Development Corporation and Others*, reported in (2013) 1 SCC 353. Paragraph Nos. 8 to 12 of the aforesaid judgment is reproduced hereunder for ready reference:-

"8. The appellants were deprived of their immovable property in 1964, When Article 31 of the Constitution was still intact and the right to property was a part of fundamental rights under Article 19 of the Constitution. It is pertinent to note that even after the right to property ceased to be a fundamental right, taking possession of or acquiring the property of a citizen most certainly tantamounts to deprivation and such deprivation can take place only in accordance with the "law", as the said word has specifically been used in Article 300-A of the Constitution. Such deprivation can be only by resorting to a procedure prescribed by a statute. The same cannot be done by way of executive fiat or order or administration caprice. In Jilubhai Nanbhai Khachar v. State of Gujarat, it has been held as follows: (SCC p. 627, para 48)

"48. In other words, Article 300-A only limits the powers of the State that no person shall be deprived of his property save by authority of law. There [is] no deprivation without [due] sanction of law. Deprivation by any other mode is not acquisition or taking possession under Article 300-A. In other words, if there is no law, there is no deprivation."

9. *The right to property is now considered to be not only a constitutional or a statutory right but also a human right. Though, it is not a basic feature of the Constitution or a fundamental right. Human rights are considered to be in realm of individual rights, such as the right to health, the right to livelihood, the right to shelter and employment, etc. Now however, human rights are gaining an even greater multifaceted dimension. The right to property is considered very much to be a part of such new dimension. (Vide Lachhman Dass v. Jagat Ram³, Amarjit Singh v. State of Punjab, State of M.P. v. Narmada Bachao Andolans, State of Haryana v. Mukesh Kumar and Delhi Airtech Services (P) Ltd. v. State of U.P.⁷)*

10. *In the case at hand, there has been no acquisition. The question that emerges for consideration is whether, in a democratic body polity, which is supposedly governed by the rule of law, the State should be allowed to deprive a citizen of his property, without adhering to the law. The matter would have been different had the State pleaded that it has right, title and interest over the said land. It however, concedes to the right, title and interest of the appellants over such land and pleads the doctrine of delay and laches as grounds for the dismissal of the petition/appeal.*

11. *There are authorities which state that delay and laches extinguish the right to put forth a claim. Most of these authorities pertain to service jurisprudence, grant of compensation for a wrong done to them decades ago, recovery of statutory dues, claim for educational facilities and other categories of similar cases, etc. Though, it is true that there are a few authorities that lay down that delay and laches debar a citizen from seeking remedy, even if his fundamental right has been violated, under Article 32 or 226 of the Constitution, the case at hand deals with a different scenario altogether. The functionaries of the State took over possession of the land belonging to the appellants without any sanction of law. The appellants had asked repeatedly for grant of the benefit of compensation. The State must either comply with the procedure laid down for acquisition, or requisition, or any other permissible statutory mode. There is a distinction, a true and concrete distinction, between the principle of "eminent domain" and "police power" of the State. Under certain circumstances, the police power of the State may be used temporarily, to take possession of property but the present case clearly shows that neither of the said powers have been exercised. A question then arises with respect to the authority or power under which the State entered upon the land. It is evident that the act of the State amounts to encroachment, in exercise of "absolute power" which in common parlance is also called abuse of power or use of muscle power. To further clarify this position, it must be noted that the*

authorities have treated the landowner as a "subject" of medieval India, but not as a "citizen" under our Constitution.

12. The State, especially a welfare State which is governed by the rule of law, cannot arrogate itself to a status beyond one that is provided by the Constitution. Our Constitution is an organic and flexible one. Delay and laches is adopted as a mode of discretion to decline exercise of jurisdiction to grant relief. There is another facet. The Court is required to exercise judicial discretion. The said discretion is dependent on facts and circumstances of the cases. Delay and laches is one of the facets to deny exercise of discretion. It is not an absolute impediment. There can be mitigating factors, continuity of cause action, etc. That apart, if the whole thing shocks the judicial conscience, then the Court should exercise the discretion more so, when no third-party interest is involved. Thus analysed, the petition is not hit by the doctrine of delay and laches as the same is not a constitutional limitation, the cause of action is continuous and further the situation certainly shocks judicial conscience."

16. It shocks the conscience of this Court that the State authorities have taken over the said premises of the petitioner for the use of the Police Personnel of ASRF for the last 29 years and has not paid any rent/compensation whatsoever to the petitioner. The said action of the respondents in not paying rent to the petitioner for using the said premises for the last 29 years is totally arbitrary and unreasonable. Further, the right of the petitioner in relation to the said premises for the period during which it was in the possession of the Police Personnel of ASRF, which is a constitutionally guaranteed right, has been totally infringed upon.

17. As such, this writ petition succeeds.

18. Accordingly, this Court is of the considered view that the bill dated 20.06.2016 amounting to Rs. 49,34,400/-, after verification, be released by the

respondent Nos. 1 to 4 to the petitioner within a period of 2 (two) months from the date of receipt of a certified copy of this order.

19. The writ petition is accordingly disposed of.

20. Needless to clarify that a copy of the writ petition alongwith a certified copy of this order be furnished by the petitioner to the office of the respondent authorities for doing the needful.

JUDGE

Comparing Assistant