

GAHC010268322023



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

Case No. : WA/439/2023

M/S LAXMI NARAYAN PACKAGING INDUSTRIES AND 2 ORS.
A PARTNERSHIP FIRM REGISTERED UNDER THE PROVISIONS OF THE
INDIAN PARTNERSHIP ACT, 1932 HAVING ITS REGISTERED OFFICE
SITUATED AT ADAMS PLAZA, 1 COM. 2, 2ND FLOOR, UDAYACHAL PATH,
G.S. ROAD, GUWAHATI- 781005, AND ITS FACTORY AT NATIONAL
HIGHWAY 41, NAKUCHI, RANGIA, KAMRUP, ASSAM

2: SRI BASANT KR. AGARWAL
S/O LT. OM PRAKASH AGARWAL
R/O ASTHA APARTMENTS, SUHAGPUR
REHABARI, GUWAHATI, KAMRUP, ASSAM

3: SRI VIVEK AGARWAL
S/O SRI BASANT KUMAR AGARWAL
R/O ASTHA APARTMENTS, SUHAGPUR
REHABARI, GUWAHATI, KAMRUP, ASSA

VERSUS

1. THE STATE OF ASSAM AND 4 ORS.
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT OF ASSAM,
LAND AND REVENUE AND DISASTER MANAGEMENT DEPARTMENT,
DISPUR, GUWAHATI - 781006.

2: THE DEPUTY COMMISSIONER, KAMRUP
AMINGAON, GUWAHATI-31

3: THE SUB-DIVISIONAL OFFICER
RANGIA SUB-DIVISION, RANGIA
KAMRUP, ASSAM, PIN - 781354.

4: THE CIRCLE OFFICER
RANGIA SUB-DIVISION, RANGIA
KAMRUP, ASSAM, PIN - 781354.

5:THE NATIONAL HIGHWAY AUTHORITIES
REP. BY THE GENERAL MANAGER (P)
TEZPUR, ASSAM, PIN - 784001

For the Appellant(s) : Mr. R. Dubey, Advocate.

For the Respondent(s) : Mr. J. Handique, Standing Counsel, Revenue & Disaster Management Department for respondent No.1.
: Ms. S. Konwar, Junior Government Advocate, Assam for respondent Nos.2, 3 & 4.
: Mr. C. Baruah, Standing Counsel, NHAI for respondent No.5.

– BEFORE –
HON'BLE THE CHIEF JUSTICE MR. VIJAY BISHNOI
HON'BLE MR. JUSTICE SUMAN SHYAM

15.02.2024

(Vijay Bishnoi, CJ)

This intra-Court writ appeal is filed by the appellants being aggrieved with the order dated 16.11.2023 passed by the learned Single in WP(C) No.6465/2018, whereby the writ petition filed by the appellants/writ petitioners was disposed of with the direction to the respondent authorities to conduct demarcation proceedings of the land in question on 30.11.2013. The appellants were granted liberty to participate in the said demarcation proceedings and the learned Single Judge has issued further direction that while carrying out the said demarcation proceedings, the respondent authorities shall take into account the maps prepared during the acquisition proceedings. The learned Single Judge has also made it clear that if the appellants/petitioners participate in the said demarcation proceedings, a copy of the demarcation report shall be furnished to them immediately upon the report being prepared.

Pursuant to the directions given by this Court, the demarcation proceedings were carried out on 30.11.2023 in presence of the representatives of the appellants, wherein it was found that the appellants have encroached 2.5 metres of NHAI acquired land in the southern side and 4.8 metres of NHAI acquired land in the northern side (45.6 metres in length both sides) and the boundary wall of the appellants is situated over the NHAI acquired land.

The appellants have assailed the impugned order passed by the learned Single Judge on various grounds. However, during the course of arguments on 12.02.2024, when this Court was not inclined to grant any relief to the appellants, the learned counsel for the appellants prayed for some time to complete his instructions.

Pursuant to that, learned counsel for the appellants has submitted that an affidavit sworn by the appellant No.3 on behalf of himself and other appellants has been filed today to the effect that the appellants are ready to remove the encroachment as per the demarcation proceedings carried out on 30.11.2023. However, he prays for granting reasonable time to do the same.

Para Nos.4 and 5 of the affidavit submitted on behalf of the appellants read as under:

“4. That the appellants state that in principle they have no objection to carry out the demolition of the boundary wall of their factory by themselves and hand over the vacant possession to the NHAI of the area measured on 30.11.2023, but however this Hon’ble Court should protect the appellants by indicating in the order that NHAI authorities would also accept the said measurement and would not raise any further claim against the appellants in future.

5) That as regard the time frame, the appellants would like to pray before this Hon’ble Court for little leniency in their favour because of the following reasons. The appellants would like to state that their factory is running a manufacturing plant with an employment of 50 people and it is supplying packaging materials to the Pharma and FMCG companies. The appellants are having all types of raw materials, spares and machineries in the factory premises which shall be at stake or may get stolen or damaged once the boundary wall is dismantled, which is about 7 feet in height and around 157

feet in length on the side of National Highway. If the boundary wall is demolished without simultaneously constructing another boundary wall, there would be great risk of the properties of the appellants being either stolen or misappropriated as there would be no proper protection. The demolition of the boundary wall would not take much time, however the construction of another boundary wall may take some time, and the entire process may require a period of about 25 to 30 days considering the fact that the factory is a running one. Had it been possible for the appellants to first demolish the boundary wall and then construct the boundary wall, it would definitely have been cost effective as the appellants could have utilized the materials of the existing boundary wall for construction of the new boundary wall. However the same is not feasible as the risk of loss and discontinuation of work is much higher than the gains and therefore, if Your Lordships permit, the appellants would like to construct their new boundary wall first and thereafter, demolish the existing boundary. Therefore, it is prayed that Your Lordships may be pleased to grant a period of at least 25 to 30 days to the appellants as the outer limit though the appellants would try to complete the process in lesser time. The appellants state that no prejudice would be caused to the NHAI authorities as they have not yet initiated any proceedings against other encroachers who are situated nearby to the appellants are also occupying the NHAI land.”

Mr. C. Baruah, learned Standing Counsel, NHAI has no objection if reasonable time is granted to the appellants to remove their possession over the land of NHAI. He has also submitted that the measurement taken in the demarcation proceedings carried out on 30.11.2023 is acceptable to the NHAI authorities and that they would not raise any further claim against the appellants in future.

In view of the affidavit filed on behalf of the appellants and the statement given by the learned counsel for the NHAI, we deem it appropriate to dispose of this writ appeal with a direction to the appellants to remove their possession over the land of the NHAI, as mentioned in the measurement proceedings dated 30.11.2023, within a period of 4(four) weeks from today.

It is made clear that, in any case, the possession over the land of the NHAI shall be removed by the appellants positively by 18.03.2024. If the appellants fail to remove their possession over the land of NHAI, as per their undertaking given in the affidavit filed today by 18.03.2024, the respondents are free to take action for eviction of the

appellants from the land in question.

The writ appeal is accordingly disposed of.

JUDGE

CHIEF JUSTICE

Comparing Assistant