

GAHC010053502017



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

Case No. : WP(C)/7411/2017

BOKAJAN SHARBA JANIN KALIBARI COMMITTEE
REP. BY ITS PRESENT PRESIDENT, CHANDAN PATIKAR, S/O- AJOY KR.
PATIKAR, R/O- BOKAJAN, WARD NO.4, P.O AND P.S- BOKAJAN, DIST-
KARBI ANGLONG, ASSAM, PIN- 782480

VERSUS

THE UNION OF INDIA and 5 ORS.
REP. BY THE GENERAL MANAGER, NORTH FRONTIER RAILWAY,
MALIGAON, GUWAHATI- 781011

2:THE DIVISIONAL RAILWAY MANAGER
N F RAILWAY
LUMDING
ASSAM
PIN- 782447

3:THE ESTATE OFFICER
N F RAILWAY
LUMDING
ASSAM
PIN- 782447

4:THE STATE OF ASSAM
REP. BY THE CHIEF SECRETARY TO THE GOVT OF ASSAM
DISPUR
GHY-6

5:THE KARBI ANGLONG DISTRICT AUTONOMOUS COUNCIL
REP. BY THE SECRETARY
EXECUTIVE COMMITTEE
KARBI ANGLONG

DISTRICT COUNCIL
ASSAM
PIN- 782460

6:THE APPELLATE AUTHORITY
DISTRICT JUDGE
KARBI ANGLONG
ASSAM PERSONA DESIGNATE AS PER ASSAM PUBLIC PREMISES
EVICTON OF UNAUTHORISED OCCUPANTS ACT
197

Advocate for the Petitioner : MR.A L MANDAL

Advocate for the Respondent : SC, NF RLY

BEFORE
HONOURABLE MR. JUSTICE MICHAEL ZOTHANKHUMA

ORDER

11.03.2024

1. Heard Mr. S.B. Prasad learned counsel for the petitioner. Also heard Mr. B. Sharma, learned Standing Counsel, NF Railway.

2. This writ petition has been filed against the impugned judgment 06.11.2017 passed by the District Judge, Karbi Anglong, Assam in Misc.(Civil) Appeal No.05/2012, by which the writ petitioner's case under Section 9 of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 (hereinafter referred to as "the 1971" Act) has been dismissed, as being not maintainable. The brief facts of the case is that a number of eviction orders were issued on 02.08.2012 by the Estate Officer, NF Railway, Lumding, Assam under Section 5(1) of the 1971 Act against individual persons.

3. The writ petitioner, which is the Bokajan Sharba Janin Kalibari Committee, represented by its President challenged the eviction orders issued to various persons, by filing WP(C) 4143/2012. This Court disposed of WP(C) 4143/2012, vide order dated 31.08.2012, by giving liberty to the writ petitioner to avail the alternative remedy available, by filing a petition under Section 9 of the 1971 Act before the District Judge. Thereupon the petitioner approached the Court of the District Judge, Diphu at Karbi Anglong, vide Misc.(Civil) Appeal No.05/2012, challenging the eviction orders issued to the members of the writ petitioner.
4. Misc.(Civil) Appeal No.05/2012 was disposed of by the Court of the District Judge, Karbi Anglong, vide judgment dated 06.11.2017 by holding that the appeal petition was totally silent as to who were the members of the present writ petitioner society. Further, the writ petitioner had not submitted any document before the Court of the District Judge, Karbi Anglong, showing that any eviction order dated 02.08.2012 had been served upon any member of the writ petitioner society. The Court of the District Judge, Anglong thereafter dismissed the appeal as not being maintainable. The petitioner being aggrieved by the impugned judgment dated 06.11.2017 passed by the District Judge, Karbi Anglong in Misc.(Civil) Appeal No.05/2012, has thus approached this Court praying for setting aside the impugned judgment dated 06.11.2017.
5. The petitioner's counsel submits that he doubts that the lands which the members of the petitioner society are occupying is Railway land. He submits that he has documents showing that the lands are 'grant lands' and thus do not belong to the Railways. As such, Railways cannot evict the members of the petitioner society. He also submits that prior to issuing the orders of eviction,

the Railway Authorities were required under Section 4 of the 1971 Act to issue notices to the members of the petitioner society. Accordingly, in view of the violation of Section 4 of the 19671 Act and the fact that there is no proof that the Railways is the owner of the land which the members of the petitioner society are occupying, the impugned judgment dated 06.11.2017 passed by the District Judge, Diphu at Karbi Anglong in Misc.(Civil) Appeal No.05/2012 should be set aside.

6. Mr. B. Sharma, learned Standing Counsel, NF Railway, on the other hand submits that the writ petition is not maintainable, inasmuch as, none of the persons who were issued the eviction notices dated 02.08.2012 had approached the District Judge, Diphu at Karbi Anglong. He accordingly submits that there is no infirmity with the decision of the District Judge, Diphu at Karbi Anglong in dismissing the appeal in the absence of the affected parties, who are unauthorisedly occupying the lands of the Railways. He also submits that the fact that the affected parties are in unauthorized occupation of Railway lands is clear from the pleadings made by the writ petitioner in WP(C) No.4143/2012. He accordingly submits that the writ petition should be dismissed.

7. I have heard the learned counsels for the parties.

8. As can be seen from the various eviction orders dated 02.08.2012, which are a part of the Annexures to the writ petition, the eviction orders were issued to the affected persons on an individual basis. One such eviction order is being re-produced hereinbelow:

“OFFICE OF THE ESTATE OFFICER ::: N.F.RAILWAY::: LUNDING (ASSAM)

Order under Sub-section(I) of section-5 of Public premises (Eviction of un-authorized occupation), Act 1971 wherein the undersigned satisfied for the reason recorded below that Sri/SmtSumit Das..... is an un-authorised occupation of public premises in the Schedule below ::

REASONS

The date of hearing of the Case No.EO/212/LM/ 69 /2011/W-4 was fixed on 28.03.2012 and Notice was also issued on you to appear in the Court of ESTATE OFFICER on the date of hearing. You did not attend the Court. As you have not attended the Court under Sub-Section (I) of section(5) of Public premises (Eviction of un-authorized occupation) Act'1971, I hereby order that the said Shri/Smt.Sumit Das..... and other persons who may be in occupation of the premises or any part thereof to vacate the said quarter No/Plot No....69.... at Bokajan near Railway station by/within/on or before 03/09/12 in the event of failure of comply with this order within the date specified above, the said Sri/Smt. ...Sumit Das... and all persons concerned and liable to eviction from the said premises. If needed, use of such force may be necessary.

No.EO/212/LM/69/2011/W-4

Sd/-02.08.2012

Estate Officer

N.F. Railway, Lumding (Assam)

9. A perusal of the above eviction notice shows that date of hearing of the case was fixed on 28.03.2012. However the affected person did not appear before the authorities on the appointed date. The contents of the above show that notice was issued to the affected persons.

10. The affected persons who have been issued eviction notices by the

Railways have not approached the District Judge, Diphu, Karbi Anglong in their individual capacity in Misc.(Civil) Appeal No.5/2012. Nor have the affected persons given any authorization to the writ petitioner herein to file Misc.(Civil) Appeal No.5/2012 on their behalf, though there is an authorization to file the present writ petition. This is made clear from paragraph nos. 7 and 11 of the impugned judgment dated 06.11.2017 passed by the learned District Judge in Misc.(Civil) Appeal No.5/2012, which are as follows :

“7. The appeal petition is totally silent as to who are the members of appellant society named Bokajan Sarbajanin Kalibari Committee. The appellant has not submitted any document showing that any order like order dated 02-08-2012 with reference to reference No. EO/212/LM/ Plot No.18/2011/W-4 was served upon any member of the appellant society. The appellant also has failed to submit any copy of reference No. reference No. EO/212/LM/ Plot No.18/2011/W-4. The case of the appellant is found to be totally hypothetical.

.....

.....

11. The appeal memo is totally silent whom of the member of appellant society was served with any eviction notice issued by respondent No.3 No list containing names of members of the appellant society has been submitted. That apart no resolution of the appellant society showing empowering its president Shri Bimal Shil S/o Late Shri Surender Shil of Bokajan Ward No.4 P.S Bokajan, District Karbi Anglong to file this appeal.”

11. Now coming to the question of whether the affected persons are occupying Railway lands, it would be profitable to refer to the pleadings made by the writ petitioner in paragraph nos.6, 8 & 9 of the writ petition i.e. WP(C) No.4143/2012, which are as follows :

“6. That the petitioner begs to state that the Railway Authority of the N.F. Railway Bokajan authorized the members of the petitioner society by giving lease to start business upon the Railway land at Bokajan' for earning livelihood and the members of the petitioner society have been running stationary and other shops by constructing wooden and C.I. sheet Rooms measuring about 6.50 x 8.00 Sqm. approximately from 1970 onwards till today and the members of the petitioner's society regularly paying taxes to the Railway Authority as well as local authority of Bokajan Town Committee under the Karbi Anglong Autonomous Council. have been All the Members of the petitioner Society have been running their business by obtaining Trade Licences.

Copy of such trade licence annexed is herewith and marked as ANNEXURE 3.

One of the Money Receipt of tax paid is annexed herewith and marked ANNEXURE 4.

8. That the petitioner begs to state that the members of the aforesaid society have been running their business by doing stationary, grocery, medicine, Tea stall, Hardware, Studio, shoe and pan shop etc. and earning their livelihood and they have been paying taxes regularly to the Railway Authority, Town Committee, ASEB, till today.

Copy of one such Electricity Bill annexed hereto and marked as ANNEXURE 5.

9. That the petitioner begs to state that members of the petitioner society are getting the right over the land of the Railway Authority for doing their business on the basis of the lease and long possession of the land in question since 1970 till date.”

12. The foregoing paragraphs show that the members of the writ petitioner society who had been issued eviction notices, are in-occupation of Railway lands.

13. As can be seen from the records of the case, the individual members of the writ petitioner society, who had been given eviction notices had not approached the Court of the District Judge with their grievance and as such, there is no infirmity with the decision of the learned District Judge in dismissing Misc.(Civil) Appeal No.05/2012, as being not maintainable. The writ petitioner cannot be said to be an affected or necessary party in the proceedings before the Court of the learned District Judge, as the eviction order has not been issued to the writ petitioner but to individual persons, who have not made a challenge to the same in terms of Section 9 of the 1971 Act.

14. In view of the reasons stated above, no ground for setting aside the impugned judgment dated 06.11.2017 passed by the District Judge, Karbi Anglong in Misc.(Civil) Appeal No.05/2012 has been made out.

15. The writ petition is accordingly dismissed.

JUDGE

Comparing Assistant