

GAHC010079242018



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

Case No. : WP(C)/2650/2018

BISWAJIT DEY AND 3 ORS
S/O. LATE KANAI LAL DEY, R/O. HOUSE NO. 2, BYE LANE NO. 2, B.K.
KAKATI ROAD, ULUBARI, GUWAHATI-7, DIST. KAMRUP(M), ASSAM.

2: AMIT KUMAR DEY
SON OF LATE KANAT LAL DEY
R/O. H.N. 2
B.K. KAKATI ROAD
BYE LANE NO. 2
P.S. PALTAN BAZAR
GUWAHATI-7
DIST. KAMRUP(M)
ASSAM.

3: RINKU RANI BHOWMIK
D/O. LATE MAHINDRALAL CHOUDHURY
R/O. BISHNUPUR TARAKESWAR LANE
H.N.-14
GUWAHATI- 781016
DIST. KAMRUP(M)
ASSAM.

4: HARISADHAN BHOWMIK
SON OF LATE NAGARBASHI BHOWMIK
R/O. BISHNUPUR TARAKESWAR LANE
H.N.-14
GUWAHATI- 781016
DIST. KAMRUP(M)
ASSAM

VERSUS

THE STATE OF ASSAM AND 2 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE

GOVERNMENT OF ASSAM, GUWAHATI DEVELOPMENT DEPARTMENT,
DISPUR, GUWAHATI-6

2:THE GUWAHATI MUNICIPAL CORPORATION
PANBAZAR
GUWAHATI- 781001

3:THE COMMISSIONER
THE GUWAHATI MUNICIPAL CORPORATION
PANBAZAR
GUWAHATI-781001

4:MD. SHAH NASIM
AGED ABOUT 59 YEARS
SON OF LATE NADIR SHAH

RESIDENT OF PALTAN BAZAR
GUWAHATI-07
DISTRICT-KAMRUP(M)
ASSA

Linked Case : Cont.Cas(C)/108/2018

BISWAJIT DEY
S/O. LT. KANAI LAL DEY
R/O. HOUSE NO. 2
BYE LANE NO. 2
B.K. KAKATI ROAD
ULUBARI
GUWAHATI-7
DIST. KAMRUP(M)
ASSAM.

VERSUS

SMT. MANALISA GOSWAMI
COMMISSIONER
GUWAHATI MUNICIPAL CORPORATION
PANBAZAR
GUWAHATI
KAMRUP(M)
PIN-781001
ASSAM.

Linked Case : WP(C)/6675/2017

BISWAJIT DEY
S/O- LATE KANAI LAL DEY

R/O- HOUSE NO. 2
BYE LANE NO.2
B K KAKATI ROAD
ULUBARI
GUWAHATI- 07

VERSUS

THE STATE OF ASSAM and 2 ORS.
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT OF ASSAM
GUWAHATI DEVELOPMENT DEPARTMENT
DISPUR
GHY- 6

2:THE GUWAHATI MUNICIPAL CORPORATION

PANBAZAR

GHY- 01

3:THE COMMISSIONER

THE GUWAHATI MUNICIPAL CORPORATION

PANBAZAR

GHY- 01

For the Petitioner(s) : Mr. S. Sarma, Advocate

For the Respondent(s) : Mr. S. Bora, SC, GMC

Date of Hearing : 12.02.2024

Date of Judgment : 12.02.2024

BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH

JUDGMENT AND ORDER (ORAL)

1. The two writ petitions as well as the contempt application are taken up for final disposal by this common judgment and order.

2. The Petitioner in WP(C) No.6675/2017 claims that the Deputy Commissioner, Kamrup had acquired land at Paltan Bazar belonging to the

Shah Family for opening a market. The Petitioner's mother Late Renu Kana Dey was running a shop since 1960 in the said market. Thereupon, the State Authorities developed the said land and was called Municipal Market and after the coming into effect of the Guwahati Municipal Corporation Act, 1971, the market was constituted as a Guwahati Municipal Corporation Market. It has been specifically stated that the Petitioner's mother was allotted Room No.17 at that point of time. However, there is no document enclosed to the writ petition in that regard.

3. It is also relevant to mention that the said land wherein the Petitioner claims that a room was allotted to the mother of the Petitioner is part of a land measuring 3 Kathas 8 Lechas covered by Dag No.3217 under K.P. Patta No.397 of Sahar Guwahati Paltan Bazar, Part, Mouza Ulubari which was re-numbered as Dag No.564 of draft Patta No.95. A litigation was fought amongst the owner of the said plot of land measuring 3 Kathas 8 Lechas along with the Government of Assam and the Municipal Corporation wherein various persons who were occupying the said lands were also parties to the said suit. The said suit was registered and numbered as Title Suit No.1/1991.

4. Vide a judgment and decree dated 29.10.2003, the learned Court of the Civil Judge, (Senior Division) No.2, Kamrup (M) at Guwahati decreed the suit in favour of the owners declaring that the plaintiffs were entitled to release of 3 Kathas 8 Lechas of land as detailed in Schedule-B to the plaint from acquisition in terms with the agreement dated 19.01.1985 and entitled to a decree for mandatory injunction thereby directing the defendants to release the said land from acquisition and to deliver possession of the said land to the plaintiffs and also a permanent injunction restraining the defendants from constructing any

building or structured disturbing the plaintiffs' possession over the Schedule-B land. The said decree had attained finality as there is nothing on record which shows that the said decree in any manner was overturned.

5. The record further reveals that execution proceedings were initiated on the basis of the said decree passed in Title Suit No.1/1991. In a collateral proceedings to the said execution proceedings, an order was passed by this Court in CRP No.322/2016 dated 08.05.2017 wherein this Court specifically directed the GMC to identify the site for shifting the existing Kali Mandir within the land covered by Dag No.3217 (old)/564 (new) as per the identification and within the said identified area made by the District Administration. This Court further directed that the process of identification of the land to be completed by the GMC within a period of 1 (one) month from the date of the said order whereafter, the Mandir Committee was bound to shift the existing Mandir to the site handed over by the GMC within a period of 1 (one) from the date of such delivery by the GMC. For the process of the handing over the possession of the land to the Mandir Committee, the District Administration was also directed to render all necessary and possible assistance to the GMC. Further to that the Executing Court was also directed to carry out the process of execution of Title Execution Case No.06/2008 pending therein as per law.

6. It is relevant to take note of that this 4 Lechas of land which was to be handed over to the Mandir Committee for the purpose of construction of Kali Mandir is the land wherein the Petitioner in WP(C) No.6675/2017 was carrying on business activities. It is under such circumstances, a notice was issued on 23.10.2017 whereby the Petitioner along with 6 others were directed to shift from the site identified for shifting of the Kali Mandir within 10 (ten) days from

the date of the receipt of the order for smooth execution of the order dated 08.05.2017 passed by this Court. This order has been put to challenge in WP(C) No.6675/2017.

7. The records reveals that this Court vide an order dated 08.11.2017 issued notice and further observed that the pendency of the case would not be a bar for the Commissioner, GMC to re-confirm the area for shifting of the Kali Temple in terms with the directions passed by this Court for affording opportunity to all the 7 (seven) shopkeepers named in the notice dated 23.10.2017. It was also observed that without such opportunity and affording hearing, the impugned order dated 23.10.2017 shall not be enforced until the returnable date. Thereupon, the writ petition was listed on 18.12.2017 however the said interim order was not extended.

8. Be that as it may, an affidavit-in-opposition has been filed by the Respondent Nos. 2 and 3 pursuant to an order passed by this Court on 18.12.2017 wherein it has been mentioned that pursuant to the order dated 08.11.2017 passed by this Court, the Commissioner, GMC issued an order dated 30.11.2017 to the writ petitioner and 6 (six) others and directed them to show cause within 7 (seven) days as to why they should not be evicted. In pursuance to the said notice, a reply was submitted on 08.12.2017. Thereupon, the Commissioner, GMC vide an order dated 15.12.2017 directed the Petitioners and 6 others to re-confirm the area of shifting of Kali Mandir and upon failure to give a suitable reply against the order dated 30.11.2017 and it is under such circumstances, on 18.12.2017, eviction operation was undertaken by dismantling 7 numbers of shops of the GMC Market, Paltan Bazar, identifying 4 Lechas of land where Kali Mandir was proposed to be

located.

9. This Court at this stage finds it pertinent to take note of the reply submitted by the Petitioner to the notice dated 30.11.2017 which would reflect that the said reply had nothing to do on the merits of the claims of the Petitioner but was on the basis of pendency of WP(C) No.6675/2017 and the order dated 08.11.2017.

10. This Court further finds it relevant to take note of that another affidavit-in-opposition was filed by the Respondent Nos. 2 and 3 on 02.11.2018 and in the said affidavit-in-opposition, it was categorically mentioned that there was no documents placed on record by the writ petitioner to show that the stall No.17 was allotted in the name of his mother and the Petitioner was put to the strict proof of statements thereof. It was also mentioned that the money receipt enclosed as Annexure-I to the writ petition is in the name of one Shri Hari Sadhan Bhoumik and not in the name of the writ petitioner. The remaining portion of the affidavit-in-opposition are in terms with the narrated facts and for the sake of brevity this Court is not repeating the same.

11. The records further reveals that pursuant to the eviction of the Petitioner on 18.12.2017, the second writ petition was filed by 4 (four) writ petitioners wherein again the entire process of issuance of the order dated 23.10.2017, the Show Cause notice dated 30.11.2017 and the eviction process on 18.12.2017 was put to challenge. It was also mentioned that the Petitioners were not given a reasonable opportunity of being heard. Further to that, it has also been mentioned that the Respondent No.3 be directed to provide alternative place of business in Paltan Bazar market area during the process of re-building of all the shops so that the Petitioners can carry out the business

without any further loss. Around the same time, a contempt application was filed by the Petitioner in WP(C) No.6675/2017 against the then Commissioner, Guwahati Municipal Corporation alleging violation of the order dated 08.11.2017 inasmuch as no opportunity of hearing was provided to the Petitioner prior to eviction. The record reveals that this Court had issued notice as far back as on 21.05.2018 and till date, the said Respondents in spite of the counsels submitting their Vakalatnama on 20.04.2018 have not filed any reply.

12. The record further reveals that an affidavit-in-opposition has been filed by the Respondent Nos. 2 and 3 in WP(C) No.2650/2018 wherein the facts already mentioned hereinabove have been mentioned however, it is relevant to take note of that a hearing had taken placed on 17.05.2018 at the Guwahati Municipal Corporation Office, Panbazar at 3 PM wherein 8 persons were present. During the course of the hearing, it was decided that there was no room/space for reallocation of the evicted persons in the same place and it would further require a huge fund for any upcoming project. It was also opined that the construction of the Mandir on the first floor as suggested by the members present does not arise.

13. In the backdrop of the above pleadings, this Court has also heard the learned counsels appearing on behalf of the Petitioners as well as the Respondents including the counsels representing the Respondent contemnor. The submissions have been duly noted.

14. From the materials on record, it is clear that the GMC had no right over the land measuring 3 Kathas 8 Lechas which was the subject matter of the Schedule-B to Title Suit No.1/1991 inasmuch as the said judgment and decree

has not been put to challenge. This Court also finds it relevant to observe that vide an order dated 08.05.2017 passed in CRP No.322/2016, there was a specific direction passed by this Court directing identification of a specific plot of land for the purpose of construction of the Kali Mandir and thereupon to hand over it to the Mandir Committee for construction.

15. It also transpires that this 4 Lechas of land which was duly identified was the land wherein the Petitioners in both the writ petitions were carrying on business. This Court cannot also be unmindful of the fact that there is no material placed before this Court that the Petitioner in WP(C) No.6675/2017 or the other Petitioners in WP(C) No.2650/2018 were allotted any area by the Municipal Corporation. This Court also finds it relevant to take note of that in the affidavit-in-opposition filed by the Respondent Nos. 2 and 3 in WP(C) No.6675/2017, there is a denial to the effect that there was any allotment made in favour of the mother of the Petitioner and in spite of that, the Petitioner did not file any document for the last 6 (six) years showing that there was any allotment.

16. Be that as it may, in view of the judgment and decree passed in Title Suit No.1/1991, even if any allotment was made in favour of the Petitioner or their predecessor in interest by the Municipal Authorities, no right over the land in question could have been created upon the Petitioners and consequently, the right if any created by the Municipal Authorities over the said land has also ceased to exist.

17. In the backdrop of the above, it would also be seen that in compliance to the orders passed by this Court on 08.05.2017 in CRP No.322/2016 as well as the orders being passed in Title Execution Case No.6/2018 arising out of

judgment and decree dated 29.03.2003 in Title Suit No.1/1991, the order dated 23.10.2017 was passed whereby there was a direction to the Petitioner in WP(C) No.6675/2017 along with 6 others to vacate. This Court vide an order dated 08.11.2017 protected the Petitioner to the extent that an opportunity of hearing would be given. Thereupon, it is seen that on 30.11.2017, the Petitioners in both the writ petitions were given an opportunity to submit their reply within 7 (seven) days. The record further reveals that on 08.12.2017, the Petitioner submitted the reply. The reply which is a part of the affidavit-in-opposition filed by the Respondent Nos. 2 and 3 categorically shows that nothing has been stated on merits or any right of the Petitioner over the land in question. The entire reply hinged upon the pendency of the WP(C) No.6675/2017 as well as the order dated 08.11.2017. Thereupon, the Petitioners were evicted on 18.12.2017 after passing an order dated 15.12.2017. It is the opinion of this Court that there is no violation to the order dated 08.11.2017 passed by this Court. The consequential effect of this declaration by this Court that there is no violation to the order dated 08.11.2017 is that the contempt proceedings so initiated against the Respondent contemnor being Cont.Case(C) No.108/2018 stands dropped. This Court is also of the opinion that the eviction so carried out on 18.12.2017 has been in accordance with the provisions of law and more particularly in terms with the directions passed by this Court on 08.05.2017 and also the Title Execution proceedings being Title Execution Case No.6/2008. Therefore, the eviction of the Petitioners does not call for any interference more so when the same were duly preceded by an opportunity to the Petitioners.

18. This Court further takes note of the relief(s) sought for in the second writ petition to the extent that the Petitioners be accommodated in some other

area. In the instant proceedings, the Petitioners have not placed any document to show that the Petitioners were earlier granted any allotment by the GMC Authorities and under such circumstances, it would not be in the interest of justice to pass a direction upon the Respondent Authorities more particularly the GMC to grant an allotment of some other place to the Petitioners. However, this non-granting of the said relief(s) as sought for by the Petitioners would not preclude the Petitioners to approach the GMC Authorities for allotment in some other area and the Authorities shall consider, if permissible under law.

19. With above observations and directions, the proceedings taken up stands dismissed. No costs.

JUDGE

Comparing Assistant