

GAHC010046342017



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

Case No. : WP(C)/6534/2017

DON BOSCO COLLEGE and ANR.

REP. BY THE PRINCIPAL, DON BOSCO COLLEGE- FR JOSE PALEY, S/O-
ROCKY DEVASSY DHODAR ALI, GOLAGHAT

2: THE PRINCIPAL

DON BOSCO COLLEGE
GOLAGHAT FR. JOSE PALEY
S/O- ROCKY DEVASSY DHODAR ALI
GOLAGHA

VERSUS

THE UNION OF INDIA and 4 ORS.

REP. BY THE SECRETARY TO THE MIN OF RAILWAYS,
GOVT OF INDIA, NEW DELHI

2:THE GENERAL MANAGER

NORTH EAST FRONTIER RAILWAY
MALIGAONGUWAHATI- 781011

3:DIVISIONAL RAILWAY MANAGER WORKS

N F RAILWAY TINSUKIA DIST- TINSUKIA
PIN- 786125

4:DIVISIONAL ENGINEER/II

OF THE OFFICE OF DIVISIONAL RAILWAY MANAGERWORKS
N F RAILWAY
TINSUKIA DIST- TINSUKIA
PIN- 786125

5:DIVISIONAL ENGINEER/G

OF THE OFFICE OF DIVISIONAL RAILWAY MANAGER WORKS
N F RAILWAY TINSUKIA
DIST- TINSUKIA PIN- 78612

BEFORE
HON'BLE MR. JUSTICE MICHAEL ZOTHANKHUMA

Advocate for the petitioners : Ms. P. Bhattacharya, Advocate
For the respondents : Mr. S. Chakraborty, Advocate
Dates of hearing : 09.05.2024
Date of Judgment : 10.05.2024

JUDGMENT AND ORDER (CAV)

Heard Ms. P. Bhattacharya, learned counsel for the petitioners and Mr. S. Chakraborty, learned counsel for the Railways.

2. At the outset, Mr. S. Chakraborty, learned counsel for the Railways submits upon instructions that the respondents will not be filing any affidavit.
3. The grievance of the petitioners is related to the demand of the maintenance charge of the Railways for the Level Crossing Gate No.FM/8 at Km.8/3-4 between Golaghat and Numilagarh area of Golaghat district.
4. The petitioners' case is that the petitioners' College is situated over a plot of land measuring 40.30 acres of land, which was purchased by the predecessor-in-interest of the petitioners, i.e., Catholic Mission. The predecessor-in-interest of the petitioners gifted away part of the land to the Railway Authorities for construction of railway line and the said line is passing through the land of the petitioners, dissecting the land into two parts. The road

in between the railway line connecting both sides of the petitioners' land are being used by the public, including persons studying and working in the petitioners' college, for the purpose of ingress and egress. The Railway Authorities constructed a level crossing gate being Gate No.FM/8 at Km.8/3-4 between GLGT-NMGY at the dissection of the road and the railway line. The maintenance of the said Level Crossing Gate has been done by the Railways since the time of installation of the same by the Railways.

5. The respondent No. 4 suddenly wrote the impugned letter dated 17.07.2017 to the petitioner No.2, stating that the Railways had taken an initiative for elimination of the level crossing either by providing ROB/RUB on cost sharing basis depending upon the feasibility or by closure of gates. In tune with this policy, the Tinsukia Division of the NF Railway had identified gates which were catering exclusively to Defense, State Government Offices, PSUs and Private entities. As the Level Crossing Gate No.FM/8 at Km.8/3-4 between section GLGT-NMGY was catering exclusively to the petitioners' organization and as the Railways was incurring substantial amount in maintenance and up keeping of the level crossing gate as per the required safety standards, the petitioners were asked to pay Rs.9,58,370/- to the respondent No.4, as the same was the maintenance share of the level crossing gate worked out by the authorities.

6. The petitioners thereafter wrote a letter dated 06.09.2017 in reply to the respondents, stating that Don Bosco Society was engaged in the propagation of education and upliftment of poorer people of the society. The land at Golaghat was purchased in the year 1941 and that their predecessors were generous to give away part of their land for the Railways, to cater to the greater

development of the people of the region. As such, it was requested that they should not be made to pay for the maintenance and upkeep of the level crossing gate, as they were in no position to pay for the same.

7. The respondent No.4 thereafter wrote another letter dated 18.09.2017 to the petitioner No.2, stating that the Level Crossing Gate No.FM/8 at Km.8/3-4 between GLGT-NMGY was not required by the Railways and as such, it was not financially justified to keep the level crossing gate open for the Don Bosco College. The respondent No.4 also stated that the Railways acquired land from the State Government, by paying the value of the land and as such, the land was not gifted to the Railways by the petitioners. The petitioners were again asked to deposit Rs.9,58,370/- to the Railways, for maintenance of the level crossing gate.

8. The petitioners' counsel submits that the impugned letters dated 17.07.2017 and 18.09.2017 are illegal, as they are violative of Section 16 of the Railways Act, 1989. She submits that the road crossing pertaining to the said railway line has been used by the public at large and it is not only used by the persons who are studying/working in the petitioners' college. As it is the Railway Authorities who have installed the gate, they have a duty to maintain the same in terms of Section 16 of the Railways Act, 1989. She also submits that the impugned letters were issued without issuing any prior notice to the petitioners or giving an opportunity of hearing to them.

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

10. To a query by this Court as to whether the Railways had approached the

State Government or the Local Authorities for maintaining the level crossing gate, the learned counsel for the Railways has replied in the negative.

11. Sections 16, 18 and 19 of the Railways Act, 1989 states as follows-

“16. Accommodation works. (1) A railway administration shall make and maintain the following works for the accommodation of the owners and occupiers of lands adjoining the railway, namely:

(a) *such crossings, bridges, culverts and passages over, under or by the sides of, or leading to or from, the railway as may, in the opinion of the State Government, be necessary for the purpose of making good any interruptions caused by the railway to the use of the lands through which the railway is made; and*

(b) *all necessary bridges, tunnels, culverts, drains, water sources or other passages, over, under or by the sides of the railway, of such dimensions as will, in the opinion of the State Government, be sufficient at all times to convey water as freely from or to the lands lying near or affected by the railway as it was before the making of the railway or as nearly as possible.*

(2) *Subject to the other provisions of this Act, the works specified in sub-section (1) shall be made at the cost of the railway administration during or immediately after the laying out or formation of the railway over the lands traversed and in such a manner as to cause as little damage or inconvenience as possible to persons interested in the lands or affected by the works:*

Provided that—

(a) *a railway administration shall not be required to make any accommodation works in such a manner as would prevent or obstruct the working or using of the railway, or to make any accommodation works with respect to which the owners or occupiers of the lands have been paid compensation in consideration of their not requiring the said works to be made;*

(b) *save as hereinafter, in this Chapter, provided, no railway*

administration shall be liable to execute any further or additional accommodation works for the use of the owners or occupiers of the lands after the expiration of ten years from the date on which the railway passing through the lands was first opened for public traffic;

(c) where a railway administration has provided suitable accommodation work for the crossing of a road or stream and the road or stream is afterwards diverted by the act or neglect of the person having the control thereof, the railway administration shall not be compelled to provide any other accommodation work for the crossing of such road or stream.

(3) The State Government may specify a date for the commencement of any work to be executed under sub-section (1) and, if within three months next after that date, the railway administration fails to commence the work or having commenced it, fails to proceed diligently to execute it, the Central Government shall, on such failure being brought to its notice by the State Government, issue such directions to the railway administration as it thinks fit.

Explanation.— For the purposes of this section, the expression "lands" shall include public roads."

“18. Fences, gates and bars. *The Central Government may, within such time as may be specified by it or within such further time, as it may grant, require that—*

(a) boundary marks or fences be provided or renewed by a railway administration for a railway or any part thereof and for roads constructed in connection therewith;

(b) suitable gates, chains, bars, stiles or hand-rails be erected or renewed by a railway administration at level crossings;

(c) persons be employed by a railway administration to open and shut gates, chains or bars.”

“19. Over-bridges and under-bridges.

(1) Where a railway administration has constructed lines of rails across a public road at the same level, the State Government or the local authority maintaining the road, may, at any time, in the interest of public safety, require

the railway administration to take the road either under or over the railway by means of a bridge or arch with convenient ascents and descents and other convenient approaches, instead of crossing the road on the level, or to execute such other works as may, in the circumstances of the case, appear to the State Government or the local authority maintaining the road to be best adapted for removing or diminishing the danger arising from the level crossing.

(2) The railway administration may require the State Government or the local authority, as the case may be, as a condition of executing any work under sub-section (1), to undertake to pay the whole of the cost of the work and the expense of maintaining the work, to the railway administration or such proportion of the cost and expenses as the Central Government considers just and reasonable.

(3) In the case of any difference of opinion between the railway administration and the State Government or the local authority, as the case may be, over any of the matters mentioned in sub-section (1), it shall be referred to the Central Government, whose decision thereon shall be final."

12. Section 16 of the Railways Act, 1989 (hereinafter referred to as the "Act") provides that the Railways shall make and maintain crossings for the accommodation of the owners and occupiers of the lands adjoining the railway. Section 18 of the Act provides that the Central Government may require that suitable gates be erected or renewed by the Railway Administration at Level Crossings and persons be employed by Railway Administration to open and shut gates, chains or bars. Section 19 of the Act provides that where Railway Administration had constructed railway lines across a public road at the same level, the State Government or the local authority maintaining the road in the interest of public safety, require the Railway Administration to take the road either under or over the railway by means of a bridge or arch. In this respect, the Railway Administration may require the State Government or the local Authority to undertake to pay the whole of the cost of the work and the responsibility of maintaining the work etc.

13. A perusal of the above provisions of Sections 16, 18 and 19 of the Act clearly shows that the erection and maintenance of level crossing gates is the responsibility of the Railways, on being directed by the Central Government. There is nothing in the above provisions to show that the general public or persons or owners of adjacent lands or institutions near the Railway lines, are required to pay the maintenance charge of level crossing gates. Instead, the same appears to be the duty and responsibility of the Central Government and the Railways. The erection and maintenance of level crossing gates is for ensuring public safety and is a safeguard against possible accidents that may happen. The construction of any road, either under or above a railway line is also the responsibility of the State Government, local authority and the Railways and there is no provision provided in the Railways Act, 1989, that the owners of lands, which are adjacent to a railway line, have to bear the expenses for maintenance of the level crossing gate. As stated earlier, there is no affidavit filed by the Railways and as such, the averments made by the petitioners not being contradicted by the Railways, the averments made by the writ petitioners are deemed to be admitted. Consequently, this Court is of the view that the impugned letters dated 17.07.2017 and 18.09.2017 have been issued arbitrarily and without any proper justification. The same are accordingly set aside.

14. The writ petition is accordingly allowed.

JUDGE