

GAHC010019302023



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

Case No. : WP(C)/492/2023

SHREE SHREE SANTOSHI MATA MANDIR AND 2 ORS.
A TRUST REPRESENTED BY ITS SECRETARY SRI BIRENDRA SHARMA,
RAILWAY CONVOY GROUND, DIMAPUR-797112, NAGALAND.

2: SRI BIRENDRA SHARMA
SECRETARY
SHRI SHRI SANTOSHI MATA MANDIR TRUST
RAILWAY CONVOY GROUND
DIMAPUR-797112
NAGALAND.

3: SRI UMA SHANKAR TIWARI
PRADHAN PUJARI
SHREE SHREE SANTOSHI MATA MANDIR
NEAR RAILWAY STATION
DIMAPUR

VERSUS

THE UNION OF INDIA AND 3 ORS.
REPRESENTED BY THE SECRETARY TO THE GOVERNMENT OF INDIA,
MINISTRY OF RAILWAYS, RAIL BHAVAN, NEW DELHI-110001.

2: THE DIVISIONAL RAILWAY MANAGER
N.F RAILWAY
LUMDING
HOJAI
ASSAM

3: THE ASSISTANT DIVISIONAL ENGINEER
NF RAILWAY
HOJAI
ASSAM

4:THE ESTATE OFFICER
N.F. RAILWAY
LUMDING
HOJAI
ASSA

Advocate for the Petitioner : MS. B S GOYAL, MS. N RAJMEDHI,MS. P N SUMI,MR. A J HAZARIKA

Advocate for the Respondent : DY.S.G.I., MR. K GOGOI

BEFORE
HONOURABLE MR. JUSTICE N. UNNI KRISHNAN NAIR
ORDER

Date : 05.08.2024

Heard Ms. B. S. Goyal, learned counsel for the petitioners. Also heard Mr. K. Gogoi, learned CGC appearing for all the respondents.

2. The petitioners, by way of instituting the present proceeding has presented a challenge to an order dated 16.12.2022, issued by the respondent no. 4, requiring the petitioners herein to vacate the land in their possession by invoking the provisions of the "Public Premises (Eviction of unauthorized occupants) Act, 1971.

3. The petitioner no. 1 is a Trust, registered under the Indian Trust Act, 1982 and the said Trust had constructed a Temple under the name Sri Sri Santoshi Mata Mandir. The petitioner no. 2 is the Secretary of the said Trust; and the petitioner no. 3 is the Priest of the Temple so constructed by the petitioner no. 1 Trust.

4. The Railway authorities, more particularly, the Estate Officer, NF

Railways, Lumding, on institution of proceedings under the said Act of 1971, having concluded that the petitioner no. 1 Trust had constructed the said Temple on the railway land unauthorizedly, had vide order dated 16.12.2022, on receiving no response from the petitioners to the notices issued in the matter, proceeded to direct persons in occupation of the land in question, to vacate the same, failing which, it was directed that they would be liable to be evicted there from.

5. The petitioners, on receipt of the said notice had approached this Court, inter alia, contending that no notices in the matter as mandated under the provisions of the Act of 1971, came to be issued to them and/or received by them from the respondent no. 4 and accordingly, it is submitted that although a hearing is mandated to be granted to them, the same was so denied and accordingly, the order dated 16.12.2022; passed by the respondent no. 2 was so passed in clear violation of the provisions of the said Act of 1971.

6. The petitioners herein have further contended that the Temple as constructed by the petitioner no 1 Trust, was in existence since about the last 78 years and it is only now that the Railway authorities have claimed the plot of land, wherein, the Trust had set up the Temple, to be a land belonging to the Railways.

7. The learned counsel for the petitioners further submits that the Trust in question is a settlement holder in respect of the land involved.

8. This Court, vide an order dated 01.02.2023 had required Mr. K. Gogoi, learned CGC appearing in the matter for the respondents, to receive instructions, as to whether the initial notices issued under the said Act of

1971 were received by the petitioners or not.

9. Mr. K. Gogoi, learned CGC, on instructions, submits that the show-cause notices under Section 4 of the said Act of 1971 was duly issued to the petitioners herein on 07.11.2022, however, it was pointed out that the said notices although issued, were not received by the petitioners herein and the Estate Officer, Lumding had attached the joint notices on the wall of the structure of the petitioners on 16.12.2023.

10. In view of the above position, it not being very clear as to whether the petitioners had received the notices, issued under Section 4 of the said Act of 1971 and admittedly, a projection having been made that they were denied of an opportunity to place their case in the matter before the Estate Officer, this Court is of the considered view that the impugned order dated 16.12.2022, requires to be interfered with, in view of the fact that the same is an ex-parte order.

11. Having interfered with the order dated 16.12.2022, the notices issued under Section 4 of the said Act of 1971, stands revived. The plea having been taken that the said notices were not received by the petitioners, Mr. K. Gogoi, learned CGC has furnished copies of the same to the learned counsel for the petitioner. Ms. B. S. Goyal, learned counsel for the petitioners has acknowledged the receipt of the said two notices.

12. The petitioners shall now submit a reply against the said notices within 12.08.2024. Thereafter, the petitioners shall appear before the Estate Officer, Lumding on 19.08.2024. The proceedings thereafter, shall be taken up by the Estate Officer, Lumding, and dates be accordingly fixed for further hearing of the matter, as may be called for.

13. It is provided that the petitioners be also permitted to make oral submissions before the jurisdictional Estate Officer.

14. On conclusion of the hearing, the jurisdictional Estate Officer shall pass appropriate order(s) in the matter in accordance with law. Thereafter, the respondent authorities shall be at liberty to take steps as may be so mandated.

15. The exercise now required to be so carried out in terms of the direction passed herein above, be initiated by the parties, as directed and concluded by the respondent no. 4 within a period of one month from the date of submission by the petitioners of their reply in the matter i.e. w.e.f. 12.08.2024.

16. With the above observations and directions, the writ petition stands disposed of.

JUDGE

Comparing Assistant