

(2004) 12 GAU CK 0024

Gauhati High Court

Case No: WP (C) No. 6754 of 2004

Anukul Nagar Unnayan Samiti

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision: Dec. 14, 2004

Acts Referred:

- Constitution of India, 1950 - Article 226

Citation: (2005) 2 GLR 609

Hon'ble Judges: Anima Hazarika, J

Bench: Single Bench

Advocate: C.R. Goswami and M.K. Sarma, for the Appellant; P.K. Musahary and K.C. Mahanta, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

A. Hazarika, J.

Heard Mr. C.R. Goswami and Mr. M. K. Sharma learned counsel appearing on behalf of the petitioners, Mr. P.K. Musahari, Sr. Govt. Advocate, Assam assisted by Mr. K.C. Mahanta, Addl. Sr. Govt. Advocate, Assam for respondent Nos. 1 and 2 and Ms. Bharati Devi, learned standing counsel, Railway appearing on behalf of the respondent No. 3.

2. The petitioner Anukul Nagar Unnayan Samiti, represented by its Assistant Secretary to the Samiti on behalf of public of that locality, Sri Situ Das has preferred the instant writ petition praying for a direction to the respondents not to evict the members of the Anukul Nagar Unnayan Samiti from their dwelling houses situated at Anukul Nagar, Forest Gate, Narengi (Near ASEB Complex), Guwahati - 26.

3. The petitioner's case is that, the members of the Samiti have been residing at Anukul Nagar, constructing their dwelling houses and business establishments for

the last 15 years. The area is adjacent to the Railway line. On 8.9.2004 the Railway authority with the help of local administration threatened all the 165 families of the said locality to leave their houses and informed that their house will be demolished within 48 hours.

4. Immediately they submitted an application before the local M.L.A. on 9.9.2004 requesting him to stay the eviction process and allow them some time to shift their properties some other place. Annexure "A" to the writ petition is the said application dated 9.9.2004, submitted before the local M.L.A, which was forwarded by the MLA to the Deputy Commissioner (M), Guwahati for doing the needful.

5. Counsel appearing on behalf of the petitioners submitted that when no action was taken by the local M.L.A as well as the District Administration, finding no other alternative, they have approached this court seeking court's protection from eviction. The said writ application was moved on 10.9.2004. On 10.9.2004 this court after hearing both the parties issued notice make it returnable by 21.9.2004 and meanwhile it was directed that till the returnable date the members of the petitioners Samiti should not be evicted from the land in question.

6. The matter again came up before this court on 21.9.2004, 24.9.2004, 30.9.2004 and 11.10.2004. On 11.10.2004, after hearing both the parties, this court issued rule making it returnable by 22.11.2004. An interim order was passed to the following effect: -

"Interim order passed earlier shall continue till the returnable date. During this period as interim protection, the members of the petitioners shall arrange for alternative arrangements for shifting to some other place as reflected from their own prayer vide Annexure A to the writ petition."

7. In the mean time affidavit in opposition has been filed on behalf of the respondent Nos. 2 and 3 respectively.

8. Paras 7 and 11 of affidavit in opposition filed by respondent No. 2 are quoted below, -

Para 7- "That in regard to the statements made in paragraph Nos. 4 and 5, the deponent respectfully states that, the people of Anukul Nagar Unnayan Samiti, including the writ petitioner represented their case of eviction by the railway authority before the local M.L.A, Dispur constituency vide (Annexure-A the writ petition), wherein the people and members of the Samiti made a prayer to stay the eviction process and allow them sometime to shift their properties to some other place.

In the mean time, the petitioners of the Anukul Nagar Unnayan Samiti has preferred a writ petition before the Hon'ble Gauhati High Court in the above case and obtained an interim order on 10.9.2004, stating that the eviction order shall remain continue till 30.9.2004, but up till now the petitioners have not made any arrangement to shift

their belongings to some other place.

This deponent humbly states, the in action on the part of the writ petitioners to shift their belongings from the railway land, has stalled the ongoing construction of the Storm Water Drain along the railway line, which is a time bound scheme to be completed before the next monsoon set in. It is pertinent to mention here that the construction work of the drain along the railway line has been undertaken on priority basis as a measure to control repetition of rain water flood in the city and protect people of greater Guwahati from such floods. The construction works of the drain was allotted to the National Building Construction Corporation, herein after call the NBCC and in view of aforesaid interim stay order the NBCC has not been able to proceed with the work."

Para 11 - "That regard to the statements made in No. 9, this deponent states that the land all along the railway line track is free from all encroachment not only for security reason but also importantly to construct the Storm Water Drain over the said land to minimize the flood problem of Guwahati and to give relief to the sufferance of the Guwahatians, who suffered a lot during the last rainy season. But the construction works of this drain which is a vital public interest have come to a stand still due to the interim order passed by the Hon'ble Court. The work of construction of the drain has been allotted to NBCC and since September 2004, the works have been stopped. And if this construction is not completed before the coming monsoon, it is likely that flood will create more problem, particularly in the Eastern side of the city."

9. Respondent No. 3 also filed affidavit in opposition where in they have categorically stated that the people of the petitioners Samiti have no right to occupy the land, the right exclusively belong to Railway and they are only unauthorised occupier and liable to be evicted.

10. At para 8 it has been stated that the land in question unauthorisedly and forcefully occupied by the members of the said society is now required for developmental work and the administrative approval for construction of East-West drainage under Storm Water Scheme has been given by the competent authority as Way Leave Facility (W.L.F), which is treated as national problem. Under such circumstances, the requisition is urgently required for public purpose.

11. The learned counsel appearing on behalf of the respondents have vehemently argued that the construction of drainage system was going in the land, which is to be completed before next monsoon. But due to the status quo order of the court it could not be completed.

12. P.K. Musahary, learned Sr. Govt. Advocate, Assam, on receipt of instruction from the Govt. have submitted that, to minimize the flood problem of Guwahati, a scheme to construct a drain has been undertaken and accordingly the NBCC has been instructed to construct the drain will go to river Brahmaputra via Bonda. The

construction of the drain has been started from Nunmati area.

13. Thus, from the above it has become clear that in the greater interest of public, the construction of drainage system should go on and be completed before the monsoon, in as much as the construction of drain under NBCC is a time bound programme and if it cannot be completed before next monsoon, the whole scheme will be frustrated.

14. Admittedly, as per Annexure-A to the writ petition as well as statements made in the writ petition the petitioners are unauthorised occupant of railway land. Thus, this court find no illegality in Government's proposed action of evicting the petitioners from the site in the greater public interest. The court when asked the counsel appearing for the petitioners to show any provision in the acts/rules whether authorities is bound to serve notice upon the petitioners before taking any action for eviction from the railway land they could not show any such provision.

15. Thus, no mandamus as prayed for can be issued in the instant case, in as much as one of the conditions for exercising power under Article 226 for issuance of writ of mandamus is that, the court must come to the conclusion that the aggrieved person has a legal right, which entitles him to any of the rights and that such right has been infringed. In other words, existence of a legal right of a citizen and performance of any corresponding legal duty by the State or any public authority could be enforced by issuance of a writ of mandamus. In order to obtain a writ or order in the nature of mandamus, the petitioners has to satisfy that, he has a legal right to the performance of a legal duty by the party against whom the mandamus is sought and such right must be subsisting on the date of the petition. In the present case at hand no any such legal or constitutional rights of the petitioners have been found to, be infringed.

16. Under the facts and circumstances no mandamus can be issued to the authorities concerned directing them not to evict the members of the Samiti from their dwelling houses, which is admittedly occupied by them unauthorisedly.

17. Therefore, there is not merit in this writ petition and the same is dismissed.

18. No costs.

19. Learned counsel appearing on behalf of the petitioners have submitted that, the petitioners are poor people and they have no other land except the plot of land they are occupying since last 15 years. The petitioners may approach the appropriate authority for an alternative arrangement and it is made clear that dismissal of the writ petition shall be no bar for the authority to consider the case of the petitioners sympathetically.