

(2008) 02 GAU CK 0066
In the Gauhati High Court
Case No : P1L 72 0/2007

Bhabendra Choudhury

APPELLANT

Vs

State of Assam and Ors.

RESPONDENT

Date of Decision : 14-02-2008

Acts Referred:

Assam Municipal Act, 1956 — Section 152, 152
Constitution of India, 1950 — Article 226, 226

Citation : (2008) 3 GLR 514

Hon'ble Judges : Jasti Chelameswar, C.J. and Hrishikesh Roy, J

Bench : Division Bench

Advocate : B.Goyal, D.Sur, H.Ali, R.Deka, S.Baruah, Advocates appearing for Parties

Judgement

Jasti Chelameswar, CJ.

1. The writ petition is filed with the prayer as follows : "In the premises aforesaid it is, therefore, humbly prayed that your lordships may be pleased to admit this petition, call for the records and issue rule upon the respondents to show cause as to why a writ in the nature of certiorari should not be issued setting aside/quashing the impugned letter dated 30.11.2006 issued by the Deputy Commissioner, Barpeta allotting land measuring 2 Bighas, 2 Kathas, 10 Lechas covered by Dag No. 693, 703, 706 for construction of Bus stand and further to show cause as to why a writ in the nature of mandamus should not be issued directing/commanding the Respondents to stop the construction of Busstand and Multi storeyd Market complex and keep open the road No. 10 of Ward No. 5, Barpeta Road Municipal Board for the use of commuters in total contravention of the Air (Prevention and Control of Pollution) Act, 1981 and/or direct the Pollution Control Board, Assam to make inspection and submit its report before this hon'ble Court and on perusal of the report be pleased to pass such order(s) restraining the Barpeta Road Municipal Board from proceeding further with the proposed construction work within a thickly populated area, i.e., over the Road

No. 10 at Barpeta Road Ibwn, and/or pass such other direction(s), order(s) as your lordships may deem fit and proper."

, 2. The present writ petition is filed aggrieved by the decision of the Barpeta Road Municipal Board, the Chairman of which is the 6th respondent herein, to construct a bus stand cum multi-storey market complex. According to the averments of the petitioner the construction (which is halfway through, as can be seen from the photographs submitted along with the petition) has the effect of completely closing down a particular Road No. 10. At paragraph 4 of the petition the petitioner says that more than 50 families inhabit on both sides of the said Road No. 10 apart from the existence of some 50 shops. It is further stated that the said road, prior to the construction that is under challenge, was a 120 feet road and a part of which was admittedly always used as a bus stand and only the remaining part was being used as a public road. The averments in this regard at paragraph 6 of the petition reads as follows :

"6. That, the petitioner begs to state that as the said Road No. 10 is sufficiently wide (120 feet) one part of the same has been used as Busstand temporarily (where about 10 buses can be parked at a time) for several years, whereas the other part has been used as public road."

3. The facts admitted in the writ petition are that the Deputy Commissioner, Barpeta by his proceeding dated 26.9.2005 directed that the possession of the property be handed over to the Municipal Board for the construction of the bus stand in question and pursuant to such a direction possession was actually handed over to the Barpeta Road Municipal Board on 28.9.2005 admeasuring 2 Bighas, 2 Kathas and 10 Lechas covered by Dag Nos. 693, 763 and 704. These are admitted facts which appear from the affidavit filed in support of the writ petition at paragraphs 12 and 13. It is also an admitted fact that the Barpeta Road Municipality took a decision on 30.8.2006 to construct the bus stand. The petitioner conveniently did not mention in the writ petition as to the actual commencement of the construction.

4. The present writ petition is filed on 23.7.2007. Notice before admission was ordered on 27.7.2007. On 7.9.2007 when the matter was taken up for admission though the respondent Nos. 1 to 4 were represented by the learned Government Advocate, the other respondent, i.e., the Barpeta Road Municipal Board did not chose to appear. Having regard to the nature of the complaint and having regard to the fact the respondent Municipality did not chose to appear in time to apprise the court of the factual situation this court thought it fit to appoint an Advocate Commissioner to make a spot inspection of the disputed site and submit a report and ordered accordingly on 7.9.2007 appointing Ms. Runmani Deka, Advocate.

5. The Advocate Commissioner visited the disputed spot on 15.9.2007 and took photographs of the construction and the surroundings. The Advocate Commissioner found that the construction of the disputed bus stand does not completely close the Road No. 10 but leaves a passage of 13 feet wide road on

the southern side of the construction and public can still use it. Therefore, we are of the opinion that it is not a case of total closure of the road cutting all access for the local inhabitants as alleged by the writ petitioner but reduction of width of an existing road. The wisdom of such a decision to reduce the existing width of the road is not for us to decide. Section 152 of the Assam Municipalities Act contemplates the permanent or temporary closure of any existing road within the Municipal limits. So the decision to permanently close a part of the existing road by the Municipal Board cannot be said to a decision without any jurisdiction. The law clearly authorises the Municipal Board to take such a decision. Even prior to the construction of the present bus stand, it appears from the record, that the road was already being used for parking of the buses. Obviously, the whole width of the road was not available, or a free passage.

6. It is in the above background the present writ petition is to be considered. We are of the opinion that the writ petition is mainly required to be rejected on the ground that the petitioner, who claims to be a public spirited person, approached this court almost after lapse of two years from the date on which the property was handed over to the Municipal Board for the construction of the bus stand. Though the petitioner did not chose to give the exact date of the commencement of the construction, from the Advocate Commissioner's report and the photographs it appears that 70 per cent of the work is complete and intervention by this court at this stage must necessarily result in a direction for demolition of the construction already made a considerable cost cut of a public funds. Such an intervention, in our view, would not be in the larger public interest.

7. We do not see any merit in the writ petition and the same is dismissed.

8. While appointing the Advocate Commissioner we directed the petitioner to tentatively deposit an amount of Rs. 3, 000 and we also recorded that the Advocate Commissioner is entitled for reimbursement of the actual expenses incurred for the visit and inspection of the site in question. We further recorded that the final remuneration of the Commissioner would be fixed after the receipt of the report. The Advocate Commissioner submitted a statement of the expenses incurred by her. The Commissioner has also admitted that the amount of Rs. 3, 000 deposited by the petitioner had been withdrawn by her and after deducting the amount of expense she is left with a balance of Rs. 775. In the circumstances we deem it appropriate to direct that the Advocate Commissioner be paid an amount of another Rs. 5, 000 towards her remuneration and in our view the said amount shall be paid by the Barpeta Road Municipal Board as the appointment of the Advocate Commissioner was necessitated by the inaction of the Municipal Board to respond to the notices of this court. The amount of Rs. 5, 000 directed to be paid to the Advocate Commissioner shall be deposited within a period of two weeks from the date of receipt of this order.