

(2006) 06 GAU CK 0059

In the Gauhati High Court

Case No : Writ Appeal No. 192 of 2006 (in WP (C) No. 181 of 1999)

Bongaigaon Municipality

APPELLANT

Vs

Assam State Transport Corporation

RESPONDENT

Date of Decision : 06-06-2006

Acts Referred:

Citation : (2007) 4 GLR 616 : (2007) 3 GLT 934

Hon'ble Judges : B.S.Reddy, C.J. and A.Hazarika, J

Bench : Division Bench

Advocate : P.C.Deka, A.Saikia, B.Goyal, K.R.Patgiri, M.Khan, U.Baruah, M.U.Mahmud, Advocates appearing for Parties

Judgement

1. The 4th respondent, Bongaigaon Municipality, represented by the Chairman in WP(C) No. 181/99 is the appellant in this writ appeal preferred against judgment and order dated 11.5.2006 passed by the learned Single Judge of this court whereby and whereunder Annexure C dated 1.8.1998 issued by the Government of Assam in the Revenue (Settlement) Department has been quashed.

2. In order to consider as to whether the impugned judgment and order suffers from any Infirmities requiring our interference in exercise of our appellate jurisdiction, few relevant facts may have to be noticed.

3. The sole respondent, Assam State Transport Corporation ("ASTC") filed WP(C) No. 181/99 invoking the extraordinary jurisdiction of this court under article 226 of the Constitution of India challenging the legality and validity of Annexure C dated 1.8.1998 issued by the Government of Assam in the Revenue (Settlement) Department conveying for resumption of the land measuring 3B2K10LS as described in the order itself. The impugned order reads as under :

"GOVERNMENT OF ASSAM, REVENUE (SETTLEMENT) DEPARTMENT

No. RSS.385/98/13 dated Dispur, the 1st August, 1998 From : Shri B Bora, ACS

Joint Secretary to the Government of Assam, Revenue (Settlement) Department

To The Deputy Commissioner Bongaigaon

Sub: Allotment of land in the name of

Bongaigaon Municipality for construction of Bus Terminus.

Ref: Your letter No. BRS. 21/98/11 dated 26.6.1998.

Sir,

I am directed to say that the Governor of Assam is pleased to order for resumption of land measuring 3B2K10L covered by Dag No. 1327(old) and No. 265(new) of Bongaigaon PtVII from ASTC and allot in the name of Bongaigaon Municipality for construction of Bus Terminus subject to utilization of the land within 3(three) years failing which the land so allotted will automatically stand reverted to Government in Revenue

(Settlement) Department.

Necessary steps for handing over the land may be taken after doing the needful and land records etc. may be got corrected accordingly.

One copy of each of the trace map and chithas received with your letter under reference are returned herewith.

Yours faithfully

So/Illegible

Joint Secretary to the Government of Assam,

Revenue (Settlement) Department."

4. There is no dispute whatsoever that the land, in question, was initially requisitioned and thereafter acquired under the provisions of Assam Land (Requisition and Acquisition) Act, 1948 for the benefit of the State Transport Department at Bongaigaon in connection with nationalization of BongaigaonJogighopa Route at Bongaigaon as is evident from the proceeding in Annexures A and A2 dated 4th October, 1956. The said land originally belonged to some private individuals to whom compensation had been paid in accordance with law.

5. That after the establishment of ASTC under Road Transport Corporation Act, 1950 all the properties and assets vested in the existing Transport Department, at the relevant time, were vested in the Corporation free from all encumbrances with effect from 31.3.1970 as is evident from the Notification dated 31.3.1970 issued by the Government in exercise of its power conferred under section 34 of the Road Transport Corporation Act, 1950.

6. The requisition of land, in question, and its vesting in the Corporation in accordance with law is not an issue and in our considered opinion cannot be put in issue. The right, title and interest in the land set up by the ASTC in the writ

petition remains unanswered by any of the respondents including the State of Assam. The State of Assam filed a detailed affidavit in opposition in which no dispute has been raised about title of the land, in question, which was acquired for the benefit of the then existing Transport Department which later on stood transferred to the ASTC along with all its assets and liabilities. The only objection raised in the affidavit filed by the Deputy Commissioner, Bongaigaon is that the land stood vested in the Corporation remained unutilized and particularly for the purposes for which it was acquired by the Government in 1955. The Municipality submitted an application and the Government in its discretion thought it fit to resume the land for public purpose and the same was made available to the appellant/Municipality. It is also asserted that the land for some time remained in the possession of the Municipality. It is not, stated as to how the land could have gone into the possession of the Municipality.

7. A close reading of the impugned proceeding dated 1.8.1998 would reveal that the land has been resumed from ASTC for the purpose of its allotment in the name of Bongaigaon Municipality for construction of Bus Terminus subject to its utilization by the Municipality within three years failing of which the land so allotted shall automatically stand reverted to Government in Revenue (Settlement) Department. It is difficult to discern as to how the land belonging to the ASTC could have been resumed for the purposes of its allotment to the Municipality. Neither the Government advocate nor the learned counsel for the appellant/Municipality place any provisions of law before us under which the Government could have passed such an order of resumption. Title of the Corporation to the land cannot be divested by issuing any such Memos.

8. Strangely enough, the impugned order dated 1.8.1998 is addressed to the Deputy Commissioner, Bongaigaon without even marking a copy thereof to the admitted owner of the property, namely, ASTC.

9. The subjectmatter that arises for our consideration and the question raised is not *res integra*, but squarely covered by the authoritative pronouncement of this court in *Sarat Chandra Sinha v. State of Assam & Ors.*, (2005) 3 GLT 393. A Division Bench of this court in categorical terms held that the properties that stood vested with the ASTC on its establishment and incorporation with effect from 31.3.1970 could not have been resumed by the Government for any purpose whatsoever and the Government has no such power either to resume, lease or sell any part of the land or property so stood vested with the ASTC. The court rightly took the view that the Corporation though a statutory authority is a personality distinct from the State and is entitled to acquire and hold such property, both movable and immovable, as the Corporation may deem necessary for the purpose of any of its activities and to lease, sell or otherwise transfer any property held by it.

10. That a strange plea has been taken in the affidavit filed by the Deputy Commissioner that no patta has been granted to the Road Transport Corporation so far by the Revenue Department and, therefore, the department is entitled to

resume the land from the Corporation. The plea so taken by the Deputy Commissioner is absolutely untenable and unsustainable and cannot be supported under any circumstances. The land, in question, has been acquired for the benefit of the then existing Transport Department which stood vested in the Corporation by operation of law under which the Corporation is entitled to hold the same and dispose of in its own discretion. The State Government is not entitled to intrude into the properties vested in the Corporation at its will and pleasure.

11. Mr. Mahmud, learned counsel appearing on behalf of the 4th respondent, however, made an attempt to contend that the State Government in its discretion and wisdom thought it fit to utilize the land for a public purpose since the Corporation failed to utilize it for any public purpose and such decision cannot be interfered with by the court in exercise of its jurisdiction under article 226 of the Constitution of India. We are unable to persuade ourselves to accede to the submissions made, by the learned counsel for the simple reason that the State and its authorities have no authority in law whatsoever to interfere with the properties vested with the Corporation. It is neither pleaded nor shown under what authority the properties of the Corporation could have been "resumed" by the Government for the purpose of making the same available to the appellant. The impugned order dated 1.8.1998 issued by the Government for the purpose of resumption of the land, in question, is *ex facie* illegal and without any authority of law.

12. In such view of the matter, the court is left with no option except to quash the impugned order. The learned Judge for good and cogent reasons came to the correct conclusion to declare the impugned order to be bad in law. We are in complete agreement with the view taken by the learned Single Judge.

13. It is a different matter altogether if the State Government can successfully persuade the Corporation to surrender its land in favour of the Municipality if the said land is not utilized by the Corporation for any public purpose. There can always be an amicable settlement between the Corporation and the Government. If any such attempts are made by the Government and the Corporation, this order of ours shall not come in their way.

14. With the observations as above, this writ appeal shall stand dismissed without any order as to cost. Needless to say the order of status quo granted on 2.6.2006 shall stand vacated.