
(2012) 08 GAU CK 0011

In the Gauhati High Court

Case No : Writ Petition (C) No. 910 and 1187 of 2010

Dewan Jamsher Ali and Others

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 03-08-2012

Acts Referred:

Citation : (2013) 1 GLT 359

Hon'ble Judges : Anima Hazarika, J

Bench : Single Bench

Advocate : B. Banerjee, Mr. A. Roshid, Mr. J. Laskar, Mr. D.F.A. Ahmed, Mrs. T. Yasamin and Mr. A. Mobaraque, for the Appellant; J. Handique, State Counsel and Ms. R. Deka, for the Respondent

Final Decision : Allowed

Judgement

Anima Hazarika, J.—Heard Mr. B. Banerjee, learned counsel appearing for the petitioners. Also heard Mr. J. Handique, learned State counsel appearing for the respondent Nos. 1, 5 and 6 and Ms. R. Deka, learned Standing Counsel, PWD appearing for the respondent Nos. 2, 3 and 4. Making grievances against the construction of road on the patta land Under Pradhan Mantri Gramin Sadak Yojana (for short PMGSY), the petitioners, both in WP (C) No. 910/2010 (Dewan Jamsher Ali & Anr. Vs. State of Assam & Ors.) and WP (C) No. 1187/2010 (Tuta Mia & Ors. Vs. State of Assam & Ors.), have approached this Court seeking direction in the nature of Mandamus not to use the land of the petitioners situated in Dag No. 328, Patta No. 155 in WP (C) No. 910/2010 and Dag No. 335, 327 Patta No. 70 and 54 in WP (C) No. 1187/2010, Mouza Paka, village Koyakuchi pathar, district Barpeta. Relief sought for in both the writ petitions being identical, the same are being disposed of by this common judgment.

2. WP (C) No. 910/2010 came up for consideration before this Court on 5.2.2010, wherein this Court passed the following orders:

Heard Mr. A.K. Goswami, learned senior counsel appearing for the petitioners. Mr.

J. Patowari, learned standing counsel for the Public Works Department appears for respondents 2, 3, & 4. Respondents 1, 5 & 6 are represented by Mr. H. Rahman, learned Government Advocate.

The petitioners claim that a village road from Kayakuchi Pather to Nashatra via Helacharpam is being constructed under the PMGSY Scheme over the Patta land of the petitioner, without taking any steps for acquisition of the said land and payment of compensation to the Patta holders.

In view of above, let a Notice returnable on 22.2.2010 be issued to enable the Government Counsels to obtain instructions.

In the mean time status quo on the construction over the land of the petitioners measuring 4 Bighas, under Dag No. 328, patta No. 155, Mouza Paka, village Kayakuchi Pather in the District of Barpeta be maintained.

3. During the pendency of the writ proceedings, the officials of the State respondent filed their pleadings in the form of an affidavit whereof the stands in the both writ petitions are identical. The stand of the respondent Nos. 2, 3 and 4 as averred in the affidavit are that the construction of road from Helacharpura to Nasatra via Pethandipam including cross drainage works are carried out under the supervision of the answering department under the PMGSY (Regular) Ph-(VII) for the year 2007-08, package No. AS-01-74 which road is 3 km in length, wherefore the construction/development of the road is carried out in the existing road and not over the land as alleged. Moreover, as per the Detailed Project Report ("DPR" for short) and the Right of Way (ROW for short) of the existing track is 12 meter and there is no necessity of acquiring the petitioner's land and similarly, the question of destroying the movable and immovable properties belonging to the petitioners does not arise, since no construction is carried out over the petitioner's plot of land.

4. The stand of the respondent No. 5 in both the cases are same wherein the respondent No. 5 contended that the bend as stated at paragraph-3 of the writ petition is existed in the original i.e. Koyakuchi Pathar to Pathadi Road and the bend road is utilized for movement of thela, rickshaw, bicycle, motorcycle and pedestrians also and the construction of the road is being carried out on the original existing road, hence there is no question to acquire land.

5. WP (C) No. 910/2010 came up for consideration after the pleadings were completed and the Court after hearing the parties on 7.10.2010 passed the following orders:

Heard Mr. A. Roshid, learned counsel appearing for the petitioner and Ms. Phukan, learned Government Advocate appearing for the State-respondents. Also heard Mr. J. Patowary, learned Standing Counsel appearing for the respondent Nos. 2, 3 and 4.

The claim of the petitioners in this writ petition is that the State PWD had encroached upon the land of the petitioner which is described to be under Dag

No. 328, Patta No. 155, Mouza-Paka, village Kayakuchi Pather in the District of Barpeta. The further contention of the petitioner is that the construction of the road in question has been started by the respondent authority under the PMGSY Scheme without acquiring the encroached portion of the petitioner's land and as such a direction is sought for from this Court either for acquisition of land and payment of compensation thereto. This contention is disputed in the affidavit filed by the Chief Engineer of State PWD as well as by the Government respondents by contending that while carrying out the construction of the road under PMGSY (Regular) Ph-VII for the year 2007-2008, Package No. AS-01-74, the construction/upgradation is done on the existing road and this assertion is again disputed by the petitioner by filling a rejoinder affidavit. The Court is not in a position to understand whether the land of the petitioner has been encroached upon by the State PWD in the construction/upgradation of road under PMGSY scheme or not and at the same time, the Court is not inclined to throw out this petition on the ground of involvement of disputed question by facts inasmuch as the dispute raised by the parties can be resolved once a proper demarcation of the area is done by the competent authority.

In this view of the matter, the Circle Officer, Sarthebari Revenue Circle, District Barpeta who is the competent authority to conduct demarcation of the disputed land, is directed to conduct a demarcation of the area with the help of the revenue records to find out whether the construction/upgradation of the road has touched/encroached upon any portion of the land belonging to the petitioner as claimed or the construction in question is within the existing road/government land. The demarcation shall be done by the Circle Officer, Sarthebari Revenue Circle, after giving due notice to the parties in the case i.e. the petitioner and the PWD, within a period of one month from the date of receipt of a copy of this order. The Circle Officer is further directed to submit the report of the demarcation.

List this matter on 11.11.2010.

Registry is directed to send a copy of this order to the Circle Officer, Sarthebari Revenue Circle, through the Deputy Commissioner, Barpeta.

6. However, in pursuance of the order dated 7.10.2010 passed in WP (C) No. 910/2010, an additional affidavit has been filed by the respondent No. 5 in order to place the enquiry report submitted by the Circle Officer, Sarthebari Revenue Circle, Barpeta in compliance of the order dated 7.10.2010. From Paragraph 3 of the additional affidavit filed by the respondent No. 5, it would reveal that the petitioners' land has been used in the construction of the said road. For better appreciation and controversy raised in the pleadings of both the writ petitions, paragraph-3 of the additional affidavit is quoted hereunder:

That I have filed this additional affidavit to place the enquiry report submitted by the Circle Officer, Sarthebari Revenue Circle, Barpeta, Assam. It is stated that the aforesaid Circle Officer upon enquiry submitted a report being No. STB/

LR-18/94/1446, dated 07.12.2010. In this report it has been stated that the land involved in the writ petition is situated under village-Kayakuchi Pather, under Mouza-Paka and the same is stated to be of Dag No. 328, Patta No. 155 and it has been seen that the newly constructed road under PMGSY Scheme has encroached petitioners patta land. The trace map annexed herewith would show that the Government land where the road existed falls under Dag No. 330 whereas the road now aligned under PMGSY Scheme over the Patta No. 155, Dag No. 328 belongs to the petitioners. After due measurement in presence of the pattadar Dewan Jamsher Ali, the Public Works Department representatives and the local Gaon Burah it has been found that about 2 kathas 3 lechas land of the said Dag and Patta has been used in the construction of the said road.

7. A bare reading of PMGSY scheme and guideline, it would disclose as thus,-

2. Programme Objectives. (Relevant portion)

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2.2. The PMGSY will permit the Upgradation (to prescribed standards) of the existing roads in those Districts where all the eligible Habitations of the designated population size (refer Para 2.1 above) have been provided all-weather road connectivity. However, it must be noted that Upgradation is not central to the Programme and cannot exceed 20% of the State's allocation as long as eligible Unconnected Habitations in the State still exist. In Upgradation works, priority should be given to Through Routes of the Rural Core Network, which carry more traffic (see Para 3.7 below).

6.12 It will be the responsibility of the State Government/District Panchayat to ensure that lands are available for taking up the proposed road works. A certificate that Land is available must accompany the proposal for each road work. It must be noted that the PMGSY does not provide funds for Land Acquisition. This does not however mean that acquisition cannot be done by the State Government at its own cost. The State Government may also lay down guidelines for voluntary donation, exchange or other mechanisms to ensure availability of land. The process of making land available for the road works should sub-serve the common good and also be just and equitable. The details of land made available should be reflected in the local land records to avoid dispute.

8. A conjoint reading of paragraph-3 of the additional affidavit as indicated above along with its Annexures-A and B and trace map submitted by the Circle Officer, Sarthebari Revenue Circle, Barpeta would amply demonstrate that the proposed road under PMGSY sought to be constructed under Dag No. 328 Patta No. 155 is encroaching the land, thereby, measuring 2 Kathas 3 Lechas of the petitioners' land in WP (C) No. 910/2010 and the trace map would disclose that there exists straight Government road under Dag No. 330 and there is no impediment for construction of road of upgradation over the Government land under Dag No. 330 under PMGSY.

9. I have heard learned counsel appearing for the parties at length. Perused the pleadings set forth by the respective parties along with the Annexures appended thereto. In view of the materials available on record, in the considered opinion of this Court, the writ petitioners have been able to make out a case for passing necessary order as prayed for by invoking the power of writ jurisdiction. In the result, in view of the observation and discussion made hereinabove, both the writ petitions are allowed directing the officials of the State respondent Nos. 2, 3, 4 and 5 to construct road and/or upgrade the existing road over the existing Government road under PMGSY in Dag No. 330 which is a straight road and it should not encroach the patta land of the petitioners, viz. Dag No. 327, 328 and 335, of Patta No. 155, 54 and 70 without taking recourse to clause 6.12 of the PMGSY scheme and guidelines as indicated above. Grievances ventilated by the petitioners in both the writ petitions viz. WP (C) No. 910/2010 and WP (C) No. 1187/2010 is answered accordingly. The parties are left to bear their own costs.