
(2015) 05 GAU CK 0053
In the Gauhati High Court
Case No : WP(C) No. 229 of 2015

Giridhar Sarma

APPELLANT

Vs

The State of Assam and Others

RESPONDENT

Date of Decision : 26-05-2015

Acts Referred:

Citation : (2015) 2 GLD 701

Hon'ble Judges : Biplab Kumar Sharma, J

Bench : Single Bench

Advocate : K.K. Mahanta, Senior Advocate and B.N. Sarma, for the Appellant;
P.S. Deka and M. Bhagabati, GAs, Advocates for the Respondent

Final Decision : Disposed off

Judgement

Biplab Kumar Sharma, J—This writ petition has been filed apprehending eviction from the land under occupation of the petitioner. According to the petitioner, he is in occupation of the land measuring 4 Katha 17 Lechas under Dag No. 33 (Old)/911 (new) of Patta No. 1 of Basistha grant, possessory right of which was purchased in the year 1976. The petitioner has constructed his residential house with electricity connection etc. According to the petitioner he is also an assessee of the Guwahati Municipal Corporation. It is the further case of the petitioner that though the land belongs to the Govt., but having regard to the fact that he is in long possession of the land, it should be settled with him. According to the petitioner, many such occupiers and possessors have been settled with the land under their possession.

2. The writ petition was filed being apprehensive of eviction from the land. In the counter affidavits filed by the respondents, they have justified their action towards evicting the petitioner. In the counter affidavit filed by the respondent No. 8 i.e. the Chief Engineer, Water Resources Department, it has been stated thus:-

"8. That with regard to paragraph 8 and 9 of the writ petition your deponent

begs to submit that river Bahini which flows through the city Guwahati originates from Umtyanga in the hills of Meghalaya and used to flow through Basistha area, Guwahati, Assam. In the Basistha area it crosses the connecting road of Natun Bazar and Bakrapara Manasha Mandir, Bakrapara Tiniali and then the National Highway 37 in between Basistha Chariali and Khanapara and then through Rukminigaon, Hengrabari area and ultimately joins with river Bharalu near Assam State Zoo (Jonali Point). Prior to 1983, the river often carried huge discharge beyond its carrying capacity due to heavy rainfall in the catchment area in the hills of Meghalaya. A major portion of Guwahati city including the State Capital at Dispur got submerged due to the heavy discharge of river Bahini. Considering the facts the Flood Control Department presently known as Water Resources Department through its Guwahati East W.R. Division excavated a pilot channel in the year 1983 near Natun Bazar area and thereby diverted a major portion of river Bahini to river Basistha with the help of a sluice gate near Natun Bazar. Subsequently, in the course of time people started encroachment on the old Bahini channel in between Natun Bazar and Bakrapara Tiniali for a length of 321m and the portion of the Bahini river got dried up and the entire course stated to flow through the excavated pilot channel to river Basistha.

It may be stated here that the then Additional Chief Secretary to the Govt. of Assam and the Present Chief Secretary to the Govt. of Assam along with the Secretary to the Govt. of Assam, Water Resources Department made a field visit to the area during December 2013 and after a thorough study they recommended for revival of the dead course of river Bahini in between Natun Bazar and Bakrapara area. Dr. Arup Kumar Sharma, Professor of IIT, Guwahati also made a field study of the area during that period and he too suggested for revival of the original course of river Bahini.

It may be specifically stated here that revival of the original course of river Bahini is highly essential for flood free Guwahati. Free flow of river Bahini will also keep the existing course of river bahini presently flowing through the city of Guwahati free from pollution and it will be beneficial for the public health. The work is required for the greater interest of the public of Guwahati and in no way it will jeopardize the Public Interest.

It may further be stated here that the excess discharge of Bahini shall again be diverted to river Basistha through the pilot channel excavated in the year 1983 by sluice mechanism near Natun Bazar."

3. The respondent No. 6 i.e. the Circle Officer, Dispute Revenue Circle has also filed counter affidavit in which it has been stated that the petitioner is in occupation of 03 Katha 15 Lechas of Sarkari land in Sarkari Dag No. 43 (new) of Village- Basistha. The said land is a ceiling acquired land. It has also been stated that the petitioner was in occupation of Govt. land more than the present area measuring 3 Katha 15 Lechas and he has sold out the possessory right to others. For a ready reference, the basic stand of the respondents in paragraphs 4, 8, 10, 11, 14 and 16 are reproduced below:-

"4. That with regard to the statement made in paragraph 2 of the writ petition, the deponent begs to state that the petitioner Shri Giridhar Sharma is in occupation of 03K-15L of Sarkari Land in Sarkari Dag No. 43 (new) of Village Basistha as per present Land Records. As per present land records, land belongs to Dag No. 43 found recorded as Ceiling acquired land. It is a fact that the petitioner has been encroaching land in the area since last few years. After selling of possession to the neighbours, he has at present kept 03K-15L of land in his possession.

It is a fact that, many families are residing on a large plot measuring more than 100 Bighas in the Basistha Village. River Bahini was flown at a time in the middle portion of the said large plot connecting Bakrapara on one side and Natun Bazar on the other side. But when once sluice gate was constructed at Bakrapara point about 25 years back, the River Bahini had become dried up and subsequently taking the advantage of drying up of the River, local people started filling up the river and gradually take life of the River. Accordingly, when the last resettlement operation in that village was taken up, the Settlement Officials without thinking about the future complicity, merged the area of River Bahini with the surrounding Sarkari Land as Ceiling acquired land.

Considering the present water logging problem in the Guwahati City, particularly in the Basistha area, local people approached the District Administration for revival of the dead portion of the River Bahini so that the excess water from the Bakrapara Side can be diverted to Natunpara side by connecting the other part of the River Bahini. Accordingly, Water Resources Department studied the pros & cons of the revival of the dead portion and then suggested digging of the Dead Bahini River on Basistha Village.

At present Revenue Map do not reflect the portion of the River because of injudicious decision of the Settlement Staff, hence the Administration decided to take help of the Old Map which existed prior to last Re-Settlement Operation. The present Revenue Maps and Records have been finalised in the year 2009 only. Referred Old Map was prepared in the year 1964 and was used upto the first half of the year 2009. In the Old Map of Basistha (earlier it was known as Basistha Grant), the dead portion of the River Bahini was clearly reflected with Dag No. 26. Accordingly, District Administration decided to excavate the dead portion of the Bahini River with the help of 1964 Map to avoid any confusion among the local inhabitants.

It is a fact that the other families who have encroached the reserved land pertaining to the Dead Bahini River, have already cooperated with the Administration in reviving the dead River. Administration has already cleared encroachment on the portion by evicting the structures found over the land as per Old Map. Portion of two numbers of three storied School building has also been removed during the process of eviction which were found standing on the River land.

On the one portion of the dead river, petitioner, Shri Giridhar Sarma has also residing with his family. He has been found occupying 03K-15L of land in three Dags as per the Old 1964 Map. The Dags are 33 (part), 26 (Part/the River Dag) and 30 (Part). As per Old map, the dead river, Bahini passes through the occupied portion of Shri Giridhar Sharma.

As the eviction would separate his occupied plot into two separate plots as because the River passes through the middle of the occupied plot, hence, to reduce the probable loss, Petitioner was suggested by the administration that the river would be excavated on one side of the plot by slightly diverting the alignment, but Shri Sarma refused the proposal and approached the Hon"ble Court. His adamancy will definitely hamper the revival works of the dead River and as a result, people of the locality in particular and a major part of citizens of Guwahati City in large will suffer. Shri Sharma has been illegally occupying 03K-15L of land as because, as per Land Policy" 1989, Government can settle only 1K-10L of land against a family in Urban areas. Further, Shri Sarma constructed several Assam Type rented house over the plot along with his own residential house and earning rent illegally.

8. That with regard to the statements made in paragraph 6 of the writ petition, the deponent begs to state that a proposal was submitted in favour of the Petitioner against 1K-10L of land in Dag No. 33 (old). But the petitioner is presently occupying 3K-15L of land including land in Dag No. 26 (old) (Dag reserved in the name of Bahini River). By submitting false information, Petitioner thus misleading the Honourable Court.

10. That with regard to the statement made in paragraph 8 of the writ petition, the deponent beg to state that eviction drive has been initiated in the interest of public to reduce the water logging problem in greater Basistha area. Regarding his petition, when the petitioner along with his learned Advocate met the Circle Officer, Circle Officer brief them about the land status and urgent decision of the administration about the revival of the dead river.

11. That with regard to the statement made in paragraph 9 of the writ petition, the deponent to state that the eviction was initiated on the basis of genuine map and thus the eviction was not illegal. Rather, the petitioner has been encroaching land in Dag No. 26, the Dag reserved for the dead Bahini River along with the land of two other surrounding Dags.

14. That with regard to the statement made in paragraph 14 of the writ petition, the deponent begs to state that no person has been given settlement in Dag No. 26 which was reserved in favour of River Bahini. Further, the river has been recreated already in the New Map and hence, there is no question of giving Settlement on that portion in future also.

16. That the deponent begs to submit that as the petitioner has been illegally occupying the land reserved for River Bahini and his unnecessary obstruction will create hurdle in Administration"s plan for Water Log free Guwahati."

4. From the above stand of the respondents, what has transpired is that the petitioner was suggested by the administration that Bahini river would be excavated on one side of the plot of land by slightly diverting the alignment but the petitioner did not agree to the proposal and filed the writ petition. As stated in the affidavit, his confrontational approach would definitely hamper the revival work of the dead river and as a result the people of the locality in particular and a major part of citizens of Guwahati city in large will suffer. It is the stand of the respondents that the petitioner has been illegally occupying 03K-15L of land. Referring to the land policy of 1989, it has been stated that in case of settlement of Govt. land, the petitioner is entitled to get only 1 Katha 10 Lechas of land. It is the further stand of the respondents that the petitioner has constructed several Assam Type house, giving the same on rent.

5. As stated in the counter affidavit, a proposal was submitted in favour of the petitioner for allotment of 1Katha 10 Lechas of land in Dag No. 33 (old) but the petitioner did not agree to the same and has been occupying 3 Katha 15 Lechas of land including Dag No. 26(old) reserved for river Bahini. As regard the stand of the petitioner that some others have been favoured with the settlement, it is the definite stand of the respondents that no person has been given any settlement of land falling under Dag No. 26 which is reserved for Bahini river and that there is no question of giving settlement on that portion in future also.

6. From the above narration of fact, what has emerged is that admittedly the petitioner is in occupation of Govt. land. The controversy arose in respect of the land occupied by him under Dag No. 26, said to be reserved for Bahini River. The respondents also not opposed to the proposal to give settlement of 1 Katha 10 Lechas of land to the petitioner. As to whether river Bahini should be excavated for free flow of water and also to solve the water logging often experienced in Guwahati, is a matter to be decided by those at the helm of affairs. This Court exercising writ jurisdiction cannot issue any direction to the respondents not to evict the petitioner, more particularly when admittedly he is in occupation of the Govt. land.

7. Mr. K.K. Mahanta, learned senior counsel assisted by Mr. B.N. Sarma, learned counsel for the petitioner submits that since the petitioner is in occupation of the land for the last several years, unless there is absolute necessity, he should not be evicted. According to him, as per the original report filed through an additional affidavit, the Bahini river did not flow over the land under occupation of the petitioner. He submits that the respondents should first try re-alignment instead of disturbing the peaceful possession of the land under occupation of the petitioner. He further submits that the petitioner being in long occupation of the land, the authority should consider settlement of the entire land with him.

8. Countering the above argument, Mr. M. Bhagabati, learned State Counsel submits that the land under occupation of the petitioner is the portion over which Bahini River had original flown. In this connection, he has referred to the trace map annexed to the counter affidavit showing the original location of river

Bahini. He submits that with the proposed excavation, the authorities have decided to get free flow of Bahini river to ease water logging in Guwahati, which will be beneficial to large number of Guwahatians.

9. Having regard to the aforesaid facts and circumstances and the submissions advanced by the learned counsel for the parties, the writ petition is disposed of providing that the respondents shall take appropriate decision in the matter taking note of all the attending facts and circumstances and in accordance with law, providing opportunity of being heard to the petitioner.

10. Interim order operating in this proceeding stands vacated.

11. There shall be no order as to costs.