
(2013) 06 GAU CK 0026
In the Gauhati High Court
Case No : WP (C) No. 1780 of 2008

Managing Committee of Kalarchar Lower Primary School, Md. Rustam Ali and Md. Akbar Ali APPELLANT

Vs

The State of Assam and Others RESPONDENT

Date of Decision : 12-06-2013

Acts Referred:

Citation : (2013) 06 GAU CK 0026

Hon'ble Judges : Hrishikesh Roy, J

Bench : Single Bench

Advocate : S.S. Dey, Mr. M. Nath, Md. A. Matlib and Mr. A. Roy, in WPC No. 3499 of 2009 and Mr. H.R.A. Choudhury, Mr. F.U. Barbhuiya and Mr. J. Islam, in WPC No. 2125 of 2008, for the Appellant; U.K. Goswami, SC, Edu. and Mr. G. Goswami, SC, SSA, for the Respondent

Final Decision : Disposed Off

Judgement

Hrishikesh Roy, J.—The primary issue that arise in these cases is where the submerged Kalarchar L.P. School of Kalarchart Part-II Village of Barkhetri Block of Nalbari District, should be relocated. The petitioners in WP (C) 1780/2008 and the WP (C) 3499/2009 are supporting shifting of the school to Kalarchar (Bangnaputa) whereas the petitioners in the WP (C) 2125/2008 are for relocation at Syed Ali Char (Mintur Suba), as was approved by the District Mission Coordinator, Assam Sarba Siksha Abhijan Mission (in short SSA), Nalbari through the order dated 6.8.2009. On prayer made by advocates Mr. A. Matlib and Mr. F.U. Borbhuiya, Advocate, the records of the WP (C) 3499/2009 was requisitioned since in this case, the petitioners have challenged the order dated 6.8.2009 of the District Mission Coordinator and seek direction for relocation of the eroded Kalarchar L.P. School at Kalarchar (Bangnaputa). However although this case is reflected in the supplementary hearing list, when the cases are called, the lawyers representing the Managing Committee of the Kalarchar L.P. School, who have filed the WP (C) 1780/2008 and the WP (C) 3499/2009 are found to be absent. However during the hearing the petitioners in the WP (C) 2125/2008 is

represented by Advocate Mr. F.U. Borbhuiya and the respondent authorities are represented by Mr. U.K. Goswami, Standing Counsel, Education and Mr. G. Goswami, Standing Counsel, SSA.

2. The D.I. of Schools, Nalbari through his order dated 9.10.2007 directed the Headmaster of the Kalarchar L.P. School to shift to the ekchalia house at the Kalarchar (Bangnaputa) Village which was constructed by the local villagers. But the shifting order was stayed in the WP (C) 1780/2008 through an interim order of 12.5.2008. But subsequently the interim order was modified and through the order dated 15.9.2008 in the WP (C) 1780 and 2125 of 2008, the departmental authorities were permitted to relocate the school, as may be considered by the appropriate authorities.

3. After the Court permitted the departmental authorities to identify the appropriate location for the shifting of the submerged Kalarchar L.P. School, the Deputy Commissioner, Nalbari and the District Project Engineer, SSA, Nalbari arranged inspection of the suggested sites and recommended construction of the school at the Syed Ali Char instead of the Kalarchar (Bangnaputa), although the local people had constructed a temporary school house at the Kalarchar (Bangnaputa). In the meantime land measuring 2 Bighas covered by Dag No. 192 of K.P. Patta of Madhya Barkhetri Mouza in Village Bhangamari Char was allotted in the name of the Kalarchar L.P. School at the Syed Ali Char by the Circle Officer, Barkhetri.

4. The order dated 23.2.2009 of the Deputy Commissioner, Nalbari reveals that recommendation was made for construction of the school at the Kalarchar (Bangnaputa). Thereafter the authorities of the SSA had sanctioned Rs. 4,00,000/- (Rupees four lakh) for construction of the building at the relocated site. But notwithstanding the recommendation of the D.I. of Schools, Nalbari for construction of the school at Kalarchar (Bangnaputa), the District Mission Coordinator, Nalbari approved construction of the school building at the Syed Ali Char (Mintur Suba), as per his order dated 6.8.2009, which is under challenge in the WP (C) 3499/2009. But this approval for the school's relocation to the Syed Ali Char (Mintur Suba) was stayed by this Court on 21.8.2009 in the WP (C) 3499/2009.

5. On behalf of the authorities of the SSA, Advocate Mr. G. Goswami submits that decision on relocation of the L.P. School is to be taken by the authorities of the Education Department where the SSA officers have no legitimate role. But the SSA authorities have come into the picture only because, they had sanctioned Rs. 4,00,000/- (Rupees four lakh) for construction of a school building at the new site.

6. ON the other hand, Mr. U.K. Goswami, Standing Counsel, Education submits that because of the ongoing litigation between the rival groups, the decision for relocation of the school building should appropriately be taken by a higher authority since the officers at the district level are unable to take an effective

decision. Advocate Mr. F.U. Borbhuiya submits that since stay order is operating on the relocation of the L.P. School, the DEE, Assam should be asked to decide on the appropriate place where the Kalarchar L.P. School should be relocated.

7. In view of above, the DEE, Assam is directed to re-examine the order passed by the DEEO, Nalbari on 6.8.2009 and to take a decision on the appropriate place where the submerged Kalarchar L.P. School should be relocated. While taking the decision, the inputs given by the D.I. of Schools, Nalbari, the Circle Officer, Barkhetri Circle and the other competent authorities should be taken into account. Hearing may also be afforded to the rival groups, who are seeking to re-establish the school in their respective favoured locations. To facilitate the exercise, the petitioners may intimate this order to the Director who shall then take a decision through a speaking order. The interim orders operating in these cases will abide by the decision of the DEE, Assam. Since the original school was eroded by the river Brahmaputra in the year 2007 and 6 years have gone by, the decision should be given expeditiously and preferably within 8 weeks of receipt of intimation. The cases are disposed of accordingly.