

(2016) 11 GAU CK 0075
In the Gauhati High Court
Case No : PIL No. 100 of 2015

Nilakshya Sarma

APPELLANT

Vs

State of Assam

RESPONDENT

Date of Decision : 25-11-2016

Acts Referred:

Citation : (2016) 5 NEJ 473

Hon'ble Judges : Ajit Singh, CJ. and Kalyan Rai Surana, J.

Bench : Division Bench

Advocate : Mr. D. Gogoi, Advocate, for the Petitioner; Mr. B.N. Sarma, Sr. GA, Mr. D.K. Mishra, Senior Advocate, Mr. Bikash Prashad, Ms. S. Jahan, Advocates, for the Respondents

Final Decision : Disposed Off

Judgement

Ajit Singh, C.J.—Mr. D Gogoi, learned counsel for the petitioner, Mr. BN Sarma, learned Senior Government Advocate, Assam for Respondent Nos. 1 and 2 and Mr. DK Mishra, learned senior counsel, assisted by Mr. Bikash Prasad and Ms. S Jahan, learned counsel for Respondent No.3.

2. In the present Public Interest Litigation, the case of the petitioner is that the Sarkari Khas land situated at Dag Nos. 1828 and 1829, Mouza Mahabhairab is reserved for Tezpur Iddgah Committee (Respondent No.3) for the purpose of only Idd prayer and it is merely authorised to look after the upkeep of the field. The petitioner has also stated that as per order of the competent authority, the land has to remain Sarkari Khas as well as in the custody of Deputy Commissioner, Darrang, who, as and when necessary, shall give permission for the games, holding of social and public functions, without affecting the sentiments of Muslim religion, but Respondent No.3 has unlawfully taken steps to raise certain structures. On these averments, the petitioner has prayed that Respondent No.3 be directed to remove all unauthorized construction from the land.

3. Pursuant to compliance of order dated 19.9.2015 of this Court, the

Superintendent of Police, Sonitpur, Tezpur, after inspecting the land and examining the land record, has submitted her report dated 12.11.2015 (Annexure-A). The report reads as under:-

"Office of the Superintendent of Police Sonitpur Tezpur

Letter No. Crime/SR/23,497

dated Tezpur, the 12th November, 2015

Sub:- Submission of compliance report in connection with PIL No.100/2015

(Nilakshya Sarma v. The State of Assam & others).

Ref:- No. JR.GA/NU/2015/7277 Dated 21.09.2015

Sir,

With reference to the subject cited above, I have the honour to submit herewith the compliance report in connection with PIL No.100/2015 (Nilakshya Sarma v. The State of Assam & others) as follows:-

During inquiry it is known that the Iddgah field situated at Tezpur town as Sarkari Khas land vide Dag No.1828 and 1829, Mouza-Mahabhairab which is reserved for Tezpur Iddgah Committee for the purpose of Idd prayer now is being used for construction of some structure by the respondent No.3 which is against the order of State Govt. contain in the letter dated 09-09-1975 issued by the Under Secretary to the Govt. of Assam, Revenue Department.

In this respect, it is seen that the Government Notification being No. RSS 114/71/68 dated Dispur, Guwahati-781006 of 9th day of September 1975, states that "the Governor of Assam having considered all aspects of the matter and also for strengthening of understanding among different section of the people is pleased to order that the Tezpur Iddgah Field comprising of Dag Nos. 1828 and 1829 mouza-Mahabhairab be reserved for the Tezpur Iddgah Committee for the purposes of Idd prayer. The Committee will look after the upkeep of the field. The field will remain "Sarkari Khas" and it remain in the custody of the Deputy Commissioner, Darrang who will whenever necessary give permission for the games, holding social and public functions etc. While giving permission will see that the field is not used for such purposes as may affect the Muslim religious sentiment. The Deputy Commissioner may allow the Iddgah Committee to construct walls around the field as boundary for its proper upkeep.

It is seen that the field was initially called "Chitrobon Bakari" which is now commonly known as Idd Gah field. There was some dispute between the Madhya Tezpur Rangali Bihu Sanmilam and the Idd Gah Committee for which some lands of Mahakuma Tezpur Parishad measuring about 2 katha 4 lessas was sold to the Madhya Tezpur Rangali Bihu Sanmilan vide registered sale deed. The field has been used as playground for the Tezpur Academy Higher Secondary School and the Bengali Boys Higher Secondary School. The elderly people of Tezpur Town

also used to do morning walk on the field but since February 2014 the gates has been kept under lock and key by the Idd Gah Committee. The Govt. order allowed the Muslim Community of Tezpur to hold Idd prayer on 2 (two) days of the year and also allowed the Madhya Tezpur Rangali Bihu Sanmilon to use the play ground as a venue for the audience and general public for witnessing the Bihu functions. Now some persons under the banner of the Tezpur Idd Gah Committee has tried to make two numbers of sheds in front of the Bihu Mancha and stopped the students from carrying out their sporting activities which has led to discontentment in between different communities in the area for which there was an apprehension of law and order situation due to which the further construction over the lands were stopped by the Idd Gah Committee.

Also the members of the Tezpur Idd Gah Committee were requested to submit the records as well as permissions for making the said constructions but nothing was produced by them as yet.

The authorities of the Town committee and development authority were also consulted but no permissions for the Tezpur Idd Gah Committee to make such construction inside the field was found. It is also seen that the gate of the field has been closed by the Tezpur Idd Gah Committee because of which the people are also deprived. Thus this report is being submitted in pursuance to the directions of the Hon"ble Gauhati High Court.

Encl:- Photocopy of Govt. Order No. RSS 114/71/68 Dated Dispur Gauhati-781006 of 9th September/75

Yours faithfully,

Sd/- Illegible

Superintendent of Police, Sonitpur, Tezpur."

4. Respondent No.3 has filed objection dated 22.11.2016 against the above quoted report of Superintendent of Police. In the objection, Respondent No.3 has mainly stated that out of two sheds referred in the report, one is Uzu Khana, which is in existence since 1908, for Namajis to cleanse themselves before offering Namaj and the second shed has recently been constructed for the purpose of providing shelter to the old and infirm, who come to offer their Namaj.

5. The photographs of both these sheds filed clearly show that they have been recently constructed for which no permission has been taken from the authorities. No document has also been filed by Respondent No.3 to indicate that any such Uzu Khana has been in existence since 1908. The sheds have been constructed with bricks, cement, iron etc. and are of permanent nature. It is thus apparent that Respondent No.3 has constructed two permanent sheds on the land without any permission from the authorities.

6. We, accordingly, direct Respondent No.3 to use the land/field only for Idd prayer and immediately remove both the sheds which have been raised by it

without any permission from the authorities. We also direct Respondent No.3 not to prevent the public from using the field for morning walk etc. We make it clear that if Respondent No.3 on its own fails to comply with our order, the District authorities shall ensure that the above directions are complied with in public interest. Needless to mention that after removing the unauthorized constructions, Respondent No.3 will be at liberty to apply as per law for making any construction before the appropriate authority and the appropriate authority shall decide the application on its own merit.

7. With the above direction, the petition stands finally disposed of.