

(2025) 07 GAU CK 0438
In the Gauhati High Court
Case No : I.A.(Civil) Of 1486 Of 2025

Padmananda Choudhury

APPELLANT

Vs

Sikandar Ali

RESPONDENT

Date of Decision : 17-07-2025

Acts Referred:

Constitution Of India, 1950 — Article 226

Citation : (2025) 07 GAU CK 0438

Hon'ble Judges : Sanjay Kumar Medhi, J

Bench : Single Bench

Advocate : M Das, P K Basu, P K Roychoudhury

Final Decision : Dismissed

Judgement

Sanjay Kumar Medhi, J

1. The instant writ petition has been filed with the following prayers:

"In the premises aforesaid it is most respectfully prayed that this Hon'ble Court may graciously be pleased to admit this petition, call for the records and issue Rule, calling upon the Respondents to show cause as to why;

(A)a Writ in the nature of Mandamus should not be issued directing the Respondents to stay the proposed eviction at Beltoli Bazar under Nagaon Sadar Circle in Nagaon district till enquiry is completed by the Respondent No. 3 through District Development Committee (DDC) which was initiated on the representation dated 4-1-2024 (Annexure-4);

(B)a Writ in the nature of Mandamus should not be issued directing the Respondents to initiate an enquiry as regard implementation of PMGSY Package No. AS-19-791 for construction of R.C.C. Bridge which is not a part of PMGSY Package No. AS-19-791;

(C)a Writ in the nature of Mandamus should not be issued directing the Respondent No. 3 to dispose of the representation dated 4-1-2024 (Annexure-4)

(D) any such other or further order should not be issued as may be deemed fit and proper under the facts and circumstances of the case.

And-

Upon perusal of the records and hearing the parties the Rule may be made absolute.

And for this act of kindness the petitioners as in duty bound shall ever pray."

2. This Court vide order dated 04.03.2024 while issuing notice, had granted an interim protection by directing that the petitioners shall not be evicted from their land which is located at Beltoli Daily Bazar under Khagorijan Anchalik Panchayat till the returnable date. The matter was however not listed on the returnable date and in the meantime, two interlocutory applications being IA(C)/1486/2025 and IA(C)/2099/2025 have been filed for modifications / vacation of the interim order and in those two interlocutory applications, there is a direction for extension of the interim order.

3. Be that as it may, considering the subject matter involved, the writ petition along with the two interlocutory applications are taken up for disposal together.

4. I have heard Shri P.K. Roy Choudhury, learned counsel for the petitioners. I have also heard Shri S. Dutta, learned Standing Counsel, P&RD for the respondent no. 1, Shri A. Gayan, learned C.G.C. for the respondent no. 2, Shri D. Nath, learned Senior Government Advocate for the respondent nos. 3 to 8 and Shri P.K. Basu, learned counsel for the respondent no. 10.

5. The case projected in the writ petition is with regard to the apprehended eviction of the petitioners from their establishment in the area in question. It is projected that a PMGSY scheme under Package No. AS-19-791, namely "MRL-05-Rupohigaon Uttar Etapara to Uttar Herapatty via Loagaon" is on for upgradation of a road from Rupohigaon Uttar Etapara to Uttar Herapatty via Laogaon. It is the case of the petitioners that as a part of the scheme, though one RCC Bridge has been sanctioned, there is actually no river or low-lying area on the said road requiring the RCC Bridge and in the projection of construction of the RCC Bridge, the eviction of the petitioners have been sought to be made.

6. It is also contended that the eviction, if any, would require the prior consent of the concerned Gaon Panchayat and Anchalik Panchayat. The petitioners also contend of filing representation before the respondent authorities, praying for an enquiry and stay of the proposed eviction and no steps have been taken.

7. Shri PKR Choudhury, learned counsel has fairly submitted that public interest would outweigh the private interest. However, as per the instructions received, the RCC Bridge on the pretext of which the eviction has been sought to be made is not a part of the scheme and by mala fide exercise of powers, the petitioners have been sought to be evicted. He has accordingly submitted that the interim order was rightly passed which is continuing.

8. Per contra, Shri D. Nath, the learned Senior Govt. Advocate, has submitted that an entirely wrong projection of facts have been made in the writ petition. He has also alleged that there are suppression of material facts and misrepresentation of facts. It is submitted that the entire premises that there is no river or low-lying area requiring the bridge on which the petition has been structured is incorrect. He has submitted that in fact a timber bridge is existing and the same is sought to be substituted by an RCC Bridge which is wholly in the interest of public. He has categorically stated that the bridge is a part of the aforesaid PMGSY scheme and is sought to be constructed to facilitate the communication of the public in general.

9. The learned State Counsel has drawn the attention of this Court to the averments made in the interlocutory application filed by the official respondent, more particularly those made in paragraph 5 which reads as follows.

"That the applicant begs to state that the actual fact of the case is that the road namely "MRL-05-Rupohigaon Uttar Etapara to Uttar Herapatty via Laogaon" is a PMGSY major rural link comprises segments of 6 (six) different rural roads and connect directly or indirectly 24 Nos. of habitations. The road alignment as per Online Management Monitoring and Accounting System (in short OMMAS) portal of NRRDA and as per the sanctioned DPR found to be started from Beloguri was generated and available in OMMAS Portal of PMGSY for OF ASSKhagarijan Block trace map approved by the hon'ble MP, Nagaon on 05-12-2021. The GPS photographs taken during preparation of DPR established that the road alignment NOTARY Natipara passes through Laogaon at Beltoli Bazar existing Sataya wooden bridge and ends at Uttar Herapatty. This alignment passes through the existing timber bridge at Beltoli Bazar. The said timber bridge is at Beltoli Bazar over the river Sonai and proposed RCC Bridge sanctioned in the same location and hence the bridge proposed was done after proper survey and enquiry.

A copy of the Major Rural Link comprises segment of 6 (six) different rural roads is annexed herewith and marked as Annexure-A/2.

A copy of the list of 24 Nos. of habitations is annexed herewith and marked as Annexure- A/3.

A copy of the GPS photographs taken during preparation of DPR is annexed herewith and marked as Annexure-A/4.

A copy of the trace map approved by hon'ble MP, Nagaon is annexed herewith and marked as Annexure-A/5."

10. The learned State Counsel has also placed before this Court certain photographs taken by means of GPS indicating the location of the site where a timber bridge is existing. He has also placed before this Court a communication issued by the Executive Engineer PWRD dated 29.12.2023 to the Circle Officer whereby it has been stated that the RCC bridge under the package would replace the existing SPT foot Bridge and for smooth execution of the proposed RCC

Bridge, the Right of Way (ROW) is required in both sides of the existing SPT Bridge at Beltoli Bazaar area.

11. The learned State Counsel has fairly submitted that till now no notice for eviction has even been issued and therefore, the writ petition is premature. He accordingly submits that not only the interim order is required to be vacated, the writ petition itself is to be dismissed. He has also drawn the attention of this Court to the prayer made in the writ petition regarding the shifting of the site and has submitted that the same being a policy decision which is reached by taking into consideration all the relevant factors, such prayers are not maintainable.

12. Shri PK Basu, learned counsel for the respondent no. 10, who is the applicant in I.A.(Civil)/2099/2025 endorses the submission advanced by the learned State Counsel. The submissions of Sri Nath, the learned Senior Govt. Advocate is also supported by Sri S. Dutta, learned Standing Counsel, P&RD and Ms. A. Gayan, learned CGC.

13. The rival submissions have been duly considered.

14. It clearly appears that the projection in the writ petition is that the RCC Bridge in question is not a part of the scheme.

15. The said averment and projection is however categorically disputed and the materials placed on record would show that the said RCC Bridge is indeed a part of the scheme. The statements made in the writ petition also appears to be misleading by stating that there is no low lying area or river requiring a bridge. The materials placed on record including the GPS photographs would show that not only there is a low lying area which is filled with water, there is also an existing wooden bridge which is to be replaced by the RCC Bridge and such construction clearly appears to be in the interest of public service. The representations which have been annexed to the writ petition would also indicate that there are other considerations for making the same before the authorities.

16. Without even going to those aspects, this Court has also noted that till date no notice has been issued to the petitioners requiring them to vacate the area in question. In the considered opinion of this Court, the cause of action has not even arisen making it ripe for the petitioners to approach this Court by filing an application under Article 226 of the Constitution of India. It is a settled position of law that the powers exercised under Article 226 of the Constitution of India is a discretionary power where prerogative writs are to be issued only in extraordinary situations and writs are not to be issued on mere asking. As already held, the cause of action is yet to arise.

17. Under the conspectus of the aforesaid decision, this Court is of the firm opinion that no case for interference is made out at this stage and accordingly the writ petition is dismissed. Apart from the fact that no case for interference has been able to be made out by the petitioners at this stage, the private

interest of the petitioners has to give way to overwhelming public interest involved in the construction of an RCC bridge which would cater to the needs of the public in general.

18. Consequently, the interim order stands vacated.

19. It is needless to state that the process of eviction when carried out is required to be done as per law.