
(2005) 08 GAU CK 0075
In the Gauhati High Court
Case No : P.I.L. No. 13 of 2005

Sarat Chandra Sinha and Others

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 12-08-2005

Acts Referred:

Assam Land Revenue Settlement Rules — Rule 13
Road Transport Corporations Act, 1950 — Section 12, 17, 19, 19(1), 19(2)

Citation : AIR 2006 Guw 4 : (2006) 2 GLR 672 : (2005) 3 GLT 393

Hon'ble Judges : B.K. Roy, C.J;D. Biswas, J

Bench : Division Bench

Advocate : G.H. Sahewalla, A.K. Goswami and G. Uzir, s, S. Senapati, Md. Aslam and D. Senapati, for the Appellant; K.N. Choudhury, Add. A.G., P.C. Deka and U. Barua, S.C. A STC, J. Roy, U. Hazarika, A. Paul, R.B. Deka, M. Sarkar, A. Barua and B. Bhuyan, for the Respondent

Final Decision : Allowed

Judgement

D. Biswas, J.—This Public Interest Litigation questions the decision of the Respondent, State of Assam as contained in Annexure-V to transfer 2 Bighas of land situated in Paltan Bazar, Guwahati within (he Assam State Transport Corporation Complex in favour of Respondent No.7 Indian Motel Company Limited for the purpose of setting up a hotel, while coming with prayers to direct Respondent Nos. 1 to 5 to cancel, recall or forbear from giving effect to that decision.

2. Respondent No. 7 proposed to the Government of Assam for investment, by setting up of "IndiOne" category hotel at Guwahati which was considered in a Meeting held on 6-11-2004 under the Chairmanship of the Chief Minister, Assam which was attended by 10 persons, viz.-

(1) Additional Chief Secretary, Revenue Department;

(2) Commissioner & Secretary, Revenue Department;

- (3) Commissioner to Chief Minister;
- (4) Additional Secretary, Chief Minister's Secretariat;
- (5) Deputy Commissioner, Kamrup (M);
- (6) Chairman, Assam State Housing Board;
- (7) Managing Director. HOUSEFED;
- (8) Managing Director, Assam State Ware-housing Corporation;
- (9) Managing Director, ASTC; and
- (10) Mr. B. Bordoloi, TATA TEA Ltd., Guwahati

and the following minute was recorded :?

Meeting after threadbare discussion arrived at following decisions :?

Meeting welcomed the investment proposal of Tata Groups for setting up of "IndiOne" category hotel at Guwahati.

After examining all the probable sites of the proposed hotel as furnished by the Deputy Commissioner, Kamrup (M), Meeting finally decided that a plot of land measuring about two Bigha of vacant land in Paltanbazar locality in the vicinity of ASTC Complex as, the proposed site of the hotel complex.

Shri B. Bordoloi of Tata Tea Ltd. who represented the company in the meeting was requested to submit a formal application to the Deputy Commissioner, Kamrup (M) for making available to the company the aforementioned plot of identified land for the hotel project to which he agreed to do so at the earliest. Shri Bolin Bordoloi on the other hand requested for giving settlement of land by December, 2004 so that the project could be completed before the start of next National Games to be held in Guwahati.

Meeting decided that land in question may be handed over to the company for construction of the Hotel project on payment of land value as per prescribed norms to be fixed by the Revenue Department.

3. This Minute shows that the authorities present in this Meeting decided to handover 2 Bighas of vacant land in the Paltan Bazar locality in the vicinity of the ASTC Complex. It is, therefore, clear that the Members were not appraised of the fact that the land, as claimed by the ASTC, was part and parcel of 9 Bighas and odd lands comprised in Dag No. 554/3213 (old) and 555 (new)/32 13 (old) of Sahar Guwahati Part V under Ulubari Mouza which was transferred and vested in the name of Assam State Transport Corporation.

4. A question crops up whether the land stood vested in the Corporation and, if so, whether the State Government had the authority to take a decision to divest a part of the land of its own without reference to the Corporation which is governed by the Road Transport Corporation Act, 1950 and the Rules framed

thereunder?

5. Mr. G. N. Sahewalla, learned senior counsel for the petitioner with reference to the documents on record and several provisions of the Act of 1970 argued that the land sought to be transferred is a part and parcel of the land measuring 9 Bighas and odd stated as above which is exclusively under the control of the Corporation and the State Government cannot independently take any decision to take away any part of it unless the Corporation so decides in compliance with the provisions of the Act and the Rules.

6. Mr. P. C. Deka, learned senior counsel appearing for the Corporation argued at length to show that the land was vested with the Corporation long back and the powers to lease, sell or otherwise transfer any property held by the Assam State Transport Corporation are exclusively within the domain of the Corporation, in view of the provisions of Section 19(2)(b) of the Road Transport Act of 1950. He further argued that the Corporation had invested a sum of Rs.10 lakhs for the development of the land and it is being used as parking yard for the vehicles and is within the boundary walls of the Transport Complex. Mr. Deka further makes it clear that the Corporation does not want to part away with this piece of land,

7. Mr. D. K. Mishra, learned senior counsel of Respondent No. 8 pointed out that as per provisions of the Assam Land and Revenue Regulations, 1886, a plot of land allotted with or vested with any authority cannot be divested except without taking recourse to the procedure for resumption. According to him, if the resumption is for the purpose of re-allotment or sale, the first option will also be with the allottee either to seek re-allotment or to purchase the same. We find no reason to disagree with Shri Mishra since the land in question is not a waste land or not under occupation of the allottee.

8. Mr. K. N. Choudhary, learned Additional Advocate General for the State defended the Government's decision submitting as follows :?

The State Government have the powers to divest land which is not in use for the purpose for which it was allotted; and the decision taken by the State Government is in public interest inasmuch as it will boost tourism industry in the State of Assam. The land in question is going to be utilized for the purpose of establishing a hotel in the prime locality of the city keeping in mind the ensuing National Games to be held in the State of Assam by the end of 2005. The State is also getting quite a substantial amount as consideration for the aforesaid land. Public interest was the prime consideration which prompted the State authority to adopt the resolution for sale of the land for construction and establishment of a hotel. According to him, it is the policy decision of the State and, therefore, any interference by this Court would be wholly map- ! appropriate. Shri Choudhury also raised objection as to the maintainability of this public interest litigation. According to him, the three petitioners are political adversaries of the present State Government and they have no locus to challenge the decision which has been taken in public interest. Shri Choudhury relied upon the decisions in Janata

Dal Vs. H.S. Chowdhary and Others, ; Raunaq International Limited Vs. I.V.R. Construction Ltd. and Others, ; Shri Sachidanand Pandey and Another Vs. The State of West Bengal and Others, ; Narmada Bachao Andolan Vs. Union of India and Others, ; BALCO Employees Union (Regd.) Vs. Union of India and Others, and in Wallamphang Roy v. State of Meghalaya (2004) 2 GLJ 403. The gamut of the situation boils down to the question whether the plot of land measuring 2 bighas is a part and parcel of the 9 Bighas and odd land which was vested with the erstwhile Shillong Motor Limited and, thereafter with the Assam State Transport Corporation on its establishment and incorporation w.e.f. 31-3-1970 and whether the State Government have the powers to lease or sell any part of the land vested with the Assam State Transport Corporation.

9. There is no dispute that the land in question is under possession of the Corporation and is being used as a parking yard. Annexure-1, certified copy of the Chitta of Gauhati Town Panbari Mouza, shows that 9 Bighas 3 Kathas 17 Lechas of land were recorded in the name of Shillong Motor Office. There is also an endorsement made on 25-11-1978 to the effect that the land is reserved for Shillong Motor Office (Assam State Transport Corporation) as per letter No. 659 dated 7-12-1985 and order dated 1-4-1986 of Circle Office. The name of the owner i.e. Shillong Motor Office stood replaced by Assam State Transport Corporation. It appears from the Chitta that the land appertains to Dag No. 3213/554 (555(new))/ 3213(old). In paragraph-5 of the affidavit-in- opposition, it is averred that the revenue records would show that the land in question belongs to the State Government and not to the Corporation. A plot of land measuring 104.07 ares in Dag No. 554 is shown as reserved for ASTC and another plot of land measuring 16.23 ares in Dag No. 554/ 633 has been shown as reserved for residential quarters and guest house of Grade III and Grade-IV employees. A part of the land appertaining to Dag No. 633 was resumed from ASTC by Letter No. RSS 840/ 95/9 dated 25th September. 1995. This statement in paragraph-5 of the affidavit-in-opposition by the State Government shows beyond all shadow of doubt that the land in question was allotted to the Corporation. A statement that a part of the land measuring 4 Kathas was resumed from ASTC clearly indicates that the right, title and interest over the land had vested with the Corporation. The title to the land in question and possession thereof by the ASTC has been established.

10. Necessarily the question as to the powers of the State Government to divest the land assumes significance. To resolve this issue, it would be necessary to refer to certain provisions of the Act of 1950 to determine the legal status of the Corporation. It is an admitted fact that the Assam State Transport Corporation has been established in pursuance of the provisions of Section 3 of the aforesaid Act. Section 3 empowers the State Government to establish a Road Transport Corporation for the whole or in part of the State by notification in the official Gazette. Section 4 provides that every Corporation shall be a body corporate by the name notified u/s 3 having perpetual succession and a common seal, and shall by the said name sue and be sued. Section 5 provides for the general

superintendence. direction and management of the affairs and business of the Corporation by a Board of Directors with the assistance of the committees and the Managing Director. The Board shall consist of a chairman and such other directors, being not less than five and not more than seventeen, as the State Government may appoint. Section 12 empowers the Board to adopt resolutions in its meeting, appointing Committees and for regulating other affairs of the Corporation. Section 17 empowers the State Government to constitute advisory council for the purpose of advising the Corporation of such matters as may be specified in the notification. Therefore, the Corporation though a statutory authority is a personality distinct from the State. The provisions of the Act of 1950 make it clear that it had a separate and independent identity of its own. It is not a part of the Government and, therefore, the ownership, control and management of the Corporation vests in the Corporation itself. The provisions of Section 19 provides for the power of the Corporation. It is considered necessary to quote hercinbelow the provisions of Section 19(2)(a), (b), (c) and (d) which broadly specify the powers of the Corporation in respect of its activities, particularly relating to movable and immovable properties ?

19. Powers of the Corporation?

(1) ...

(2) subject to the provisions of this Act, the powers conferred by Sub-section (1) shall include power?

(a) to manufacture, purchase, maintain and repair rolling stock, vehicles, appliances, plant, equipment or any other thing required for the purpose of any of the activities of the Corporation referred to in subsection (1): Explanation ? In this clause, the expression "manufacture" does not include the construction of the complete unit of a motor vehicle except for purposes of experiment or research;

(b) to acquire and hold such property, both movable and immovable, as the Corporation may deem necessary for the purpose of any of the aid activities, and to lease, sell or otherwise transfer any property held by it;

(c) to prepare schemes for the acquisition of, and to acquire, either by agreement or compulsorily in accordance with the law of acquisition for the time being in force in the State concerned and with such procedure as may be prescribed, whether absolutely or for any period, the whole or any part of the undertaking of any other person to the extent to which the activities thereof consist of the operation of road transport services in that State or in any extended area;

(d) to purchase any agreement or to fake on lease or under any form of tenancy any land and to erect thereon such buildings as may be necessary for the purpose of carrying on its undertaking.

11. It would appear from Clause (b) that the powers to lease, sell or otherwise

transfer any property held by the Corporation are vested in the Corporation itself. Therefore, unless the Board decides by a resolution to part with any part of the movable property i.e. the land in question, the State Government cannot of its own divest any such property in derogation of the above statutory provisions. The State Government by the impugned resolution instead of requesting the Corporation to take a decision in the matter itself decided to sell 2 Bighas of land to Respondent No. 7. This act on the part of the State Government, in our considered opinion, is not permissible under the law. That apart, the Minute/ resolution itself shows that the members present in the meeting were not aware of the fact that the land was a part and parcel of the immovable property belonging to the Corporation. This is apparent from the fact that the resolution refers to a plot of land in the vicinity of the Corporation Complex.

12. The State do not have overriding powers under the provisions of the Act to take a decision to divest any part of the land from the Corporation and to sell it out for consideration without the concurrence of the Corporation. In the instant case, the Corporation in its affidavit had emphatically stated that they have been considering seriously the proposal for construction of a Yatri Niwas on a part of the land to facilitate accommodation of the passengers /commuters and they are not willing to part with this plot of land to any private party for construction of a hotel. Mr. P. C. Deka, learned senior counsel made this stand of the Corporation very clear in his argument advanced with reference to (his affidavit. That apart, in Paragraph 4 of the Affidavit the Corporation made it clear that the land in question is under possession of the Corporation and it is bounded by wall. According to the Corporation, the said plot of land has been under peaceful and undisputed possession of the Corporation for last 30/35 years and on this plot of land staff quarters, toilet complex, vehicle serving units exists. That apart, a part of the said land is also used for parking unit of the vehicles of ASTC and other vehicles operated under the banner of the Corporation. The Corporation also made it clear that the said land has been developed by spending an amount of Rs.10 lakhs by dismantling the staff quarters. Annexure-1 to the affidavit filed by the Corporation reads as follows :?

GOVERNMENT OF ASSAM

TRANSPORT DEPARTMENT.... DISPLJR

GUWAHATI-6

No.TMV. 208/2000/135, Dated Dispur the 18th January, 2005

From: Additional Chief Secretary to the Govt. of Assam, Transport Department, Dispur.

To,

The Additional Chief Secretary to the Govt. of Assam, Revenue Department, Dispur.

Sub : Settlement of Land with M/s. Roots, Corporation.

Ref : Letter No. RSS. 637/2004/28 dated 18-12-2004 of Revenue Department.

Sir,

With reference to the above, I am directed to inform you that land in question is under possession of Assam State Transport Corporation, fully bounded with wall. The land is presently utilized for parking of vehicle, serving of vehicles and some residential quarters of the employees. In case the Government decide to utilize the land by setting up a Hotel as pointed out in the letter under reference, an alternative plot of land should be provided to Assam State Transport Corporation for accommodating the facilities and residential Complex, presently existing on the said plot of land. In this connection a copy of the earlier letter received from Managing Director, ASTC is also enclosed herewith for your information & further necessary action.

Yours faithfully, Sd/- Additional Chief Secretary to the Govt. of Assam Transport Department. Dispur.

13. Apart from above. Notification No. I. V. M. 138/70/6. dated 31st March, 1970 issued by the Secretary to the Government. of Assam in the Transport Department clearly indicates that all the properties and assets of the erstwhile State Transport Undertaking of the Government of Assam vested with the Corporation with effect from 31st March, 1970. The relevant excerpts from the said notification reads as follows :?

Notification No. T. V. M. 138/70/6, dated 31st March. 1970. In exercise of the powers conferred by 34 of (the Road Transport Corporations Act, 1950 (Central Act LXIV of 1950), the Government of Assam hereby direct, after consultation with the Assam State Road Transport Corporation, that the following administrative arrangements shall come into force :

(1) The Assam State Road Transport Corporation (hereinafter referred to as the Corporation) shall take over the management of the existing State Transport Undertaking of the Government of Assam with effect from the 31st March, 1970.

(2) All properties and assets vested in the existing Assam Government State Transport Department shall vest in the Corporation from the 31st March, 1970.

14. It is clear from the letter of the Additional Chief Secretary to the Government of Assam in the Transport Department that the land in question is under exclusive possession of the Corporation and is being used for public purposes. The proposal for allotment of an alternative plot of land as indicated in the above letter is not in pursuance of any decision of the Corporation in accordance with the provisions of the Act of 1950, situated thus this Court has no option but to conclude that the impugned resolution of the State Government is not under any authority of law and being contrary to the provisions of the Act of 1950.

15. The Petitioner No. 1 Shri Sarat Chandra Sinha is a veteran leader of the State

who has had held the high office of the Chief Minister of the State. The Petitioner No.2 Dr. Deba Prasad Barooah was the Vice Chancellor of the Gauhati University and, after his retirement, has been espousing causes for upliftment of the Society. The petitioner No.3 Shri Pulak Choudhury is the President of Assam Jatiyatabadi Yuba Chatra Parishad and he is also connected with various social activities. It is true that two of the petitioners are actively connected with politics but this cannot be a ground for throwing out this PIL at the threshold. In a public interest litigation, the most significant aspect is public interest. Once it is shown that public interest is involved, the Court has to intervene. It is true that a PIL is to be entered if it makes out a case for violation of Article 21 or of Human Rights or where the PIL seeks relief for the poor and underprivileged who are unable to come to Court due to some disadvantageous position and it must be to secure the legal rights of the members of the public at large. There is no dispute with regard to the ratio laid down in the decisions referred to by Shri Choudhury. A PIL cannot be used as a weapon to challenge the financial or economic decision of the State,

16. The land does not belong to the State Government. The Corporation has not take any decision to sell this plot of land. The proposal given by the Respondent No. 7, a private party, was only considered and the decision taken to part with the land at a throw away price. No notice was given inviting tenders. The area where the hotel is sought to be established is a busy commercial area and there are more than 30 hotels of different categories whose tariff starts from Rs. 100/- to Rs. 1500/- for a room. The hotel proposed to be set up by the Respondent No. 7 would cost the common man Rs.900/- for a single room and Rs.950/- for double room per day. It appears that the State Government has taken the decision without in-depth consideration of the entire matter. It is of immense significance to mention here that the Corporation was suffering heavy losses over the years and was virtually near closure. Presently, in view of certain positive steps, the Corporation is in the process of revival. At this stage, the Corporation is operating a large number of vehicles of their own including private vehicles under Corporation's banner. It is submitted at the bar that presently 1500 private buses are operating under the State Transport Corporation banner, apart from 350 buses of the Corporation. A proposal (as contained in Annexure-4) is also under active consideration for construction of Yatri Niwas by the Corporation in the disputed site. These matters were not brought to the notice of the Committee while taking the decision.

17. In the instant case, a large number of passengers/commuters visit the premises of the Corporation complex to board around 1900 buses plying from there. To part with 2 Bighas of land out of 9 Bighas would mean further congestion bringing in a state of chaos for smooth operation of the large number of buses. Moreover, the proposal of the corporation to construct a Yatri Niwas of their own to provide accommodation to the passengers at a cheaper rate would suit the convenience of the members of the public more than a hotel of IndiOne category (2 Star) to be set up by the Respondent No. 7. Apart from the

convenience of the members of the public who undertake journey by ASTC buses, the State has no power to settle the land in question in purported exercise of powers under Rule 13(a)(ii) of the Settlement Rules framed under the Assam Land Revenue Regulations, 1886. The cases relied upon by Mr. Choudhury, in the peculiar facts and circumstances of the instant case are of no help to him. We are, there-fore, impelled to conclude that the decision is not only contrary to the provisions of the Settlement Rules, but also violative of the provisions of Section 19(2)(b) of the Road Transport Act, 1950. We are not in a position to sustain the decision of the State Government on facts as well as law.

18. While issuing notice of this case on 11-2-2004, the Court had recorded the statement of the learned Additional Advocate General, Assam that "the possession of the land in question will not be handed over to the Respondent No.7 till 17-2-2005. On 17-2-2005 the Court directed "Pending disposal of the petition and until otherwise directed, the respondent State may process the matter but shall not hand over possession of the land to the Respondent No.7 On 1-3-2005 this Bench had passed the following Order :?

Status quo of the land in question, as on today, is required to be maintained by the Respondents, which was granted earlier and is in operation till today.

19. We, therefore, set aside the impugned decision of the State Government in the Minutes of the Meeting dated 6-11 -2004 (as contained in Annexure-V) and allow the writ petition but without cost.

20. We restrain Respondent Nos. 1 to 5 in handing over possession of the land in question to Respondent No. 7.

21. Let a copy of this order be handed over to Shri Choudhury, the learned Addl. Advocate General, Assam for its intimation to and follow up action.