

**IN THE COURT OF THE DISTRICT JUDGE : KAMRUP(M)  
AT GUWAHATI**

**Present:** **Md. M. Ahmed,**  
District Judge,  
Kamrup(M), Guwahati.

**Misc. Appeal No. 12 of 2013**

**1. West Guwahati Commerce College**

Represented by the Secretary, West Guwahati  
Commerce College, Guwahati-781012.

**2. The Principal**

West Guwahati Commerce College,  
Baripara, Pandav Nagar,  
District Kamrup(M), Assam

..... **Petitioners/Appellants**

**- Vs -**

**1. The Estate Officer,**  
N.F. Railway, Maligaon  
Guwahati-781011,  
District Kamrup(M), Assam

**2. The Senior Divisional Engineer,**  
N.F. Railway, Maligaon  
Guwahati-781011,  
District Kamrup(M), Assam

**3. N.F. Railway, Maligaon,**  
Guwahati-781011,  
District Kamrup(M), Assam  
represented by the General Manager,  
N.F. Railway

..... **Respondents/Opp. Parties**

Date of Argument : 23.02.2017

Date of Judgment : 15.03.2017

Advocates who appeared in this case are:

Mr. P.J.Phukan : Learned Advocate for the Petitioners/appellants.

Mr. R.Sarma : Learned Advocate for the Opp. Parties/respondents.

**J U D G M E N T**

1. This appeal under section-9 of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 is preferred against the order of eviction dated 04.03.2013 passed by the Estate Officer, N.F. Railway, Maligaon, Guwahati – 781011 in Eviction Case No. EO/MLG/2041/2010 against the appellants namely West Guwahati Commerce College, Baripara, Pandav Nagar, Dist: Kamrup(M), Assam and appellant no. 2 the Principal of the said college. Respondent/opp. parties in this case are 1) Estate Officer, N.F. Railway, Maligaon, Guwahati-781011, Dist: Kamrup(M), Assam 2) The Senior Divisional Engineer, N.F. Railway, Maligaon, Guwahati-781011, Dist: Kamrup(M), Assam, 3) N.F. Railway, Maligaon, Guwahati – 781011, Dist: Kamrup(M), Assam represented by the General Manger, N.F. Railway.

2. Vide the said impugned order Estate Officer/respondent no. 1 has recorded his satisfaction as regards unauthorized occupation of the Public Premises specified in the schedule shown in the order by appellants and hearing. It is further noted that the case was heard on 15.03.2010 in the presence of both the parties. The respondent no. 1 has further observed that at the time of hearing the opp. party/appellant admitted that they have been occupying the subject plot of Railway land without any lawful authority/permission from the Railway Administration. They have also failed to submit any documents in support of the ownership of the said land. It was prayed by the Railway that the land in question had been unauthorizedly occupied by the appellant/opp. party and now it is urgently required for the Railway works. On the basis of the documents on record, the respondent no. 1, Estate Officer observed that appellant/opp. party are unauthorized occupants of the Railway land in question and as such they are liable to be evicted from the Public Premises as per P.P. Act 1971 and accordingly the

respondent no. 1 passed order for vacation of the Railway land by the appellants in exercise of powers conferred upon the respondent no. 1 u/s 5(1) of Public Premises (Eviction of Unauthorized Occupants) Act, 1971 with a direction to vacate the said premises within 15 days from the date of receipt of the order. It was further provided in the impugned order that in the event of refusal/failure to comply with the order within the period specified, the appellant or all the persons concerned will be liable to be evicted from the said premises, if need arise even by use of force as may be necessary. The said order comes under challenge in this appeal. Appellant no. 1 is a college having concurrence/affiliation/recognition from State Government/Gauhati University/Assam Higher Secondary Education Counsel, which was established in 1992 at Baripara, Pandav Nagar(Gar Pandu), Guwahati – 781012 with Dag No. 18 under Jalukbari Mouza, Dist: Kamrup(M), Assam. The case of the appellant is that respondent no. 1, Estate Officer, N.F. Railway, Maligaon, Guwahati -781011 vide purported Notice dated 03.03.2010 called upon the Principal of West Guwahati Commerce College inter alia to show cause on or before 15.03.10 in connection with one Eviction Case No. EO/MLG/2041/2010. Accordingly the appellant college authorities responded properly with their reply communication dated 15.03.2010 (duly received by office of the Estate Officer). It is further contended that the Hon'ble Gauhati High Court vide a Division Bench Judgment and Order dated 02.08.1988 in Civil Rule No. – 1191/1986 as well as Single Bench Judgment & Order dated 27.09.1966 in Civil Rule No. – 4845/1996, dated 05.09.1998 in Civil Rule No. 4448/1998, dated 01.02.2000 in Civil Rule No. – 439/2000 and dated 26.02.2007 in WP (C) No. – 3551/1999 etc. while stressing upon the service of notice also directed the Railway authorities to proceed with the case in accordance with due procedure of law. It is also directed by the aforementioned Hon'ble Division Bench of Gauhati High Court that before taking action under the aforementioned Public Premises Act of 1971 the "the Railway shall also consider whether the land in question could be settled with the petitioners." It is stated that from the contentions of the aforesaid WP (C) No. - 3551/1999, it is clear that a public meeting was held on 30<sup>th</sup> August, 1992 at Vidhya Niketan, Pandu, Guwahati in presence of some well known dignitaries including a prominent Minister, Govt. of Assam and in pursuance of that

meeting, the then Deputy Commissioner of Kamrup vide communication No-KHL-277(A)/92 dated 01.09.1992 asked the Settlement Officer of Guwahati to demarcate the Railway land, Kamakhya Temple land and Civil/Govt. land since, no proper demarcation operation has been carried out as yet and also in view of subsequent developments, the land in possession of the Appellant College authorities is still a disputed land.

**3.** It is further contended, that the respondent N.F. Railway, Maligaon, Guwahati-781011 and the Respondent Senior Divisional Manager, N.F. Railway, Maligaon, Guwahati – 781011, in the meantime surprisingly moved the Hon'ble Gauhati High Court with a Writ Petition bearing WP (C) No. – 5182/2012 (arraying the present Appellant College authorities as Respondent Nos. - 7 & 8 to the Writ Petition) suppressing some vital facts of the instant matter, praying inter alia "for execution of eviction process by deputing Magistrate Security forces and Revenue Staff for eviction the land measuring total area 36.0 M X 110.0 M = 3960 sq. meter at Triangular Colony near Boripara, ROB under Mouza: Jalukbari, Revenue Village Gar Pandu, Kumarpara covered by Dag No. - 18, Patta No. - Nill (Railway land) Dist: Kamrup(M), Assam" and on eviction, to hand over the same to the said Writ Petitioner Railways. Further it is contended that the said Writ Petition was totally silent about the aforementioned Notice of the Estate Officer dated 03.03.2010 and/or the reply communication of the Appellant College authorities thereto dated 15.03.10 and it was done solely for the purpose of obtaining an Order in favour of the said Writ Petitioner Railways, without narrating the entire facts in details. It is further contended that the Hon'ble Single Judge of Gauhati High Court on 24.01.2013 in the aforesaid Writ Petition bearing WP(C) No. – 5182/2012, solely relying upon an impugned letter purportedly issued by Additional Deputy Commissioner of Kamrup(M) to the State Counsel on the same day disposed of the Writ Petition "providing that it will be open for the Railways to carry out the eviction operation in accordance with law and in the process the District Administration and the Revenue Staff shall also provide adequate security measures in accordance with the laid down procedure". The Appellant College Authorities, being aggrieved and dissatisfied with the said impugned Judgment and Order dated 24.01.2013 in WP (C) No. 5182/2012 preferred a Writ Appeal bearing W.A.

No – 28/2013 before the Hon'ble Division Bench of Gauhati High Court of the Hon'ble Gauhati High Court vide Judgment and Order dated 11.02.2013 in the said W.A. No – 28/2013, the Hon'ble Gauhati High Court while stating inter alia that an "order dated 31.03.1998 has been passed for eviction" of the Appellant College Authorities after initiating proceedings under the aforementioned Public Premises Act of 1971 and that two FIRs dated 31.10.2006 and 05.05.2012 have already been lodged by the respondent Railway authorities in this regard, modified the impugned Order dated 24.01.2013 "to the effect that if any order of eviction has already been passed, a copy thereof be furnished to the appellant and steps for eviction be taken only fifteen days after such service of notice and if no eviction order has so far been passed, the steps for eviction may not be taken till the passing of such an order, subject to legal remedies against such an order ". The appellants are aggrieved and according to them the respondent Estate Officer got himself involved in the aforesaid so-called illegal/unlawful act of the Respondent N.F. Railway authorities and issued the impugned Order of eviction dated 04.03.2013 in purported Eviction Case No. EO/MLG/2041/2010, after long 3 years from the hearing, basing upon some illogical grounds/reasonings for the reasons best known to the said Respondent Estate Officer. It is further contended that on close perusal of the contents of the said impugned Order dated 04.03.2013 revealed that undue haste was committed by the respondent Estate Officer in passing the impugned Order immediately after the Judgment & Order dated 11.02.2013 in W.A. No – 28/2013, having kept the matter pending for long three years and / or the violation of the Court's order/direction in the instant matter. According to the Appellant, the said impugned order is discriminatory in nature; it smacks & biasness in favour of the Respondent N.F. Railway authorities and the impugned order is also against the laws of the land including the provisions of aforementioned Public Premises Act 1971 as amended. It is further contended that being aggrieved with the impugned Order dated 04.03.2013 the Appellant College Authorities moved the Hon'ble High Court with a Writ Petition bearing WP (C) No. – 1283/2013 and the Hon'ble Court vide Judgment & Order dated 14.03.2013 while disposing of the Writ Petition directed the Appellant to move this court under the Public Premises Act of 1971 for legal remedies.

4. It is contended, that the impugned order dated 04.03.2013 has been passed by the Respondent Estate Officer in connection with the disputed land, without going through the Judgments and Orders of the Hon'ble Gauhati High Court in connection with the said matter and further, the averments made by the Respondent N.F. Railway authorities as well as their stand in the earlier Writ Petition bearing No. WP (C) No. – 5182/2012 are clearly contradictory to the stand taken by the aforementioned Estate Officer in connection with the said Order dated 04.03.2013. The appellants are further aggrieved as according to them no adequate or/and proper opportunity has been afforded to the Appellant College authorities prior to passing of the aforementioned impugned Order dated 04.03.2013. It is further contended that the impugned order will allow the Respondent N.F. Railway authorities to initiate or carry out eviction operation in a disputed land in occupation of the Appellant College for last 20 years. It is further contended that the impugned order are vitiated by arbitrariness, malafide, malice in law and there is violation of the Constitutional rights of the Appellants. It is further contended that the impugned order is against the law of land. It is further contended that the Appellant College Authorities have been discriminated against without any reasonable basis or justification and have been denied equality before the law and /or equal protection under the law. It is further contended that there is total non-application of mind to the relevant factors as regards the instant case. There has been colourable exercise of power for collateral purposes in passing the impugned order. It is further contended that the contents of notice (Annexure-D) dated 03.03.2010 in Eviction Case No. EO/MLG/2041/2010 along with reply communication and other documents submitted by the Appellant vis-à-vis the legal aspects of the matter were not closely gone through with proper perspective and consequently the impugned order dated 04.03.2013 has been passed by the respondent Estate Officer without considering the merits of the case in its entirety. It is further contended that neither any document has been allowed to be submitted in the said Eviction Case within a reasonable period nor relevant records have been allowed to be placed, prior to passing the impugned Order of eviction after long three years, granting proper and

adequate opportunity to the present Appellants, in the aforementioned long pending complex Eviction Case.

5. Having heard learned counsel of both the sides and attentively perusing the case record, it is found that vide exhibit-D notice was served upon the appellants in relation to Eviction Case No. EO/MLG/2041/2010. The impugned order has relevance with the matter that was last heard on 05.03.10 in presence of both the parties. But there was no further hearing on this matter; the impugned order is also silent if before passing of the impugned order, any opportunity was given to the Appellant side to submit any documents in their favour or to hear the matter at length. In such terms, the impugned order suffers from serious illegality and it was hurriedly done after Hon'ble Gauhati High Court vide order dated 11.02.2013 has disposed of the matter, modifying the earlier impugned order passed by the Hon'ble Single Judge in the aforementioned Writ Petition to the effect that if any order of eviction has already been passed and a copy thereof to furnish to the appellant and subject for eviction will be taken only after 15 days of service of such notice. It is apparent from the materials on record that no eviction order was passed till the time the impugned order is come into existence. It was clearly observed by the Hon'ble Gauhati High Court that no eviction order has so far been passed, eviction may not be taken till the passing of the order subject to legal remedies against such order. Thus from the same, it is apparent that as soon as this direction was passed by the Hon'ble High Court, the respondent no. 1 hurriedly put up the record and in the absence of the parties and without going through the documents have passed the impugned order, thus depriving the appellant for proper hearing in this matter. Under such circumstances, the impugned order could not be allowed to exist which suffers from serious illegality; as such it stands set aside with a direction to the respondent no. 1 to hear the matter afresh in presence of both the parties and afford full opportunity to the Appellant also allowing both the parties to submit their documents and after final hearing the respondent no. 1 shall pass necessary order it deems fit and proper in accordance with law.

6. It is accordingly ordered;the appeal stands allowed.

7. Signed, sealed and delivered in the open court on this 15<sup>th</sup> day of March, 2017 at Guwahati.

(M. Ahmed)  
District Judge,  
Kamrup(M), Guwahati

Dictated & corrected by me.

(M. Ahmed)  
District Judge,  
Kamrup(M), Guwahati