

THE HON'BLE SMT. JUSTICE A. HAZARIKA

A writ of mandamus/certiorari has been sought for in the instant petition under article 226 of the Constitution of India for a direction to the respondents to clear the public path from unauthorized occupation of Respondent Nos. 5 and 6 by demolishing the pucca construction for use of the villagers of Madhuripathar village.

Heard Mr. B. Chetri, learned counsel for the petitioners. Also heard Ms. K. Devi, learned Govt. Advocate, Assam for the official respondents and Mr. R.L. Yadav, learned counsel for Respondent Nos. 5 and 6.

No affidavit-in-opposition has been filed, nor any record has been produced on behalf of the respondents. In *Nassem Banu vs- State of UP*, reported in AIR 1992 SC 2592, it has been held that, If the statements made in the writ petition remains uncontroverted or not contradicted, the court should proceed on the basis of averments not controverted deeming them to have been admitted.

Thus, this writ petition is taken up for disposal on the basis of averments made in the writ petition, in absence of affidavit-in-opposition by the respondents.

In brief, the petitioners' case is that, the petitioners are villagers of Madhuripathar village in the district of Dhemaji, which was established in 1972-73 over the Govt. land and since then the villagers are using the public path to come out to the other parts of the locality and the said path is only connected path with Silapathar-Likabali P.W.D. Road. However, the private respondents illegally blocked the path from the use of the villagers/ public and thereby causing problem/inconvenience in their day to day life. Hence, this petition with the aforesaid prayer.

At the very outset, Mr. Chetri has submitted that the suit land being a sarkari land, the villagers represented by five elder people of the village submitted an application/representation dated 19.3.2003 before the Deputy Commissioner, Dhemaji, (DC for short) Respondent No.2 for clearing out the village path from unauthorized occupation and illegal construction of house of Respondent Nos. 5 and 6. This representation has not been disposed of till date and lying pending before the DC, Dhemaji. Mr. Chetri therefore, prays for a direction to the DC, Dhemaji to dispose of the representation/application filed by the villagers.

In view of the limited prayer so made by the learned counsel for the petitioners, the DC, Dhemaji is directed to dispose of the application/representation pending before him within a period of two months from the date of receipt of certified copy of this order. If so advised, the petitioners may also submit fresh application before the DC, Dhemaji alongwith the certified copy of this order.

The writ petition is disposed of with the above direction. However, in the facts and circumstances of the case, there shall be no order as to cost.