

GAHC010119962016



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C) 6297/2016

1:MADAN BORO
S/O LT. MALAY BORO, R/O NO.2 MATHGHARIA, B.G. TINIALI, P.O. and P.S.
NOONMATI, DIST- KAMRUP METRO

VERSUS

1:THE ESTATE OFFICER, NORTH EAST FRONTIER RAILWAY and 2 ORS
MALIGAON, GHY-22

2:THE GENERAL MANAGER
NORTH EAST FRONTIER RAILWAY
MALIGAON
GHY-22

3:THE STATE OF ASSAM
REP. BY THE COMMISSIONER AND SECY.
REVENUE DEPTT.
DISPUR
GHY- 6

Advocate for the Petitioner : MR.B CHAKRABORTY

Advocate for the Respondent : MR. S C BISWAS (SC, RAILWAY)

Linked Case : WP(C) 6395/2016

1:RAMEN BAISHYA
S/O. LT. RAMESH BAISHYA
R/O. NO.2 MATHGHARIA
B.G TINIALI

P.O. and P.S. NOONMATI
DIST. KAMRUP M.

VERSUS

1:THE ESTATE OFFICER
NORTH EAST FRONTIER RAILWAY and 2 ORS
MALIGAON
GHY.-22.

2:THE GENERAL MANAGER
NORTH EAST FRONTIER RAILWAY
MALIGAON
GHY.-22.

3:THE STATE OF ASSAM
REP. BY THE COMM. and SECY.
REVENUE DEPTT.
DISPUR
GHY.-06.

Advocate for the Petitioner : MS.S J DEKA
Advocate for the Respondent : MR. S C BISWAS (SC
NF RAILWAY)

Linked Case : WP(C) 6438/2016

1:BABUL BORO
S/O LT. DINESH BORO R/ONO. 2 MATHGHARIA
B.G. TINIALI P.O. and P.S. NOONMATI
DIST. KAMRUP M.

VERSUS

1:THE ESTATE OFFICER and 2 ORS.
NORTH EAST FRONTIER RAILWAY
MALIGAON
GUWAHATI-22.

2:THE GENERAL MANAGER
NORTH EAST FRONTIER RAILWAY
MALIGAON
GUWAHATI-22.

3:THE STATE OF ASSAM
REP. BY THE COMMISSIONER AND SECRETARY
REVENUE DEPARTMENT
DISPUR
GUWAHATI -6.

Advocate for the Petitioner : MRS.R DEVI
Advocate for the Respondent : MR. S C BISWAS (SC
NF RAILWAY)

Linked Case : WP(C) 6366/2016

1:LAKHI GIRI
W/O LT. SHYAM GIRI
R/O. NO. 2 MATHGHARIA
B.G. TINIALI
P.O. and P.S. NOONMATI
DIST. KAMRUPM.

VERSUS

1:THE ESTATE OFFICER and 2 ORS.
NORTH EAST FRONTIER RAILWAY
MALIGAON
GUWAHATI -22.

2:THE GENERAL MANAGER
NORTH EAST FRONTIER RAILWAY
MALIGAON
GUWAHATI -22.

3:THE STATE OF ASSAM
REP. BY THE COMMISSIONER and SECRETARY
REVENUE DEPTT.
DISPUR
GUWAHATI -6.

Advocate for the Petitioner : MR.A R TAHBILDAR
Advocate for the Respondent :

Linked Case : WP(C) 6372/2016

1:PRIYA NATH DEKA

S/O LT. PRABHAT CHANDRA DEKA
R/O NO.2 MATHGHARIA
B.G. TINIALI
P.O.
P.S. NOONMATI
DIST- KAMRUP METRO

VERSUS

1:THE ESTATE OFFICER
NORTH EAST FRONTIER RAILWAY and 2 ORS
NORTH EAST FRONTIER RAILWAY
MALIGAON
GHY-22

2:THE GENERAL MANAGER
NORTH EAST FRONTIER RAILWAY
MALIGAON
GHY-22

3:THE STATE OF ASSAM
REP. BY THE COMMISSIONER AND SECY.
REVENUE DEPTT.
DISPUR
GHY-6

Advocate for the Petitioner : MR.B CHAKRABORTY
Advocate for the Respondent : GA
ASSAM

Linked Case : WP(C) 6422/2016

1:KUSHESWAR HAZARIKA
S/O- LT. KANTI RAM HAZARIKA
R/O- NO. 2 MATHGHARIA
B.G. TINIALI
P.O. and P.S.- NOONMATI
DIST.- KAMRUP M.

VERSUS

1:THE ESTATE OFFICER and 2 ORS.
NORTH EAST FRONTIER RAILWAY
MALIGAON

GHY- 22.

2:THE GENERAL MANAGER
NORTH EAST FRONTIER RAILWAY
MALIGAON
GHY- 22.

3:THE STATE OF ASSAM
REP. BY THE COMMISSIONER AND SECY.
REVENUE DEPTT.
DISPUR
GHY- 6.

Advocate for the Petitioner : MS.R DEVI
Advocate for the Respondent : MR. S C BISWAS (SC
NF RAILWAY)

Linked Case : WP(C) 6400/2016

1:AHALA BAISHYA
D/O. LT. SASTARAM BAISHYA
R/O. NO.2 MATHGHARIA
B.G. TINIALI
P.O. and P.S. NOONMATI
DIST. KAMRUPM.

VERSUS

1:THE ESTATE OFFICER and 2 ORS.
NORTH EAST FRONTIER RAILWAY
MALIGAON
GHY.-22.

2:THE GENERAL MANAGER
NORTH EAST FRONTIER RAILWAY
MALIGAON
GHY.-22.

3:THE STATE OF ASSAM
REP. BY THE COMM. and SECY.
REVENUE DEPTT.
DISPUR
GHY.-06.

Advocate for the Petitioner : MS.S J DEKA

Advocate for the Respondent : MR. S C BISWAS (SC
NF RAILWAY)

Linked Case : WP(C) 6414/2016

1:MADAN BORO
S/O LT.MALAY BORO R/O NO. 2 MATHGHARIA
B.G. TINIALI
P.O. and P.S. NOONMATI
DIST. KAMRUP M.

VERSUS

1:THE ESTATE OFFICER and 2 ORS.
NORTH EAST FRONTIER RAILWAY
MALIGOAN
GUWAHATI -22.

2:THE GENERAL MANAGER
NORTH EAST FRONTIER RAILWAY MALIGAON
GUWAHATI-22.

3:THE STATE OF ASSAM
REP. BY THE COMMISSIONER AND SECRETARY
REVENUE DEPARTMENT
DISPUR
GUWAHATI -6.

Advocate for the Petitioner : MRS.R DEVI
Advocate for the Respondent : MR. S C BISWAS (SC
NF RAILWAY)

Linked Case : WP(C) 6432/2016

1:TARUN BORA
S/O LT. BUDHESWAR BORA
R/O NO.2 MATHGHARIA
B.G. TINIALI
P.O. and P.S. NOONMATI
DIST- KAMRUP METRO

VERSUS

1:THE ESTATE OFFICER
NORTH EAST FRONTIER RAILWAY and 2 ORS
MALIGAON
GHY-22

2:THE GENERAL MANAGER
NORTH EAST FRONTIER RAILWAY
MALIGAON
GHY-22

3:THE STATE OF ASSAM
REP. BY THE COMMISSIONER AND SECY.
REVENUE DEPTT.
DISPUR
GHY-6

Advocate for the Petitioner : MR.A R TAHBILDAR
Advocate for the Respondent : MR. S C BISWAS (SC
NF RAILWAY)

Linked Case : WP(C) 6376/2016

1:PULIN BAISHYA
S/O LT. NAGEN BAISHYA
R/O NO.2 MATHGHARIA
B.G. TINIALI
P.O. and P.S. NOONMATI
DIST- KAMRUP METRO

VERSUS

1:THE ESTATE OFFICER and 2 ORS.
NORTH EAST FRONTIER RAILWAY
MALIGAON
GHY-22

2:THE GENERAL MANAGER
NORTH EAST FRONTIER RAILWAY
MALIGAON
GHY-22

3:THE STATE OF ASSAM
REP. BY THE COMMISSIONER AND SECY.
REVENUE DEPTT.

DISPUR
GHY-6

Advocate for the Petitioner : MS.S J DEKA
Advocate for the Respondent :

Linked Case : WP(C) 6405/2016

1:UMESH SARMA
S/O. LT. SUKHDEU SARMA
R/O. NO.2 MATHGHARIA
B.G. TINIALI
P.O. and P.S. NOONMATI
DIST. KAMRUPM.

VERSUS

1:THE ESTATE OFFICER
NORTH EAST FRONTIER RAILWAY and 2 ORS
MALIGAON
GHY.-22.

2:THE GENERAL MANAGER
NORTH EAST FRONTIER RAILWAY
MALIGAON
GHY.-22.

3:THE STATE OF ASSAM
REP. BY THE COMM. and SECY.
REVENUE DEPTT.
DISPUR
GHY.-06.

Advocate for the Petitioner : MS.S J DEKA
Advocate for the Respondent : MR. S C BISWAS (SC
NF RAILWAY)

Linked Case : WP(C) 6401/2016

1:MD. TAIZUDDIN AHMED
S/O. LT. HAI SONARUDDIN AHMED
R/O. NO.2 MATHGHARIA
B.G. TINIALI

P.O. and P.S. NOONMATI
DIST. KAMRUPM.

VERSUS

1:THE ESTATE OFFICER and 2 ORS.
NORTH EAST FRONTIER RAILWAY
MALIGAON
GHY.-22.

2:THE GENERAL MANAGER
NORTH EAST FRONTIER RAILWAY
MALIGAON
GHY.-22.

3:THE STATE OF ASSAM
REP. BY THE COMM. and SECY.
REVENUE DEPTT.
DISPUR
GHY.-06.

Advocate for the Petitioner : MS.S J DEKA
Advocate for the Respondent : MR. S C BISWAS (SC
NF RAILWAY)

Linked Case : WP(C) 6471/2016

1:ADHIR PAUL
S/O- LT. GURUCHARAN PAUL
R/O- NO. 2 MATHGHARIA
B.G. TINIALI
P.O. and P.S.- NOONMATI
DSIT. - KAMRUP M.

VERSUS

1:THE ESTATE OFFICER and 2 ORS.
NORTH EAST FRONTIER RAILWAY
MALIGAON
GHY- 22.

2:THE GENERAL MANAGER
NORTH EAST FRONTIER RAILWAY
MALIGAON

GHY-22.

3:THE STATE OF ASSAM
REP. BY THE COMMISSIONER AND SECY.
REVENUE DEPTT.
DISPUR
GHY- 6.

Advocate for the Petitioner : MS.R DEVI
Advocate for the Respondent : MR.S C BISWAS (SC
NF RAILWAY)

Linked Case : WP(C) 3994/2016

1:MADAN BORO and 85 ORS
S/O LATE MALAY BORO

VERSUS

1:THE STATE OF ASSAM AND 5 ORS
REPRESENTED BBY THE COMMISSIONER and SECY.
REVENUE DEPTT.
DISPUR
GUWAHATI-6

Advocate for the Petitioner : MS.P SARMA
Advocate for the Respondent : MR.A K SARKAR

Linked Case : WP(C) 6389/2016

1:HEMA DAS
ON THE DEATH OF KANAK DAS

R/O- NO. 2 MATHGHARIA
B.G. TINIALI
P.O. and P.S.- NOONMATI
DIST.- KAMRUP M

VERSUS

1:THE ESTATE OFFICER and 2 ORS.
NORTH EAST FRONTIER RAILWAY
MALIGAON
GHY- 22.

2:THE GENERAL MANAGER
NORTH EAST FRONTIER RAILWAY
MALIGAON
GHY- 22.

3:THE STATE OF ASSAM
REP. BY THE COMMISSIONER and SECY.
REVENUE DEPTT.
DISPUR
GHY - 6.

Advocate for the Petitioner : MS.R DEVI
Advocate for the Respondent : MR.B CHAKRAVARTY

Linked Case : WP(C) 6420/2016

1:MAYA DAS
W/O. LT. KHARGESWAR DAS
R/O. NO. 2 MATHGHARIA
B.G. TINIALI
P.O. and P.S. NOONMATI
DIST. KAMRUPM.

VERSUS

1:THE ESTATE OFFICER and 2 ORS.
NORTH EAST FRONTIER RAILWAY
MALIGAON
GUWAHTI -22.

2:THE GENERAL MANAGER
NORTH EAST FRONTIER RAILWAY
MALIGAON
GUWAHATI -22.

3:THE STATE OF ASSAM
REP. BY THE COMMISSIONER and SECRETARY
REVENUE DEPTT.
DISPUR
GUWAHATI - 6.

Advocate for the Petitioner : MS.R DEVI
Advocate for the Respondent : MR. S C BISWAS (SC
NF RAILWAY)

Linked Case : WP(C) 6427/2016

1:KULESWAR BASUMATARY
S/O LT. MOHIRAM BASUMATARY
R/O NO.2 MATHGHARIA
B.G. TINIALI
P.O. and P.S. NOONMATI
DIST- KAMRUP METRO

VERSUS

1:THE ESTATE OFFICER and 2 ORS.
NORTH EAST FRONTIER RAILWAY
MALIGAON
GHY-22

2:THE GENERAL MANAGER
NORTH EAST FRONTIER RAILWAY
MALIGAON
GHY-22

3:THE STATE OF ASSAM
REP. BY THE COMMISSIONER AND SECY.
REVENUE DEPTT.
DISPUR
GHY-6

Advocate for the Petitioner : MR.A R TAHBILDAR
Advocate for the Respondent : MR. S C BISWAS (SC
NF RAILWAY)

Linked Case : WP(C) 6367/2016

1:NIBARAN MAZUMDAR
S/O LT. RAM PRASAD MAZUMDAR
R/O NO.2 MATHGHARIA
B.G. TINIALI
P.O. and P.S. NOONMATI

DIST- KAMRUP METRO

VERSUS

1:THE ESTATE OFFICER and 2 ORS.
NORTH EAST FRONTIER RAILWAY
MALIGAON
GHY-22

2:THE GENERAL MANAGER
NORTH EAST FRONTIER RAILWAY
MALIGAON
GHY-22

3:THE STATE OF ASSAM
REP. BY THE COMMISSIONER AND SECY.
REVENUE DEPTT.
DISPUR
GHY-6

Advocate for the Petitioner : MS.S J DEKA
Advocate for the Respondent : GA
ASSAM

Linked Case : WP(C) 6433/2016

1:ARJUN PODDAR
S/O LT. GOWANAND PODDAR
R/O NO.2 MATHGHARIA
B.G. TINIALI
P.O. and P.S. NOONMATI
DIST- KAMRUP METRO

VERSUS

1:THE ESTATE OFFICER and 2 ORS.
NORTH EAST FRONTIER RAILWAY
MALIGAON
GHY-22

2:THE GENERAL MANAGER
NORTH EAST FRONTIER RAILWAY
MALIGAON
GHY-22

3:THE STATE OF ASSAM
REP. BY THE COMMISSIONER AND SECY.
REVENUE DEPTT.
DISPUR
GHY-6

Advocate for the Petitioner : MR.B CHAKRABORTY
Advocate for the Respondent : SC
RAILWAY

BEFORE
HONOURABLE MR. JUSTICE PRASANTA KUMAR DEKA

ORDER

Date : 30-08-2019

Heard Ms. R. Devi, the learned counsel for the petitioner. Also heard Mr. S. C. Biswas, the learned Senior Special Counsel for the N.F. Railway as well as Mr. R. Borpujari, the learned Standing Counsel for the Revenue Department and Ms. M. D. Bora, learned counsel for the respondent Nos. 2 and 7.

In these writ petitions the common Judgment passed in Misc. Appeal Nos. 32-49/2013 by the learned District Judge Kamrup (Metro), Guwahati is under challenge. The petitioners are possessing land covered by Government Dag No. 110 in village No. 2 Mathgharia, under Mouza- Beltola, in the district of Kamrup (Metro). In support of their possession, the petitioners produced various holding extracts of the Guwahati Municipal Corporation as against their structures standing over the said land under individual possession of the present petitioners. The Estate Officer, N. F. Railway initiated proceeding under *The Public Premises (Eviction of Unauthorised Occupants) Act, 1971* (hereinafter referred to as the Act). On notices being issued under Section 5 of the said Act, the petitioners preferred an appeal under Section 9 of the said Act before the learned District Judge, Kamrup (Metro) at Guwahati. Upon admission of the said appeal, the action initiated by the Railways for eviction of the petitioners were stayed. It would not be out of place to mention here that prior to initiation of the proceedings under the said Act by the respondent, Railways, apprehending that there was a move by the Railways to evict the said petitioners without issuing notices as required under due process of law, the petitioners filed WP(C) 4438/2004 in this Court, which was disposed on 15.06.2012 with the following direction:

“Accordingly, this Court directs the Secretary (Revenue Department), Govt. of Assam and the General Manager, N.F. Railway Maligaon, Guwahati to cause a joint survey and enquiry in respect of the land in issue with responsible officers to ascertain the ownership of the land in issue. The whole exercise of the aforesaid joint survey and enquiry may be undertaken within a period of three months. It is made clear that the petitioners will not cause any hindrance or disturbance when such a joint survey and enquiry is conducted. On such determination of the ownership of the said land in issue, the Railway authorities or the State Government as the case may be, would be entitled to proceed with the claim of the petitioners, if any, who are stated to be in occupation of the land in issue, in accordance with law.

With the above observation and direction, the present writ petition stands disposed of.”

On the basis of the said direction, the Circle Officer, Dispur Revenue Circle carried out a survey and informed the Deputy Commissioner, Kamrup (Metro) vide his report dated 09.07.2013, that the land covered by the Government Dag No. 7 is standing in the name of N.F. Railway.

It is submitted by Ms. R. Devi that as per the said report, it cannot be concluded that the survey was carried out as per the direction of this Court in WP(C) 4438/2004 but even then the learned District Judge relied on the said report and dismissed the appeals of the petitioners under Section 9 of the said Act. Being aggrieved, the petitioners have filed these writ petitions challenging the said judgment passed in the respective appeals filed by each of the writ petitioners.

Ms. Devi submits that the claim of the petitioners centre around the land covered by Dag No. 110 of the Revenue village No. 2 Mathgharia, under Mouza- Beltola, in the district of Kamrup (Metro) and the petitioners are not claiming nor they are possessing the land covered by new Dag No. 7. Further, the Government failed to produce before this Court, that there was a joint survey by the Circle Officer and the competent officials from the Railways. Accordingly, Ms. Devi sought for a survey to be undertaken as per the direction of this Court in WP(C) 4438/2004 and consider the same by the learned District Judge, Kamrup(M) and thereafter dispose of the appeals.

Mr. Biswas, on the other hand fairly submits that keeping in view the claim in respect of the petitioners over land covered by Dag No. 110 he has no objection in the event of a joint survey is undertaken as per the direction of this Court as referred to hereinabove.

Mr. Borpujari, on the other hand, raised his objection against the submission of Ms. Devi and submits that the learned District Judge, while disposing of the appeals, considered the report of the Lat Mandal, trace map and the Chitha which were forwarded to the learned Court below and as such,

the findings of the learned Court below that the land in occupation of the petitioners is vested with the respondent, NF Railway authority is proper.

I have given due consideration to the submissions of the learned counsel. The claim of the petitioners is in respect of their possession over the land covered by Dag No. 110 of village No. 2 Mathgharia, under Mouza- Beltola, in the district of Kamrup (Metro). In the connected WP(C) 3994/2016, an affidavit-in-opposition is filed by the Deputy Commissioner, Kamrup(M), the respondent No. 2, wherein there is a specific stand that as per revenue records, the land under dispute falls under land covered by Dag No. 7(New) which originated from the old Dag Nos. 213, 214, 215, 216, 217 and 219. From the said statement, an inference can be drawn that Dag No. 7 (New) does not contain any land covered by old Dag No. 110 which the petitioners are claiming to be government land in the form of ceiling surplus. Be that as it may, the stand of the Deputy Commissioner, the respondent No. 2 at least shows that the land under possession of the petitioners are not covered by Dag No. 7(New). Moreover, there is no definite proof on record that as per the direction passed in WP(C) 4438/2004, a joint survey took place.

Considering the same, these writ petitions are disposed of with a direction to the respondents to carry out a joint survey on the basis of the original Dag No. 110 of No. 2 revenue village Mathgharia, under Mouza- Beltola considering all the subsequent changes in Dag No. 110 during the subsequent settlement operations. After the said joint survey report, keeping in view the claim of the petitioners, the learned District Judge, Kamrup(Metro) will decide the appeals. In view of the observation made hereinabove, the common Judgment dated 30.09.2016 passed by the learned District Judge, Kamrup(Metro) in Misc. Appeal Nos. 32-49/2013 is set aside and the same is remanded back to decide afresh after calling for the reports of the joint survey as directed by this Court in WP(C) 4438/2004. However, the same should be in respect of the conversion of Dag No. 110 if any vis-à-vis the Dag No. 7(New) which does not contain the land covered by Dag No. 110 as per the affidavit-in-opposition of the Deputy Commissioner, the respondent No. 2. Accordingly, all these writ petitions succeed with the aforesaid directions.

The joint survey is to be conducted immediately on receipt of the order of the learned Court of District Judge, Kamrup (Metro) and the same is to be completed within a period of 1 (one) month from the order passed by the learned Court below in presence of all the stakeholders including the present petitioners. The date of such joint inspection must be notified to the petitioners.

The parties to these writ petitions shall appear before the learned Court below on 01.10.2019.

Registry to send back the LCRs keeping in view that the parties are directed to appear before

the learned court below on 01.10.2019.

Interim order passed earlier stands vacated.

JUDGE

Comparing Assistant