

GAHC010177132024



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

**Case No. : WP(C)/4389/2024**

MD. JAKIR ALI  
S/O- LATE ABDUL SATTAR, R/O- NORTH JALUKBARI, PHULPAHI NAGAR,  
P.S. JALUKBARI, DIST. KAMRUP(M), ASSAM, PIN- 780012.

VERSUS

THE UNION OF INDIA AND 3 ORS  
REPRESENTED BY THE GENERAL MANAGER, N.F. RAILWAY, MALIGAON,  
GUWAHATI-781011.

2:THE NORTH EAST FRONTIER RAILWAY  
MALIGAON  
REPRESENTED BY GENERAL MANAGER  
MALIGAON HEAD QUARTERS  
GHY-781011.

3:THE DIVISIONAL MANAGER  
N.F. RAILWAY  
MALIGAON  
GHY-781011.

4:THE ESTATE OFFICER  
N.F. RAILWAY  
MALIGAON HEAD QUARTERS  
GHY-781011

For the Petitioner(s) : Mr. T. H. Hazarika, Advocate

For the Respondent(s) : Mr. K. Gogoi, CGC

**BEFORE  
HONOURABLE MR. JUSTICE DEVASHIS BARUAH**

**ORDER**

**Date : 31.08.2024**

Heard Mr. T. Z. Hazarika, the learned counsel appearing on behalf of the Petitioner and Mr. K. Gogoi, the learned CGC appearing on behalf of the Union of India.

2. This Court vide an order dated 29.08.2024 had prima facie observed that the judgment and order dated 31.07.2024 passed in Misc. Appeal No.7/2024 by the learned Additional District Judge No.1, Kamrup (M) at Guwahati (hereinafter referred to as "First Appellate Authority") called for no interference taking into account that the findings arrived at are based upon proper appreciation of evidence. This Court upon issuance of notice made it returnable today thereby granting an opportunity to the Petitioner to file an undertaking.

3. The dispute between the Petitioner as well as the Railway Authorities is as regards the initiation of eviction proceedings under the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 was solely on the question that the land in question wherein the Petitioner was in possession was a "Government land" and not "Railway land". The land in question is described as Railway Plot No. 10 (Cat – 1 & 2) Plan No. T/01/2023 at North Jalukbari between AGT-KYQ section under Cadestrial Dag No. 337 (New) of Mouza Jalukbari Village Sadilapur District:- Kamrup (Metro), Guwahati, Assam measuring an area of more or less Hard = 9.00 Sqm & Soft = 24 Sqm bounded by in all sides (hereinafter the said plot is referred to as "the said land").

4. The Estate Officer of the Northeast Frontier Railway, Maligaon in Eviction Case No. EO/MLG/19/2023 came to an opinion on the basis of the evidence on record that the land in question is a Railway land and issued directions for eviction. Being aggrieved, the Petitioner had assailed the said order passed by the Estate Officer in Misc. Appeal No.7/2024.

5. This Court has perused the judgment dated 31.07.2024 and finds it relevant to take note of the findings arrived as regards the point for determination No.1. The learned First Appellate Authority after taking into account the materials on record and including the evidence so tendered by the Circle Officer of the Guwahati Revenue Circle had come to an opinion that the land in question is a Railway land and not Government land and on the basis thereof further came to a finding that the said land would come within the ambit of "Public Premises" as defined in Section 2(e) of the Public Premises (Eviction of Unauthorized Occupants) Act, 1971. This Court has also taken note of the adjudication so carried out by the learned First Appellate Authority in respect to the other three points for determination and is of the opinion that the same is in conformity with the provisions of law.

6. As already stated above, this Court finds it very relevant to reiterate that when the instant writ petition was taken up on 29.08.2024, this Court having prima facie opined that there was no illegality in the judgment dated 31.07.2024 passed in Misc. Appeal No.07/2024 and gave liberty to the Petitioner to submit an undertaking if he sought for some reasonable time to vacate the land in question. Accordingly, the Petitioner has filed an undertaking in the form of an additional affidavit on 30.08.2024 stating inter alia that the Petitioner shall vacate and hand

over the vacant possession of the land being the subject matter of the instant writ petition to the concerned authorities within a reasonable time i.e. on or before the expiry of three months from the date of the order dated 29.08.2024 or as directed by this Court. Paragraph 2 of the said undertaking being relevant is reproduced herein under:

*“2. That in compliance with the order dated 29.08.2024 passed in WP(C) No.4389/2024, I do hereby undertake that I shall vacate and hand over the vacant possession of the Government land being subject matter of this instant writ petition to the concerned authorities that I am possessing and occupying by constructing residential houses thereon, within a reasonable time on or before expiry of 03 (three) months from the order dated 29.08.2024 of the Hon’ble Court or as directed by the Hon’ble Court.”*

7. This Court during the course of the hearing inquired with the learned counsel appearing on behalf of the Petitioner as to why in the undertaking there is a mention of the Government land and not Railway land. The learned counsel submitted that it was inadvertently mentioned as Government land. It should have been mentioned as the Railway land. This inadvertent mistake occurred on account of the requirement of filing of the said undertaking in a short span of time. He submitted that the words “Government land” mentioned in Paragraph No.2 of the said additional affidavit should be construed as “Railway land”.

8. Taking into account above, this Court has also heard Mr. K. Gogoi, the learned CGC appearing on behalf of the Railway Authorities. He submitted that the said land is required for infrastructure projects and already demarcation has been carried out.

9. This Court taking into account the above undertaking and the fact

that the Petitioner if not granted some reasonable time to vacate, it would be difficult on the part of the Petitioner to get an alternative place for dwelling in such a short span of time is of the opinion that some time is required to be given to the Petitioner for vacating the land in question.

10. Accordingly, this Court without interfering with the judgment dated 31.07.2024 passed in Misc Appeal No.07/2024 grants 3 (three) months time from today to the Petitioner to vacate the land in question and hand over the vacant possession to the Railway Authorities. In other words, the Petitioner has to vacate the land by 30.11.2024. It is observed and directed that the Petitioner during this period up to 30.11.2024 shall not create any third party interest upon the said land. Further to that, if the Petitioner fails to vacate the land on or before 30.11.2024, the Railway Authorities would be at liberty to take such actions as deemed fit to get the vacant possession. In addition to that, the Petitioner herein shall be liable for violation of the undertaking given to this Court for which consequences shall follow.

11. With above observations and directions, the instant petition stands disposed of.

12. Interim order passed on 29.08.2024 stands vacated.

**JUDGE**

**Comparing Assistant**