

GAHC010202552021



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

Case No. : WP(C)/118/2022

BADAN CHANDRA BORA
S/O. RABIRAM BORA, R/O. 8TH MILE, AMERIGOG, P.S. BASISTHA (OUT
POST JORAHAT) P.O. KHANAPARA, DIST. KAMRUP(M), ASSAM, PIN-781023.

VERSUS

THE STATE OF ASSAM AND 6 ORS.
REP. BY THE COMM. AND SECY. TO THE GOVT. OF ASSAM, REVENUE AND
DISASTER MANAGEMENT, ASSAM CIVIL SECRETARIAT, DISPUR,
GUWAHATI, PIN-781006.

2:THE ADDL. DEPUTY COMMISSIONER AND CEO

DISTRICT DISASTER MANAGEMENT AUTHORITY
KAMRUP (M)
GUWAHATI-781001.

3:CIRCLE OFFICER

DISPUR REVENUE CIRCLE
DISPUR
PIN-781028.

4:DIRECTOR

SOIL CONSERVATION RG BARUAH ROAD
GUWAHATI-781005.

5:DIVISIONAL FOREST OFFICER

KAMRUP EAST DIVISION
BASISTHA

GUWAHATI-781039.

6:OFFICER IN CHARGE

JORBAT OUT POST
JORABAT
GUWAHATI.

7:BIKASH AGARWAL
R/O. FLAT NO. C1
DURGA RESIDENCY
BACK SIDE OF MLA HOSTEL
DISPUR-781005

Advocate for the Petitioner : MR K K MAHANTA (Sr. Advocate)

Advocate for the Respondent : GA, ASSAM

BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA

ORDER

Date : 27.06.2023

Heard Ms. N. Begum, learned counsel for the petitioner. Also heard Ms. G. Hazarika, learned standing counsel for the Revenue Department, respondent no.1, Mr. M. Chetia, learned Govt. advocate, respondent nos. 2, 3 and 6, Ms. R.H. Deuri, learned standing counsel for respondent no.4, Mr. R.R. Gogoi, learned standing counsel for the Forest Department appearing for respondent no.5 and Mr. J. Dasgupta, learned counsel for respondent no.7.

2. By filing this writ petition under Article 226 of the Constitution of India, the petitioner has projected that the respondent no.7 by his act of earth cutting on the hill slope, has exposed the property of the petitioner to imminent threat of landslide, which is likely to adversely affect life and property.

3. Notice of motion was issued by order dated 06.01.2022. Till date, except

for respondent no.7, none of the official respondents have filed any affidavit-in-opposition. The learned Govt. advocate has produced a copy of letter dated 10.03.2022 issued by the Circle Officer, Dispur Revenue Circle. The contents of the said letter is extracted below;

“With reference to the subject cited above and letters under reference, I have the honour to inform that the following recommendations by the Range Officer, Guwahati Soil Conservation Range, South Sarania, Guwahati are being observed:-

i)Recommendation No. 1. No further earth cutting should be done in that area.

However the following recommendations have not yet been followed by the concerned party.

i) Recommendation No.2. RCC retaining wall in the lower part of the plot (adjacent to the road) is suggested.

ii) Recommendation No.3. Series of boulder masonry wall with RCC post, along with cut portion of the hill is suggested.

iii) Recommendation No.4. Earth filling (carrying from outside) should be done to maintain the slope of the plot from the upper ridge of the hill to the proposed retaining wall.

iv) Recommendation No.5. All the earth exposed area to be covered up by Geo-textile mat so that soil particles would not be disturbed or detached.

Submitted for favour of your kind information and necessary action.”

4. The learned standing counsel for the Soil Conservator Department has produced a copy of letter dated 12.03.2020 by the Planning Officer, Soil Conservator Directorate, Assam. The contents of the said letter is extracted below:

“With reference to the subject cited above, I have visited the site on 05/03/2020 alongwith officials of Circle Officer, Dispur. A team of Lat Mandal, Field Officer D.M. and Forest & Fire service has inspected the site of earth cutting at 8th mile area.

As per complain petition of Sri Badan Ch. Bora who is inhabitant and adjacent of earth cutting area has resolves that this type of indiscriminate earth cutting in the hilly slope will cause landslides during heavy shower and there may be downward movement of slope forming material composed of natural rocks, soil and will cause damage to the life & property during heavy rainfall.

Therefore, immediate measure may be taken to stabilize steep hill slopes with series of sausage wire crated boulder retaining wall in lowermost part of the cutting area and all the earth exposed area to be covered by Geo-textile mat so that soil particle would not be disturbed or detached.

Herewith, I have enclosed photographs of the site for realizing the situation.

This has been submitted for onward submission to Circle Office, Dispur."

5. From the contents of the said two letters as reproduced hereinabove, there appears to be no doubt that the Circle Officer as well as the Planning Officer of Soil Conservation Directorate perceive the earth cutting on the hill slope is likely to cause landslides during heavy shower and that there is imminent threat to life and property during heavy rain fall. If responsible officers have shared their view that the earth cutting on the hill slope is like to cause damage to life and property during heavy rain fall, the Court is unable to see any reason why the Addl. Deputy Commissioner and Chief Executive Officer, District Disaster Management Authority (respondent no.2) has not expressed their own respective opinion in the matter.

6. It appears that none of the State respondents are inclined to take any responsibility of taking an appropriate decision in such a matter.

7. Under such circumstances, one last opportunity is granted to the Commissioner and Secretary to the Govt. of Assam, Revenue and Disaster Management (respondent no.1), the Addl. Deputy Commissioner and CEO, District Disaster Management (respondent no.2), Circle Officer, Dispur Revenue Circle (respondent no.3), Director of Soil Conservation (respondent no.4), and

the Divisional Forest Officer, Kamrup East Division (respondent no.5) to file an affidavit to bring their stand on record. The said authorities are put to notice that in the event on failure to file their affidavit-in-opposition in the matter and to take appropriate steps as they may be so empowered by law, the Court would be compelled to pass an appropriate orders on the next date for their personal appearance along with all records to assist the Court in the matter.

8. The learned State and departmental counsel shall send a downloaded copy of this order to the respondent nos. 1 to 5 to bring the order to the notice of the said authorities.

9. As prayed for by learned counsel for the respondent no. 7, time is allowed to file affidavit-in-opposition in the matter against the additional affidavit filed by the petitioner.

10. List on 24.07.2023.

JUDGE

Comparing Assistant