

GAHC010207482019



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

Case No. : WP(C)/6390/2019

ABHIJIT BHAGAWATI
S/O- LT RAJANI BHAGAWATI, R/O- KOCHGAON, OPP. BORA NURSING
HOME, BISWANATH CHARIALI- 784176, DIST- BISWANATH CHARIALI,
ASSAM

VERSUS

THE STATE OF ASSAM AND 5 ORS.
REP. BY THE COMM. AND SECY. TO THE GOVT. OF ASSAM, TOURISM
DEPTT., DISPUR, GHY-6

2:PRINCIPAL SECRETARY
TOURISM DEPTT.
GOVT. OF ASSAM
JANATA BHAWAN
D-BLOCK
THIRD FLOOR DISPUR
GHY-5
DIST- KAMRUP (M)
ASSAM

3:THE ASSAM TOURISM DEVELOPMENT CORPORATION LTD.
ASOM PARYATAN BHAWAN
4TH FLOOR
A.K.AZAD ROAD
PALTAN BAZAR
GHY-8

4:THE MANAGING DIRECTOR
THE ASSAM TOURISM DEVELOPMENT CORPORATION LTD.
ASOM PARYATAN BHAWAN
4TH FLOOR

A.K.AZAD ROAD
PALTAN BAZAR
GHY-8
DIST- KAMRUP (M)
ASSAM

5:THE GENERAL MANAGER
THE ASSAM TOURISM DEVELOPMENT CORPORATION LTD.
ASOM PARYATAN BHAWAN
4TH FLOOR
A.K.AZAD ROAD
PALTAN BAZAR
GHY-8
DIST- KAMRUP (M)
ASSAM

6:THE TOURIST INFORMATION OFFICER
THE ASSAM TOURISM DEVELOPMENT CORPORATION LTD.
TEZPUR
SONITPU

Advocate for the Petitioner : MR. M SARMA, MRS R DEKA

Advocate for the Respondent : GA, ASSAM, L BAGCHIE(R3,4,5,6),MR M KALITA(R3,4,5,6),G
TALUKDAR(R3,4,5,6),MRS P BARUA(R3,4,5,6)

BEFORE
HONOURABLE MR. JUSTICE SANJAY KUMAR MEDHI

ORDER

15.06.2026

The instant petition under Article 226 of the Constitution of India has been filed with the following relief:

“In the premises aforesaid, the Petitioner prays that your Lordships may be pleased to call for the records of the case including the selection process, issue a Rule calling upon the Respondents to show cause as to why a Writ in the nature of Certiorari or a Writ of like nature should not be issued to set aside and quash the impugned process of Seizure of the movable goods of the Petitioner kept at the Prashanti Wayside Amenity Centre at Biswanath Chariali by the Respondent Authorities on 06.08.2016 (Annexure-XII) and the Impugned Letter dated 10.04.2017 issued by the Respondent No.4 cancelling the contract of

management of Prashanti Wayside Amenity Centre at Biswanath Chariali (Annexure-XV) and/or as to why a Writ in the nature of Mandamus or a Writ of like nature should not be issued directing the Respondents, their servants to recall the Impugned Letter dated 10.04.2017 issued by the Respondent No.4 cancelling the contract of management of Prashanti Wayside Amenity Centre at Biswanath Chariali (Annexure-XV) and/or as to why a Writ in the nature of Mandamus or a Writ of like nature should not be issued directing the Respondent Authorities to release the movable goods belonging to the Petitioner seized by the Respondent Authorities on 06.08.2016 at Prashanti Wayside Amenity Centre allow the Petitioner to do the work of management of Prashanti Wayside Amenity Centre at Biswanath Chariali and/or as to why a Writ in the nature of Mandamus or a Writ of like nature should not be issued directing the Respondent Authorities and/or as to why any other appropriate Writ, Direction or Order should not be issued to give full and complete relief to the petitioner and on hearing cause or causes shown and on perusal of records may be pleased to make the Rule absolute and/or pass such further or other order(s) as to this Hon'ble Court may deem fit and proper

-AND-

Pending disposal of the Rule, your Lordships may be pleased to stay the Impugned Letter dated 10.04.2017 issued by the Respondent No.4 cancelling the contract of management of Prashanti Wayside Amenity Centre at Biswanath Chariali (Annexure-XV) and to allow the Petitioner to run the Prashanti Wayside Amenity Centre at Biswanath Chariali

And the Petitioner, as in duty bound, shall ever pray"

2. As per facts projected, one M/s RMD Hotel and Resorts Pvt. Ltd. was awarded the contract by the Assam Tourism Corporation Ltd. (hereinafter Corporation) to run a Resort at Biswanath Chariali. It is the case of the petitioner that the said party had entered into an agreement dated 29.08.2011 with him to run the resort and accordingly, a Power of Attorney was also executed. Accordingly, the petitioner was depositing the monthly rent to the Corporation in his own name and the same was also received. It is also contended that the petitioner had constructed an A-Type house in the premises and had planted certain trees. However, on account of he work pertaining to

widening and construction of the National Highway, there were acquisitions in which the A-Type house and the trees were affected. Accordingly, an assessment was made on 21.12.2012 for an amount of Rs.3,40,442/-. Thereafter the compensation amount along with the solatium and other was paid to the petitioner for an amount of Rs.7 Lakh odd. Thereafter, the petitioner had offered his intention to the Corporation to run the resort for a further 10 years which was agreed by the Corporation and in this regard, a communication dated 13.08.2015 was issued. It is also contended that the petitioner had made Security Deposit of Rs.1,00,000/-. After 1 year thereafter suddenly, on 05.08.2016, the Corporation had lodged an *Ejhar* against the petitioner and few others alleging fraud in the aspect of the compensation pertaining to the acquisition of the land. It is contended that the petitioner had to take anticipatory bail from this Court. It is also the case of the petitioner that articles/goods belonging to the petitioner were seized by the Corporation without any authority of law. On 16.03.2017, a Show Cause Notice was issued to the petitioner as to why the arrangement should not be cancelled to which the petitioner had submitted his reply. Vide the impugned communication dated 10.04.2017, the agreement was also cancelled. It is the aforesaid action which are the subject matters of challenge in the present writ petition.

3. I have heard Shri M. Sarma, learned counsel for the petitioner. I have also heard Ms. P. Barua, learned counsel representing ATDC.

4. Shri Sarma, the learned counsel for the petitioner has submitted that in the premises, the petitioner had constructed an A Type house and had also planted trees and though the land was Government land, the compensation was not pertaining to the land but to the structure constructed by him and the trees planted by him. He has submitted that the law on acquisition is very clear on

the aspect of payment of solatium and therefore along with solatium, an amount of Rs.7 Lakh odd was duly paid to the petitioner. He has also submitted that such transaction was done transparently which was within the knowledge of the Corporation. He has submitted that having full knowledge, the subsequent arrangement was worked upon which was also responded by the Corporation vide the communication dated 13.08.2015 whereafter the petitioner had made the Security Deposit and the arrangement had started. He has questioned the *bona fide* of the Corporation in instituting the criminal case. He has also challenged the aspect of seizure of the articles/goods without the same being preceded by any order of the competent authority. He has submitted that the impugned communication dated 10.04.2017 is also bad in law as the conditions precedent have not been fulfilled. He has submitted that there was no fraud played by the petitioner and the compensation received by him was in accordance with law.

5. On the aspect of withholding the Security Deposit, the learned counsel for the petitioner has submitted that such deposit was made by him on the insistence of the Corporation without even there being a formal agreement and therefore the same could not have been withheld.

6. *Per contra*, Ms. Barua, the learned counsel for the respondents has submitted that the facts projected by the petitioner are not correct. She has disputed that any separate structure was ever erected by the petitioner or trees planted by him and the structure which had existed was the Prashanti Dhaba which was, in fact, the property of the Corporation and let out to M/s RMD Hotel and Resorts. She has also submitted that the lessee could not have sublet the resort to the petitioner. She has also submitted that it is the Corporation which would be entitled to the compensation for acquisition as the property in

question constituting the structure was belonging to the Corporation. She has submitted that when the matter came to light, the Corporation had lodged the FIR on 05.08.2016 not only against the petitioner but also against three other persons who the Lot Mandals. It is submitted that the Show Cause Notice dated 16.03.2017 was issued to give an opportunity to the petitioner and only after having his response, the impugned order dated 10.04.2017 has been issued.

7. On the aspect of seizing the articles/goods, the learned counsel for the Corporation has submitted that when a huge amount was involved which was actually entitled to by the Corporation and was usurped by the petitioner, it was with all *bona fide* that the articles were seized. She has also submitted that the very purpose of Security Deposit is to ensure completion of the work in a lawful manner and there being default on the part of the petitioner, such Security Deposit has been withheld.

8. On the aspect of there being no separate structures, the learned counsel for the Corporation has emphasised that in fact even the permission sought for by the petitioner to make such construction was declined and therefore, the question of having separate structure would not arise at all. She has also submitted that the seizure of the articles were done in the presence of two employees of the petitioner and in a transparent manner. It is submitted that the petitioner was found to be absconding and under those circumstances, the seizure had to be done in the interest of justice.

9. The learned counsel for the respondent has also drawn the attention of this Court to the action taken report issued by the concerned police station dated 21.02.2017. She has submitted that the said report would reveal that the premises was unauthorisedly leased out and the Corporation was defrauded.

10. The rival submissions have been duly considered and the materials placed before this Court have been carefully examined.

11. The dispute which is involved in this matter emanates from the assessment of compensation pertaining to widening and construction of the National Highway at Biswanath Chariali for which an assessment was done by the National Highways amounting to Rs.3,40,442/-. Along with the admissible solatium, the amount had come to Rs.7 Lakh odd. There are documents to show that the assessed amount was in the name of the petitioner and accordingly paid to him.

12. On the other hand, it is the categorical case of the Corporation that no separate structure was constructed by the petitioner and no trees were planted. It is also the case of the Corporation that it is not in dispute that the land was not that of the petitioner and no compensation as such was assessed for the land as it was Government land. Alleging that the petitioner had defrauded the Corporation, the Corporation had already lodged an FIR and this Court has been informed that the trial is almost in the final stage.

13. So far as the civil liabilities are concerned, this Court is of the view that if the Corporation is of the opinion that the amount assessed is not entitled to by the petitioner but by them, appropriate remedies would be available in law. However, so far as the communication dated 10.04.2017 is concerned regarding the cancellation of the arrangement, this Court is of the view that by efflux of time, there would be no live cause of action to be adjudicated as the period of agreement has elapsed. On the aspect of seizure of the articles/goods belonging to the petitioner, this Court is however of the opinion that such seizure, though claimed to have been done *bona fide* has not been preceded by any order by the competent authority. Accordingly, the seized articles are directed to be

returned to the petitioner.

14. As regards the Security Deposit, this Court being a Court of equity is however of the opinion that the fate of the same be decided in appropriate proceeding which may be instituted by either of the party.

15. As directed above, the seized articles/goods be released to the petitioner within a period of 15 days from today. To avoid any confusion or ambiguity such release be done on 30.06.2026 to the petitioner or his representative(s).

16. Accordingly, writ petition stands closed. Closure of this writ petition shall not preclude either of the parties from approaching the appropriate Court of law for raising their claims/counter claims.

JUDGE

Comparing Assistant