



IN THE GAUHATI HIGH COURT
(The High Court of Assam, Nagaland, Mizoram and Arunachal Pradesh)
PRINCIPAL SEAT AT GUWAHATI

1. PIL No. 38/2019

Shri Jitul Deka,
General Secretary, Asomiya Yuva Mancha,
Son of Shri Karuna Deka,
resident of AT Telecom, Kunja Commercial Complex,
Maligaon, Guwahati, Assam, Pin-781012.

.....Petitioner.

-Versus-

- 1.** The State of Assam,
represented by Chief Secretary,
Government of Assam, Dispur, Guwahati.
- 2.** The Union of India,
represented by Secretary, Ministry of Environment and Forest,
Paryavaran Bhawan, C.G.O. Complex,
Lodhi Road, New Delhi-110003.
- 3.** The Chief Conservator of Forest,
Regional Office, Ministry of Environment and Forest (NEZ),
Upland Road, Laitmukhrah, Shillong-793003.
- 4.** The Secretary,
Department of Environment,
Government of Assam, Guwahati.
- 5.** The Chief Conservator of Forest (T),
Central Assam Circle, Basistha Forest Complex,
Guwahati-781029.
- 6.** The Deputy Commissioner,

Kamrup Metropolitan District, Guwahati.

- 7.** The Circle Officer,
Guwahati Revenue Circle, Kamrup, Guwahati.
- 8.** The Guwahati Development Authority,
represented by the Commissioner & Secretary, Janata Bhavan,
'D' Block, 2nd Floor, Dispur, Guwahati-6.
- 9.** The Guwahati Municipal Corporation,
represented by the Commissioner,
Panbazar, Guwahati.
- 10.** The Guwahati Metropolitan Development Authority,
represented by the Commissioner, Bhangagarh, Guwahati.
- 11.** Shrishti Infrastructure Development Corporation Limited,
A company incorporated under the Companies Act, 1956,
having its registered office at Plot No.X-1, 2 & 3, Block-EP,
Salt Lake City, Sector-V, P.O.-Sech Bhawan,
Police Station-Electronic Complex, Kolkata-700091.

.....Respondents.

- 12.** The Central Bureau of Investigation,
represented by the Director, Block No.3, CGO Complex,
Lodhi Road, New Delhi-110003.

.....Proforma Respondent.

For the Petitioner: Mr. K. Choudhury,
Mr. K.M. Mahanta,
Mr. M. Smith.Advocates.

For the Respondents: Mr. R.K. Dev Choudhury, ASGI,
Mr. S. Bora, SC, GMDA & GMC,
Mr. K.P. Pathak, SC, Forest,
Ms. M. Bhattacharjee, GA, Assam,
Mr. S.C. Keyal, SC, CBI.Advocates.

2. WP(C) No. 7397/2018

Shrishti Infrastructure Development Corporation Limited,
A company incorporated under the Companies Act, 1956,
having its registered office at Plot No.X-1, 2 & 3, Block-EP,
Salt Lake, Sector V, PO-Sech Bhawan, Police Station-Electronic Complex,
Kolkata-700091,
represented by Shri Nayan Basu, Project Head.

.....Petitioner.

-Versus-

- 1.** The State of Assam,
represented by Addl. Chief Secretary, Government of Assam,
Revenue Department, Dispur, Guwahati.
- 2.** The Commissioner & Secretary,
Government of Assam, Revenue Department,
Dispur, Guwahati.
- 3.** The Deputy Commissioner,
Kamrup Metropolitan District, Guwahati.
- 4.** The Circle Officer,
Guwahati Revenue Circle, Kamrup, Guwahati.
- 5.** The Guwahati Development Department,
represented by the Commissioner & Secretary,
Janata Bhavan, 'D' Block, 2nd Floor,
Dispur, Guwahati-6.
- 6.** The Guwahati Metropolitan Development Authority,
represented by the Chief Executive Officer,
Bhangagarh, Guwahati-5.

.....Respondents.

For the Petitioner:

Dr. A. Saraf (Sr. Adv.),
Mr. A. Goyal,
Mr. A. Choudhury.

.....Advocates.

For the Respondents:

Mr. R.K. Borah, GA, Assam,
Mr. S. Bora, SC, GDD,
Mr. R. Borpujari, SC, Revenue.

.....Advocates.

BEFORE
HON'BLE MR. JUSTICE N. KOTISWAR SINGH
HON'BLE MRS. JUSTICE MALASRI NANDI

Date of Hearing & Judgment : **7th December, 2021**

JUDGMENT AND ORDER (ORAL)

[N. Kotiswar Singh, J.]

The matter is taken up in hybrid mode.

2. Heard Mr. K. Choudhury, learned counsel for the petitioner in PIL No.38/2019 and Dr. A. Saraf, learned Senior counsel for the petitioner in WP(C) No.7397/2018. Also heard Ms. M. Bhattacharjee as well as Mr. R.K. Borah, learned Additional Senior Government Advocates, Assam; Mr. R.K. Dev Choudhury, learned Assistant Solicitor General of India; Mr. R. Borpujari, learned standing counsel, Revenue Department; Mr. K.P. Pathak, learned standing counsel, Forest Department; Mr. S.C. Keyal, learned standing counsel, CBI and Mr. S. Bora, learned standing counsel, GMC/GMDA/GDD appearing for the respondents.

3. These two petitions, PIL No.38/2019 and WP(C) No.7397/2018 have been taken up together considering the fact that issues raised in these petitions are closely related.

4. It may not be necessary to go in detail to the facts of the petitions. It will suffice if the following essential facts are mentioned in brief.

5. The petitioner, Shristi Infrastructure Development Corporation Limited, in WP(C) No.7397/2018, filed the writ petition challenging the orders dated 12.03.2018 and 31.03.2018, issued by the District Magistrate, Kamrup Metropolitan District, Guwahati, to stop all construction activities in Shristi Nagar Complex with immediate effect and also to give effect to the order dated 10.08.2018 passed by the Joint Secretary to the Government of Assam, Guwahati Development Department directing the Deputy Commissioner, Kamrup(M) to withdraw the 'stop construction' order issued earlier to the petitioner.

6. The petitioner Shristi Infrastructure Development Corporation Limited, was given permission to develop a project called "Shristinagar" on a plot of land lying and situated at Dag No.31, Patta No.1 of village Kharghuli Non-Cadastral (Rajabari) F.C. Grant, under Mouza-Beltola, District-Kamrup now Kamrup(Metro) in the State of Assam and Dag No.1(old) 1, 3 and 4(new) of Periodic Patta No.1 of Clearance Grant under Ulubari Mouza, District-Kamrup now Kamrup(Metro) in the State of Assam. The said project comprises of providing mass housing, school, hospital, commercial, social infrastructures, etc., which was permitted vide official letter dated 10.08.2009 issued by the Ministry of Environment & Forests, Government of India as well as the order dated 07.06.2010 issued by

the Guwahati Metropolitan Development Authority by approving the master plan for the said township subject to the conditions mentioned in the said approval letter dated 07.06.2010.

7. According to the writ petitioner, the Pollution Control Board of Assam also consented for establishing the said township vide their letter dated 06.09.2013. The petitioner contends that after obtaining necessary permission from the concerned authorities the petitioner started construction of the township. It may be pertinent to mention herein that the office of the District Magistrate, Kamrup Metropolitan District also vide order dated 23.11.2015 had given clearance for undertaking construction works in the location in issue provided that there be no hill cutting except for dressing and levelling, provisions of Assam Hills Land and Ecological Sites (Protection and Management) Act, 2006 as well as guidelines in respect of hill roads as laid down by the Indian Road Congress be adhered to, and there shall not be no fresh earth cutting under any circumstances and also the Circle Officer, Guwahati Revenue Circle will supervise and monitor the day to day excavation work to ensure that such work is done properly and he will also submit progress of the work to the Deputy Commissioner on day to day basis. The DFO, Kamrup East Division was also directed to supervise and monitor the day to day excavation work.

8. According to the writ petitioner, the aforesaid work was going on

smoothly. However, on alleged violation by the petitioner company of the aforesaid norms laid down by the authorities, based on certain media reports, a PIL came to be filed before this Court, which was registered as PIL No.38/2019. In the said PIL, the concern was raised that the area which was located in the hillside of Kharghuli with tree/forest coverage, could not have been allowed to be developed in the manner done without adhering to the norms as well as without proper examination of the environmental issues and also without ensuring that the forest areas are properly preserved.

9. It was alleged in the PIL that the petitioner company is resorting to indiscriminate cutting of hills leading to destruction of hills and forest coverage in contravention of the Assam Hills Land and Ecological Sites (Protection and Management) Act, 2006. The aforesaid Act provides for, preservation, protection, regulation, acquisition and maintenance of hill, land and other ecological sites of the State, more specifically within the jurisdiction of Guwahati Municipal Corporation. The said Act defines "hill land" as any land covered by hillocks or hills and includes any local area, which is not reserved forest or a sanctuary declared under any forest law for the time being. The said Act prohibits any damage and destruction in the designated area. The Government on the basis of report of the advisory committee constituted under the Act can declare any hill or ecological site as a designated area, by notification published in the official Gazette. It has been also provided under Section 15 of the Act

that if in the opinion of the Government any particular area within the meaning of hill land or ecological sites, which are not declared as designated area, is threatened with destruction by reason of commercial, industrial or other development activities, the Government may order the stoppage of such activities involved in the area and direct the advisory committee to submit reports regarding the declaration of the area as designated area.

10. It has been highlighted in the PIL that the location where the present project is being undertaken by the petitioner company, is a hill area and even if it is not declared as a designated area, the Government can certainly issue necessary directions to preserve the same, which has been done by the office of the District Magistrate, Kamrup Metropolitan District, on 23.11.2015. However, contrary to the said directions issued, hill cutting has been going on destroying the forest coverage as well as the hills. In the PIL, other issues also have been raised that the competent authorities had not properly applied their mind while giving permission to the petitioner company to undertake the aforesaid project and in fact they had been collusive with this company in allowing to undertake such a project.

11. In this regard, it may be pertinent to refer to a joint meeting held in the presence of the representatives of the petitioner company and other functionaries of the State Government presided over by the Principal Secretary, Guwahati Development Department on 29.09.2018. In the said meeting the

Chief Conservator of Forest(T), Central Assam Circle, Deputy Commissioner, Kamrup(M), representatives of the GMDA were also present. In the said joint meeting, after considering the various issues relating to the said project, certain decisions were taken.

12. In our view, it may be appropriate to reproduce the minutes of the meeting, as it would have a bearing on the decision of these two petitions. Accordingly, the minutes of the meeting held on 29.09.2018 are reproduced hereinbelow:-

"List of members attended is enclosed as Annexure-I.

The meeting was presided over by the Principal Secretary, GDD. He welcomed the members present in the meeting. The representative of M/s Shristi Infrastructure Development Corporation made a brief presentation on the construction of the new township "Shrishti Nagar" at Chunchali, Guwahati. They stated that the project has been instrumental in generating employment opportunity besides developing social infrastructure. However, the project came to a standstill in March, 2018 due to "Stop construction" notice by the Deputy Commissioner Kamrup(M).

The Chief Conservator of Forest (T), Central Assam Circle stated that as the concerned area appears to have a good tree cover, it would attract the Forest Conservation Act, 1980 as per the order of the Hon'ble Supreme Court. Hence, a scientific survey needs to be conducted to ascertain whether the area of interest may fall under the category of "Deemed Forest" i.e. a compact block of area with stipulated No. of trees per hectare.

The Deputy Commissioner, Kamrup(M) stated that Guwahati Metropolitan Development Authority (GMDA) should thoroughly monitor the project from every

perspective such as Earth Cutting and adherence to all existing laws.

The representative of GMDA stated that the concept of “Deemed Forest” did not arise during the preparation of the Technical Committee report referred therein.

The Chief Conservator of Forest (T), Central Assam Circle has opined that the Ministry of Environment, Forest and Climate Change (MoEF&CC) shall have to accord permission which subsequently need to be verified by the DFO.

The Principal Secretary, GDD stressed on the immediate need to ascertain whether the land falls under the “Deemed Forest” category.

The Chief Conservator of Forest (T), Central Assam Circle also informed that each cutting can be carried out upto a maximum height of 9(nine) feet from the hill-top. It has to be ascertained whether there has been a violation of any Act while carrying out the Earth cutting activity.

After threadbare discussion the following resolution were taken:

1. The Chief Conservator of Forest(T), Central Assam will make a survey and confirm whether the area of interest falls under the category of “Deemed Forest”. This should be done within a month time.
2. Deputy Commissioner, Kamrup(M) has to ascertain whether there has been a violation of any Act while carrying out the Earth Cutting activity.
3. NOC from Pollution Control Board, Assam shall have to be re-validated after proper examination.
4. The CCF suggested that the party may like to move for conversion of the area of interest if it falls under the “Deemed Forest” category.

The meeting ended with a vote of thanks from the Chair.

Sd/- (Ajay Tewari, IAS)

Principal Secretary to the Govt. of Assam

13. From the above, it is clearly evident that the authorities were concerned about the activities being carried out by the petitioner company and to ensure preservation of forest land, the aforesaid resolutions were taken, which are also the issues raised in the PIL.

14. As per the first resolution i.e. requiring the Chief Conservation of Forest (T), Assam to make a survey and to confirm whether the area of interest falls under the category of "Deemed Forest", which was required to be done within a month's time, it has been pointed out that the Chief Conservator of Forest (T) did make a survey, as can be seen from the communication dated 16.03.2020 from the Divisional Forest Officer, Kamrup East Division, Basistha, to the Commissioner, Guwahati Municipal Corporation, in which it has been mentioned that a team of officers constituted from the said Division had conducted the field survey during the month of February, 2020 and enumerated the entire standing trees in the plot of land developed by the petitioner company covered by Dag No.1, 3 & 4 of Patta No.1 under Revenue Village Clearance Garden of Ulubari Mouza and the team had marked the trees in the entire plot of land and found 7370 numbers of naturally grown trees and 1543 numbers of planted trees in the entire plot of land where Shristinagar construction is involved and there were 73 numbers of naturally grown trees per hectare in the plot.

15. It was also mentioned that as per Hon'ble Supreme Court's order dated

12.12.1996 and as notified vide Govt. of Assam, Forest Notification No.FRM.88/2001/77 land is to be treated as deemed forest if continuous patch of 10 hectares or more having not less than 200 naturally grown trees per hectare on an average are found and accordingly, the survey team gave the opinion that the plot of land where Shristinagar construction is going on may not qualify as forest.

16. Thus, it appears that the aforesaid first resolution was duly examined and considered on the basis of the report by the competent authority that it does not fall under the category of "Deemed Forest".

17. As regards the 2nd resolution requiring the Deputy Commissioner, Kamrup(M), to ascertain as to whether there has been violation of any Act while carrying out the earth cutting activity, it has been contended by learned Senior counsel for the petitioner company that nothing has been brought on record by any of the authorities of carrying out any illegal activity. It has been submitted on behalf of the petitioner company that in fact, after the order of stoppage of construction was issued by the District Magistrate, Kamrup Metropolitan District, which was challenged in the writ petition, the petitioner company had not undertaken any earth cutting activity and as such, the question of violation of the Act does not arise, emphasizing that on earlier occasion also, there was no such occasion of any violation of the Act.

18. As regards this, in absence of any factual finding by the competent authority, which would show away such illegal activity, we would not like to make any further observation.

19. Coming to the 3rd resolution for obtaining NOC from the Pollution Control Board of Assam, which is required to be re-validated after proper examination, it has been submitted by Dr. A. Saraf, learned Senior counsel for the petitioner company that at the relevant time, the No Objection Certificate issued by the Pollution Control Board was valid upto 06.09.2021 and even if it is expired now, during the pendency of this petition, the petitioner company will certainly apply for extension of the same and accordingly, had applied and the petitioner company will undertake the construction activities only after getting the NOC from the Pollution Control Board.

20. As regards the last resolution containing the suggestion of the Chief Conservator of Forest (T) that the party may like to move for conversion of the area of interest if it falls under "Deemed Forest" category, it has been submitted on behalf of respondent No.5 that the land in question is covered by periodic pattas and since it is a revenue land, it cannot be classified as a forest land.

21. Thus, from the above resolutions and the actions taken thereafter, we are of the view that the concern raised in the PIL had been addressed and without any contrary material in that regard, which have not been brought to

our notice, it would not be appropriate for us to intervene.

22. As regards the apprehension raised by the petitioner in PIL that certain officials had collusively with the petitioner company and without proper application of mind had issued the various orders and permits, we are of the view that in absence of any supporting materials in that regard, it may not be appropriate for us dwell into this aspect, as it is easy to allege malafide but difficult to prove it.

23. The joint meeting was held on 29.09.2018 in presence of representatives of various authorities and from the actions taken thereafter, we do not see that there has been any irregularity in the activities undertaken so far.

24. What we have also noted is that the Assam Hill Land and Ecological Sites (Protection and Management) Act, 2006 is applicable when a particular hill land has been designated as a 'designated area', as notified by the Government under Section 4 of the Act, which can be done on its own motion or on receipt of a report from the Advisory. Any Hill land or ecological site can be declared as designated area where the provisions of the aforesaid Act of 2006 will be applicable. That apart, in respect of any area, which is not declared as a designated area, if in the opinion of the Government any particular area within the meaning of hill land or ecological site is threatened with destruction by reason of commercial, industrial or other development activities, the

Government may order the stoppage of such activities in whole in that area and direct the Advisory Committee to submit reports regarding declaration of the area as 'designated area', as provided under Section 15 of the Act.

25. In the present case, the aforesaid area in which the petitioner is executing the project, does not come within the 'designated area'. However, that will not prevent the State Government from issuing appropriate orders under Section 15 of the Act.

26. Of course, we have noted that the Deputy Commissioner vide order dated 23.11.2015 had issued certain directions prohibiting hill cutting except dressing and leveling, ensure following of the provisions of the Assam Hills Land and Ecological Sites (Protection and Management) Act, 2006 as well as guidelines issued in respect of hill roads as laid down by the Indian Road Congress and also prohibiting any fresh earth cutting to be allowed in any circumstances. We are of the view that even if the said area does not fall under the designated area, the aforesaid directions can still be issued for preserving any hill area. The aforesaid directions were issued based on certain report submitted by the Circle Officer, Guwahati Revenue Circle vide letter dated 21.11.2015 as well as the order of the CEO, GMDA, Bhangagarh, Guwahati, vide order dated 07.10.2015 and the petition submitted by Nayan Basu, Head, Shristinagar, Noonmati, Guwahati, dated 07.10.2015.

27. We have noted that the directions issued by the Joint Secretary to the Government of Assam, Guwahati Development Department on 10.08.2018 to the Deputy Commissioner that the Government after having examined the matter has intimated that the Government has no objection to the execution of the project provided that the above mentioned real estate developer adheres to the prescribed Government rules, norms and conditions laid down by technical committee, which was prior to the joint meeting held on 29.09.2018. Subsequently, all the concerned authorities held a meeting on 29.09.2018 where the issues relating to the project was discussed and certain actions taken.

28. Accordingly, we do not find any reason which would warrant interference of this Court in implementation of the aforesaid project by the petitioner company. However, it goes without saying that while executing the project, the petitioner company is to strictly adhere to all the Government rules, norms and conditions laid down by the authorities or competent authorities including the Guwahati Metropolitan Development Authority as well as the Pollution Control Board, Assam and also the State Environment Impact Assessment Authority and any such deviation should be strictly dealt with in accordance with law.

29. We are also of the view that the State Government can certainly invoke provisions under Section 15 of the 2006 Act in respect of the project area, even if it is not declared a designated area. Though the petitioner in the PIL had

alleged that hill land had been destroyed by way of hill cutting, which has been denied by the respondents, we are of the view that the State Government can still examine this issue and pass appropriate orders in spite of closing of the PIL and the writ petition.

30. For the reasons discussed above and with the above observations, we close the PIL No.38/2019 and allow the writ petition being WP(C) No.7397/2018.

Sd/- Malasri Nandi
JUDGE

Sd/- N. Kotiswar Singh
JUDGE

Comparing Assistant