

GAHC010012962014



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

Case No. : WP(C)/3780/2014

ANYNAL HOQUE @ AYNAL HOQUE CHOUDHURY and 37 ORS.
S/O- LT. ALI MIYA, VILL.- HARIPUR, P.O.- BAHARIHAT.

2: IBRAHIM SIKDAR
S/O- LT. ABDUL KARIM SIKDAR
VILL.- HARIPUR
P.O.- BAHARIHAT.

3: SAJAHAN BHUYAN
S/O- LT. KORBAN BHUYAN
VILL.- BAHARI
P.O.- BAHARI HAT.

4: TUTA MIAH
S/O- ZAFAR ALI MIAH
VILL.- HARIPUR
P.O.- BAHARIHAT.

5: KHRSHED ALI
S/O- LT. MINNAT ALI
VILL.- FULBARI
P.O.- GOMAFULBARI.

6: LATIF BHUYAN
S/O- LT. LALCHAND BHUYAN
VILL.- HARIPUR
P.O.- BAHARIHAT.

7: ABU BAKKAR MALLICK
S/O- LT. SATTAR MALLIK
VILL.- FULBARI
P.O.- GOMAFULBARI.

8: ABU BAKKAR SIDDIQUE

S/O- IMAN ALI
VILL.- HARIPUR
P.O.- BAHARIHAT.

9: JAHEDUL ISLAM
S/O- IMAN ALI
VILL.- HARIPUR
P.O.- BAHARIHAT.

10: ABDUL ROUF
S/O- IMAN ALI
VILL.- HARIPUR
P.O.- BAHARIHAT.

11: ABDUL MALEK
S/O- LT. ALI MIYA
VILL.- HARIPUR
P.O.- BAHARIHAT.

12: JABBAR KHAN
S/O- JAMAL KHAN
VILL.- FULBARI
P.O.- GOMAFULBARI.

13: ABUL BASHAR
S/O- LT. NAYAN UDDIN AHMED
VILL.- HARIPUR
P.O.- GOMAFULBARI.

14: NAZRUL ISLAM
S/O- SAMSUL BEPARI
VILL.- BAHARI RESERVE
P.O. BAHARI HAT.

15: ABDUL ROUF KHAN
S/O- SATTAR KHAN
VILL.- HARIPUR
P.O.- BAHARIHAT.

16: LIADUR ALI KHAN
S/O- LIAKAT ALI KHAN
VILL.- FULBARI
P.O.- GOMAFULBARI.

17: JIAUR RAHMAN KHAN
S/O- LT. BANIZUDDIN KHAN
VILL.- FULBARI
P.O.- GOMAFULBARI.

18: SAROWAR SIKDAR
S/O- LT. ABDUL KUDDUS
VILL. and P.O.....

19: AFTADUR ALI KHAN
S/O- LIAKAT ALI KHAN
VILL.- BAHARI MUSLIMPARA
P.O.- BAHARI HAT.

20: MAKIBUR KHAN
S/O- MAHAR KHAN
VILL.- KAKDUWA
P.O.- GOMAFULBARI.

21: NAZRUL SIKDAR
S/O- LT. UMAR ALI SIKDAR @ UMAR ALI
R/O- BANDALI
P.O.- JATRADIA.

22: TAZUDDIN
S/O- LT. MINNAT ALI
VILL.- FULBARI
P.O.- GOMAFULBARI.

23: ABDUL MALEQUE
S/O- LT. MOSHARAF HUSSAIN
VILL- HARIPUR
P.O.- BAHARIHAT.

24: SAJAHAN MIAH
S/O- LAE MUAZAM MIAH
VILL.- HARIPUR
P.O.- BAHARI HAT.

25: IBRAHIM ALI
S/O- ABDUR RASHID
VILL.- GOMA
P.O.- GOMAFULBARI.

26: AKBAR BHUYAN @ AGBAR KHAN
S/O- KARIM BHUYAN @ EDIL KHAN
VILL.- HARIPUR
P.O.- BAHARIHAT.

27: MANIR HUSSAIN
S/O- HAKIM ALI
VILL.- FULBARI

P.O.- GOMAFULBARI.

28: MUFAZZAL HUSSAIN
S/O- LT. BARHAN ALI
VILL.- BAHARI MUSLIMPARA
P.O.- BAHARIHAT.

29: KASHEM SIKDAR
S/O- AMIR SIKDAR
VILL.- HARIPUR
P.O.- BAHARIHAT.

30: ABDUL MANNAN ALI
S/O- LT. AMZAD ALI
VILL.- GOMA
P.O.- FULBARI.

31: ROKIBUL ISLAM
S/O- LT. NABBESH ALI
VILL.- GOMA
P.O.- GOMAFULBARI.

32: ABDUL RASHID
S/O- LAT AFAZUDDIN
VILL.- GOMA
P.O.- GOMAFULBARI.

33: ABDUL GAFUR
S/O- LT. KURBAN ALI
VILL. and P.O.- BAHARI HAT.

34: AYUB KHAN
S/O- LT. MARTUZ KHAN
VILL.- HARIPUR
P.S.- BAHARIHAT.

35: HUSSAIN KHAN
S/O- JAMAL KHAN
VILL.- FULBARI
P.O.- GOMAFULBARI.

36: ABDUL MAZID
S/O- LT. ALTAF HUSSAIN
VILL.- HARIPUR
P.O.- BAHARIHAT.

37: BAHADUR ISLAM
S/O- LT. MUSARAF HUSSAIN

VILL.- HARIPUR
P.O.- BAHARIHAT.

38: SHANI ISLAM
S/O- NAZRUL ISLAM
BAHARI RESERVE
P.O.- BAHARI HAT
ALL ARE OF DIST.- BARPETA
ASSAM

VERSUS

THE STATE OF ASSAM and 7 ORS.
REP. BY THE SECY. TO THE GOVT. OF ASSAM, REVENUE DEPTT., DISPUR,
GHY- 6.

2:THE DY. COMMISSIONER
BARPETA
P.O. and DIST.- BARPETA
ASSAM.

3:THE CIRCLE OFFICER
CHENGA
P.O.- CHENGA
DIST.- BARPETA.

4:BARPETA ZILLA PARISHAD
REP. BY ITS PRESIDENT-
P.O. and DIST.- BARPETA
ASSAM.

5:THE B.D.C. CUM- SECRETARY
GUMAFULBARI ANCHALIK PANCHAYAT
VILL.- BHAGERPAR
P.O.- GUMAFULBARI
DIST.- BARPETA
ASSAM.

6:THE ASSAM STATE AGRICULTURAL MARKETING BOARD
REP. BY ITS CHEIF EXECUTIVE OFFICER
RAMKRISHNA MISSION ROAD
ULUBARI
GHY- 7.

7:THE CHAIRMAN
BAHARIHAT MARKETING COMMITTEE
P.O.- BAHARI HAT
DIST.- BARPETA

ASSAM
PIN- 781301.

8:THE LAND ADVISORY COMMITTEE
BARPETA SUB-DIVISION
REP. BY THE D.C.
BARPETA
P.O. and DIST.- BARPETA
ASSAM
PIN- 781301

Advocate for the Petitioner : MS.M DEKA

Advocate for the Respondent : SC, P AND R.D.

BEFORE
HONOURABLE MR. JUSTICE SANJAY KUMAR MEDHI

ORDER

30-01-2023

Heard Shri A. R. Sikdar, learned counsel for the petitioners. Also heard Ms. G. Hazarika, learned Standing Counsel, Revenue Department for the respondent No. 1; Ms. S. Sarma, learned State Counsel for the respondent Nos. 2 and 3 and respondent Nos. 4 and 5 by Shri S. Dutta, learned Standing Counsel, P&RD.

2. Considering the facts and circumstances of the case and also the fact that the writ petition is pending since the year 2014, the same is taken up for disposal at the admission stage.

3. The petitioners claimed to be educated unemployed youth. They claimed to be have moved from the erstwhile Tarabari Bazar in the district of Barpeta which was eroded in the flood forcing the people to run their business in the adjacent village of Bahari Reserve in which various areas of ½ to 2 lechas were allotted to the petitioners. The petitioners claimed to have been paid certain taxes/cess to the Bazaar authority.

4. Apprehending some kind of eviction, the petitioners had earlier approached this Court by filing WP(C) No. 3148/2013. The said writ petition alongwith few other writ petition

on the same subject was disposed of by this Court vide a common judgment dated 23.08.2013 by directing them to make a representation before the authorities which would be taken into consideration. The grievance of the petitioners is that though such representation was submitted, no steps have been taken on the same. On the other hand, the petitioners could learn that in a meeting dated 23.06.2014, a proposal was made for setting up of a regulated market at Bahari.

5. Shri Sikdar, the learned counsel for the petitioners submits that they are the flood affected persons and require special attention as they had lost their land in the flood which was in the erstwhile Tarabari area. The learned counsel for the petitioners also submits that they are in possession of the land in the present area for a long time and in the event a regulated market is constructed, preference is liable to be given to the petitioners for allotment.

6. Ms. S. Sarma, learned State Counsel however submits that neither any legal right of the petitioner has been infringed nor they are vested with any such rights. The State Counsel however fairly submits that in the event a regulated market is set up, the cases of the petitioners, if are within the permissible limits would be considered alongwith other similarly situated persons. The learned State Counsel however disputes that the petitioner are in possession of the area in question and the actual process to allot the area of the Market is yet to begin.

7. In this connection, the learned State Counsel has referred to the affidavit-in-opposition filed by the respondent No. 2 on 21.05.2015.

8. Ms. G. Hazarika, learned Standing Counsel, Revenue Department as well as Shri S. Dutta, learned Standing Counsel, P&RD Department additionally submits that the dispute raised would be a factual one which perhaps cannot be adjudicated in a writ proceeding. So far as the prayer for consideration of the representation is concerned, the learned counsel for the respondents have submitted that unless the Court is convinced regarding existence of a legally enforceable right, a mechanical exercise should not be done to simply forward the representation.

9. The contentions advanced by the learned counsel for the parties have been duly considered and the materials placed before this Court have been duly examined.

10. The principal basis of filing this petition of the petitioners is that they are flood affected persons and their original area have been completely eroded in the river flood for which they have to shift from the erstwhile Tarabari area to the Bahari Reserve wherein they are depending on their livelihood by opening of shops in the particular area on which a regulated market is sought to be constructed. The issue which would arise for determination is as to whether a direction can be given for consideration of the case of the petitioners in case such a regulated market is constructed.

11. The assertion of the petitioners that they are having shops in the particular area has been categorically denied by the respondents in their affidavits. The prayer for allotment of land to each of the petitioners at the rate of 2 Katha (which Shri Sikdar, learned counsel admits to be a typographical error and it should have been 2 leches) will also not be a part of a legally forcible right as allotment of Government land is by a process wherein various pre conditions are to be met and it is in discretion of the Government which is to be exercised in a judicious manner.

12. In view of the above, this Court is of the opinion that the present writ petition can be disposed of with a direction that there is no embargo on the part of the authorities to have a regulated market in the area concerned. However, vide allotting space in the said Market, the cases of the petitioners, if found to be otherwise eligible, be considered in accordance with law alongwith other similarly situated persons. If however, on facts the petitioners or any of them are able to establish that they are in possession of the land in question for a long period of time, some weightage may be given on that aspect.

13. The writ petition accordingly stands closed.

JUDGE

Comparing Assistant