

GAHC010027752015



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

Case No. : WP(C)/7629/2015

MD. TALEB ALI and 13 ORS.
S/O LT. WAZED ALI, VILL. DAUKMARI, P.O. JANIA, PIN-781314, DIST-
BARPETA, ASSAM

2: SOBAHAN ALI
S/O LT. RAHMAN ALI
VILL. DAUKMARI
P.O. JANIA
PIN-781314
DIST- BARPETA
ASSAM

3: ATOWAR RAHMAN
S/O LT. MUNGLA MIA
VILL. JANIA
P.O. JANIA
PIN-781314
DIST- BARPETA
ASSAM

4: SAIFUL ISLAM
S/O LT. GANI MIA
VILL. DAUKMARI
P.O. JANIA
PIN-781314
DIST- BARPETA
ASSAM

5: MONOWAR HUSSAIN
S/O LT. ABU MIA
VILL. JANIA
P.O. JANIA
PIN-781314
DIST- BARPETA

ASSAM

6: AKKES ALI
S/O LT. WAZED ALI
VILL. DAUKMARI
P.O. JANIA
PIN-781314
DIST- BARPETA
ASSAM

7: FALU MIA
S/O LT. JONGSHER ALI
VILL. DAUKAMARI
P.O. JANIA
PIN-781314
DIST- BARPETA
ASSAM

8: SAMSUL HAQUE
S/O ABDUS SUBAHAN ALI
VILL. JANIA
P.O. JANIA
PIN-781314
DIST- BARPETA
ASSAM

9: ABDUL KHALEQUE
S/O LT. SAHJAHAN ALI
VILL. DAKUAMARI
P.O. JANIA
PIN-781314
DIST- BARPETA
ASSAM

10: TARA MIA
S/O LT. OMAR ALI
VILL. DAUKMARI
P.O. JANIA
PIN-781314
DIST- BARPETA
ASSAM

11: MATIOR RAHMAN
S/O LT. MUNGLA MIA
VILL. JANIA
P.O. JANIA
PIN-781314
DIST- BARPETA

ASSAM

12: RAJAB ALI
S/O LT. RAHMAN ALI
P.O. JANIA
PIN-781314
DIST- BARPETA
ASSAM

13: SAHJAHAN ALI
S/O LT. MUNNAF ALI
VILL. DAUKAMARI
P.O. JANIA
PIN-781314
DIST- BARPETA
ASSAM

14: FULCHAN MIA
S/O LT. JONGSHER ALI
VILL. DAUKMARI
P.O. JANIA
PIN-781314
DIST- BARPETA
ASSA

VERSUS

THE STATE OF ASSAM AND 5 ORS
REP. BY ITS COMMISSIONER and SECY., REVENUE and SETTLEMENT
DEPTT., DISPUR, GHY-6

2:THE DIRECTOR
MADRASSA EDUCATION
ASSAM
KAHILIPARA
GHY-19

3:DY. COMMISSIONER
BARPETA
P.O. and DIST- BARPETA
ASSAM
PIN-781301

4:THE CIRCLE OFFICER
BAGHBAR REVENUE CIRCLE
MONDIA
P.O. MONDIA
DIST- BARPETA

ASSAM

5:MANAGING COMMITTEE
JANIA ANCHALIK SENIOR MADRASSA
VILL. and P.O. JANIA
PIN-781314
DIST- BARPETA
ASSAM

6:AYNAL HAQUE CHAUDHURY
PRINCIPAL
DAPUN JATIYA VIDDALAYA
VILL. and P.O. JANIA
PIN-781314
DIST- BARPETA
ASSA

Advocate for the Petitioner : MRK BHUYAN

Advocate for the Respondent : GA, ASSAM

Linked Case : WP(C)/2893/2016

HAMID ALI and 7 ORS.
S/O- LT. ABDUL HAI
VILL.- JANIA.

2: ASHED ALI
S/O- LT. WAZED ALI
VILL.- DAUKMARI.

3: KHALILUR RAHMAN
S/O- LT. INNAS ALI
VILL.- DAUKMARI.

4: JAKIR HUSSAIN
S/O- SOBHAN ALI
VILL.- DAUKMARI

5: TOTA MIA
S/O- LT. ISMAIL
VILL.- SOTIRPATHAR

6: RAHMAT ALI
S/O- LT. DAGU MIA
VILL.- DAUKMARI

7: MANIK ALI
S/O- LT. WAZED ALI
VILL.- DAUKMARI

8: JAMIR ALI
S/O- SAMSUL HAQUE
VILL.- DAUKMARI
ALL ARE UNDER P.O.- JANIA
DIS.- BARPETA
ASSAM
PIN- 781314.
VERSUS

THE STATE OF ASSAM and 5 ORS.
REP. BY ITS COMMISSIONER AND SECY.
REVENUE and SETTLEMENT DEPTT.
DISPUR
GHY- 6.

2:THE DIRECTOR
MADRASSA EDUCATION
KAHILIPARA
GHY- 19.

3:THE DY. COMMISSIONER
BARPETA
P.O. and DIST.- BARPETA
ASSAM
PIN- 781301.

4:THE CIRCLE OFFICER
BAGHBOR REVENUE CIRCLE
MONDIA
DIST.- BARPETA
ASSAM
PIN- 781301.

5:THE MANAGING COMMITTEE
JANIA ANCHALIK SENIOR MADRASSA
VILL. and P.O.- JANIA
DIST.- BARPETA
ASSAM
PIN- 781314.

6:AYNAL HAQUE CHOUDHURY
PRINCIPAL
DAPUN JATIA VIDYALAYA
VILL. and P.O.- JANIA

DIST.- BARPETA
ASSAM
PIN- 781314.

Advocate for : MR.A A AL-AMAN
Advocate for : MR. B SINHA (PRIVATE RESPONDENT) appearing for THE STATE
OF ASSAM and 5 ORS.

Linked Case : WP(C)/2870/2016

BADSHA ALAM and 32 ORS.
S/O. LT. WAJUDDIN
VILL. DAUKAMARI

VERSUS

THE STATE OF ASSAM AND 5 ORS
REP. BY ITS COMM. and SECY.
REVENUE and SETTLEMENT DEPTT.
DISPUR
GHY.-06.

Advocate for : MR.A S AHMED
Advocate for : SC
SECONDARY EDUCATIONR-2 appearing for THE STATE OF ASSAM AND 5
ORS

BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH

ORDER

Date : 22-11-2023

These three writ petitions are taken up together taking into account the common issues involved therein.

2. The petitioners in these three writ petitions claim to be erosion affected persons and they had been occupying Government land covered by Dag Nos. 282 and

632 of Jania Revenue village under Jania Mouza within Baghbar Revenue Circle. The petitioners herein are aggrieved by the action of the Sub-Divisional Land Advisory Committee in recommending allotment of the aforesaid land covered by Dag No. 632 in favour of respondent No. 5, situated at village Jania under Jania Mouza within Baghbar Revenue Circle. It is the admitted fact that neither the petitioners herein nor the private respondent No. 5 have been granted settlement of the land in question. It is only that recommendation was made by the Sub-Divisional Land Advisory Committee in favour of the private respondent No. 5.

3. On 15.11.2023, when the matter was placed before this Court, this Court took note of the instructions dated 18.05.2022, issued by the Deputy Commissioner, Barpeta, wherein it was mentioned that land under Dag Nos. 282 and 632 of Jania village, under Jania Mouza within Baghbar Revenue Circle is reserved land (VGR). It was also mentioned that the Sub-Divisional Land Advisory Committee, in its meeting held on 06.11.2002 had recommended for allotment of land measuring 39 Bighas covered by Dag No. 282 and 632 of Jania Revenue village under Baghbar Revenue Circle to the people affected by the erosion caused by the Beki river. Further to that, it was also mentioned that as per the report of the Circle Officer, Baghbar Revenue Circle, the land covered by Dag No. 232 is Periodic Patta land, but the 16 Bighas of land covered by Dag No. 282 of Jania village was recommended for allotment to the families affected by the erosion caused by Beki river. This Court, taking note of the aforesaid instructions dated 18.05.2022, sought for further instructions from the respondent authorities to the effect as to how the land meant for Village Grazing Reserve (VGR) can be allotted or settled unless such land is de-reserved. This specific instruction was sought for in view of the judgment rendered by the Hon'ble Supreme Court in the case of **Jagpal Singh & Ors. Vs. State of Punjab & Ors.**, reported in **(2011) 11 SCC 396**, wherein it has been categorically observed by the Hon'ble Supreme Court that reserved land cannot be settled except for public purposes.

4. Today, when the matter was taken up, Ms. M. Barman, learned counsel

appearing on behalf of the Deputy Commissioner, Barpeta, has placed before this Court a communication/written instructions dated 20.11.2023, issued by the Deputy Commissioner, Barpeta and has submitted that the land covered by Dag Nos. 282 and 632 of Jania revenue Mouza, which had been recommended on 06.11.2002 by the Sub-Divisional Land Advisory Committee for allotment to the families affected by the erosion of Beki river, is in fact the land reserved as VGR. However, no process for de-reservation of the said land seems to have been initiated till date. The said written instructions/ communication dated 20.11.2023 is kept on record and marked with the letter "Y".

5. This Court also finds it relevant to take into account Clause-6 of the Land Policy, 2019 of the Government of Assam, which deals with Village Grazing Reserve (VGR) and Professional Grazing Reserve (PGR) and other reserved land, which is reproduced herein-below:

6. Village Grazing Reserve (VGR) and Professional Grazing Reserve (PGR) and other reserved land:

- 6.1. *Deputy Commissioners shall make necessary endeavour to preserve the existing V.G.Rs and P.G.Rs for use by the members of the public for the purpose for which those were constituted and encroachment on V.G.Rs and P.G.Rs if any, will be removed. Henceforth, the land under V.G.Rs and P.G.Rs will not be further decreased by way of de-reservation and allotment etc. except for public purposes under special circumstances as defined by judicial pronouncements.*
- 6.2. *A block of Government land ranging from 5 (five) Bighas to 15 (fifteen) Bighas, subject to availability in each village should be reserved as an open space for environmental/ecological purposes and be kept free from encroachment/allotment/settlement or any form of transfer.*
- 6.3. *Play ground, and other open place suitable for play ground and Park in rural areas will be preserved for maintenance of ecological balance/environment as well as other public purposes. Appropriate measures for maintenance/upkeep of such gardens and open places shall also be provided for deriving the optimal utility/benefits from such public facilities.*
- 6.4. *Deputy Commissioners shall ensure creation of a data base in the*

form of Village Land Bank for all such reserved land and keep strict vigilance towards its protection and preservation.

6.5. Deputy Commissioners shall ensure that the wet lands remain free from encroachment and that the natural water channels which function as natural drainage are marked by the Land Record Staff in the village map and note to that effect shall be recorded in the remark column of field index register (Chitha).

Further, Deputy Commissioners shall not change the class of wet land in the land records without prior approval from the Government."

5. From a perusal of the above-quoted Clause-6 as well as its Sub-clauses, it reveals that the land under the V.G.Rs and P.G.Rs would not further be decreased by way of de-reservation or allotment etc. except for public purposes under special circumstances as defined by judicial pronouncements. In view of the land policy of the Government of Assam, being the Land Policy, 2019 as well as the judgment rendered by the Hon'ble Supreme Court in the case of **Jagpal Singh** (supra), the land in question, which have been specifically reserved as Village Grazing Reserve, in the opinion of this Court, cannot be settled in favour of either the petitioners or the private respondent No. 5. Under such circumstances, this Court is of the opinion that no writ can be issued directing the respondent authorities to consider settlement of the land in question in favour of the petitioners. This Court, therefore, sets aside and quashes the recommendations so made in favour of the private respondent No. 5 for settlement of the land covered by Dag No. 632. Be that as it may, this Court, taking into account that the petitioners herein are the families affected by the erosion of Beki river and also that the respondent No. 5 is running a school since the year 2000, grants opportunity to both the petitioners as well as the respondent No. 5 to file appropriate application to the authority concerned, within a period of 30 days from today, seeking settlement of other waste land of the Government of Assam. This Court further directs the revenue authorities as well as the Deputy Commissioner, Barpeta, to consider the application(s) to be filed by the petitioners as well as the respondent No. 5 seeking settlement as per the Land Policy, 2019 and keeping in view that the

petitioners herein are erosion affected families and the respondent No. 5 is running a school. It is made clear that if the petitioners as well as the respondent No. 5 file application(s), within 30 days from today seeking allotment of other waste lands of the Government of Assam, the petitioners as well as the respondent No. 5 shall not be evicted from the present occupation till disposal of their applications for settlement.

6. With the above observations and directions, the writ petitions stand disposed of.

JUDGE

Comparing Assistant