

GAHC010046072023



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

**Case No. : WP(C)/1156/2023**

RUPJYOTI BORA BURAGOHAIN AND 9 ORS  
W/O- LT. ARUP BORA, R/O- SATGAON, SURJYA NAGAR, P.O.  
UDAYANVIHAR, MOUZA- BELTOLA, REVENUE CIRCLE- DISPUR, KAMRUP  
(M), ASSAM- 781171

2: BIPASHA MEDHI SAIKIA  
W/O- SUREN SAIKIA  
R/O- SATGAON  
SURJYA NAGAR  
P.O. UDAYANVIHAR  
MOUZA- BELTOLA  
REVENUE CIRCLE- DISPUR  
KAMRUP (M)  
ASSAM- 781171

3: GANESH CHANDRA SHARMA  
S/O- LT. KAMINI SHARMA  
R/O- SATGAON  
SURJYA NAGAR  
P.O. UDAYANVIHAR  
MOUZA- BELTOLA  
REVENUE CIRCLE- DISPUR  
KAMRUP (M)  
ASSAM- 781171

4: SIMA DAS  
W/O- DHANJIT DAS  
R/O- SATGAON  
SURJYA NAGAR  
P.O. UDAYANVIHAR  
MOUZA- BELTOLA  
REVENUE CIRCLE- DISPUR  
KAMRUP (M)  
ASSAM- 781171

5: K. SHYAM KUMAR SINGHA  
S/O- KABRABAM LAKHINARAYAN SINGHA  
R/O- SATGAON  
SURJYA NAGAR  
P.O. UDAYANVIHAR  
MOUZA- BELTOLA  
REVENUE CIRCLE- DISPUR  
KAMRUP (M)  
ASSAM- 781171

6: SAGARIKA DAS  
D/O- TARUN DAS  
R/O- SATGAON  
SURJYA NAGAR  
P.O. UDAYANVIHAR  
MOUZA- BELTOLA  
REVENUE CIRCLE- DISPUR  
KAMRUP (M)  
ASSAM- 781171

7: RAJEN KALITA  
S/O- RIJU KALITA  
R/O- SATGAON  
SURJYA NAGAR  
P.O. UDAYANVIHAR  
MOUZA- BELTOLA  
REVENUE CIRCLE- DISPUR  
KAMRUP (M)  
ASSAM- 781171

8: TARUN SAIKIA  
S/O- LT. NARESWAR SAIKIA  
R/O- SATGAON  
SURJYA NAGAR  
P.O. UDAYANVIHAR  
MOUZA- BELTOLA  
REVENUE CIRCLE- DISPUR  
KAMRUP (M)  
ASSAM- 781171

9: REHANA MAJUMDAR  
W/O- KHALILUR RAHMAN MAJUMDAR  
R/O- SATGAON  
SURJYA NAGAR  
P.O. UDAYANVIHAR  
MOUZA- BELTOLA  
REVENUE CIRCLE- DISPUR

KAMRUP (M)  
ASSAM- 781171

10: AMITAVA DUTTA  
S/O- MUKUL CHANDRA DUTTA  
R/O- SATGAON  
SURJYA NAGAR  
P.O. UDAYANVIHAR  
MOUZA- BELTOLA  
REVENUE CIRCLE- DISPUR  
KAMRUP (M)  
ASSAM- 78117

VERSUS

THE STATE OF ASSAM AND 4 ORS  
THROUGH THE COMMISSIONER AND SECY., REVENUE AND DISASTER  
MANAGEMENT, DISPUR, GUWAHATI- 781006

2:THE GUWAHATI METROPOLITAN DEVELOPMENT AUTHORITY (GMDA)  
THROUGH ITS CHAIRMAN  
3RD FLOOR  
STATFED BUILDING  
GMC HOSPITAL ROAD  
BHANGAGARH  
GUWAHATI  
ASSAM- 781005

3:THE GUWAHATI MUNICIPAL CORPORATION  
THROUGH ITS COMMISSIONER  
PANBAZAR  
GUWAHATI- 781001

4:THE DY. COMMISSIONER  
KAMRUP (M)  
GUWAHATI- 781001

5:THE CIRCLE OFFICER  
DISPUR REVENUE CIRCLE  
GUWAHATI- 78100

**Advocate for the Petitioner** : MR. A GANGULY

**Advocate for the Respondent** : GA, ASSAM

Linked Case : WP(C)/1229/2023

NARESWAR BAISHYA AND 9 ORS.  
S/O- LATE BASU RAM BAISHYA

RESIDENT OF USHA NAGAR  
BARBARI

GUWAHATI- 781036  
KAMRUP(M)

ASSAM.

2: RAJU KASHYAP  
S/O- LATE BHOLA RAM BASFOR

RESIDENT OF HOUSE NO. 48  
USHA NAGAR  
BYE LANE - PRAGATI PATH

VIP ROAD  
BARBARI  
GUWAHATI- 781036

KAMRUP(M)  
ASSAM.

3: ANJAN BAISHYA  
S/O- LATE ANANTA BAISHYA

RESIDENT OF USHA NAGAR  
BARBARI

GUWAHATI- 781036  
KAMRUP(M)  
ASSAM.

4: JYOTISMAN KASHYAP  
S/O- LATE UDDHAB CH. DEKA

RESIDENT OF USHA NAGAR

RUDRA SINGHA PATH  
BORBARI

P.O.- HENGRABARI

P.S.- DISPUR

GUWAHATI- 781036  
KAMRUP(M)

ASSAM.

5: BIJIT KALITA  
S/O- UTTAM KALITA

RESIDENT OF BARBARI  
GUWAHATI- 781036  
KAMRUP(M)

ASSAM.

6: HEMKANTA BORA  
S/O- LT. PUNYESWAR BORA

RESIDENT OF HOUSE NO. 15A

PRAGATI PATH  
USHA NAGAR

VIP ROAD  
BARBARI CHARIALI

GUWAHATI- 781036  
KAMRUP(M)

ASSAM.

7: DHRUBAJYOTI KALITA  
S/O- RAMA KANTA KALITA

RESIDENT OF USHA NAGAR  
RUDRA SINGHA PATH

BARBARI  
PO- HENGRABARI

P.S.- DISPUR  
GUWAHATI- 781036

KAMRUP(M)  
ASSAM.

8: NARENDRA DUTTA

S/O- SRI MINA KT. DUTTA

R/O- HOUSE NO. 15B  
PRAGATI PATH

VIP ROAD  
BARBARI

GUWAHATI- 781036

KAMRUP(M)  
ASSAM.

9: DEBASISH BORAH  
S/O- GHANA KANTA BORAH

RESIDENT OF SANJIBANI PATH

USHA NAGAR  
BARBARI

GUWAHATI- 781036  
KAMRUP(M)

ASSAM.

10: MONJIT THAOSEN  
S/O- SRI AMENDRA THAOSEN

R/O- BORBARI  
USHA NAGAR

P.O.- BELTOLA  
P.S.- DISPUR

GUWAHATI- 781036  
KAMRUP(M)

ASSAM.  
VERSUS

THE STATE OF ASSAM AND 4 ORS.  
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE GOVT.  
OF ASSAM

REVENUE (SETTLEMENT) DEPARTMENT  
DISPUR  
GUWAHATI- 781006 (ASSAM).

2:THE GUWAHATI METROPOLITAN DEVELOPMENT AUTHORITY  
REPRESENTED BY ITS CHAIRMAN

BHANGAGARH

GUWAHATI- 781006 (ASSAM).

3:THE GUWAHATI MUNICIPAL CORPORATION  
REPRESENTED BY ITS COMMISSIONER

GUWAHATI- 781006 (ASSAM).

4:THE DEPUTY COMMISSIONER

KAMRUP(METRO)

HENGRABARI

GUWAHATI- 781036

ASSAM.

5:THE CIRCLE OFFICER

DISPUR REVENUE CIRCLE

DISPUR

GUWAHATI- 781006.

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Advocate for : MR. D K DAS

Advocate for : appearing for THE STATE OF ASSAM AND 4 ORS.

Linked Case : WP(C)/1159/2023

HIMANI DEVI AND ANR

D/O- BISWESWAR SINGHA

R/O- JURIPAR

V.I.P. ROAD

PATHARQUARY

PIN- 781171

ASSAM

2: INDRAJIT KALITA

S/O- LATE HAREKRISHNA KALITA

R/O- JURIPAR

V.I.P. ROAD

PATHARQUARY

PIN- 781171

ASSAM

VERSUS

THE STATE OF ASSAM AND 4 ORS

REPRESENTED BY COMMISSIONER AND SECRETARY TO THE  
GOVERNMENT OF ASSAM

SECRETARIAT ADMINISTRATION DEPARTMENT

DISPUR

GUWAHATI-6.

2:THE GUWAHATI METROPOLITAN DEVELOPMENT AUTHORITY  
REPRESENTED BY ITS CHAIRMAN

BHANGAGARH  
GUWAHATI-781006  
ASSAM

3:THE GUWAHATI MUNICIPAL CORPORATION  
REPRESENTED BY ITS COMMISSIONER

GUWAHATI.

4:THE DEPUTY COMMISSIONER  
KAMRUP METRO

HENGRABARI

GUWAHATI  
ASSAM

5:THE CIRCLE OFFICER  
DISPUR REVENUE CIRCLE

DISPUR  
GUWAHATI-781006.

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Advocate for : MR H K DAS

Advocate for : GA

ASSAM appearing for THE STATE OF ASSAM AND 4 ORS

Linked Case : WP(C)/1256/2023

ANIL KALITA AND 13 ORS  
S/O- KALI RAM KALITA

R/O- HOUSE NO-20  
USHA NAGAR  
BORBARI  
VIP ROAD

P.O- BELTOLA

P.S- DISPUR  
GUWAHATI-36  
KAMRUP (M)  
ASSAM

2: HIRAN NATH TALUKDAR  
S/O- NRIPEN TALUKDAR

R/O- USHA NAGAR  
BORBARI

VIP ROAD

P.O- BELTOLA

P.S- DISPUR  
GUWAHATI-36  
KAMRUP (M)  
ASSAM

3: DIPJYOTI BARMAN  
S/O- BIREN BARMAN

R/O- USHA NAGAR  
BORBARI  
NEAR USHA NAGAR SHIV TEMPLE

P.O- BELTOLA

P.S- DISPUR  
GUWAHATI-36  
KAMRUP (M)  
ASSAM

4: GITANJALI HAZARIKA  
W/O- PADMA KANTA HAZARIKA

R/O- USHA NAGAR  
BORBARI  
SILSAKU

P.O- BELTOLA

P.S- DISPUR  
GUWAHATI-36  
KAMRUP (M)  
ASSAM

5: KUKA RAY  
S/O- SATISH ROY

R/O- BORBARI

P.O- BELTOLA

P.S- DISPUR  
GUWAHATI-36  
KAMRUP (M)  
ASSAM

6: APABI SINGHA  
W/O- LATE TANU SINGHA

R/O- HOUSE NO-42  
SANJIVANI PATH  
BORBARI  
VIP ROAD

P.O- BELTOLA

P.S- DISPUR  
GUWAHATI-36  
KAMRUP (M)  
ASSAM

7: LILI BEGUM  
W/O- MATIN ALI

R/O- HOUSE NO-42  
HENGRABARI ROAD  
SANJIBANI PATH  
USHA NAGAR  
BORBARI

P.O- BELTOLA

P.S- DISPUR  
GUWAHATI-36  
KAMRUP (M)  
ASSAM

8: LAKHI CHUTIA  
W/O- LATE NARENDRA NATH CHUTIA

R/O- HOUSE NO-28  
SANJIBANI PATH  
USHA NAGAR  
BORBARI

P.O- BELTOLA

P.S- DISPUR  
GUWAHATI-36  
KAMRUP (M)  
ASSAM

9: KUMAM MAHESHWAR SINGH

S/O- LATE KUMAM MANJI SINGH

R/O- HOUSE NO-45  
SANJIBANI PATH  
VIP ROAD USHA NAGAR  
BORBARI

P.O- BELTOLA

P.S- DISPUR  
GUWAHATI-36  
KAMRUP (M)  
ASSAM

10: RIJU BORAH  
W/O- MANTU BAIDYA

R/O-USHA NAGAR  
BORBARI

P.O- BELTOLA

P.S- DISPUR  
GUWAHATI-36  
KAMRUP (M)  
ASSAM

11: GITA BORO  
W/O-LATE ARUN CH. BARO

R/O- HOUSE NO-44  
SANJIBANI PATH  
VIP ROAD  
NEAR GINGER HOTEL  
BORBARI

P.O- BELTOLA

P.S- DISPUR  
GUWAHATI-36  
KAMRUP (M)  
ASSAM

12: PRONIL NUNISA  
S/O- LATE SARODHA NUNISA

R/O- SANJIBANI PATH  
VIP ROAD

USHA NAGAR  
BORBARI

P.O- BELTOLA

P.S- DISPUR  
GUWAHATI-36  
KAMRUP (M)  
ASSAM

13: JYOTISH DEKA  
S/O- LATE DHIRESWAR DEKA

R/O- H. NO-33  
USHA NAGAR  
BORBARI

P.O- BELTOLA

P.S- DISPUR  
GUWAHATI-36  
KAMRUP (M)  
ASSAM

14: MINAKSHI DAS  
W/O- NISHI PAD SWARGIARY

R/O- VIP ROAD  
USHA NAGAR  
BORBARI

P.O- BELTOLA

P.S- DISPUR  
GUWAHATI-36  
KAMRUP (M)  
ASSAM  
VERSUS

THE STATE OF ASSAM AND 4 ORS  
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE  
GOVERNMENT OF ASSAM  
REVENUE (SETTLEMENT) DEPARTMENT  
DISPUR  
GUWAHATI-6  
ASSAM

2:THE GUWAHATI METROPOLITAN DEVELOPMENT AUTHORITY  
REP. BY ITS CHAIRMAN  
BHANGAGARH

GUWAHATI- 781006

ASSAM.

3:THE GUWAHATI MUNICIPAL CORPORATION  
REP. BY ITS COMMISSIONER

GUWAHATI-06

ASSAM

4:THE DEPUTY COMMISSIONER

KAMRUP (M)

HENGRABARI

GUWAHATI-36

ASSAM

5:THE CIRCLE OFFICER  
DISPUR REVENUR CIRCLE

DISPUR

GUWAHATI-06

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Advocate for : MR D K DAS

Advocate for : GA

ASSAM appearing for THE STATE OF ASSAM AND 4 ORS

Linked Case : WP(C)/1113/2023

SANJAY GOSWAMI BARUAH AND 2 ORS.

S/O- LT. B.K. BARUAH R/O- H.NO. 21

USHA NAGAR

BORBARI SANJEVANI PATH

P.O. HENGRABARI

P.S. DISPUR

781036

ASSAM

2: KHIRESWARI SAIKIA

D/O- LT. PURNIMA SAIKIA R/O- USHA NAGAR

BORBARI NEAR DURGA MANDIR

P.O. HENGRABARI

P.S. DISPUR

781036

ASSAM

3: ALOK BORUAH

S/O- LT. PRAFULLA BORUA R/O- USHA NAGAR

BORBARI NEAR SHIV MANDIR

P.O. HENGRABARI  
P.S. DISPUR  
781036  
ASSAM  
VERSUS

THE STATE OF ASSAM AND 4 ORS.  
REP. BY THE COMM. AND SECY. TO THE GOVT. OF ASSAM  
REVENUE (SETTLEMENT) DEPTT.  
DISPUR  
GHY-06 (ASSAM)

2:THE GUWAHATI METROPOLITAN DEVELOPMENT AUTHORITY  
REP. BY ITS CHAIRMAN  
BHANGAGARH  
GUWAHATI- 781006 (ASSAM)

3:THE GUWAHATI MUNICIPAL CORPORATION  
REP. BY ITS COMMISSIONER  
GUWAHATI

4:THE DY. COMMISSIONER  
KAMRUP (METRO)  
HENGRABARI  
GUWAHATI

ASSAM  
5:THE CIRCLE OFFICER  
DISPUR REVENUE CIRCLE DISPUR  
GUWAHATI- 781006

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Advocate for : MR. M KHATANIAR  
Advocate for : GA  
ASSAM appearing for THE STATE OF ASSAM AND 4 ORS.

**BEFORE  
HONOURABLE MR. JUSTICE SANJAY KUMAR MEDHI**

**Judgment & Order**

**03.03.2023.**

The writ jurisdiction of this Court has been sought to be invoked in these five writ petitions which have been filed with a similar cause of action. In the first writ petition, namely, WP(C)/1113/2023, vide an order dated 27.02.2023 an interim protection was granted and directed the matter to be listed on 03.03.2023. Two

subsequent matters were moved on 28.02.2023 being, WP(C)/1156/2023 & 1159/2023 in which an order for analogous hearing on the motion stage with the earlier writ petition i.e, WP(C)/1113/2023 was fixed today. Further, it was observed that if the eviction was yet to be done, the same may not be carried out till the next date fixed i.e. 03.03.2023. Today, apart from the aforesaid writ petitions, two more writ petitions have been listed for motion being, WP(C)/1229/2023 & WP(C)/1256/2023. The principal challenge in all these writ petitions is against the action for eviction of the petitioners.

**2.** In the deliberations, which had commenced today, Shri D. Saikia, the learned Advocate General, Assam, clarified, at the outset that his argument would be based on the point of law and therefore, no affidavit-in-opposition is required to be filed. In that view of the matter, the writ petitions were taken up for disposal at the motion stage itself.

**3.** However, before going to the issue involved, it would be beneficial to record the facts of the cases in brief.

**4.** The petitioners in WP(C)/1113/2023, who are 3 in numbers, claim to be occupying small plots of Government lands in Village-Hengrabari, Mouza-Beltola, under Dispur Revenue Circle. They claim to have constructed residential houses and have been allotted Municipal holding numbers by the concerned authorities. The petitioners also claim to have given electricity connection. The petitioners claim that they are in occupation of the land since last 12 years and the lands neither reserved for any Government department, road or public purpose nor part of the Wetland of Silsako Fresh Water Lake.

**5.** The petitioners in WP(C)/1156/2023, who are 10 in numbers, claim to be the

residents of Satgaon, under Mouza-Beltola, Revenue Circle-Dispur and have been in long and continuous possession of various plots of land covering various Dags, namely, Dag Nos. 182, 184, 185 & 186. As per the petitioners, the aforesaid lands are classified as residential and Khiraj Eksona and do not come under any water body as per the Guwahati Waterbodies (Prevention and Conservation) Act, 2008. The petitioner no.2, in this case, has further claimed that settlement application was made and that presently, her son's examination is also going on. The other petitioners also have claimed to have applied for settlement which has not been done. It is the specific case of the petitioners that the aforesaid dag numbers are outside the Silsako Beel.

**6.** There are 2 numbers of petitioners in WP(C)/1159/2023, who claim to have occupied Government land under Village-Mathgharia, Mouza-Beltola, Dispur Revenue Circle and claim to have been granted municipal holding numbers. They have also claimed to have applied for settlement of the land in question. Though in the synopsis a mention has been made regarding annual examination of the children of the petitioners, there is no such pleading in the writ petition.

**7.** In WP(C)/1229/2023<sup>10</sup>, the petitioners, who are 10 in numbers, have joined together and have claimed to be occupying the Government lands of Village-Hengrabari, Mouza-Beltola, under Dispur Revenue Circle. The petitioners claim to have been granted municipal holding numbers and electricity connection to their houses and that their lands are not reserved for any Government department nor part of any Wetland.

**8.** There are 14 numbers of petitioners in WP(C)/1256/2023, who have claimed to be occupying the Government land of Village-Hengrabari, Mouza-Beltola, under Dispur Revenue Circle. The petitioners claim to have been granted municipal holding numbers and electricity connection to their houses and that their lands are not reserved for any

Government department nor part of any Wetland. In this case also, though there is a mention made in the synopsis regarding annual examination of the children, there is no such averment made in the pleadings.

**9.** It is the common cause of the petitioners that on 26.02.2023 and 28.02.2023 at around noon, a large contingent of Police Force along with officials of GMDA & GMC came to the lands of the petitioners with Bulldozers and JCBs for the purpose of evicting them and demolishing their dwelling houses. It is the aforesaid cause for which the instant writ petitions have been filed.

**10.** I have heard Shri DK Das and Shri M. Khataniar, learned counsel for the petitioners in WP(C) Nos. 1113/2023, 1229/2023 & 1256/2023; Shri A. Ganguly, learned counsel appears for the petitioners in WP(C)/1156/2023 and Shri HK Das, learned counsel for the petitioners in WP(C)/1159/2023. I have also heard Shri D. Saikia, learned Advocate General, Assam assisted by Shri S. Bora, the learned Standing Counsel, GMDA as well as Shri R. Borpujari, the learned Standing Counsel, Revenue and Disaster Management Department.

**11.** Shri DK Das, learned counsel for the petitioners along with Shri M. Khataniar, learned counsel has, first drawn the attention of this Court to the provisions of the Guwahati Waterbodies (Prevention and Conservation) Act, 2008 (For short hereinafter referred to as the Waterbodies Act, 2008). It is contended that the Waterbodies Act, 2008 is prospective in nature and therefore, aid of the said Act cannot be taken to evict the petitioners who claim to have been residing in the areas prior to commencement of the Waterbodies Act, 2008.

**12.** It is, thereafter submitted on behalf of the petitioners that while undertaking the present eviction drive, the fact of human element has been wholly ignored wherein

minimum time was not given to the petitioners to vacate the lands in which case, the hardships could be reduced and the extent of damage be lessened. The learned counsel has also clarified that in the meantime, the house of the petitioner, namely, Anil Kalita in WP(C)/1256/2023 has already been dismantled.

**13.** Shri DK Das, learned counsel, however has fairly submitted that though the objective to make the waterbodies in Guwahati encroachment free, some balance is required to be maintained, as the petitioners are indigenous people and belong to the backward strata of the society.

**14.** Shri Ganguly, learned counsel for the petitioners in WP(C)/1156/2023 while endorsing the submissions made by the petitioners in the other cases, has submitted that even assuming that the eviction drive is not, *per se* restricting to the provisions of the Waterbodies Act, 2008, even for evicting persons from Government land, notice is required to be served which admittedly, in this case, has not been done. By drawing the attention of this Court to the Settlement Rules framed under the Assam Land and Revenue Regulation, 1886 (Regulation of 1886), more specifically, Rule 18 thereof, the learned counsel has submitted that there is a requirement under the Settlement Rules to issue notice before such eviction drive is carried out. The learned counsel submits that though there is some confusion with regard to the point of issuing notice under Rule 18(2) of the Settlement Rules, he submits that a Single Bench of this Court vide a recent order has referred the matter for constitution of a Larger Bench.

**15.** Shri HK Das, learned counsel for the petitioners in WP(C)/1159/2023 has additionally raised the point of jurisdiction by urging that under Section 9 of the Waterbodies Act, 2008, the power to make Rules have been conferred upon the Government and since no Rules have been published till date, the Water Bodies Act, 2008 cannot be made applicable. He also urges the requirement of notice to vacate

prior to the eviction drive.

**16.** The learned counsel for the petitioners have relied upon the following case laws:

i) Order dated 05.01.2023 in SLP No. 289/2023 (*Abdul Mateen Siddiqui Vs. Union of India & Ors.*),

ii) 2001 (1) GLT 650 (*Rameswar Rai Vs. State of Assam*),

iii) 2006 (Supp) GLT 400 (*Kundargaon Anti Eviction Action Committee Vs. State of Assam and Ors.*),

iv) AIR 1986 SC 180 (*Olga Tellis & Ors. Vs. Bombay Municipal Corporation & Ors.*),

v) 2017 6 GLJ 475 (*Bimal Ch. Das Vs. State of Assam and Ors.*),

vi) Order dated 18.02.2022 in WP(C)/1057/2022 (*Md. Salak Uddin Vs. State of Assam and Ors.*).

**17.** In the case of *Abdul Mateen Siddiqui (supra)*, the Hon'ble Supreme Court was dealing with the case of displacement of a large section of people overnight due to the construction work of Railways and by the aforesaid order, notice have been issued with the observation that some workable arrangement is necessary to be made to segregate people who may have no rights in the land and those who have.

**18.** In the case of *Rameswar Rai (supra)*, a Single Bench of this Court had laid down that a notice under Rule 18(2) of the Settlement Rules cannot be done away with.

**19.** In the case of *Kundargaon Anti Eviction Action Committee (supra)*, it has, however

been held that notice under Rule 18(2) is not a pre-condition.

**20.** In the case of *Olga Tellis (supra)*, the Hon'ble Supreme Court was examining the displacement of the pavement dwellers in the Bombay Municipality. The Hon'ble Supreme Court had recognized the rights under Articles 21 and 14 of the Citizens and it was also held that under the law of torts, notice to a trespasser is required.

**21.** The case of *Olga Tellis (supra)* was decided in the year 1985 when there was a paradigm shift in the interpretation of the fundamental rights and a broad meaning was sought to be given so as to give maximum benefit to the citizens. The said *lis* was also seen from the perspective of the pavement dwellers of Bombay Municipality where, they were living from the hand to mouth and therefore, the direction for rehabilitation was issued. In any case, the Hon'ble Supreme Court did not, as such, interfere with the process of eviction of the encroachers and the only direction was to arrange for an alternative place to the dwellers which was made on an assurance given by the State Government. As regards the requirement of notice to a *tort feasor*, the statute, however, in the instant case, specifically covers the field on the issue of notice.

**22.** The case of *Md. Salak Uddin (supra)* has been cited only to apprise the Court regarding conflicting judgment of this Court in *Bimal Ch. Das (supra)* and *Kundargaon Anti Eviction Action Committee (supra)* and accordingly, vide the order dated 18.02.2022, the matter has been placed before the Hon'ble Chief Justice for a reference to be made to a Division Bench.

**23.** *Per contra*, Shri D. Saikia, learned Advocate General, Assam has, at the outset, raised a preliminary objection regarding the maintainability of the writ petition by questioning as to what right of the petitioners has been enforced. It is submitted that

the petitioners are occupying Khas land without any authority of law and have accrued no right whatsoever to possess the same.

**24.** By drawing the attention of this Court to the Waterbodies Act of 2008, the learned Advocate General has placed before this Court three numbers of satellite photographs taken at different periods namely, 2003, 2015 & 2021, which would reveal that from a large waterbody, the Silsako has been reduced to almost a kind of a drain. Shri Saikia, learned AG has submitted that one of the principal reasons of artificial flood in the main city of Assam is because of the encroachment of waterbodies in Guwahati.

**25.** The learned AG clarifies that the eviction drive is not restricted to the action to be taken only under the Waterbodies Act of 2008 alone and the same is also a general one under the Regulation of 1886. It is submitted that Rule 18(2) and Rule 18(3) of the Settlement Rules under the said Regulations are distinct and different. Rule 18(2) is with regard to eviction from certain categories of land, including Khas land, Waterbodies and Grazing land etc. whereas under Rule 18(3), it is for lands not covered under Rule 18(2) and the statute requires serving of notice only when Rule 18(3) is involved. He submits that admittedly, the land, in the instant case, is either Khas land or land within the boundaries of waterbodies which is clear from the Schedule of the Waterbodies Act of 2008.

**26.** The learned AG, Shri Saikia further submits that the present action is one with which immense public interest is involved. It is submitted that maximum 200 families residing in the said area may be affected by the eviction drive whereas, such an eviction drive would benefit the entire city of Guwahati which consists of more than 7 lakhs families. It is submitted that the petitioners and other persons in that locality have encroached upon the Government lands and the waterbodies have been filled up in a rampant manner which is a major cause of artificial flood in the city of Guwahati.

**27.** The learned AG has also strenuously argued on the aspect of prejudice by not serving of notice before the eviction process. Without prejudice to his contention that notice is not necessary, the learned AG has submitted that since the facts are admitted that the land in question is Khas land and the status of the petitioners are mere encroachers, no explanation, whatsoever can be put forth by the petitioners which can be held to be convincing.

**28.** On the aspect of the argument made that the issue of requirement of notice has been referred to a Larger Bench in the case of *Md. Salak Uddin (supra)*, the learned AG has submitted that apart from the fact that the facts are different and distinguishable, till now, no reference has been made to a Larger Bench.

**29.** The learned AG also refers to an **order dated 12.08.2016** passed by an Hon'ble Division Bench of this Court in **WP(C)/4179/2009 (*Ishaque Ali Vs. State of Assam*)** in which, the Division Bench has laid down the distinction between Rule 18 (2) and Rule 18 (3). Shri Saikia, learned AG has also referred to an order dated 17.02.2023 passed by the Hon'ble Division Bench in PIL/76/2021 in which the *vires* of the said Rule has been upheld.

**30.** The learned AG has also referred to the provisions of the Assam Land Grabbing (Prohibition) Act, 2010 and has submitted that the act of the petitioners in occupying Government land amounts to land grabbing against whom the aforesaid Act prescribes a penal proceedings.

**31.** The learned State Counsel has finally submitted that no case for interference is made out and in any case, the over-whelming public interest connected with the eviction drive should, in any case, override the private interest of few individuals. The learned AG has also stated that similar eviction drive of illegal encroachers would be

carried out from other Wet lands/Waterbodies in the City, including Deepor Beel other Khas land and the hills, including the Norokasur and Sarania hills.

**32.** While contending that no right, whatsoever has accrued upon the petitioners, the learned AG has, however submitted that in a genuine case wherein the eviction is yet to take place, the petitioners can approach the authorities wherein, a reasonable time would be granted. The causes could be on going examination of the children/wards of the petitioners, serious illness etc. which, however has to be *prima facie* established/demonstrated in support of the applications. The concession, however that may be granted is only for a certain period to ease out the difficulty.

**33.** The learned AG has relied upon the following decisions:

i) Order dated 26.09.2019 in WP(C)/6158/2019 (*Taher Ali Vs. State of Assam & Ors.*),

ii) Order dated 17.02.2023 in PIL/76/2021 (*All India Kishan Mazdoor Sabha & Anr. Vs. State of Assam*),

iii) 2006 (Supp.) GLT 400 (*Kundargaon Anti-Eviction Action Committee Vs. State of Assam*) and

iv) Order dated 12.08.2016 in WP(C)/4179/2009 (Division Bench- *Ishaque Ali Vs. State of Assam*).

**34.** In the case of *Taher Ali (supra)*, it has been laid down that Rule 18 (2) of the Settlement Rules does not mandate any issuance of notice. Further, it has been laid down that no person can claim an indefeasible right either to encroach upon or to continue in unauthorized occupation of any Government land.

**35.** In the case of *All India Kishan Mazdoor Sabha (supra)* which was a PIL, the Hon'ble Division had negated the challenge made to the *vires* of Rule 18 of the Settlement Rules.

**36.** The case of *Ishaque Ali (supra)* has been pressed into service to set on rest the projection sought to be made regarding requirement of a reference to a Larger Bench on the interpretation of Rule 18 (2) of the Settlement Rules. In the said case, the Hon'ble Division Bench did not prescribe for issuance of notice under Rule 18 (2) and has, rather held that recourse to a summary procedure is found to be acceptable, as individual right must give way to the public interest.

**37.** The rival submissions made by the learned counsel for the parties have been duly considered and the materials placed before this Court have been duly examined.

**38.** To examine the grounds of challenge projected by the petitioners, the petitioners have to first demonstrate that they have accrued any legal right to possess the land in question. Admittedly, the land is Khas land wherein the petitioners are illegally in occupation.

**39.** A submission was made on the prospective applicability of the Waterbodies Act of 2008. The aforesaid submission may be a substantial one from the legal angle, however, the basic burden upon the petitioners is to establish that they have been residing in the aforesaid lands from a period prior to coming of the said Act. Admittedly, the same would require a factual determination which would involve adducing of evidence which is not within the ambit of this Court exercising its powers under Article 226 of the Constitution of India. That apart, from the categorical assertion of the learned Advocate General that the eviction drive is not only under the

Waterbodies Act, 2008 but also a general eviction drive against all Khas land, Grazing land etc., the said ground may not be a substantial one to persuade this Court to interfere.

**40.** With regard to the submission made on behalf of the petitioners on the issue of requirement of notice under Rule 18 (2) that there is a reference in the case *Md. Salak Uddin (supra)*, this Court had noted that the facts of that case is clearly distinguishable from the fact of the present case where the land in question, is admittedly, Khas land. In any case, a perusal of the order dated 18.02.2022 passed in the case of *Md. Salak Uddin (supra)* would reveal that the learned Single Judge had noticed a conflict in two earlier judgments of this Court, both rendered by a learned Single Judge. The first judgment is in the case of *Kundargaon Anti-Eviction Action Committee (supra)* and the later judgment is in the case of *Bimal Ch. Das (supra)*. The learned Single Judge had noticed that while in the earlier judgment, it was held that the statute did not envisage notice under Rule 18 (2), no such distinction was made *qua* the notices to be issued either in Rule 18 (2) or 18 (3) in the subsequent decision. Though an endeavour was made by the learned counsel for the petitioners that even before the case of *Kundargaon Anti-Eviction Action Committee (supra)*, there was an earlier case of *Rameswar Rai (supra)*, decided in the year 1999 in which a learned Single Judge had held that notice under Rule 18 (2) is necessary, however, it appears that a meaning was sought to be given to Rule 18 by taking into consideration Article 14 of the Constitution of India.

**41.** The aforesaid issue, however may not detain this Court in view of the clear judgment and order dated 12.08.2016 passed by a Division Bench of this Hon'ble Court in *Ishaque Ali (supra)*, as pointed out by the learned AG, Assam. The Hon'ble Division Bench after noticing the amendment of Rule 18 w.e.f. 29.03.1997 has held that no right is noticed in favour of an incumbent who comes under Rule 18 (2). The

Division Bench has further held that when the land is needed to be cleared in public interest, the individual right, if any, must give away.

**42.** To remove any doubts, the provisions of Rule 18 of the Settlement Rules can be noted. For ready reference Rule 18 thereof, after the amendment 29.03.1997, is extracted hereinbelow:

*“18. Ejectment (1) Subject as hereinafter provided, the Deputy Commissioner may eject any person from land over which no person has acquired the rights of a proprietor, landholder, or settlement-holder.*

*(2) When such person has entered into possession of Government khas land, or Waste land or estate over which no person has acquired the right of a proprietor, land holder or settlement-holder or any land that has previously been reserved roads or roadside land or for the grazing of village cattle or for other public purposes, or has entered into possession of land from which he has been excluded by general or special orders and when further, there is no bona fide claim of right involved he may be ejected or ordered to vacate the land forthwith, and the Deputy Commissioner may sell, confiscate or destroy any crop raised, or any building or other construction erected without authority on the land.*

*(3) (a) (i) In all other cases ejectment shall be preceded by publication of a notice in the manner prescribed below requiring the occupant generally to vacate the land specified in the notice, within 15 days of the date of publication of the notice on the land concerned or in a prominent place in the vicinity thereof, and to remove any buildings, houses, fences or crops etc., which may have been raised on such land : Provided that the Deputy Commissioner may give time to any particular occupant to harvest the crops, if any growing on such land. Any buildings, houses, fences, crops etc., which have not been*

*removed in accordance with such notice shall be confiscated to the Government.*

*(3) (b) The notice referred to in clause (a) of sub-rule (3) above shall be published by affixing a copy thereof in the Notice Board of the office of the Deputy Commissioner of the Sub-divisional Officer, as the case may be, and also in the Notice of the office of Sub-Deputy Collector within whose jurisdiction the land is situated. A notice shall also be published by affixing a copy thereof on the land concerned or in a prominent place in the vicinity thereof.”*

**43.** A bare perusal of sub-rule (2) and sub-rule (3) of Rule 18 makes a clear distinction regarding the nature of the encroachment whereas under sub-rule (2), specific mention has been made of Government Khas land, Wetland of State over which no person has acquired the right of a proprietor, land holder or settlement holder and land reserved roads, road side land, grazing land or other public purposes etc., an eviction can be carried out. Sub-section (3), however lays down for any other class of land, before eviction, notice is necessary. This Court is of the opinion that when the language of the statute is plain and free from any ambiguity wherein no other interpretation is possible, the golden rule of interpretation is to give a plain and literary meaning of the statute. Further, the *vires* of Rule 18 (2) is not questioned in any of these writ petitions and rather, in PIL/76/2021, the Hon’ble Division Bench has negated the challenge to the *vires*.

**44.** Under the aforesaid facts and circumstances, this Court is of the opinion that when the language of the statute itself is clear and there is a distinction between an eviction under Rule 18 (2) *vis-a-vis* Rule 18 (3), the requirement of issuing notice under Rule 18 (2) cannot be read into while interpreting such Rule.

**45.** This Court also finds force in the contention made on behalf of the State that the present action is for the larger interest of the public. It is a settled position of law that larger public interest would override the private rights of few individuals or a small section. This Court cannot ignore the aspect of artificial floods seen in the city of Guwahati after a major shower which has almost become a routine affair. However, such phenomenon was not seen about 2 decades back.

**46.** This Court may take judicial notice of the fact that artificial floods have almost become a routine in this City of Guwahati where, after a heavy shower, the entire city is inundated and reduction of Waterbodies in the Guwahati is one of the main reasons for the same. As indicated above, the satellite pictures for different periods placed before this Court would really indicate a shocking state of affairs wherein a huge water body has been turned almost to a drain. The said satellite pictures (3 in nos.) are made part of the records. While dismissing these writ petitions, this Court is also of the view that as stated by the learned Advocate General of the State, the present eviction drive may be set as an example for initiating such drives to clear all Waterbodies, especially in and around Guwahati, including the Deepor Beel. Illegal encroachment in the hills in and around the Guwahati is also to be made encroachment free with stricter steps against cutting of hills and de-forestation.

**47.** In view of the aforesaid facts and circumstances, this Court is of the considered opinion that the present may not be fit cases for interference, as a much greater goal involving public interest is being sought to be achieved wherein this Court has not noticed any apparent aberration of law. In view of the same, the writ petitions are dismissed.

**48.** At this stage, this Court has also given some thought to the individual hardships of serious nature. Though specific pleadings are not there in the petitions, it has been

submitted that wards and children of some petitioners in the locality are having their annual examinations, including the HSLC and Higher Secondary/Class-XII examination. This Court has also indicated that hardships may also be in the form of some petitioners who are suffering from serious ailments and are not able to shift immediately. For those cases, liberty is given to the petitioners to individually approach the authorities in question by submitting written representations with supporting documents with an undertaking to vacate the encroached lands on or before 10.04.2023 and if such step is taken within 15.03.2023, the same may be considered and a reasonable time be granted to vacate the land under their possession. This liberty, however cannot be extended for an indefinite time.

**49.** No order as to cost.

**JUDGE**

**Comparing Assistant**