

GAHC010053672022



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

Case No. : WP(C)/2556/2022

ABDUL SUBBUR BARBHUIYA
S/O- LT. JAHUR UDDIN BARBHUIYA, VILL. BIDRUHIPAR, P.O. HATIKHAL
BAZAR, P.S. KACHUDARAM, DIST.- CACHAR, ASSAM.

VERSUS

THE STATE OF ASSAM AND 6 ORS
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM,
DEPTT. OF PANCHAYAT AND RURAL DEVELOPMENT, DISPUR, GHY.-06.

2:THE COMMISSIONER
PANCHAYAT AND RURAL DEVELOPMENT DEPTT.
JURIPAR
PANJABARI
GHY- 22.

3:THE DY. COMMISSIOENR
CACHAR
PIN- 78001.

4:THE CHIEF EXECUTIVE OFFICER
CACHAR ZILLA PARISHAD
DIST.- CACHAR
ASSAM
PIN- 788001.

5:THE BLOCK DEVELOPMENT OFFICER
SONAI DEVELOPMENT BLOCK
PIN- 788119.

6:THE SECRETARY
HATIKHAL GAON PANCHAYAT

P.O. HATIKHAL BAZAR
P.S. KACHUDARAM
DIST. CACHAR
ASSAM
PIN- 788116.

7:THE PRESIDENT
HATIKHAL GAON PANCHAYAT
P.O. HATIKHAL BAZAR
P.S. KACHUDARAM
DIST. CACHAR
ASSAM
PIN- 788116

Advocate for the Petitioner : MR M J QUADIR

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

BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA

ORDER

Date : 07-06-2023

Heard Mr. M.J. Quadir, learned counsel for the petitioner as well as Mr. S. Dutta, learned standing counsel for the respondent nos.1, 2, 4, 5 and 6 and Mr. N. Goswami, learned Govt. Advocate appearing for the respondent no.3

2. By filing this writ petition under Article 226 of the Constitution of India, the petitioner has prayed for a direction upon the respondent authorities to include his name in the list of beneficiaries for sanction of PMAY-G house under Hatikhal Gaon Panchayat under Sonai Development block. The case of the petitioner is that he is a person from socio-economic Group and initially his name was included in the socio economic and caste census, 2011 which entitled him to have his name entered in the list of proposed PMAY-G beneficiary for the Hatikhal Gaon Panchayat and his name was at Sl. No.60 vide ID no.2004738.

The petitioner had approached the authorities on several occasion, but his name was not entered in the PMAY-G beneficiary list and later on the petitioner came to know that his name was deleted from the list of beneficiaries. The petitioner had submitted a complaint on 05.07.2021 before the respondent no.4 which remains unresponded. Hence, this writ petition.

3. The learned counsel for the petitioner has submitted that a PMAY-G house was allotted to his mother but the petitioner was threatened by his two sisters to vacate the house who are in the house of their mother in exclusion the petitioner who has eight members of his own and therefore, it is submitted that the petitioner be provided with a PMAY-G house.

4. Per contra the learned standing counsel for the P&RD department has referred to statement made in para-6 and 8 of the affidavit-in-opposition filed by the respondent no.7 to project that the petitioner's mother was allotted a pucca house under the PMAY-G scheme and that payment towards the same was routed through the account of the petitioner. It is also submitted that some other persons may have got benefit of allotment of PMAY-G house despite their family members being allotted a house, but if that has happened it was an error on the part of the authorities, which cannot create any legal right to the petitioner to have a PMAY-G house as such a house was already allotted in the name of his mother under the scheme.

5. Having regard to the un-disputed fact that the mother of the petitioner namely, Smt. Amina Khatun Barbhuiya, was named in the list of

beneficiary of SECC, 2011 in SI No.05 vide ID no.1699574. It is not disputed that the money for PMAY-G was sanctioned in the favour of the mother of the petitioner in the year 2016-17 which was disbursed through the account of the petitioner. Under such circumstances, the petitioner has failed to show that under the scheme the petitioner is entitled to a PMAY-G house as one such house has been already sanctioned and provided to the mother of the petitioner.

6. There is no material on record to show that in the event after sanction of PMAY-G house, there is a dispute between the beneficiary and other family members and all other members of the family will become entitled to have a separate PMAY-G house. Under such circumstances, as there is nothing on record to show that the petitioner has been segregated from his extended family including his mother and sisters, after a lawful partition, the Court finds no merit in the writ petition and the same is dismissed.

7. If any other persons have received a PMAY-G house despite his immediate family members like parents or children being allotted PMAY-G house, such allotment would be in contravention of terms of the scheme of the PMAY-G. Therefore, the Court is of the considered opinion that the petitioner cannot be allowed to strengthen his case by claiming negative equality, which if granted, would amount to give approval to an illegal act.

8. Accordingly, this writ petition fails and stands dismissed.

9. The parties are left to bear their own cost.

JUDGE

Comparing Assistant