

GAHC010069332022



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

Case No. : PIL/33/2022

SADAK ARDAO AND ORS.
SON OF LATE ADAO ARDAO
RESIDENT OF VILLAGE GARANGGISIM,
P.O. AND P.S. LANGTING, DISTRICT - DIMA HASAO, (ASSAM). PIN-788832

2: MONEN BADER
SON OF M BADER
RESIDENT OF VILLAGE PAMPU GHAT
P.O. LANGTING
P.S. LANGTING
DISTRICT - DIMA HASAO
(ASSAM). PIN-788832

3: MOJEN THAOSEN
SON OF LATE MOHORA THAOSEN
RESIDENT OF VILLAGE THAIPLUNGDISA
P.O. AND P.S. LANGTING
DISTRICT - DIMA HASAO
(ASSAM). PIN-788832

4: ROBILAL JIDUNG
SON OF LATE THANGRON JIDUNG
RESIDENT OF VILLAGE RONGPHANG II
P.O. HATIKHALI P.S. LANGTING
DISTRICT - DIMA HASAO
(ASSAM).
PIN-788832

5: BIGEN LONGMALAI
RESIDENT OF VILLAGE RONGPHANG II
P.O. HATIKHALI P.S. LANGTING
DISTRICT - DIMA HASAO
(ASSAM). PIN-788832

6: BROMON KHERSA
SON OF LATE TARASON KHERA
RESIDENT OF VILLAGE PALAIPA HADI
P.O. NASINGWARI
P.S. DIYUNGBRA
DISTRICT - DIMA HASAO
ASSAM.
PIN-788832

7: ENJOY THAOSEN
SON OF LATE RANGBANG THAOSEN
RESIDENT OF VILLAGE PALAIPA HADI
P.O. NASINGWARI
P.S. DIYUNGBRA
DISTRICT - DIMA HASAO
ASSAM.
PIN-788832

8: POROTOM LONGMAILAI
SON OF LATE LOMPODUR LONGMAILAI RESIDENT OF VILLAGE
MANGATI HAWAR
P.O. NASINGWARI
P.S. DIYUNGBRA
DISTRICT - DIMA HASAO
ASSAM.
PIN-788832

9: RANGSODAO RAJIYUNG
SON OF LATE RAMINON RAJIYUNG
RESIDENT OF VILLAGE MANGATI HAWAR
P.O. NASINGWARI
P.S. DIYUNGBRA
DISTRICT - DIMA HASAO
ASSAM.
PIN-788832

10: BROLAL HASNU
SON OF LATE SODIRINON HASNU
RESIDENT OF VILLAGE KIMTHAO
P.O. NASINGWARI
P.S. DIYUNGBRA
DISTRICT - DIMA HASAO
ASSAM.
PIN-788832

11: NIRMAL NUNISA
SON OF LATE RONSA NUNISA
RESIDENT OF VILLAGE KIMTHAO

P.O. NASINGWARI
P.S. DIYUNGBRA
DISTRICT - DIMA HASAO
ASSAM.
PIN-788832

12: ROBENDRO HASAM
SON OF LATE ROHENDRO HASAM
RESIDENT OF VILLAGE DIYUNGJAOSA
P.O. NASINGWARI
P.S. DIYUNGBRA
DISTRICT - DIMA HASAO
ASSAM.
PIN-788832

13: AMRIT KEMPRAI
SON OF LATE DONMAIDAO KEMPRAI
RESIDENT OF VILLAGE DIYUNGJAOSA
P.O. NASINGWARI
P.S. DIYUNGBRA
DISTRICT - DIMA HASAO
ASSAM.
PIN-788832

14: RANGTHOLAL NUNISA
SON OF LATE PATHANON NUNISA
RESIDENT OF VILLAGE MAHURBRA
P.O. DEHANGI P.S. DEHANGI
DISTRICT - DIMA HASAO
ASSAM.
PIN-788832

15: BODRO HOJAI
SON OF LATE JUNA HOJAI
RESIDENT OF VILLAGE MAHURBRA
P.O. DEHANGI P.S. DEHANGI
DISTRICT - DIMA HASAO
ASSAM.
PIN-788832

16: BIBESH ARDAO
SON OF LATE KONTROL ARDAO
RESIDENT OF VILLAGE GARANGGISIM
P.O. AND P.S. LANGTING
DISTRICT - DIMA HASAO
(ASSAM). PIN-788832

17: DETARNON KEMPRAI
SON OF LATE LOLIDAO KEMPRAI
RESIDENT OF VILLAGE THAIPLUNGDISA
P.O. AND P.S. LANGTING
DISTRICT - DIMA HASAO
(ASSAM). PIN-788832

18: SOLEN DIBRAGEDE
SON OF LATE RINGKOMON DIBRAGEDE
RESIDENT OF VILLAGE MOSODISA
P.O. AND P.S. LANGTING
DISTRICT - DIMA HASAO
(ASSAM). PIN-788832

19: JOYGOMON PHONGLO
SON OF LATE KALACHAND PHONGLO RESIDENT OF VILLAGE
MOSODISA
P.O. AND P.S. LANGTING
DISTRICT - DIMA HASAO
(ASSAM). PIN-788832

20: BOCHAN KEMPRAI
SON OF LATE TANGMOLAL KEMPRAI
RESIDENT OF VILLAGE THANGGUMBAIJORA
P.O. AND P.S. LANGTING
DISTRICT - DIMA HASAO
(ASSAM). PIN-788832

21: SANJIT LANGTHASA
SON OF LATE JOYBANON LANGTHASA
RESIDENT OF VILLAGE THANGGUMBAIJORA P.O. AND P.S. LANGTING
DISTRICT - DIMA HASAO
(ASSAM). PIN-788832

22: SOTENDRA DAOLAGUPU
SON OF LATE BINOY DAOLAGUPU
RESIDENT OF VILLAGE SHANTIPUR

P.O. HATIKHALI
P.S. LANGTING
DISTRICT - DIMA HASAO
(ASSAM). PIN-788832

23: JOYDESH ARDAO
SON OF LATE LOVICHARAN ARDAO
RESIDENT OF VILLAGE SHANTIPUR
P.O. HATIKHALI
P.S. LANGTING

DISTRICT - DIMA HASAO
(ASSAM). PIN-788832

24: RAITO JOHORI
SON OF LATE HIACHAL JOHORI
RESIDENT OF VILLAGE KURANGBRA-II
P.O. HATIKHALI
P.S. LANGTING
DISTRICT - DIMA HASAO
(ASSAM). PIN-788832

25: PONEN NAIDING
SON OF SHRI BANGAI NAIDING
RESIDENT OF VILLAGE KURANGBRA-II
P.O. HATIKHALI
P.S. LANGTING
DISTRICT - DIMA HASAO
(ASSAM). PIN-788832

26: ROBIN NAIDING
SON OF ANANDA NAIDING
RESIDENT OF VILLAGE RONGPHANGDISA-II
P.O. HATIKHALI
P.S. LANGTING
DISTRICT - DIMA HASAO
(ASSAM). PIN-788832

27: PORESH JORASA
SON OF LATE BONGSON JORASA
RESIDENT OF VILLAGE HATIKHALI HANDINGMA
P.O. HATIKHALI
P.S. LANGTING
DISTRICT - DIMA HASAO
(ASSAM). PIN-788832

28: SOTISH LANGTHASA
SON OF LATE GURUMUNI LANGTHASA RESIDENT OF VILLAGE
HATIKHALI HANDINGMA
P.O. HATIKHALI
P.S. LANGTING
DISTRICT - DIMA HASAO
(ASSAM). PIN-788832

29: DINON KEMPRAI
SON OF LATE POLISHING KEMPRAI
RESIDENT OF VILLAGE LANGLODISA-I
P.O. HATIKHALI
P.S. LANGTING

DISTRICT - DIMA HASAO
(ASSAM). PIN-788832

30: RONESH LANGTHASA
SON OF LATE ROPIN LANGTHASA
RESIDENT OF VILLAGE LANGLODISA-I
P.O. HATIKHALI
P.S. LANGTING
DISTRICT - DIMA HASAO
(ASSAM). PIN-788832

31: THARBANG LANGTHASA
SON OF NOLEN LANGTHASA
RESIDENT OF VILLAGE LANGLODISA-II
P.O. HATIKHALI
P.S. LANGTING
DISTRICT - DIMA HASAO
(ASSAM). PIN-788832

32: SONDESH RAJIYUNG
SON OF BUSUNDRA RAJIYUNG
RESIDENT OF VILLAGE LANGLODISA-II
P.O. HATIKHALI
P.S. LANGTING
DISTRICT - DIMA HASAO
(ASSAM). PIN-788832

33: BIRAT THAOSEN
SON OF LATE NORDEN THAOSEN
RESIDENT OF VILLAGE DIHAKUBRA II P.O. LANGTING
P.S. LANGTING
DISTRICT - DIMA HASAO
(ASSAM). PIN-788832

34: SONEN BATHARI
SON OF LATE BORJENDRA BATHARI
RESIDENT OF VILLAGE DIHAKUBRA II P.O. LANGTING
P.S. LANGTING
DISTRICT - DIMA HASAO
(ASSAM). PIN-788832

35: JOYBANON KEMPRAI
SON OF J KEMPRAI
RESIDENT OF VILLAGE PAMPU GHAT
P.O. LANGTING
P.S. LANGTING
DISTRICT - DIMA HASAO
(ASSAM). PIN-788832

36: JOYTISH THAOSEN
SON OF JOYHEN THOSEN
RESIDENT OF VILLAGE WARIGIDING
P.O. LANGTING
P.S. LANGTING
DISTRICT - DIMA HASAO
(ASSAM). PIN-788832

37: PRODESH THAOSEN
SON OF BODOMOHON THAOSEN
RESIDENT OF VILLAGE WARIGIDING
P.O. LANGTING
P.S. LANGTING
DISTRICT - DIMA HASAO
(ASSAM). PIN-788832

38: SOLEN DIBRAGEDE
SON OF LATE RANGKOMON DIBRADEGE
RESIDENT OF VILLAGE MOSODISA
P.O. LANGTING
P.S. LANGTING
DISTRICT - DIMA HASAO
(ASSAM). PIN-788832

39: JOYBANON PHONGLO
SON OF LATE KALASAN PHONGLO RESIDENT OF VILLAGE MOSODISA
P.O. LANGTING
P.S. LANGTING
DISTRICT - DIMA HASAO
(ASSAM). PIN-788832

40: AMON THAOSEN
SON OF LATE DAJALA THAOSEN
RESIDENT OF VILLAGE DILIMPUR
P.O. LANGTING
P.S. LANGTING
DISTRICT - DIMA HASAO
(ASSAM). PIN-788832

41: BADILAL JOHORI
SON OF GOBIN JOHORI
RESIDENT OF VILLAGE DILIMPUR
P.O. LANGTING
P.S. LANGTING
DISTRICT - DIMA HASAO
(ASSAM). PIN-788832

42: TARBANG LANGTHASA
SON OF LATE NOLEN LANGTHASA
RESIDENT OF VILLAGE LANGLODISA II
P.O. HATIKHALI P.S. LANGTING
DISTRICT - DIMA HASAO
(ASSAM). PIN-788832

43: SOTENDRA DAOLAGUPU
SON OF LATE BINOY DAOLAGUPU
RESIDENT OF VILLAGE SHANTIPUR
P.O. HATIKHALI P.S. LANGTING
DISTRICT - DIMA HASAO
(ASSAM). PIN-788832

44: DINON KEMPRAI
SON OF LATE POLISHING KEMPRAI
RESIDENT OF VILLAGE LANG LODISA
P.O. HATIKHALI P.S. LANGTING
DISTRICT - DIMA HASAO
(ASSAM). PIN-78883

VERSUS

THE STATE OF ASSAM AND 6 ORS.
REP. BY THE COMMISSIONER AND SECRETARY GOVT. OF ASSAM
REVENUE DEPTT. DISPUR GUWAHATI-781006

2:THE DEPUTY COMMISSIONER
N.C. HILLS, HAFLONG
DISTRICT - DIMA HASAO, HAFLONG
PIN-788819 ASSAM.

3:THE EXECUTIVE MEMBER
I/C REVENUE
N.C. HILLS AUTONOMOUS COUNCIL
DISTRICT - DIMA HASAO, HAFLONG
PIN-788819, ASSAM.

4:N.C. HILLS AUTONOMOUS COUNCIL
REPRESENTED BY ITS PRINCIPAL SECRETARY
DISTRICT - DIMA HASAO, HAFLONG
PIN-788819 ASSAM.

5:THE REVENUE AND SETTLEMENT OFFICER
N.C. HILLS AUTONOMOUS COUNCIL
DISTRICT - DIMA HASAO
HAFLONG
PIN-788819, ASSAM.

6:THR REVENUE OFFICER
N.C. HILLS AUTONOMOUS COUNCIL
DISTRICT - DIMA HASAO
HAFLONG
PIN-788819, ASSAM.

7:THE LOT PATOWARI
I/C HATIKHALI
N.C. HILLS AUTONOMOUS COUNCIL
DISTRICT - DIMA HASAO
HAFLONG
PIN-788819, ASSAM.

8:THE UNION OF INDIA
MINISTRY OF ENVIRONMENT AND FOREST
CLIMATE CHANGE
INDIRA PARYAVARAN BHAVAN
JORBHAGH ROAD
ALIGANJ
NEW DELHI-110003
REPRESENTED BY ITS SECRETARY.

9:THE PRINCIPAL SECRETARY
TO THE GOVERNMENT OF ASSAM
ENVIRONMENT AND FOREST DEPARTMENT
DISPUR
GUWAHATI-781006. ASSAM.

10:THE PRINCIPAL CHIEF CONSERVATOR OF FOREST
OF FOREST AND HEAD OF FORESTS FORCE
PANZABARI
GUWAHATI-781037
ASSAM.

11:THE DIVISIONAL FOREST OFFICER
DIMA HASAO
FOREST DIVISION EAST
HAFLONG
DISTRICT - DIMA HASAO
ASSAM
PIN-788819

Advocate for the petitioners: Mr. B. Baruah and
Mr. S. Hussain.

Advocate for the respondents: Mr. C. Sarma,
Standing Counsel for NC Hills Autonomous Council,
Mr. D. Gogoi, Standing Counsel for the Forest Department
and
Ms. M. Bhattacharji, Govt. Advocate.

BEFORE

HON'BLE MR. JUSTICE ACHINTYA MALLA BUJOR BARUA

HON'BLE MR. JUSTICE ROBIN PHUKAN

Date of hearing & judgment: 11.05.2023.

JUDGEMENT AND ORDER (ORAL)

(A.M. Bujor Barua, J)

Heard Mr. B. Baruah, learned counsel for the petitioners. Also heard Mr. C. Sarma, learned Standing Counsel for North Cachar Hills Autonomous Council being the respondent Nos.3—7, Mr. D. Gogoi, Standing Counsel for the Forest Department, Government of Assam being the respondent Nos.9—11 and Ms. M. Bhattacharji, learned Govt. Advocate, Assam representing the respondent Nos.1 & 2.

2. The petitioners herein claimed to be inhabitants of the villages, namely, Mangadi Hawar, Palaipahadi, Diyungiaaosa, Khimthao, Dihakubra II, Thaiplyungdisa, Dilimpur, Thanggumbaijora, Mosodisa, Pampughat, Garanggisim, Mahubra Kurangbra II, Santipur, Simbao II, Rongpangdisa II, Luckybill, Hadingma Hatikhali, Langlodisa II, Dima Haplai II, Thaijudisa, Thaijudisabra, Warigiding, Mangadihower, etc. of Dima Hasao District. The petitioners also claim that their respective villages were set up several decades ago with permission from the North Cachar Hills Revenue Department.

3. In the circumstance, this PIL is filed with the following prayers:

“In the premises aforesaid, Your Lordships would be pleased to admit this petition, call for the records of the case, issue rule calling upon the respondents to show cause as

to why a writ in the nature of mandamus or any other appropriate writ/order may not be issued :-

(i) For a direction to the respondent authorities to recognize their villages into revenue villages on land which are under occupation of the local inhabitants of Scheduled Tribe (Hills) Community;

(ii) To direct the concern respondent authorities that the aforesaid name villages are recorded in the revenue records as 'Village' to ensure that its legal status is secured and further the local people of their villages may not be deprived of getting land Patta, Permanent Resident Certificate, NOC for their children education purpose;

(iii) For a direction to appoint Gaonburah by the NC Hills Autonomous Council Revenue Department to facilitate in functioning and discharging the responsibility as constitutional head of the aforesaid villages in the matter of village administration".

4. A reading of the prayers makes it discernable that the first claim of the petitioners is for a direction to the respondent authorities to recognize their respective villages as revenue villages inasmuch as, they are located on lands which are under occupation of the local Scheduled Tribe (Hills) Community inhabitants. The second prayer of the petitioners is that the respondents be directed that the aforesaid villages be recorded in the revenue records as 'Village' to ensure its legal status as a revenue village and thereafter subject the villagers to the laws relating to land, like granting land patta, permanent resident certificate, no objection certificate for their children's education purpose, etc. The third prayer is for a direction to appoint Gaonburah for the respective villages by the NC Hills Autonomous Council Revenue Department for effective management of the village administration.

5. From the prayers itself it is discernible that although the petitioners claim that they are in occupation of the lands concerned for several decades, but neither their lands are recognized as revenue villages nor they are enjoying the benefits, as may be entitled to a resident of a revenue village.

6. In order to appreciate the claim of the petitioners, a question has arisen as to whether the land over which the petitioners are having their occupation, are located inside the reserved forests or they are outside the reserved forests. Accordingly, upon obtaining

necessary instruction from the Forest Department, Government of Assam, Mr. D. Gogoi, learned counsel representing the Department, has made a statement that all the lands which are known by the names indicated above, over which the petitioners are having their occupations, are located inside the Langting Mupa Reserved Forests, except one village, namely, Santipur village.

7. As the lands of the petitioners are admittedly located within the Reserved Forests, except for one village, namely, Santipur village, and as the claim of the writ petitioners in this PIL is for a direction to recognize the villages of the petitioners as revenue villages and further to provide them with all such entitlements as may be available for a village upon being recognized or declared as a revenue village, we have also examined the relevant provisions of the Assam Land and Revenue Regulation, 1886 (here-in-after referred to as 'the Regulation of 1886'), for the purpose.

8. The concept of revenue village flows from the provisions of the Regulation of 1886 and the provisions of law and the procedure applicable in respect of a revenue village are provided in the Regulation itself. Accordingly, we examine as to whether in respect of the lands under the occupation of the petitioners, the provisions of the Regulation of 1886 would be applicable. Section 4 of the Regulation of 1886 provides, as extracted:

"4. Land exempted from the operation of this chapter.- This chapter shall apply to all land except following,-

- (a) land included in any forest constituted a reserved forest under the law for the time being in force;
- (b) any land which the State Government may, by notification, exempt from the operation of this chapter."

9. A reading of the provision of Section 4 of the Regulation of 1886, makes it discernable that Chapter-II of the Regulation providing for rights over land are applicable to all such lands, except in respect of any land included in any forest, constituting a reserved forest, under the law time being in force.

10. As the land under the occupation of the petitioners except the village Santipur, are included within the Langting Mupa Reserved Forests, therefore, as per the provisions of Section 4 of the Regulation of 1886, the provision of Chapter-II thereof i.e. right over land,

would not be applicable in respect of all the aforesaid villages, except for the village Santipur. Accordingly in respect of the villagers of village Santipur, we provide that the villagers may make an application before the appropriate authority in the Revenue Department of N.C. Hills Autonomous Council, for declaring the areas within the Santipur village to be a revenue village. Upon such application being made, the appropriate authority in the Revenue Department of N.C. Hills Autonomous Council shall consider as to whether the said village do satisfy the requirements under the Regulation of 1886 and if yes, to pass appropriate orders declaring the village to be a revenue village. If the declaration to be made is that village Santipur would be a revenue village, the inhabitants of the said village shall be provided with all such rights and entitlements, as may be available under the Regulation of 1886, including the rights over land.

11. In respect of the villages other than the Santipur village, it is an admitted position, that such lands under occupation of the petitioners are located within the Langting Mupa Reserved Forests. We are of the view that as the petitioners claim themselves to be belonging to the indigenous scheduled tribes (hills) community, there is a possibility that the provisions of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (here-an-after referred as 'the Act of 2006') may be applicable.

12. In our judgment dated 19.05.2020 in WP(C) No.4608/2019, a detail consideration had been made as to what category of people would be entitled to the benefits under the Act of 2006, and the procedure to be adopted for recognizing any such rights provided under the said Act in respect of such persons who may be entitled to the benefits under the Act.

13. For the provisions of the Act of 2006 to be applicable, it would have to be shown that the persons who claim the benefits under the said Act, either satisfy that they are "forest dwelling scheduled tribals", as defined in Section 2(c) of the Act of 2006 or that they are "other traditional forest dwellers", as defined under Section 2(o) of the said Act.

14. In the circumstance, all such petitioners and any other persons who may be inhabitants or occupants of the land of the aforementioned villages, other than the village Santipur, which are located within the Langting Mupa Reserved Forests, may make applications to the concerned Gram Sabhas for initiating a process under Section 6 of the Act of 2006. If any

such application/applications is made, the same be given its reasoned consideration by strictly following the procedure provided in Section 6 of the Act of 2006 and as discussed in more details in the aforementioned judgment dated 19.05.2020 in WP(C) No.4608/2019 and thereupon bring the process to its logical end, by passing a reasoned order. If the reasoned order happens to go in favour of the petitioners, the entitlements under the Act of 2006 may be provided and if otherwise, the petitioners be duly communicated of the reasoned decision, that may be taken.

15. The PIL closed with the above observations.

JUDGE

JUDGE

Comparing Assistant