

GAHC010078222021



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

Case No. : WP(C)/2861/2021

ASHYUTANANDA HAZARIKA AND 31 ORS
S/O LATE LOKNATH HAZARIKA,
RESIDENT OF PUB BATAHGHULI, PO PANJABARI, PS SATGAON,
GUWAHATI 781037, DIST KAMRUP M ASSAM

2: ZAFOR ALI
S/O SIRAJ ALI

RESIDENT OF PUB BATAHGHULI
PO PANJABARI
PS SATGAON
GUWAHATI 781037
DIST KAMRUP M ASSAM

3: RATUL BARMAN
S/O LATE ATUL BARMAN
RESIDENT OF PUB BATAHGHULI
PO PANJABARI
PS SATGAON
GUWAHATI 781037
DIST KAMRUP M ASSAM

4: DHRUBAJYOTI BARMAN

S/O LATE AMULYA BHUYAN
RESIDENT OF PUB BATAHGHULI
PO PANJABARI
PS SATGAON
GUWAHATI 781037
DIST KAMRUP M ASSAM

5: AKRAM AHMED

S/O LATE ABDUL JABBAR

RESIDENT OF PUB BATAHGHULI
PO PANJABARI
PS SATGAON
GUWAHATI 781037
DIST KAMRUP M ASSAM

6: BENI MADHAB PEGU
S/O SUBANSING PEGU
RESIDENT OF PUB BATAHGHULI
PO PANJABARI
PS SATGAON
GUWAHATI 781037
DIST KAMRUP M ASSAM

7: JOGEN BARMAN
S/O MANGALA BARMAN
RESIDENT OF PUB BATAHGHULI
PO PANJABARI
PS SATGAON
GUWAHATI 781037
DIST KAMRUP M ASSAM

8: AMRIT THAKURIA

S/O LATE ATUL THAKURIA

RESIDENT OF PUB BATAHGHULI
PO PANJABARI
PS SATGAON
GUWAHATI 781037
DIST KAMRUP M ASSAM

9: KAMAL CH. BORA

S/O LATE DHANESWAR BORA

RESIDENT OF PUB BATAHGHULI
PO PANJABARI
PS SATGAON
GUWAHATI 781037
DIST KAMRUP M ASSAM

10: DIMPLE GOGOI
W/O UTPAL GOGOI
RESIDENT OF PUB BATAHGHULI
PO PANJABARI
PS SATGAON

GUWAHATI 781037
DIST KAMRUP M ASSAM

11: RATUL BORAH
S/O SRI MANIK BORAH
RESIDENT OF PUB BATAHGHULI
PO PANJABARI
PS SATGAON
GUWAHATI 781037
DIST KAMRUP M ASSAM

12: RAMESWAR BORAH
S/O LATE PADORAM BORAH
RESIDENT OF PUB BATAHGHULI
PO PANJABARI
PS SATGAON
GUWAHATI 781037
DIST KAMRUP M ASSAM

13: SUKUR ALI
S/O MD. HAKIM ALI
RESIDENT OF PUB BATAHGHULI
PO PANJABARI
PS SATGAON
GUWAHATI 781037
DIST KAMRUP M ASSAM

14: AMINUL HUSSAIN
S/O LATE TALEB ALI
RESIDENT OF PUB BATAHGHULI
PO PANJABARI
PS SATGAON
GUWAHATI 781037
DIST KAMRUP M ASSAM

15: UTPAL DAS
S/O LATE PRABHAT CH. DAS

RESIDENT OF PUB BATAHGHULI
PO PANJABARI
PS SATGAON
GUWAHATI 781037
DIST KAMRUP M ASSAM

16: GOPAL BARMAN
S/O LATE GHANA KANTA BARMAN
RESIDENT OF PUB BATAHGHULI
PO PANJABARI

PS SATGAON
GUWAHATI 781037
DIST KAMRUP M ASSAM

17: UJJAL BORAH
S/O LATE UPEN BORAH
RESIDENT OF PUB BATAHGHULI
PO PANJABARI
PS SATGAON
GUWAHATI 781037
DIST KAMRUP M ASSAM

18: MADHAB DEKA
S/O HARESWAR DEKA
RESIDENT OF PUB BATAHGHULI
PO PANJABARI
PS SATGAON
GUWAHATI 781037
DIST KAMRUP M ASSAM

19: JAYANTA BARUAH
S/O LATE DHIREN BARUAH
RESIDENT OF PUB BATAHGHULI
PO PANJABARI
PS SATGAON
GUWAHATI 781037
DIST KAMRUP M ASSAM

20: AZAD ALI
S/O MD. SAHEB ALI
RESIDENT OF PUB BATAHGHULI
PO PANJABARI
PS SATGAON
GUWAHATI 781037
DIST KAMRUP M ASSAM

21: MUSTAFA AHMED
S/O LATE A. MANNAN
RESIDENT OF PUB BATAHGHULI
PO PANJABARI
PS SATGAON
GUWAHATI 781037
DIST KAMRUP M ASSAM

22: CHAIDUR RAHMAN
S/O ABDUR RAHMAN KHANDAKAR
RESIDENT OF PUB BATAHGHULI

PO PANJABARI
PS SATGAON
GUWAHATI 781037
DIST KAMRUP M ASSAM

23: BHASKAR KALITA
S/O LATE BASANTA KALITA
RESIDENT OF PUB BATAHGHULI
PO PANJABARI
PS SATGAON
GUWAHATI 781037
DIST KAMRUP M ASSAM

24: RUNU DEKA
S/O SRI BHABANANDA DEKA
RESIDENT OF PUB BATAHGHULI
PO PANJABARI
PS SATGAON
GUWAHATI 781037
DIST KAMRUP M ASSAM

25: GOPESH SHARMA
S/O LATE GAURI KANTA SHARMA
RESIDENT OF PUB BATAHGHULI
PO PANJABARI
PS SATGAON
GUWAHATI 781037
DIST KAMRUP M ASSAM

26: PRANESWAR KALITA
S/O LATE NIVA RAM KALITA
RESIDENT OF PUB BATAHGHULI
PO PANJABARI
PS SATGAON
GUWAHATI 781037
DIST KAMRUP M ASSAM

27: MAHTAB HUSSAIN
S/O LATE ALI HUSSAIN
RESIDENT OF PUB BATAHGHULI
PO PANJABARI
PS SATGAON
GUWAHATI 781037
DIST KAMRUP M ASSAM

28: BIMAL BARMAN
S/O LATE RAMESWAR BARMAN
RESIDENT OF PUB BATAHGHULI

PO PANJABARI
PS SATGAON
GUWAHATI 781037
DIST KAMRUP M ASSAM

29: SWAPNA BEGUM
W/O INNUS ALI
RESIDENT OF PUB BATAHGHULI
PO PANJABARI
PS SATGAON
GUWAHATI 781037
DIST KAMRUP M ASSAM

30: DRONESWAR BORA
S/O LATE JAIRAM BORA
RESIDENT OF PUB BATAHGHULI
PO PANJABARI
PS SATGAON
GUWAHATI 781037
DIST KAMRUP M ASSAM

31: BIPIN CH. LAHKAR

S/O LATE RAWPATI LAHKAR

RESIDENT OF PUB BATAHGHULI
PO PANJABARI
PS SATGAON
GUWAHATI 781037
DIST KAMRUP M ASSAM

32: HIRENDRA KUMAR GOGOI
S/O NABA KUMAR GOGOI
RESIDENT OF PUB BATAHGHULI
PO PANJABARI
PS SATGAON
GUWAHATI 781037
DIST KAMRUP M ASSA

VERSUS

THE UNION OF INDIA AND 7 ORS
REPRESENTED BY THE SECRETARY TO THE GOVT. OF INDIA, MINISTRY
OF DEFENCE, NEW DELHI

2: THE STATE OF ASSAM
REPRESENTED BY THE SECRETARY TO THE GOVT. OF ASSAM
REVENUE AND DISASTER MANAGEMENT DEPARTMENT

ASSAM SECRETARIATE
DISPUR GUWAHATI 781006

3:THE 51 AREA COMMANDANT
NARENGI MES
NARENGI
GUWAHATI
KAMRUP M ASSAM

4:THE 51 SUB AREA COMMANDANT
NARENGI MES
NARENGI
GUWAHATI
KAMRUP M ASSAM

5:DEPUTY COMMISSIONER

KAMRUP (M) GUWAHATI
ASSAM 781001

6:THE CIRCLE OFFICER

CHANDRAPUR REVENUE CIRCLE
CHANDRAPUR
KAMRUP M ASSAM

7:THE CIRCLE OFFICER

DISPUR REVENUE CIRCLE
CHANDRAPUR
KAMRUP M ASSAM

8:COMMISSIONER AND SECRETARY
GOVT. OF ASSAM
DEPARTMENT OF FOREST
DISPUR
GUWAHATI

Advocate for the Petitioner : MR. R K BORAH

Advocate for the Respondent : ASSTT.S.G.I.

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

ORDER

17.02.2023

Heard Shri S. Borthakur, learned counsel for the petitioners. Also heard Shri RKD Chodhury, learned Dy. SGI representing the Union of India for the respondent nos. 1, 3 & 4; Ms. G. Hazarika, learned Standing Counsel, Revenue Department for the respondent no. 2; Shri R. Talukdar, learned State Counsel for the respondent nos. 5 to 7 and Shri D. Gogoi, learned Standing Counsel, Forest Department for the respondent no. 8.

2. In view of the development in this case including the report of the learned Advocate Commissioner, this writ petition is taken up for disposal today.

3. The petitioners claimed to be permanent residents of Pub-Batahghuli area under Satgaon Police Station in the district of Kamrup (M). The petitioners claimed that they along with their family members are in use of a road which however falls in the land under the defence forces. The petitioners claimed that they have approached the authorities to transfer the land covered by the Road for public utility which however was not paid any heed to. The grievance of the petitioners is that a wall is being constructed to close the road, in which case petitioners claimed that they would suffer irreparable loss and injury. The case of the petitioners is that there is no other alternative route and if it is blocked by permanent structure, grave hardship would be caused to them.

4. Shri Borthakur, learned counsel for the petitioner submits that though he would not dispute regarding the ownership of the land in question, he submits that greater public interest is involved in allowing the road to be used by the inhabitants of their area as it is the only access of the petitioners and their family members.

5. On the other hand, Shri RKD Choudhury, learned Dy. SGI by referring to the affidavit-in-opposition filed on 20.07.2021 has submitted that the projection made by the petitioners is not correct. By referring to the said affidavit-in-opposition, the

learned Dy. SGI has referred to the photographs and the map to show that there are alternative routes available and there being no dispute that the land in question is defence land, interest of public would require that such land should be made encroachment free and also free from any trespassing. The respondent no. 5 has also filed an affidavit on 25.08.2021. The petitioner has also filed rejoinder affidavit.

6. When this matter was taken up for consideration on 04.01.2023 and this Court being confronted with the claims of the rival parties which involved factual determination, Shri RK Bhatra, a practicing advocate of this Court was appointed as Advocate Commissioner who was requested to make a local inspection / spot verification and submit the report. The said appointment was made with the consent of the parties.

7. Subsequently, the learned Advocate Commissioner has filed the report on 06.02.2023, after an elaborate discussion in which the relevant photographs have also been annexed, the following conclusion has been put on record by the learned Advocate Commissioner:

“During my visit the petitioners and their counsel present, or the local people present could not take me to a plot/ residential houses, where there was no access road or access had been blocked due to construction of the permanent wall.

In my overall opinion, the houses of the petitioners I visited, have approach roads and those who have some difficulty have alternate accessible approach roads to their respective residential houses.”

8. A writ Court would not ordinarily enter into disputes which involves factual determination. In the instant case, to resolve such a dispute and taking into consideration the public interest involved, a report from the learned Advocate Commissioner was sought for, who had made a spot verification and has come to a finding that the projection that there would be blockage by the permanent wall is not

correct. It is also not in dispute that the land in question belongs to the respondent no. 3 and therefore there cannot be any legal right of the petitioners over the said plot of land and the endeavor of this Court was only to come to a finding as to whether the road which was under the use of petitioners was the only access from the residential houses. The report of the learned Advocate Commissioner being otherwise wherein there is a clear finding that different roads which would cover all the residential houses, this Court is of the considered view that public interest would tilt towards the respondents in building a permanent wall so as to avoid any means of trespassing to the defence land.

9. In that view of the matter, this Court is of the opinion that the present may not be a fit case for interference and accordingly the writ petition stands dismissed.

10. At this stage, Shri Borthakur, learned counsel for the petitioners submits that the controversy was only with regard to a stretch of 100m which falls within the boundary between the defence land and the Government land. He accordingly prays for a liberty to approach the District Administration for improvement / development of a road so that it will ameliorate problems of the inhabitants in their access.

11. In considering the aforesaid submission, the petitioners are at liberty to approach the appropriate authority of the District Administration for development of that stretch of the land so that the petitioners and other inhabitants of that area can use the same for their access.

JUDGE

Comparing Assistant