

GAHC010111742022



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

**Case No. : WP(C)/3834/2022**

PUIN DUTTA AND 12 ORS  
S/O. RATNESWAR DUTTA, R/O. BALUGADA, SABJIBARI, P.O.  
SUKHANPUKHURI, P.S. AND DIST. TINSUKIA, ASSAM, PIN-786125.

2: AMARJIT BORA @ BIPUL BORA

S/O. SRI PROBIN BORA  
R/O. KODOMONI SRIPURIA  
P.O. KODOMANI  
P.S. AND DIST. TINSUKIA  
ASSAM  
PIN-786125.

3: MD. JAMIR AHMED @ JAMIRUDDIN AHMED

S/O. LT. MD. MADHURI MIYAN  
R/O. DR. NABIBULLAH ROAD  
NEPALI MANDIR  
P.O.  
P.S. AND DIST. TINSUKIA  
ASSAM  
PIN-786125.

4: DADHIRAM GOHAIN

S/O. LT. JUGAL GOHAIN  
R/O. KODOMONI GAON SRIPURIA  
P.O. KODOMANI  
P.S. AND DIST. TINSUKIA  
ASSAM  
PIN-786125.

5: MD. HASIBUR RAHMAN  
S/O. MD. HABIBUR RAHMAN

R/O. USMAN GHANI ROAD  
RAJENDRA NAGAR  
HIJUGURI  
P.O. HIJUGURI  
P.S. AND DIST. TINSUKIA  
ASSAM  
PIN-786125.

6: SUMAT DEB  
S/O. LT. SUSHIL DEB  
R/O. RAMKRISHAN MISSION PARA  
P.O.  
P.S. AND DIST. TINSUKIA  
ASSAM  
PIN-786125.

7: KAJAL DEB  
S/O. LT. CHUNILAL DEB  
R/O. WEST SRIPURIA  
P.O. SRIPURIA  
P.S. AND DIST. TINSUKIA  
ASSAM  
PIN-786125.

8: BIDYUT DEY  
S/O. LT. MANORANJAN DEY  
R/O. WEST SRIPURIA  
P.O. SRIPURIA  
P.S. AND DIST. TINSUKIA  
ASSAM  
PIN-786125.

9: MD. SAHABUDDIN  
S/O. LT. RAHMATULLAH  
R/O. DHEKIAJURI BONGALI GAON  
P.O. HIJUGURI  
P.S. AND DIST. TINSUKIA  
ASSAM  
PIN-786125.

10: JUGEN GOGOI  
S/O. SRI UMAKANTA GOGOI  
R/O. KANJIKHIWA GAON  
P.O. KANJIKHOWA  
P.S. CHABUA  
DIST. DIBRUGARH  
ASSAM  
PIN-786125.

11: SANJIB SAIKIA  
S/O. LT. DHARMESHWAR GOGOI  
R/O. DEOHALL TEA ESTATE  
P.O. HOOGRIJAN  
P.S. BORDUBI  
DIST. TINSUKIA  
ASSAM  
PIN-786125.

12: MANOJ YADAV

S/O. RAJ DEO RAY  
R/O. TINKONIA CITY BUS STAND  
P.O.  
P.S. AND DIST. TINSUKIA  
ASSAM  
PIN-786125.

13: SMT. MONALISHA BORA  
W/O. AMARJIT BORA @ BIPUL BORA  
R/O. KODOMONI SRIPURIA  
P.O. KODOMANI  
P.S. AND DIST. TINSUKIA  
ASSAM  
PIN-786125

VERSUS

THE STATE OF ASSAM AND 4 ORS  
REP. BY ITS COMM. AND SECY. TO THE GOVT. OF ASSAM, REVENUE AND  
DISASTER MANAGEMENT (L.R) DEPTT., DISPUR, GUWAHATI-781006.

2:THE CHIEF ENGINEER

PWD (ROAD)  
ASSAM  
CHANDMARI  
GUWAHATI-781003.

3:THE EXECUTIVE ENGINEER

PWRD  
TINSUKIA  
DOOMDOOMA  
SADIYA TERRITORIAL ROAD DIVISION  
TINSUKIA  
ASSAM

PIN-786125.

4:THE DY. COMMISSIONER CUM COLLECTOR

TINSUKIA  
DIST. TINSUKIA  
ASSAM  
PIN-786125.

5:THE CIRCLE OFFICER

TINSUKIA REVENUE CIRCLE  
DIST. TINSUKIA  
ASSAM  
PIN-786125

**Advocate for the Petitioner** : MR. S DEKA

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

**BEFORE**  
**HONOURABLE MR. JUSTICE SUMAN SHYAM**

**ORDER**

**Date : 08/08/2023**

Heard Mr. B. Dutta, learned senior counsel assisted by Mr. S. Deka, learned counsel for the writ petitioners. Also heard Ms. N. Bordoloi, learned Standing Counsel, Revenue and Disaster Management Department, Assam, appearing for the respondent no.1 and Mr. D. Sarmah, learned Additional Senior Government Advocate, Assam, appearing for the respondent nos. 4 and 5. Mr. B. Gogoi, learned Standing Counsel, PWD, is present on behalf of the respondent nos. 2 and 3.

The writ petitioners herein, numbering 13 in total, are admittedly in occupation of sarkari land, where upon, they have their shops which are being operated by the respective petitioners for earning their livelihood. Aggrieved by the notices dated 13/05/2022 issued by the Deputy Commissioner, Tinsukia, viz. the respondent no. 4, under section 3(1) of the Assam Land (Requisition and Acquisition) Act, 1964, directing the petitioners to handover vacant possession of the land in question on the ground that the land was required for construction of a Road Over-Bridge (RoB), the instant writ petition has been filed, *inter alia*, contending that since the land will be required permanently for the purpose of construction of RoB, there was no scope of returning the land. Therefore, the

provisions of the Act of 1964 would not be applicable in this case. On the contrary, according to the petitioners' counsel, it is the *Right to Fair Compensation and Transparency in land Acquisition, Rehabilitation and Resettlement Act, 2013* (herein after referred to as the **Act of 2013**), which alone would have relevance in the present proceeding.

By inviting the attention of this Court to the definition contained under section 3 (x)(v) of the Act of 2013, Mr. Dutta, learned senior counsel for the petitioners submits that the writ petitioners come within the definition of "Persons interested" in so far as the acquisition process is concerned. Since the impugned notices have been issued on 13/05/2022 i.e. after coming into effect of the Act of 2013 and since the requirement of land is of permanent nature, hence, the proceeding would be governed by the provisions of the Act of 2013 and not under the Act of 1964. By placing heavy reliance on the decision of this Court rendered in the case of ***Sarita Soni and others Vs. State of Assam and others*** reported in **(2020) 1 GLR 136**, Mr. Dutta has argued that while deciding an issue of similar nature, the learned Single Judge has categorically held that the land required for construction of Bridge would be of permanent nature and, therefore, the provisions of section 3(1) of the Act of 1964 would not have any application in such cases. Rather, it is the Act of 2013 that will apply in such a case.

Ms. N. Bordoloi, learned Standing Counsel, Revenue and DM Department, Assam, has invited the attention of this Court to the averments made in the counter affidavit filed by the respondent no.1 to submit that the notices issued under the provisions of section 3(1) of the Act of 1964 are valid in the facts and circumstances of the case. The learned departmental counsel, however, could not respond to the query of this Court as to how, after the repeal of the Land Acquisition Act, 1964, and in view of the law laid down in the case of ***Sarita Soni (Supra)***, the impugned notices issued under the provisions of the Act of 1964 would be sustainable. The learned counsel appearing for the remaining respondents have reiterated the stand taken by the respondent no.1 in its affidavit, which has been noticed herein above.

In the case of ***Sarita Soni (Supra)***, the petitioners had joined together and filed a writ petition questioning the validity of the notice dated 31/05/2018 issued by the Collector in exercise of powers conferred under section 3(1) of the Act of 1964 for acquisition of land for construction of a bridge. According to the writ petitioners therein, it is the provisions of the Act of 2013, which alone would be applicable and, therefore, the notices issued under section 3(1) of the Act of 1964 were required to be quashed.

While answering the question in favour of the petitioners, the following observations were

made in paragraphs 23 and 24 of the said decision, which are reproduced herein below :-

*“23. Having noticed the above, the impugned notice dated 31.05.2018 may now be adverted to again.*

*24. As noticed above, this notice has been issued in statutory Form "A" i.e., under Rule 3 and "second proviso to" sub-section (1) of Section 3 of the 1964 Act. Rule 3 deals with requisition of land for landless or displaced persons. In so far "second proviso to" Section 3 (1) of the 1964 Act is concerned, there is no second proviso. Prima facie the very foundation of this notice appears to be shaky, to put it mildly. Land is being requisitioned for construction of bridge. Admittedly, there is no possibility of returning back the requisitioned land to either the land owners or the tenants or the persons interested in the land. Therefore, it is not understood as to why provisions of the 1964 Act was invoked when admittedly it is a case of land acquisition in which case provisions of the 2013 Act will apply.”*

Having regard to the facts and circumstances of the present case, I am of the opinion that the decision rendered in the case of ***Sarita Soni (Supra)*** would be squarely applicable in the present case as well.

In view of the above, this writ petition is hereby disposed of by permitting the petitioners to approach the respondent no. 4 by filing individual applications asserting their rights under the Act of 2013 in the matter.

If such application is filed individually by the writ petitioners within 30(thirty) days from today by enclosing certified copy of this order, the same may be considered as per law and appropriate steps as may be permissible under the law, be taken for redressal of the grievance of the petitioners.

Until such time, the aforesaid exercise is completed, *status quo* as regards the land under the occupation of the writ petitioners, be maintained.

With the above observations, the writ petition stands disposed of.

**JUDGE**

*sukhamay*

**Comparing Assistant**