

GAHC010043552017



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

Case No. : WP(C)/6230/2017

ZUBBAR ALI AND 67 ORS
S/O IBRAHIM ALI

2: RAJU PASWAN
S/O LATE RUDAL PASWAN

3: AJGAR ALI
S/O JACHIMUDDIN

4: LATIFA BEGUM
W/O ALI MOHAMMAD

5: HAIDAR ALI
S/O AJGAR ALI

6: DARBESH ALI
S/O JAHER ALI

7: OHIJUL HOQUE
S/O AHAMMADAS ALI

8: CHULTAN HOQUE
S/O JADU MOLLAH

9: AKLIMA KHATUN
W/O ALAM SADHU

10: ACHIR UDDIN
S/O MOFIZ UDDIN

11: GOLAM HUSSAIN
S/O NOUSAD ALI

12: JABANAB BHANU

W/O JAMAL UDDIN

13: ALI AKABBAR
S/O CHUBAHAN

14: NAJIMA BEBUM
W/O ABDUL RAFIK

15: RABIYA BEGUM
W/O DELWAR ALI

16: KASHEM ALI
HASHEM MONDAL

17: REJINA BEWA
D/O RAHMAT ALI

18: PINJIRA KHATUN
W/O IBRAHIM ALI

19: HEJARAT ALI
S/O IBRAHIM ALI

20: MAGARAB MANDAL
S/O RAMAJAN MANDAL

21: ATOWAR HUSSAIN
S/O AFSAR ALI

22: AHAB ALI
S/O IBRAHIM ALI

23: ARAB ALI
S/O ASIM UDDIN

24: ANAJUMA BEGUM
W/O CHUBAHAN ALI

25: ROBIUL ISLAM
S/O MANIK ALI

26: HANIF ALI
S/O MAHIR UDDIN

27: MAHIR UDDIN
S/O RAJAB ALI

28: ABDUL MAJID

S/O LATE AJGAR ALI

29: KADBHANU
W/O LATE KUDDIS ALI

30: MOHAMMAD ALI
S/O LATE KACHIM UDDIN

31: REHAN ALI
S/O MAJID MANDAL

32: BAKKAR ALI
S/O TAMEJ UDDIN

33: ISMAIL HUSSAIN
S/O LATE KARIMUDDIN MUNCHI

34: CHAHIB UDDIN
S/O MANURUDDIN

35: ASHRAB ALI
S/O LATE BADUL SHEIKH

36: MOLIKA BIBI
W/O LATE SAMAN SHEIKH

37: MANOWARA BEGUM
W/O JAMIR UDDIN

38: MATIJAR RAHMAN
S/O JAMIR UDDIN

39: RAHELA BEWA
W/O JAYNAL ABEDIN

40: AFSAR ALI
S/O KEROT ALI

41: JABED ALI
S/O LATE MAJEN UDDIN

42: MANJU DEVI
W/O SOTOBA MUKHIA

43: KUL BHANU
W/O LATE BASKET ALI

44: MEHERUN NESSA

W/O RAHMAT ALI

45: REKHA BEGUM
W/O CHOBAHAN ALI

46: ACHMA KHATUN
W/O MAFIJ UDDIN

47: CHURAT JAMAL
S/O RAHMAT ALI

48: IBRAHIM ALI
S/O LATE TAFIJ UDDIN

49: HALIMA BEGUM
W/O LATE IMAN ALI

50: CHAN ALI
S/O AMIR UDDIN

51: ABDUR RAHMAN
S/O AFSAR ALI

52: JAHIDUL ISLAM
S/O FEDDUS

53: SANOWAR HUSSAIN
S/O AJIBAR RAHMAN

54: AFCHAR ALI
S/O JACHIM UDDIN

55: NUR JAHAN
W/O AMDAD KHAN

56: AMIR ALI
S/O ABDUL JALIL

57: CHABIYA KHATUN
W/O AJMAT KHAN

58: ANOWAR HUSSAIN
S/O HABIBAR RAHMAN

59: AKABBAR ALI
S/O LATE SIKANDER SHEIKH

60: MANIK ALI

S/O LATE SAFAR UDDIN

61: RAFIKUL ISLAM
S/O AHAMMAD ALI

62: ABDUL KADER
S/O ALIMUDDIN

63: MAYNUL HAQUE
S/O KADAM ALI

64: MAHILA KHATUN
W/O LATE BASKET ALI

65: AJIRAN NESSA
W/O LATE ABDUL JALIL

66: RAHIM ALI
S/O LATE ABDUL SHEIKH

67: SHAHAR BHANU
W/O SAMSER ALI

68: SUBORUDDIN AHMED
S/O USMAN GONI ALL ARE RESIDENTS OF VILLAGE BHATIPARA
PO and PS JOGIGHOPA
DIST. BONGAIGAON ASSAM
PIN-78338

VERSUS

THE STATE OF ASSAM AND 9 ORS
REP. BY THE COMMISSIONER and SECRETARY TO THE GOVT. OF ASSAM,
REVENUE SETTLEMENT DEPTT., DISPUR, GUWAHATI-6

2:THE DIRECTOR
LAND RECORDS AND SURVEYS ETC.
RUPNAGAR
GUWAHATI-32

3:THE DEPUTY COMMISSIONER
LAND SETTLEMENT BRANCH BONGAIGAON
PO and DIST. BONGAIGAON ASSAM
PIN-783380

4:THE SUB-DIVISIONAL OFFICER C
NORTH SALMARA
ABHAYAPURI

PO- ABHAYAPURI
DIST. BONGAIGAON ASSAM
PIN-783384

5:THE CIRCLE OFFICER
BOITAMARI REVENUE CIRCLE
PO-BOITAMARI
DIST. BONGAIGAON ASSAM
PIN-783384

6:THE UNION OF INDIA
REPRESENTED BY MINISTRY OF SHIPPING.

7:THE SECRETARY
INLAND WATER AUTHORITY OF INDIA
A-13
SECTOR -1
NOIDA
U.P. - 201301.

8:THE DIRECTOR
INLAND WATER AUTHORITY OF INDIA
PANDU PORT COMPLEX
PANDU
GUWAHATI-781012.

9:NATIONAL HIGHWAYS AND INFRASTRUCTURE DEVELOPMENT
CORPORATION LTD.
REPRESENTED BY ITS MANAGING DIRECTOR AT 3RD FLOOR
PTI BUILDING
4
PARLIAMENT STREET
NEW DELHI-110001.

10:DEPUTY GENERAL MANAGER (INFRA)
NATIONAL HIGHWAYS AND INFRASTRUCTURE DEVELOPMENT
CORPORATION LTD.
SITE OFFICE- JOJIGHOPA
HOUSE NO. 279
ISLAMPUR
P.S. JOGIGHOPA
DIST. BONGAIGAON
ASSAM- 783382

Advocate for the Petitioner : MR. A H M R CHOUDHURY

Advocate for the Respondent : MR. S C KEYAL,ASSTT.SGL.

Linked Case : WP(C)/4637/2021

SHAHADAT ALI AND 6 ORS.
S/O RAYHAN ALI
R/O VILL-BHATIPARA
P.O. AND P.S.-JOGIGHOPA
DIST-BONGAIGAON (ASSAM)

2: BILLAL HUSSAIN
S/O LATE AYNAL HOQUE
R/O VILL-BHATIPARA
P.O. AND P.S.-JOGIGHOPA
DIST-BONGAIGAON (ASSAM)

3: RAHELA KHATUN
D/O ARAB ALI
R/O VILL-BHATIPARA
P.O. AND P.S.-JOGIGHOPA
DIST-BONGAIGAON (ASSAM)

4: SAYANA KHATUN
D/O LATE JAMAL UDDIN
R/O VILL-BHATIPARA
P.O. AND P.S.-JOGIGHOPA
DIST-BONGAIGAON (ASSAM)

5: MAJEDA BEGUM
W/O MOHAMMED ALI
R/O VILL-BHATIPARA
P.O. AND P.S.-JOGIGHOPA
DIST-BONGAIGAON (ASSAM)

6: MAINUDDIN
S/O GOLAM SAROWAR
R/O VILL-BHATIPARA
P.O. AND P.S.-JOGIGHOPA
DIST-BONGAIGAON (ASSAM)

7: MOKADES ALI
S/O GOLAM SAROWAR
R/O VILL-BHATIPARA
P.O. AND P.S.-JOGIGHOPA
DIST-BONGAIGAON (ASSAM)
VERSUS

THE UNION OF INDIA AND 6 ORS.
REPRESENTED BY THE SECRETARY
INLAND WATERWAYS AUTHORITY OF INDIA
A-13
SECTOR-1
NOIDA
UP-201301

2:THE DIRECTOR
INLAND WATERWAYS AUTHORITY OF INDIA
PANDU PORT COMPLEX
PANDU
GUWAHATI-781012

3:THE STATE OF ASSAM
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE GOVT.
OF ASSAM
REVENUE AND DISASTER MANAGEMENT DEPARTMENT
DISPUR
GUWAHATI-6

4:THE DIRECTOR
LAND RECORDS AND SURVEY ETC
RUPNAGAR
GUWAHATI-32

5:THE DEPUTY COMMISSIONER
BONGAIGAON
PIN-783380

6:THE SUB-DIVISIONAL OFFICER (C)
NORTH SALMARA
ABHAYAPURI
P.O.-ABHAYAPURI
DIST-BONGAIGAON (ASSAM)
PIN-783384

7:THE CIRCLE OFFICER
BOITAMARI REVENUE CIRCLE
P.O.-BOITAMARI
DIST-BONGAIGAON (ASSAM)
PIN-783384

Advocate for : MS. R CHOUDHURY
Advocate for : SC
I W A OF INDIA appearing for THE UNION OF INDIA AND 6 ORS.

**BEFORE
HONOURABLE MR. JUSTICE MANISH CHOUDHURY**

JUDGMENT & ORDER [ORAL]

Date : 20-04-2023

In the writ petition, W.P.[C] no. 6230/2017, 68 nos. of petitioners have joined together to institute the writ petition under Article 226 of the Constitution of India. The petitioners, 7 in nos., have instituted the other writ petition, W.P.[C] no. 4637/2021. The petitioners in both the writ petitions have claimed that they have espoused a common cause of action. In both the writ petitions, the common relief the petitioners have sought for is a direction to the respondent authorities not to evict the petitioners from the lands located at Village - Bhatipara, Boitamari Revenue Circle, District – Bongaigaon by the side of the River Brahmaputra which they have claimed to be in possession. Claiming that they are flood affected people the petitioners have also sought for a direction for settlement of those plots of land in their favour as per the Land Policy of the State Government and/or under the provisions of Assam Land and Revenue Regulation, 1886 and the settlement Rules framed thereunder.

2. I have heard Ms. R. Choudhury, learned counsel for the petitioners in both the writ petitions; Mr. R. Borpujari, learned Standing Counsel, Revenue Department for the respondent nos. 1 & 2 in W.P.[C] no. 6230/2017 and for the respondent nos. 3 & 4 in W.P.[C] no. 4637/2021; Mr. R. Talukdar, learned Junior Government Advocate, Assam for the respondent nos. 3 – 5 in W.P.[C] no. 6230/2017 and for the respondent nos. 5 – 7 in W.P.[C] no. 4637/2021; Mr. S.C. Keyal, learned counsel for the respondent nos. 7 & 8 in W.P.[C] no. 6230/2017; and Mr. C. Baruah, learned Standing Counsel, National Highways and Infrastructure Development Corporation Limited [NHIDCL] for the respondent nos. 9 & 10 in W.P.[C] no. 6230/2017.

3. The case of the petitioners, as projected in the writ petition, W.P.[C] no. 6230/2017 as well as by Ms. Chudhury, learned counsel for the petitioners, is that the petitioners or their

predecessors-in-interest [father/grandfathers] were residents of different villagers in the erstwhile Goalpara district and now Bongaigaon district. The names of the petitioners' fathers/grandfathers were enlisted in the Voters' Lists prior to 25.03.1971 and also appeared in the National Register of Citizens [NRC] of 1951, in respect of their respective earlier residences, though no documents in support of the said facts have been annexed, other than few revenue receipts issued in the name of few of the petitioners, with the writ petitions. Ms. Choudhury has, however, submitted that the petitioners are in position to produce the documents as regards enlistment of the petitioner's names in the Voters Lists and in the NRC 1951, electricity connections, revenue receipts, etc.

3.1. The petitioners have projected that their fathers/grandfathers were landless indigenous people and were residing as permissive occupants/tenants under different landlords in different villages in the present district of Bongaigaon. In course of time, they came to be settled in parcels of Government Khas lands at Village – Bhatipara under Boitamari Revenue Circle, District – Bongaigaon, situated by the bank of River Brahmaputra for about 40 years earlier. But due to flood during the year : 1991-1992, the entire area where the petitioners or their predecessors-in-interest had settled, stood submerged in River Brahmaputra. As a result, the petitioners became shelterless and had to take shelter in parcels of land which were at the western side of the previous parcels of land. After taking shelter there, the petitioners constructed dwelling houses, etc. In course of time, few of the original possessors died and accordingly, the petitioners being successors of the original possessors, continued to reside in those parcels of land. The petitioners have stated that they have been provided with electricity connections, ration cards, etc. apart from enlistment of their names in the Voters' List under 35 no. Abhayapuri South [SC] Legislative Assembly Constituency [LAC]. In support of their claims, the petitioners have annexed few revenue receipts to assert that they have been paying land revenue [Khajana] in respect of the parcels of land they are in possession at present.

4. In the writ petition, W.P.[C] no. 4637/2021, 7 [seven] petitioners, have joined together to institute it in the year 2021 i.e. after 4 [four] years of the other writ petition, W.P.[C] no. 6230/2017, seeking similar relief by making similar projections as in the writ petition, W.P.[C]

no. 6230/2017.

5. It was in the month of August, 2017, a team of officials from the Bongaigaon District Administration entered into the parcels of land the petitioners are in possession and started taking measurements. When asked, the petitioners were informed that some office buildings were going to be constructed over those parcels of land and they would be evicted for the purpose of facilitating such constructions. The petitioners stated to have submitted a Representation before the respondent no. 4 on 19.09.2017 requesting them not to evict from those parcels of land till they were suitably rehabilitated at any other place. With the assertion that they have been living in those parcels of land for the last three decades and they are river eroded landless people, the petitioners have sought for allotments of suitable homestead lands in their favour in terms of the Land Policy, 1989. The petitioners by referring to a Circular bearing no. DLR/LR-36/2014/14 dated 22.04.2015, more particularly, Para 2.13 and Para 2.14 thereof, have contended that the petitioners being erosion affected people, are entitled for rehabilitation at Government Khas lands, etc. and they cannot be termed as encroachers of Government Khas land. With the apprehension that the petitioners were likely to be evicted shortly as the officials from the District Administration, Bongaigaon started taking measurements of the parcels of land where they have constructed dwelling houses, etc. the petitioners have preferred the writ petitions seeking inter alia a direction to the respondent authorities not to evict the petitioners from the parcels of land located at Village – Bhatipara, Boitamari Revenue Circle, District – Bongaigaon on the bank of River Brahmaputra till the petitioners, being river erosion affected people, are rehabilitated elsewhere and/or for their settlement as per the Land Policy and/or under the provisions of the Assam Land and Revenue Regulation, 1886.

6. Mr. Keyal, learned counsel appearing for the respondent nos. 6 – 8 has drawn attention to the sequence of events and the manner how the parcels of land, which is under alleged encroachment of the petitioners, have come under the authority of the respondent IWAJ authorities at present. Mr. Borpujari, learned Standing Counsel, Revenue Department and Mr. Talukdar, learned Junior Government Advocate have referred to the provisions of the Assam Land and Revenue Regulation, 1886, the Settlement Rules framed thereunder, and the

Land Policy, 2019 to contend that the petitioners are encroachers in so far as the parcels of land in question are concerned. Mr. Baruah, learned Standing Counsel, NHIDCL has urged about urgent necessity of the parcels of land, free from encroachment, as the parcels of land are needed for a project of national importance.

7. At this juncture, it is apposite to trace the history of the parcels of land, as emerged from the case record, which are stated to be under alleged unauthorized occupation of the petitioners. From the letter bearing no. 3-IWT[10]/69 dated 12.08.1970 of the Inland Water Transport Directorate, Ministry of Shipping & Transport, Government of India addressed to the Managing Director, Central Inland Water Transport Corporation Ltd., Calcutta [M/s CIWTC Ltd., for short], it has emerged that the Government of India decided to execute an agreement with M/s CIWTC Ltd., Calcutta inter alia for the management and maintenance of an Inland Port at Jogighopa, subject to terms and conditions mentioned therein. It was decided that M/s CIWTC Ltd. would be paid by the Government of India a management and maintenance charge @ ₹ 3,000/- per month for managing the affairs of the Inland Port at Jogighopa as the agent of the Government from the date of taking over of the Inland Port. M/s CIWTC Ltd. would also be paid by the Government of India 7½% of the cost of the works of capital nature concerning the Inland Port as agency charges, in addition to full reimbursement of the cost of such works and the estimate of all capital works would be sanctioned by the Government of India in the Ministry of Shipping & Transport. It was further decided that the agreement would be terminable in a month's notice on either side. In course of time, a proposal came to be submitted for dissolution of M/s CIWTC Ltd. Vide a letter bearing no. WTC-13021/3/2013-CIWTC[Vol.I] dated 06.09.2016, the Government of India in the Ministry of Shipping [CIWTC Section] conveyed its approval on the proposal of dissolution of M/s CIWTC Ltd. with conditions mentioned therein. The immovable assets of the erstwhile M/s CIWTC Ltd. were proposed to be disposed of in various manners. The Inland Water Authority of India [Iwai], an autonomous body under the Ministry of Shipping, Government of India had expressed its willingness to purchase 5 [five] parcels of land in Assam, belonging to erstwhile M/s CIWTC Ltd., at Uzanbazar, Pandu Ghat, Badarpur Steamer Ghat, Karimganj Steamer Ghat and Dibrugarh at the then prevailing Circle Rate. In so far as the parcels of land for the Inland Port at Jogighopa was concerned, the Ministry of Shipping, Government of

India had decided to hand over the same to the IWAI as custodian of land on behalf of the Government of India. By the said letter dated 06.09.2016, the Chairman-cum-Managing Director, M/s CIWTC Ltd. was asked to take necessary action for implementation of the decision. After the IWAI had become the custodian of the parcels of land at Jogighopa, under Boitamari Revenue Circle, belonging to erstwhile M/s CIWTC Ltd., the IWAI through its Director wrote to the respondent no. 3 i.e. the Deputy Commissioner, Bongaigaon vide letter bearing no. IWAI/GHY/3[76]/CIWTC/JOG/2016-2017/402 dated 26.07.2017 intimating the fact that from 06.09.2016, the said parcels of land at Jogighopa stood handed over from its earlier custodian, M/s CIWTC Ltd. to the IWAI as the custodian. After a site visit at Jogighopa Inland Port areas on 20.07.2017, the Director, IWAI wrote to the respondent no. 3 by a letter dated 26.07.2017 to demarcate the parcels of land at Jogighopa Inland Port and to initiate action for eviction of unauthorized encroachers from the said land as the Inland Port is to be developed as a Multi Modal Commercial Hub/Terminal. The letter dated 26.07.2017 was followed by another letter bearing no. D.O. No. IWAI/PR2/NER/2017 dated 26.09.2017 from the Director, IWAI to the Chief Secretary to the Government of Assam intimating inter alia that the IWAI was examining feasibility to set up Multi Modal Commercial Hub/Terminal at Jogighopa as suggested by the Government of Assam vide D.O. no. TWT.47/2011/261 dated 03.07.2017 and it owns, at present, 40 acres of land at Jogighopa, which is being considered for the development of the Terminal and other navigational facilities. In addition to that, the IWAI had also taken over approx. 100 acres of land from M/s CIWTC Ltd. as custodian but the parcel of land measuring 100 acres [approx.] was found encroached when the said visit was made on 21.07.2017 along with officials from the District Administration, Bongaigaon. As the requests for demarcation and eviction of encroachers from the parcels of land owned by the Government of India in which the IWAI is the custodian, were pending, the Chief Secretary to the Government of Assam was requested to take up the matter with priority so as to enable the IWAI authorities take up the work of fencing and construction of boundary on expeditious basis.

8. It is to be noted that during the pendency of the writ petition, W.P.[C] no. 6230/2017, the party-respondent no. 6, the party-respondent no. 7 and the party-respondent no. 8 came to be impleaded in terms of an order dated 07.03.2018. The party-respondent no. 9 and the

party-respondent no. 10 came to be impleaded pursuant to an order dated 01.01.2021 passed in the interlocutory application, I.A.[C] no. 503/2021.

9. From the counter affidavit filed on behalf of the resident no. 9 and the respondent no. 10, it has emerged that a Memorandum of Understanding [MoU] was entered into between the Ministry of Road Transport & Highways [MoRT&H], Government of India [GoI], represented by the National Highways & Infrastructure Development Corporation Limited [NHIDCL], a Government of India Undertaking, on one hand, and the Government of Assam in the Industries & Commerce Department, on the other hand, on 20.10.2020. From the MoU, it has emerged that the Government of India has entrusted the NHIDCL with the development, maintenance and management of a Multi Modal Logistic Park [MMLP] at Jogighopa and the location, Jogighopa has been selected as one of the locations for development of the MMLP under the Bharatmala Parijoyana. The MMLP is envisaged to act as a world class logistic aggregation/disaggregation point for various forms of cargo across all modes, within a single facility. The MMLP comprising road, rail and inland waterway connectivity integrated with warehousing spaces, cold storage facility, etc. is strategically decided to be developed at the location to improve the logistics efficiency and reduce logistics costs. The MMLP is also being set up over parcels of land measuring approximately 200 acres owned by M/s Ashok Paper Mill Ltd., a State Government undertaking.

9.1. One of the packages included for the project of MMLP is development of external road connectivity of the MMLP from National Highway no. 17 and Inland Water Transport [IWT], Jogighopa i.e. the project for which the parcels of land were acquired vide L.A. Case no. 26/1965-1966. In developing the connectivity between the MMLP and the IWT, the existing connectivity of the IWT from the National Highway no. 17, which is presently an intermediate lane, is being developed to a 4-lane facility and a new connectivity is being developed from the IWT to the National Highway no. 17 to the MMLP.

9.2. The lands falling in the alignment of the connectivity, part of the 103-acres of parcels of land which were earlier in possession of M/s CIWTC Ltd., are required for connecting the IWT with the MMLP. In the counter affidavit, the respondent no. 9 and the respondent no. 10

have provided the details of the parcels of land, ownership of which is vested with the Inland Port, as per the revenue records provided by the revenue authority. According to the respondent no. 9 and the respondent no. 10, the parcels of land falling within Dag nos. 295, 310, 190, 368, 345, 178, 356 & 149 located at Village - Bhatipara, Boitamari Revenue Circle, District – Bongaigaon, are included. It is stated that the work for the development of the aforesaid project of MMLP is not progressing in desired manner in the parcels of land belonging to the Inland Water Authority of India [IWAI] as a part of the land is under encroachment and in litigation before this Court. It is stated that in absence of encroachment free land, there would be time and cost overrun in executing the project of MMLP. According to the respondent no. 9 and the respondent no. 10, there are about 23 structures which are to be removed and the contractor is unable to take up the work in view of the encroachment. Requests have been made to the respondent no. 8 by the respondent NHIDCL authorities vide a letter no. RO/A-D/MMLP/GC/387/6363 dated 11.01.2021 to take up the matter with the District Administration, Bongaigaon immediately for removal of the encroachment and to hand over the land to the NHIDCL authorities for the purpose of completing the construction work.

10. The petitioners in none of the writ petitions have provided the details of the parcels of land which are under their occupation, save and except saying that they are located at Village - Bhatipara, Boitamari Revenue Circle, District – Bongaigaon. In support of the same, they have annexed few revenue receipts as annexures to the writ petition and the said receive receipts to go show that the revenue which were in the form of *Bedakhali Jarimona* are paid for plots of lands located at Village - Bhatipara, Boitamari Revenue Circle, District – Bongaigaon.

11. The respondent no. 3 has filed its counter affidavit in the writ petition, W.P.[C] no. 6230/2017. In the counter affidavit, it is asserted that no record is available in land records as regards the petitioners falling in the category of erosion affected people by the River Brahmaputra in Revenue Village - Bhatipara, Boitamari Revenue Circle, District – Bongaigaon. It is stated that the Circle Officer, Boitamari [the respondent no. 5 in W.P.(C) no. 6230/2017] has reported that the petitioners occupied Government Khas land recorded in the name of

IWT, Jogighopa by constructing dwelling houses, etc. and the IWT Department, Jogighopa had taken steps for implementation of a new project over the said plots of land i.e. the parcels of land measuring 50 Bighas approximately, covered by Dag nos. 178, 190, 345, 356 & 366, located at Village - Bhatipara, Boitamari Revenue Circle, District – Bongaigaon. It has emerged that the petitioners fall in the category of unauthorized occupants of said parcels of land which have been recorded in the name of IWAI since the year : 1965-1966. The matter of rehabilitation of the petitioners is denied on the premise that there is no record available regarding their status as river erosion affected people. It is mentioned that the IWT authorities have moved the District Administration for eviction of the unauthorized occupants from the land falling under Dag nos. 295, 310, 190, 368, 345, 178, 356 & 149 located at Village - Bhatipara, Boitamari Revenue Circle, District – Bongaigaon. The respondent no. 4 in his letter no. NSRP/L.A./IWT/27/2017/47 dated 01.02.2018, addressed to the respondent no. 8, has asserted that the petitioners or their predecessors are not recorded as landless persons of Village – Bhatipara/Jogighopa and they are not original inhabitants of Village – Bhatipara/Jogighopa. It is further reported that as per records, the petitioners have not submitted any application before the respondent no. 5 seeking allotment of Government land for their settlement elsewhere under Boitamari Revenue Circle, District – Bongaigaon. No records is stated to be available with the revenue authorities that the petitioners were inhabitants living on the bank of River Brahmaputra, whose lands were eroded by River Brahmaputra during the year : 1991-1992. The said statements and averments are not controverted by the petitioners filing any affidavit-in-reply.

12. From the aforesaid conspectus of facts and circumstances and the respective pleadings of the parties, it has emerged that the petitioners are in occupation of parcels of land located at Village - Bhatipara, Boitamari Revenue Circle, District – Bongaigaon. According to the petitioners, they are in occupation of the said parcels of land since about 3 decades. From the counter affidavit of the respondent no. 3, it has emerged that the parcels of land the petitioners are in occupation fall within the lands covered by Dag nos. 295, 310, 190, 368, 345, 178, 356 & 149 located at Village - Bhatipara, Boitamari Revenue Circle, District – Bongaigaon. It is not in dispute that the parcels of land falling under Dag nos. 295, 310, 190, 368, 345, 178, 356 & 149 located at Village - Bhatipara, Boitamari Revenue Circle, District –

Bongaigaon are recorded, as per the revenue records, in the name of Inland Port/IWAI since 1965-1966. The petitioners have themselves, in their Representation dated 19.09.2017, admitted that they had shifted to the parcels of land which are under the jurisdiction of Port Land [M/s CIWTC] and they have started living in the said parcels of land finding the Port Land lying abandoned and in such manner, they continued to live there for about three decades.

13. Thus, the issue that has fallen for consideration is as to whether the reliefs sought for in the two writ petitions in the form of a direction to the respondent authorities not to evict the petitioners from the parcels of land they are occupying, covered by Dag nos. 295, 310, 190, 368, 345, 178, 356 & 149, at Village - Bhatipara, Boitamari Revenue Circle, District – Bongaigaon can be considered.

14. Entry no. 18 of List II of the 7th Schedule of the Constitution of India, is inter-alia, land, that is to say, right in or over land. Thus, it is in the province of the State Legislature to make laws on right in or over land. The statute governing laws on right in or over land is the Assam Land and Revenue Regulation, 1886. After it was passed in 1886, the Assam Land and Revenue Regulation was amended from time to time. After Independence, by the Adaption of Laws Order, 1950, the Assam Land and Revenue Regulation, 1886 had been retained and a number of amendments were carried out thereafter. Chapter I of the Assam Land and Revenue Regulation, 1886 [hereinafter referred to as 'the Regulation, 1886', for short] deals with definitions, etc. Chapter II defines the rights of the different classes of persons recognized by the Regulation, 1886 and they are mainly three classes :- [i] Proprietors; [ii] Landholders; and [iii] Settlement-holders other than landholders, including persons holding lands directly under the Government under annual leases, etc. Chapter II also provides for issue of Settlement Rules by the State Government.

14.1. 'Proprietor' means, as per Section 2[f] of the Regulation, 1886, the owner of any estate permanently settled or entered on the Deputy Commissioner's register of revenue-free estates. As per Section 2[g] 'land-holder' means any person deemed to have acquired the

status of a land-holder under Section 8. Under Section 2[h], 'settlement-holder' means any person, other than a proprietor, who has entered into an engagement with the Government to pay land revenue and includes a land-holder. 'A Periodic Lease', as per Rule 2[d] of the Rules, means a lease granted for more than one year and in the case of town, a lease for a period longer than three years. Subject to any restrictions, conditions and limitations contained therein, a periodic lease, the term of which is not less than ten years, conveys to the lessee the right of a land-holder. An 'Annual lease', as per Rule 2[c], means a lease granted for one year only and confers no right in the soil beyond a right of user for the year for which it is given. It confers no right of inheritance beyond the year of issue. It confers no right of transfer or of sub-letting and shall be liable to cancellation for any transfer or sub-letting even during the year of issue. Rule 2[f] defines 'Settlement', which means leasing of land at the disposal of the Government and includes the operations of survey, classification and report, preliminary to such leasing.

14.2. Under the provisions of the Regulation, 1886, Settlement Rules have been framed. As per the definition provided for 'Settlement' in Rule 2[f] of the Rules ['the Settlement Rules', for short] framed under the Regulation, 1886, it inter alia means the leasing of land at the disposal of the Government. Rule 15 of the Settlement Rules has enjoined that no person shall have any right to settlement merely because he is in occupation of land not included in any lease granted by the State Government either to himself or to any other person. A prohibition is incorporated in Rule 16 of the Settlement Rules to the effect that lease shall be issued on written application only, and no person shall enter into possession of waste land in any area until a lease has been issued to him or otherwise a written permission by the Deputy Commissioner has been granted to him, pending issue of such lease, to enter into possession. 'Waste land' means land at the disposal of the Government, which the Government has not disposed of by lease, grant or otherwise, and which is not included in a forest reserve, or in a forest proposed to be reserved under Section 5 of the Assam Forest Regulation [VII of 1891], or in a protected forest constituted under the allotted as a grazing ground under rules framed under Section 13 of the Regulation, 1886. As per Rule 17 of the Settlement Rules, if an occupant to whom settlement is offered accepts it then he shall be liable for payment of the revenue assessed on the land. A power, under Rule 17A of the

Settlement Rules, has been vested in the Deputy Commissioner who may at any time on application or of his own motion, assess increment or grant reduction in the revenue in proportion to the change in the area of the lease as a result of gain by alluvion or by dereliction of a river, or loss by diluvion, during the currency of the settlement, subject to observance of the procedure indicated therein. Rule 18 of the Settlement Rules has provided for ejectment.

15. Rule 16 of the Settlement Rules is, therefore, relevant for the case in hand and the same reads as under :

Rule 16 - Prohibition to enter into land until issue of lease. – Lease shall be issued on written application only and no person shall enter into possession of waste land in any area until a lease has been issued to him or otherwise a written permission by Deputy Commissioner has been granted to him, pending issue of such lease, to enter into possession.

15.1. A reading of Rule 16 of the Settlement Rules goes to show that no person can enter into possession of any Government land in any area until a lease has been issued to him or otherwise, a written permission has been granted to him by the Deputy Commissioner, pending issue of such lease, to enter into possession of Government land. It is not the case of the petitioners that they had, at an earlier point of time, submitted any application for lease for the Government land in question, in writing before the Deputy Commissioner in terms of Rule 5 of the Settlement Rules. When a person enters into possession otherwise than as per the provision of Rule 16 of the Settlement Rules, then such person can only be termed as an encroacher.

16. Rule 18 of the Settlement Rules are also of import and relevance in the cases in hand. By the Assam Land and Revenue Regulation [Amendment] Act, 1997, the sub-rule [2] of Rule 18 has been amended and it was published in the Official Gazette in its issue dated 29.03.1997. For ready reference, the relevant parts of Rule 18 of the Settlement Rules are extracted hereinbelow :-

Rule 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 rights of a proprietor, hand-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 bonafide 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] 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 or the Sub-Divisional Officer, as the case may be, and also in the Notice Board of the office of the 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.

[4] Any person or persons required by notice to vacate under the last preceding sub-rule the land which the person or persons occupy, shall comply with the requisition within the time prescribed in the notice, running from the date of its service.

16.1. A conjoint reading of Rule 18[2] and Rule 18[3] of the Settlement Rules makes the distinction regarding the nature of encroachment apparent.

17. The petitioners have contended that they have been paying revenues in respect of the areas of land under their respective possession and to buttress such contentions, they have annexed few revenue receipts as annexures to the writ petition. On perusal of those revenue receipts, it is noticed that the petitioners have been only paying *Bedakhali Jarimona* [Encroachment Penalty], which is earlier known as *Touzi Bahira* Revenue. The change of nomenclature from *Touzi Bahira* to *Bedakhali Jarimona* came in the year 1992 pursuant to a Circular issued by the State Government in the Revenue Department.

18. The Hon'ble Supreme Court of India in *State of Assam and others vs. Rakha Kanoo [Smt] and others*, reported in 1996 [8] SCC 692, had the occasion to examine the provisions of Rule 16, Rule 17, Rule 17A and Rule 18 of the Settlement Rules framed under the Regulation, 1886 in the context of the right of a person who had entered into possession of Government land otherwise than in accordance with Rule 16, from whom the Mauzadar had collected amounts in the form of *Touzi Bahira* Revenue. It has been held that such collection of *Touzi Bahira* Revenue from persons other than those covered by Rule 16, Rule 17 and Rule 17A would not confer any right on such person in unauthorized occupation Government of land. It has also been held that such collection has to be regarded as illegal collection and it does not bind the Government, because of the mandate embodied in Rule 16. From the said decision, it has emerged that collection of *Touzi Bahira* Revenue does not amount to collection of revenue and the possession of a person in unauthorized occupation from whom *Touzi Bahira* Revenue is collected, does not become lawful because of such collection. It is also discernible from the said decision that merely for the fact that *Touzi Bahira* Revenue has

been collected from such a person, the person who is a trespasser of Government land, there is no bar for the authorities to evict such person from such land to recover possession of land under Rule 18 of the Settlement Rules.

18.1. The petitioners are found paying *Bedakhali Jarimona* [Encroachment Penalty] which itself indicates that the petitioners are encroachers.

19. Rule 16 and Rule 18[2] of the Settlement Rules also came up for consideration in Kundargaon Anti Eviction Action Committee vs. State of Assam, reported in [2006] 3 GLR 99. The petitioners therein claimed to be in possession of the Government Khas land in question for more than 70 years, initially through their forefathers, like the claims made by the petitioners herein. It has been observed that unless a lease is granted by the competent authority or permission has been granted by the Deputy Commissioner to enter into any Government waste land under Rule 16 of the Settlement Rules, the said land if they possess, they are to be treated as illegal occupants of Government land and the said character of encroacher does not change because of long possession of land by any person. The Court has observed as under :-

11. Sub-rule [1] of the Settlement rules provides that the Deputy Commissioner may eject any person from the land over which no person has acquired rights of the proprietor, landholder or settlement holder. Sub-rule [2] of Rule 18 of the Settlement Rules empowers the authority to evict any person, who has entered into possession of the land that has previously been reserved for roads or roadside land or for the grazing of village cattle or for other public purposes or enter into possession of the land from which he has been excluded by general or special order and when there is no bona fide claim of right involved. Such ejection has to be made forthwith. Sub-rule [2] of Rule 18 of the Settlement Rules, therefore, does not provide for issuance of any notice before eviction, unlike sub-rule [3] of the said Rule which provides for issuance of notice before eviction from the land covered by sub-rule [2] of the said Rules.

12. As discussed above, Rule 16 of the Settlement Rules read with Rule 95 of the said Rules any person from occupying either Government waste land or the Village Grazing Reserve. Rule 16 of the Settlement Rules provides that no person can possess any waste land without lease or any permission from the Deputy Commissioner. Therefore, it is evident that to acquire bona fide claim of right over the land possessed by a person, he must have a lease in his favour or written permission from the competent authority to possess the same. Unless a lease or permission is granted in his favour, he cannot occupy the land and consequently, he has to be termed as an encroacher and liable to be evicted by virtue of Rule 18 of the Settlement Rules. In the instant case, the petitioner has not been able to show any semblance of right or any document issued by any authority allowing its members to occupy the land which is presently under their possession and, therefore, however, long period of possession may be, such unauthorized act on the part of the members of the petitioner's committees shall not give rise to any bona fide claim of right to remain in possession and consequently, not evictable by invoking the provisions of Rule 18 of the Settlement Rules. As discussed above, the land is the Village Grazing Reserve, the occupation of which has been prohibited by Rule 95 of the Settlement Rules.

20. Following Kundargaon Anti Eviction Action Committee [supra], the Court in Mustab Ahmed vs. State of Assam, reported in 2017 [3] GLT 41, in paragraphs 15 & 16, has observed as under :-

15. In the aforesaid premises, this Court is of the view that the petitioner could not make out a case of establishing a legal right over the land in question. In fact, on the other hand, from the materials on the record, it appears to this Court that the land in question is Khas Government land and the petitioner has no legal right over it, inasmuch as the petitioner could not produce any order of settlement or a lease deed by the appropriate authority in respect of the land in question.

16. The petitioner has also raised the question that before the eviction notice was issued, the petitioner was not given any opportunity of hearing. The aforesaid question had already

been examined by this Court as reported in *Kundor Gaon Committee vs. State of Assam, 2006 Suppl GLT 400*, in paragraph 11, wherein, it had been held that such ejectment has to be made forthwith and the said Rule of 18 of the settlement rules does not provide for issuance of any notice before eviction. In view of the above, the writ petitioner has failed to make out any bona fide claim as regards his right over the land in question from which the petitioner is sought to be evicted by the Government notice of eviction dated 01.12.2015, inasmuch as the petitioner does not have a legal right over the land nor he is a proprietor or a land holder or settlement holder of the land in question. Nothing could be produced by the petitioner to substantiate that the petitioner has any subsisting right to occupy the land and in such view of the matter, no infirmity can be found in the notice dated 01.12.2015.

21. Thus, from Rule 18[2] of the Settlement Rules and the afore-mentioned decisions, it is clear that there is no mandate of issuance of any notice upon persons falling within the ambit of Rule 18[2] of the Settlement Rules. From the materials on record, the fact that the parcels of land on which the petitioners are in occupation, are admittedly Government lands as per the revenue records, and the same are for the purpose of Inland Port. Rule 18[2] makes it clear that if a person is neither a proprietor nor a land holder nor a settlement holder and if he found in possession of any land which is reserved for roads or roadside land or for the grazing of village cattle or for *other public purposes* in which he has entered into possession unauthorizedly in violation of Rule 16 of the Settlement Rules and has failed to establish any bona fide claim of right, then he is to be termed as an encroacher and the provision of Rule 18[2] of the Settlement Rules will be applicable in his case. From the revenue records and from the own admission of the petitioners, it is clearly established that the parcels of land covered by Dag nos. 295, 310, 190, 368, 345, 178, 356 & 149 located at Village - Bhatipara, Boitamari Revenue Circle, District – Bongaigaon is reserved for Inland Port since the year 1965-1966 and the same clearly for public purpose.

22. A Division Bench of this Court in the writ petition, W.P.[C] no. 4179/2009 [Md Ishaque Ali and others vs. the State of Assam and others], decided on 12.08.2016, after taking note of the amendment made in Rule 18 by the Assam Land and Revenue Regulation [Amendment] Act, 1997, has held that no right for a notice, as contemplated under Rule

18[3], is available to a person who comes under Rule 18[2] of the Settlement Rules. It has been observed that Rule 18[2] of the Settlement Rules has empowered the District Magistrate to evict those who have acquired no right of a proprietor, land holder or settlement holder. In case the land under encroachment comes within the categories of land mentioned in Rule 18[2], more particularly, for public roads then quick clearance through summary procedure cannot be said to be unwarranted. Finding the occupation of the petitioners therein unauthorized and the land they were occupying valuable Government lands, the Division Bench has observed that as the land is needed to be acquired in public interest, the individual right, if any, must make way.

23. A co-ordinate Bench of this Court in its judgment and order dated 03.03.2023, rendered in a writ petition, W.P.[C] no. 1156/2023 [Rupjyoti Bora Buragohain and 9 others vs. the State of Assam and 4 others] and a batch of 5 [five] other writ petitions, has observed the distinctive nature of the procedure contained in Rule 18[2] and Rule 18[3] of the Settlement Rules and has held that there a distinction between eviction under Rule 18[2] vis-à-vis eviction under Rule 18[3] and the requirement of issuing notice under Rule 18[2] of the Settlement Rules cannot be read into while interpreting such Rule.

24. Having regard to the entire conspectus facts and circumstances obtaining in the cases in hand, it has emerged that the parcels of land the petitioners are found occupying are reserved for *public purpose* of Inland Port and they are now required for the project of MMLP, which is a project of public importance. The provisions of Rule 18[2] is found applicable in case of such parcels of land, meaning thereby, the petitioners cannot be termed in any manner other than encroachers. Such status as encroachers merely because of the fact that the petitioners are in occupation of the parcels of land for about three decades, as claimed by them, do not change due to long elapse of time and as such, they do not have any legal right to claim protection from eviction from the parcels of land under their unauthorized occupation as the payments they have been purportedly making in the name of the revenue is only *Bedakhali Jarimona* [Encroachment Penalty], which is interchangeably known as *Touzi Bahira* Revenue. The petitioners do not have any bona fide claim over the said parcel of land. As has been held by the Hon'ble Supreme Court of India in Radha Kanoo [supra], *Touzi Bahira*

Revenue and for that matter, *Bedakhali Jarimona* is collected only from encroachers. Obtaining electricity connections in their names, enlistment of their names in the electoral rolls, etc. do not improve the status of the petitioners vis-à-vis the parcels of land under their occupation from the status of encroachers. In such view of the matter, the relief sought for in the two writ petitions in the form of protection from eviction are not merited and the same are deserved to be declined.

25. The petitioners for the purpose of seeking allotment/settlement of lands have also referred to the Land Policy framed by the Government. At present, the Land Policy – 2019 framed by the Government is in force. As per Land Policy, the land at the disposal of the Government for ordinary cultivation may initially be given by way of allotment to indigenous landless cultivators in rural areas. As per Clause 1.7[a] of the Land Policy, preference, as far as practicable, is to be given in the matter of allotment of Government land for ordinary cultivation in the rural areas to indigenous land owner cultivators who have been rendered landless due to flood, erosion, earthquake and other natural calamities. The petitioners herein have neither averred nor annexed any supporting documents to show that they had held lands earlier as owners but due to flood or erosion, they had become landless. They have only claimed that they were affected by erosion without stating that they had lands in their names earlier. Clause 1.14 of the Land Policy has stipulated that mere possession by way of encroachment is not a criteria for entitlement to get allotment/settlement of Government land and such encroachment is to be removed forthwith. It is made incumbent on the part of the revenue officials to evict the encroachers at the earliest. Clause 1.15 has placed a restriction in that allotment and settlement of land shall not be considered for such lands which is reserved for any Government or public purposes. As it has become apparent that the petitioners as encroachers are in possession of the parcels of land under reference which are reserved for Government or public purposes, the same is a clear impediment for getting allotment/settlement of such Government land in their favour. Moreover, as the parcels of land have stood reserved for Government and public purposes in the revenue records since long and the same are sought to be utilized for a project of public importance, there cannot be claim for allotment and settlement of such parcels of land. To claim benefit under Land Policy, a person has to comply with the essential eligibility criteria and pre-conditions thereof

and the petitioners do not appear to fall in such category.

26. The respondent IWAI authorities in their counter affidavit filed on 28.10.2021 has mentioned that in order to facilitate execution of the project referred above, the respondent in the IWAI with the assistance of the Deputy Commissioner, Bongaigaon made enquiry and found that 135 nos. of persons, including the petitioners are occupying the parcels of land, meant for the project, in an unauthorized manner. The Deputy Commissioner, Bongaigaon had provided the list of such 135 nos. of persons and also indicated the amounts to be released in their favour to facilitate the matter of eviction. In the counter affidavit, the respondent IWAI authorities have mentioned that out of the total 135 nos. of persons, 66 nos. of persons have collected their payments from the Circle Officer, Boitamari Revenue Circle and out of those 66 nos. of persons, 22 nos. of persons are the petitioners in the instant writ petitions. The said 22 nos. of petitioners have received the amounts, as indicated in the annexure to the counter affidavit, by signing necessary papers apart from executing an affidavit to withdraw from the case. At this stage, Ms. Choudhury has submitted that there are total 75 nos. of petitioners in the two writ petitions. Though the two writ petitions have been dismissed, the remaining petitioners have at least a right to be considered in a similar manner like the 22 nos. of petitioners who have been disbursed the payment. The matter of such disbursement of payment to the remaining 53 nos. of petitioners is left for consideration of the respondent IWAI authorities, if any individual representations are received from those 53 nos. of petitioners.

27. In view of the discussions made above and for the reasons assigned therein, this Court finds that the two writ petitions are bereft of any merits and are, therefore, liable to be dismissed. It is accordingly ordered. There shall, however, be no order as to cost.

28. With the findings arrived at, observations made and dismissal of the two writ petitions, the respondent authorities are at liberty to proceed in respect of the parcels of land under reference in accordance with law and as per the prescribed procedure. Dismissal of the writ petitions would not, however, preclude the petitioners from applying for allotment/settlement of any other Government Khas land in their favour in terms of the extant Land Policy and as

per the prescribed procedure and if such applications are filed, the same would deserve consideration as per their own merits and in accordance with law.

JUDGE

Comparing Assistant