

GAHC010167432023



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

Case No. : WP(C)/4395/2023

MD. MAJIBAR RAHMAN AND 90 ORS
S/O-HASEN ALI

2: MUSTT ANOWARA BEGUM
W/O- MATI

3: HASEN ALI
S/O- THANDU ALI

4: JONALI BASUMATARY
W/O-SANJIT

5: JAHURA KHATUN
W/O- MALBAKSA

6: KURBAN ALI
S/O- MOINUDDIN

7: JAHANARA BEGUM
W/O- SURENDRA BISWAS

8: GAFUR ALI
S/O- KIYAMAT ALI

9: ISMAIL ALI
S/O-ABDUL MANNAN

10: AINAL ALI
S/O-LALKU ALI

11: JAKIR HUSSAIN
S/O- SATTAR ALI

12: MOTHALECH ALI

S/O-KAMAL

13: AHAJARALI @ AZAHAR ALI
S/O- KAMAL

14: AJID ALI
S/O- ABDUL KASHEM MIYA

15: THANDU ALI
S/O- NIJAMUDDIN

16: CHULTAN ALI
S/O- SATTAR

17: IMRAN ALI
S/O- RAKMAN ALI

18: JAHIR ALI
S/O- AHAMMAD

19: SUMED ALI
S/O- DERAJ

20: MUKUL CHANDRA DEY
S/O- RAJENDRA KUMAR DEY

21: MUSLIM ALI
S/O- HABIBAR

22: BADCHAH ALI
S/O- NABA

23: TOTA ALI
S/O- NALKU ALI

24: GOLAPI BEGUM
W/O- KIYAMAT

25: PURNA BAHADUR BISWAKARMA
S/O- MAN BAHADUR BISWAKARMA

26: SHAN MIYA
S/O- DUDU

27: JAMIRAN NECHA
W/O- AHAMMAD

28: SAKUR LOHAR

S/O- MACHALU

29: NURJAHAN BEGUM
W/O- ICHAB

30: AMELA KHATUN
W/O- RAKMAN ALI

31: TOTA ALI
S/O- KIYAMAT

32: ADHIR SARKAR
S/O- AKSHYA

33: JAHURA BEGUM
W/O- KIYAMAT

34: ABACHAR ALI
S/O KIYAMAT

35: HASEM ALI
S/O ABDUL SHAMAD

36: KANDURAM BORO
S/O BANIYA

37: JANAKI HAJANG
W/O- BINAY

38: SAFIK ALI
S/O- INNUS ALI

39: JAYANTI KALITA
W/O- KANU RAM

40: MANIKA SAH
W/O HARI SHANKAR

41: SAMARAJAN BEGUM
W/O- ABDUL MATALEB

42: SATYA DUTTA
S/O KAMALA

43: KALU ALI
S/O- RIYAJ UDDIN

44: EABADAT ALI

S/O- SEBAO

45: ABDUR RAHMAN
S/O RAIJ UDDIN

46: JAHIR ABBASH
S/O ABDUR RAHMAN

47: SULTAN ALI
S/O- KUDDUS ALI

48: KAJIMUDDIN
S/O- OAMAR ALI

49: MUKSHED ALI
S/O- CHABIRUDDIN

50: FAJAR ALI
S/O- KADER

51: ARFAN ALI
S/O- RAHIZUDDIN MIYA

52: JALAL UDDIN
S/O- ABUBAKKAR SIDDIQUE

53: AMIR ALI
S/O- ATAR ALI

54: JAKIR HUSSAIN
S/O- KAJIMUDDIN

55: LALU ALI
S/O- SONABAR

56: ACHIYA BEGUM
W/O- SONABAR

57: RAHAM ALI
S/O- KAJIMUDDIN

58: ACHA KHATUN
W/O- ATAR

59: MAJUM ALI
S/O- ABDUL RASMAN

60: HASMAT ALI

S/O- HANIF ALI

61: RABIA BIBI
W/O- HANIF ALI

62: SOHRAB ALI
S/O- JALAL UDDIN ALI

63: JAHURA BEGUM
W/O- RAHAM ALI

64: GARI BULLA ALI
S/O- ABDUL LATIF

65: NAYEB ALI
S/O- CHATTAR

66: HANIF ALI
S/O- KABAJUDDIN

67: FAJAL ALI
S/O- MANIRUDDIN

68: MAMIRAM BEGUM
W/O- SHUKUR ALI

69: JAHURA KHATUN
W/O- AKBAR

70: GULBANU KHATUN
W/O- JUL HAS ALI

71: ABDUL MAJID
S/O- NACHKAR

72: FAJAL ALI
S/O- MANGAL

73: BACHIR ALI
S/O- HACHEN

74: SAHAJAHAN ALI
S/O- JAYNAL

75: MAYNAL ALI
S/O- MANGAL ALI

76: SOMELA BEGUM

D/O- ABUL HUSSAIN

77: AJMAL ALI
S/O- NASKAR

78: ALAUDDIN
S/O- JABBAR

79: REJIA BEGUM
W/O- IBRAHIM ALI

80: ABUL HUSSAIN
S/O- BOSU ALI

81: SALEHA BEGUM
W/O- MANNAF ALI

82: KASHEM ALI
S/O- HAMIF ALI

83: HAJRAT ALI
S/O- HANIF ALI

84: HUCHEIN ALI
S/O- ATAR

85: FEDDUCH ALI
S/O- KERAMAT

86: RAMJAN ALI
S/O- SAHEB ALI

87: JAFAR ALI
S/O- MAJIBAR

88: HAMELA KHATUN
W/O- HAMED ALI

89: CHUBURA KHATUN
W/O- HACHEN ALI

90: ACHURUDDIN
S/O- ACHGAR

91: REJIYA KHATUN
W/O- CHIRAJ. ALL ARE RESIDENTS OF VILLAGE- N.K. DARRANGA P.O.-
MELA BAZAR. P.S- TAMULPUR. DIST- BAKSA
ASSA

VERSUS

THE STATE OF ASSAM AND 5 ORS
REPRESENTED BY THE CHIEF THE SECRETARY TO THE GOVERNMENT OF
ASSAM, DISPUR, GUWAHATI-6

2:THE COMMISSIONER AND SECRETARY TO THE GOVERNMENT OF
ASSAM
DEPARTMENT OF REVENUE
DISPUR
GUWAHATI-6

3:THE COMMISSIONER AND SECRETARY TO THE GOVERNMENT OF
ASSAM
DEPARTMENT OF FOREST
DISPUR
GUWAHATI-6

4:THE BODOLAND TERRITORIAL COUNCIL
REPRESENTED BY THE PRINCIPAL SECRETARY
TERRITORIAL COUNCIL SECRETARIAT
KOKRAJHAR
BTR
ASSAM

5:THE DEPUTY COMMISSIONER
BAKSA
MUSHALPUR
BTR
ASSAM

6:THE DIVISIONAL FOREST OFFICER
BAKSA FOREST DIVISION
MUSHALPUR
BTR
ASSAM
PIN-78137

For the Petitioner(s)	: Mr. J. I. Borbhuiya, Advocate : Mr. L. Mohan, Advocate
For the Respondent(s)	: Mr. D. Gogoi, Advocate : Mr. B. Choudhury, Advocate : Mr. N. Upadhyay, Advocate

Linked Case : WP(C)/4301/2023

NURANI JAME MASJID AND ANR
VILL. N K DARRANGA P.O. DARRANG MELA P.S TAMULPUR DIST. BAKSA
BTR ASSAM REP BY ITS PRESIDENT NAMELY NUR MOHAMMAD ALI

2: NUR MAHAMMAD ALI
S/O LT. MD. HAZRAT ALI R/O VILL. N K DARRANGA P.O. DARRANGA MELA
P.S. TAMULPUR DIST. BAKSA BTR ASSAM
VERSUS

THE STATE OF ASSAM AND 5 ORS
REP. BY CHIEF THE SECRETARY TO T HE GOVT. OF ASSAM DISPUR
GUWAHATI 6

2:THE COMMISSIONER AND SECRETARY
TO THE GOVT. OF ASSAM DEPTT. OF REVENUE DISPUR GUWAHATI 6

3:THE COMMISSIONER AND SECRETARY
TO THE GOVT. OF ASSAM DEPTT. OF FOREST DISPUR GUWAHATI 6

4:THE BODOLAND TERRITORIAL COUNCIL
REP. BY THE PRINCIPAL SECRETARY TERRITORIAL COUNCIL
SECRETARIAT KOKRAJHAR BTR ASSAM

5:THE DEPUTY COMMISSIONER BAKSA
MUSHALPUR BTR ASSAM

6:THE DIVISIONAL FOREST OFFICER
BAKSA FOREST DIVISION MUSHALPUR BTR ASSAM PIN 781377

For the Petitioner(s)	: Mr. J. I. Borbhuiya, Advocate
	: Mr. L. Mohan, Advocate

For the Respondent(s)	: Mr. D. Gogoi, Advocate
	: Mr. B. Choudhury, Advocate
	: Mr. N. Upadhyay, Advocate

**BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH**

ORDER

Date : 16.08.2023

1. Both the writ petitions have been filed by the Petitioners challenging the notices issued by the Divisional Forest Officer, Baksa Forest Division, Mushalpur in the name of the Petitioners thereby granting them 15 days time to vacate the lands on the ground that the lands fall in the Darranga Forest under the Office of Kumarikata Forest.
2. It is the specific contention of the learned counsel for the Petitioners that the land in question are Government lands and not Forest lands and as such, the Forest Department or for that matter, Divisional Forest Officer has no authority to issue the said notices.
3. On the other hand, Mr. D. Gogoi, the learned Standing counsel drawing the attention of this Court to the affidavit-in-opposition filed by the Forest Department submits that the land in question are forest lands and it is a part of the Darranga Reserve Forest which was notified way back on 13.11.1895 and most specifically the area in core of the dispute is also a part of the 1st Addition of the Darranga Reserve Forest notified in the year 1941. In that regard, the said notifications have been enclosed as Annexure A and B to the Affidavit-in-Opposition along with the maps pertaining to the said lands to show that the land which is under the occupation of the Petitioners are Forest lands.
4. This Court further finds it relevant to take note of the affidavit-in-reply filed by the Petitioners wherein certain photographs have been enclosed to show that the lands are Government lands upon which the Petitioners are paying Touji Mouza wherein demarcation have already been done by erecting boundary

pillars.

5. I have heard the learned counsels for the parties and have perused the materials on record.

6. The issue involved herein is as to whether the lands presently under the occupation of the Petitioners are Forest lands or Government lands. This Court under Article 226 of the Constitution cannot adjudicate the said aspect of the matter. It would be the Revenue Authorities who can on the basis of contemporaneous materials arrive at an opinion as to whether the lands are Government lands or a Forest lands.

7. This Court had made a specific query upon Mr. B. Choudhury, the learned Standing counsel appearing on behalf of the BTC as to how the said authority proposes to ascertain as to whether the lands are Government lands or Forest lands. Mr. B. Choudhury, the learned Standing counsel upon instructions had submitted that the Office of the Deputy Commissioner, Baksa shall depute the Circle Officer, Tamulpur, who in presence of the officials of the Forest Department and the Petitioners shall ascertain on the basis of the contemporaneous materials as to whether the lands are Forest lands or Government lands.

8. Mr. B. Choudhury, the learned Standing counsel further expresses an apprehension that if all the Petitioners remain present, there may be a law and order situation. Mr. J. I. Borbhuiya, the learned counsel for the Petitioner submits that the Petitioner No.1 in WP(C) No.4395/2023 i.e Md. Majibar Rahman shall represent all the Petitioners and be present. Mr. B. Choudhury, the learned Standing counsel further submits on instructions that the said field verification proceedings would be carried out on 19.08.2023 at 12.30 PM.

9. Taking into account the above, this Court is of the opinion that it would be in the interest of justice to dispose of both the writ petitions with a direction to the Deputy Commissioner, Baksa to depute the Circle Officer, Tamulpur to carry out the field verification by taking into account the revenue records so maintained as to the lands wherein the Petitioners are in occupation falls within the Forest lands or Government lands. The Divisional Forest Officer, Baksa Forest Division, Mushalpur shall also be present at the time of field verification. The Petitioner No.1 in WP(C) No.4395/2023 i.e Md. Majibar Rahman shall also be personally present at 12:30 PM i.e. at the time of the said field verification. The Circle Officer, Tamulpur shall thereupon carry out the field verification and on the basis of the said verification, the Respondent Authorities shall take steps as permissible under law.

10. It is made clear that till such verification are concluded i.e. the date and time so fixed, the status quo order which was passed earlier shall continue.

11. With above observations and directions, both the writ petition stands disposed of.

JUDGE

Comparing Assistant