

GAHC010182262023



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

Case No. : WP(C)/4724/2023

FOJAL HOQUE AND 12 ORS.
S/O- KURMAN ALI @ KURPAN ALI @ KURMA ALI,
RESIDENT OF VILLAGE- HASRAOBARI,
P.O.- BHIRANGAON,
P.S.- DHALIGAON,
DIST.- CHIRANG, ASSAM,
PIN- 783380.

2: MD. RAFIKUL ISLAM
S/O- FOJAL HOQUE

RESIDENT OF VILLAGE- HASRAOBARI

P.O.- BHIRANGAON

P.S.- DHALIGAON

DIST.- CHIRANG
ASSAM

PIN- 783380.

3: MD. FAKARUDDIN AHMED
S/O- FOJAL HOQUE

RESIDENT OF VILLAGE- HASRAOBARI

P.O.- BHIRANGAON

P.S.- DHALIGAON

DIST.- CHIRANG
ASSAM

PIN- 783380.

4: MAINUDDIN HOQUE
S/O- FOJAL HOQUE

RESIDENT OF VILLAGE- HASRAOBARI

P.O.- BHIRANGAON

P.S.- DHALIGAON

DIST.- CHIRANG
ASSAM

PIN- 783380.

5: BACHCHA MIYA @ BADSHA ALI
S/O- LT. JAFOR ALI

RESIDENT OF VILLAGE- HASRAOBARI

P.O.- BHIRANGAON

P.S.- DHALIGAON

DIST.- CHIRANG
ASSAM

PIN- 783380.

6: ABDUL KHALEK
S/O- JURAN ALI

RESIDENT OF VILLAGE- HASRAOBARI

P.O.- BHIRANGAON

P.S.- DHALIGAON

DIST.- CHIRANG
ASSAM

PIN- 783380.

7: MALEK ALI
S/O- JURAN ALI

RESIDENT OF VILLAGE- HASRAOBARI

P.O.- BHIRANGAON

P.S.- DHALIGAON

DIST.- CHIRANG
ASSAM

PIN- 783380.

8: NUR HUSSEN ALI @ NUR HUSSAIN
S/O- JURAN ALI

RESIDENT OF VILLAGE- HASRAOBARI

P.O.- BHIRANGAON

P.S.- DHALIGAON

DIST.- CHIRANG
ASSAM

PIN- 783380.

9: MOHIBUL HOQUE @ MOHABUL ALI
S/O- JURAN ALI

RESIDENT OF VILLAGE- HASRAOBARI

P.O.- BHIRANGAON

P.S.- DHALIGAON

DIST.- CHIRANG
ASSAM

PIN- 783380.

10: ABDUL KADER
S/O- LT. JAYNAL ABEDIN @ JOYNAL ALI

RESIDENT OF VILLAGE- HASRAOBARI

P.O.- BHIRANGAON

P.S.- DHALIGAON

DIST.- CHIRANG

ASSAM

PIN- 783380.

11: ABDUL SAMAD
S/O- NAYAMUDDIN SHEIKH

RESIDENT OF VILLAGE- HASRAOBARI

P.O.- BHIRANGAON

P.S.- DHALIGAON

DIST.- CHIRANG
ASSAM

PIN- 783380.

12: USMAN ALI
S/O- LT. JAYNAL ABEDIN @ JOYNAL SK

RESIDENT OF VILLAGE- HASRAOBARI

P.O.- BHIRANGAON

P.S.- DHALIGAON

DIST.- CHIRANG
ASSAM

PIN- 783380.

13: JAYNAL SHEIKH
S/O- LT. IYAD ALI @ IJAD ALI

RESIDENT OF VILLAGE- HASRAOBARI

P.O.- BHIRANGAON

P.S.- DHALIGAON

DIST.- CHIRANG
ASSAM

PIN- 783380

VERSUS

THE STATE OF ASSAM AND 7 ORS.
REPRESENTED BY ITS COMMISSIONER AND SECRETARY,
GOVERNMENT OF ASSAM,
REVENUE DEPARTMENT, DISPUR,
GUWAHATI, ASSAM- 781006.

2:THE SECRETARY TO THE GOVERNMENT OF ASSAM
WELFARE OF PLAINS AND BACWARD CLASS DEPT.
SACHIVALAYA
DISPUR

GUWAHATI- 781006.

3:THE B.T.C.
REPRESENTED BY THE PRINCIPAL SECRETARY TO THE B.T.C.

KOKRAJHAR
ASSAM- 783370.

4:THE PRINCIPAL SECRETARY
B.T.C.
KOKRAJHAR
ASSAM- 783370.

5:THE SECRETARY (REVENUE)
B.T.C.
KOKRAJHAR
ASSAM- 783370.

6:THE DEPUTY COMMISSIONER
CHIRANG
KAJALGAON
ASSAM- 783385.

7:THE ADDITIONAL DEPUTY COMMISSIONER (REVENUE)
CHIRANG
KAJALGAON
ASSAM- 783385.

8:THE CIRCLE OFFICER
SIDLI REVENUE CIRCLE
SIDLI
ASSAM- 783373

For the Petitioner(s)

: Mr. K. N. Choudhury, Sr. Advocate
: Mr. S. Das, Advocate

For the Respondent(s) : Mr. R. Borpujari, Advocate
: Mr. B. Choudhury, Advocate

**BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH**

JUDGMENT AND ORDER (ORAL)

Date : 17-08-2023

1. The instant writ petition is filed challenging the notice dated 04.08.2023 issued by the Circle Officer, Sidli Revenue Circle whereby the Petitioners along with the other noticees were informed that they should shift from the encroached "Protected Tribal Belt and Block" area within 15 days or else action will be taken as per law.
2. Taking into account the issue involved, this Court proposes to dispose of the instant writ petition at the motion stage itself.
3. The facts enumerated in the writ petition are that the Petitioners have been residing in their lands since ages and all of a sudden, the impugned notice was issued on 04.08.2023. Mr. K. N. Choudhury, the learned Senior counsel has drawn the attention of this Court to the order passed by the Division Bench of this Court dated 09.12.2019 in PIL No.78/2012 whereby the Division Bench of this Court issued various observations which were made to the effect that the Deputy Commissioners of Bongaigaon, Kamrup (Metro), Morigaon, Sonitpur and Tinsukia have been entrusted with the responsibility under the policy adopted by the State of Assam and accordingly directions were issued to them to take necessary action as required by law against the encroachers and file their

personal affidavits verifying the action taken in regard to removing illegal encroachment from tribal areas. In the similar vein, directions were also issued to the Principal Secretary to the Bodoland Territorial Council area namely, Kokrajhar, Chirang, Baksa and Udalguri to file their personal affidavit with regard to the action taken for removal of illegal encroachment from the said areas.

4. The learned Senior counsel appearing on behalf of the Petitioners further submitted that it is on account of the directions so passed by the Division Bench of this Court that the impugned notice has been issued. The learned Senior counsel further submitted that the Respondent Authorities have not taken into consideration the order passed by the Supreme Court dated 03.02.2020 which is an order passed on a Special Leave to Appeal (C) D No.2121/2020 against the said order dated 09.12.2019 passed in PIL No.78/2012. The learned Senior counsel further drawing the attention of this Court submitted that it has been observed by the Supreme Court that the Deputy Commissioners must examine the claim of each occupant on case to case basis and after recording satisfaction, in the light of evidence produced, the said Authority was required to pass appropriate orders as per law. The learned Senior counsel further submitted that even any adversarial order if passed, the same is also required to be informed by the Deputy Commissioner by giving a reasonable opportunity to the occupants to take recourse to the appropriate remedy as permissible under law. The learned Senior counsel therefore submitted that the issuance of the impugned notice has created an apprehension in the mind of the Petitioners that they would be evicted from their respective possession of their lands without adhering to the observations of the Supreme Court in the order dated 03.02.2020.

5. Mr. R. Borpujari, the learned counsel appearing on behalf of the Respondent Nos. 1, 6, 7 and 8 submits that a perusal of the impugned notice dated 04.08.2023 shows that the Circle Officer, Sidli Revenue Circle had directed the Petitioners to vacate the land or else action would be taken as per law meaning thereby that the observations passed by the Supreme Court dated 03.02.2020 would be adhered to.

6. Mr. B. Choudhury, the learned counsel appearing on behalf of the Respondent Nos. 3, 4 and 5 had also made similar submission as was made by Mr. R. Borpujari, the learned counsel for the Revenue Department.

7. This Court have duly perused the materials on record as well as the order passed by the Supreme Court dated 03.02.2020. Taking into account the relevance, the relevant portion of the said order dated 03.02.2020 passed by the Supreme Court is reproduced hereinunder:

“This apprehension, in our opinion, is misplaced. For, the tenor of the order which is impugned in these Special Leave Petitions is merely to direct the Deputy Commissioner to proceed against the unauthorized occupants in accordance with law – which presupposes that the Deputy Commissioner must examine the claim of each occupant on case to case basis and after recording satisfaction in light of evidence produced before him proceed to pass appropriate order(s) as per law.

We may add that, if that order is adverse to the occupants, the Deputy Commissioner must give reasonable time to the occupants to take recourse to appropriate remedy as may be permissible in law.

In other words, the Deputy Commissioner shall decide the proceedings uninfluenced by any of the observations made by the High Court in the impugned judgment and order.”

8. From the above quoted observations of the Supreme Court, it transpires that the directions so passed by the Division Bench of this Court dated 09.12.2019 thereby directing the Deputy Commissioners to proceed against the unauthorized occupants in accordance with law have been understood to mean that the Deputy Commissioners must examine the claim of each occupant on case to case basis and after recording satisfaction in the light of the evidence produced before him should proceed to pass orders as per law. It was further observed by the Supreme Court that if the order is adverse to the occupants, the Deputy Commissioner must give reasonable time to the occupants to take recourse to the appropriate remedy as may be permissible in law and the Deputy Commissioners were also directed to decide the proceedings uninfluenced by the observations so made by the Division Bench of this Court in the order dated 09.12.2019.

9. This Court also finds it relevant at this stage to observe the submission of Mr. R. Borpujari, the learned counsel to the effect that taking into account the observations so made by the Supreme Court, the Petitioners may be directed by this Court, if so advised, to submit their documents regarding their claims by 31.08.2023 before the Deputy Commissioner, Chirang i.e. the Respondent No.6 and the Deputy Commissioner, Chirang shall adjudicate their claims on case to case basis and thereupon pass appropriate orders in that regard.

10. Taking into account the above, this Court therefore disposes of the instant writ petition thereby granting liberty to the Petitioners herein as well as the other noticees of the impugned order dated 04.08.2023 to submit their relevant documents pertaining to their claims over the land in their possession before the Deputy Commissioner, Chirang i.e. the Respondent No.6 by 4:00 PM of

31.08.2023. The Deputy Commissioner, Chirang thereupon shall examine the claims of each of the Petitioners as well as the other noticees who have submitted their claims and only upon recording satisfaction that the Petitioners or the noticees have no right to remain in possession of the lands in question shall pass appropriate orders thereupon.

11. This Court further finds it relevant to observe and direct that the Respondent No.6 shall also upon passing of the orders duly communicate the same to the Petitioners as well as the other noticees of the impugned notice dated 04.08.2023 and further grant them reasonable time to approach the appropriate forum within 30 days, if any adversarial orders are passed against them.

12. This Court further finds it relevant to take note of the submission of Mr. K. N. Choudhury, the learned Senior counsel who submitted that 15 days time so allotted would expire by 19.08.2023 and as such this Court ought to direct Deputy Commissioner, Chirang not to take coercive measures. This Court taking into account the above observations and directions so passed, directs the Deputy Commissioner, Chirang not to take coercive measure against any of the noticees to the Impugned Notice till the completion of the period as mentioned in paragraph No.11 herein above.

13. This Court further directs Mr. R. Borpujari, the learned counsel appearing on behalf of the Respondent No.1, 6, 7 and 8 to apprise the Respondent Authorities that this Court today has passed an order giving the liberty to the noticees of the impugned notice dated 04.08.2023 to file their respective claim by 31.08.2023 by 4:00 PM as well as the directions so passed.

14. Anyone of the Petitioners to the instant writ petition shall submit a certified copy of this order to the Deputy Commissioner, Chirang for due compliance.

15. With above observations and directions, the instant writ petition stands disposed of.

JUDGE

Comparing Assistant