

GAHC010185742023



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

Case No. : WP(C)/4797/2023

PRATAP BARMAN AND 10 ORS.
S/O- LATE KALICHARAN BARMAN

2: MAINUL ALI @ MD. MAINUL ALI
S/O- ANSER ALI

3: MAJNUR ALI @ MD. MAJNUR
S/O- LATE MAHAM ALI

4: ZAKIR ALI @ JAKIR ALI
S/O- LATE MAHAM ALI

5: MATIR ALI
S/O- LATE MAHAM ALI

6: RAHMAN ALI
S/O- LATE JAMIR ALI

7: ISLAM ALI
S/O- MANIRUDDIN ALI

8: ASKAR ALI @ MD. ASKAR ALI
S/O- USMAN ALI@MD. USMAN

9: NAJIR ALI
S/O- MAKSED ALI

10: MANIRUDDIN ALI @MAINUDDIN ALI
S/O- LT BAKHAR ALI @BASAR

11: MANJIT ALI
S/O- LT. JALAL UDDIN

ALL ARE -

R/O VILLAGE - ALLIA

P.O- DHANBIL

P.S- BARBORI
DIST- BAKSA
ASSAM
PIN-78134

VERSUS

THE STATE OF ASSAM AND 7 ORS.
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT.OF ASSAM,
REVENUE DEPARTMENT
DISPUR, GUWAHATI-6

2:THE SECRETARY TO THE GOVT. OF ASSAM

WELFARE OF PLAIN TRIBES AND BACKWARD CLASSES (WPT AND BC)
DEPTT.
DISPUR
GUWAHATI
PIN- 781006.

3:THE B.T.C
REP. BY THE PRINCIPAL SECRETARY TO THE BTC
KOKRAJHAR
ASSAM
PIN-783370

4:THE PRINCIPAL SECRETARY
BTC
KOKRAJHAR
ASSAM
PIN-783370

5:THE SECRETARY (REVENUE)
BTC
KOKRAJHAR
ASSAM
PIN-783370

6:THE DEPUTY COMMISSIONER
BAKSA
MUSHALPUR
ASSAM
PIN-781372

7:THE ADDL. DEPUTY COMMISSIONER (REVENUE)
BAKSA
MUSHALPUR
ASSAM
PIN-781372

8:THE CIRCLE OFFICER
BAKSA REVENUE CIRCLE
MUSHALPUR
ASSAM
PIN-78137

Advocate for the Petitioner : MR. K N CHOUDHURY

Advocate for the Respondent : GA, ASSAM

BEFORE
HONOURABLE MR. JUSTICE SUMAN SHYAM

ORDER

Date : 21-08-2023

Heard Mr. K.N. Choudhury, learned Sr. counsel assisted by Mr. S. Nawaz, learned counsel for the writ petitioners. Also heard Mr. R. Borpujari, learned standing counsel, Revenue & DM Department, Assam appearing for the respondent Nos. 1, 6, 7 and 8, Mr. R. Dhar, learned counsel appearing for the respondent No. 2 and Mr. S. Rava, learned standing counsel, BTC appearing for the respondent Nos. 3 to 5.

The eleven petitioners herein have joined in this writ petition, assailing the individual eviction notices served upon them with a view to evict them from the plots of land under their occupation on the ground that they are occupying land falling in the tribal belt.

Mr. K.N. Choudhury, learned Sr. counsel submits that a perusal of the eviction

notices would go to show that the same have been issued in terms of the direction issued by the Division Bench of this Court vide order dated 09-12-2019 passed in **PIL No. 78/2012 (Prodyut Kr. Bora Vs. State of Assam & Ors.)**, wherein a direction was issued to all the Deputy Commissioners to take appropriate action, as may be permissible under the law, against the encroachers of land falling in the tribal belt. However, submits Mr. Choudhury, by the order dated 03-02-2020 passed in Special Leave Petition being SLA(C) No. 2121/2020 preferred against the order dated 09-12-2019, the Hon'ble Supreme Court has provided certain protections to the persons stated to be illegal occupation of land falling in the tribal belt. According to Mr. Choudhury, unless the procedure prescribed by the order dated 03-02-2020, passed by the Apex Court is followed, any action on the part of the respondents, in seeking to evict the petitioners, would not only be illegal but also in clear violation of the order passed by the Supreme Court of India. Hence, this writ petition.

Mr. Choudhury has further submitted that taking note of the direction issued by the Supreme Court in order dated 03-02-2020, a coordinate Bench of this Court has passed an order on 17-08-2023 directing the concerned District Commissioner to consider the representation submitted by the noticees and communicate decision, if any, taken against them, before any further action is initiated. As such, a similar order be passed in the present case as well.

Mr. Borpujari, learned standing counsel, Revenue & DM Department, Assam has not denied or disputed the basic contention of the petitioners' counsel but submits that the petitioners be directed to submit individual applications, which will be considered by the

District Commissioner, Baksa. Mr. Rava, learned standing counsel, BTC has also adopted a similar stand in the matter.

From a careful examination of the order dated 03-02-2020, I find that the Supreme Court had issued the following direction in SLA(C) No. 2121/2020:-

“The principal grievance of petitioners before this court is that peremptory directions have been issued by the High Court which are likely to be construed as having been issued after recording finding of fact that the petitioners and similarly placed occupants in the concerned area are unauthorized occupants.

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.”

Since the proposed eviction drive is evidently initiated in terms of the order dated 09-12-2012 passed by the Division Bench in PIL No. 78/2012, hence, the observations and directions contained in the order dated 03-02-2020 of the Supreme Court of India, in the opinion of this Court, will be applicable in the case of the petitioners as well.

As such, with the consent of the learned counsel for both the sides, this writ petition is being disposed of at the stage of motion hearing by providing time till 31-08-2023 to the writ petitioners to submit individual representations before the respondent

No. 6, i.e. District Commissioner, Baksa, ventilating their grievance in the matter.

If such individual representations are submitted by them, within the time prescribed by this Court, the same be considered on merit and disposed of by separate order(s) issued in the light of the observations made by the Hon'ble Supreme Court in the order dated 03-02-2020.

Until such time, the exercise, as above, is carried out and completed, *status quo*, as regards the possession of the petitioners over the land shall be maintained.

Writ petition stands disposed of accordingly.

No order as to cost.

JUDGE

GS

Comparing Assistant