

GAHC010036532023



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

Linked Case : **WP(C)/5758/2020**

ANOWAR HUSSAIN AND 21 ORS
S/O MOYZUDDIN SHEIKH
R/O KAZIPARA WARD NO. 3
PO AND PS CHAPAR
DIST DHUBRI
ASSAM
783371

2: JAHIRUL ISLAM
S/O NOSIAT ULLAH
VILLAGE ROWMARI PT. I.
PO AND PS CHAPAR
DIST DHUBRI
ASSAM
783371

3: ABDUL AZIZ KHAN
S/O LATE GIRI KHA

VILLAGE DOGASIPARA (TARANGAPUR)
PO AND PS CHAPAR
DIST DHUBRI
ASSAM
783371

4: SAIDUL BEPARI
S/O SAMSUL BEPARI
VILLAGE KAZIPARA
CHANDINA
PO AND PS CHAPAR
DIST DHUBRI
ASSAM
783371

5: SAYED ALI
S/O AMZAD ALI
VILLAGE HOLDIBARI (KHELUAPARA PT. IV)
PO AND PS CHAPAR
DIST DHUBRI
ASSAM
783371

6: JAHANGIR ALOM BEPARI
S/O OSMAN GONI
VILLAGE KAZIPARA CHANDINA
PO AND PS CHAPAR
DIST DHUBRI
ASSAM
783371

7: MANNAN ALI
S/O SABEJ UDDIN BEPARI
VILLAGE KAZIPARA CHANDINA
PO AND PS CHAPAR
DIST DHUBRI
ASSAM
783371

8: SAHID ALI
S/O SER ALI
VILLAGE TARANGAPUR PT. I
PO AND PS CHAPAR
DIST DHUBRI
ASSAM
783371

9: MUKJAL ALI
S/O MOYCHAN ALI SHEIKH
VILLAGE SHIMLABARI PT. III
PO AND PS CHAPAR
DIST DHUBRI
ASSAM
783371

10: ESAHAK BEPARI
S/O LATE MESAR UDDIN BEPARI
VILLAGE KAZIPARA CHANDINA
PO AND PS CHAPAR
DIST DHUBRI
ASSAM
783371

11: HARUN RASID BEPARI
S/O MIJU BEPARI
VILLAGE KAZIPARA CHANDINA
PO AND PS CHAPAR
DIST DHUBRI
ASSAM
783371

12: EUSUF ALI BEPARI
S/O AKBAR ALI
VILLAGE KAZIPARA CHANDINA
PO AND PS CHAPAR
DIST DHUBRI
ASSAM
783371

13: SAHANUR BEPARI
S/O KASEM BEPARI
VILLAGE KAZIPARA CHANDINA
PO AND PS CHAPAR
DIST DHUBRI
ASSAM
783371

14: AKLIMA BIBI
D/O FAZAL RAHMAN
VILLAGE KAZIPARA CHANDINA
PO AND PS CHAPAR
DIST DHUBRI
ASSAM
783371

15: ABDUL SHEIKH
S/O ABESH VILLAGE TARANGAPUR PT. I
PO AND PS CHAPAR
DIST DHUBRI
ASSAM
783371

16: SURAT RAHMAN BEPARI
S/O SAFAR UDDIN BEPARI
VILLAGE KAZIPARA CHANDINA
PO AND PS CHAPAR
DIST DHUBRI
ASSAM
783371

17: NASIR BEPARI

S/O MUSLIM BEPARI
VILLAGE KAZIPARA CHANDINA
PO AND PS CHAPAR
DIST DHUBRI
ASSAM
783371

18: HAMIDUR RAHMAN
S/O ALTAF HUSSAIN
VILLAGE KAZIPARA CHANDINA
PO AND PS CHAPAR
DIST DHUBRI
ASSAM
783371

19: ABDUL BATEN
S/O KUDDUCH ALI
VILLAGE KHELUAPARA PT. II
PO NORTH SALMARA
PS JOHIGHOPA
DIST BONGAIGAON
ASSAM
783383

20: NUR HUSEN
S/O MOHEJ ALI
VILLAGE KHELUAPARA PT II
PO NORTH SALMARA
PS JOHIGHOPA
DIST BONGAIGAON
ASSAM
783383

21: NURZAMAN SHEIKH
S/O DAYARUDDIN SHEIKH
VILLAGE KHELUAPARA PT II
PO NORTH SALMARA
PS JOHIGHOPA
DIST BONGAIGAON
ASSAM
783383

22: HAJRAT ALI
S/O JOMIR ALI
VILLAGE JHUAKARA PT I
PO NORTH SALMARA
PS JOHIGHOPA
DIST BONGAIGAON

ASSAM
783383
VERSUS

THE STATE OF ASSAM AND 4 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE GOVT.
OF ASSAM
URBAN DEVELOPMENT DEPARTMENT
DISPUR GUWAHATI 6

2:THE DIRECTOR OF MUNICIPAL ADMINISTRATION

ASSAM
DISPUR GUWAHATI 06
3:THE DEPUTY COMMISSIONER

DHUBRI
ASSAM
783301
4:THE CHAPAR MUNICIPAL BOARD

REPRESENTED BY THE EXECUTIVE OFFICER
CHAPAR MUNICIPAL BOARD
CHAPAR. PO AND PS CHAPAR
DIST DHUBRI
ASSAM
783371
5:THE EXECUTIVE OFFICER

CHAPAR MUNICIPAL BOARD
CHAPAR
PO AND PS CHAPAR
DIST DHUBRI
ASSAM
783371

Advocate for : MR. D DAS SR. ADV
Advocate for : GA
ASSAM appearing for THE STATE OF ASSAM AND 4 ORS

**BEFORE
HONOURABLE MR. JUSTICE SANJAY KUMAR MEDHI**

ORDER

21-12-2023

Heard Shri H. R. Ahmed, learned counsel for the petitioners. Also heard Shri M. Chetia, learned State Counsel as well as Shri R. Goswami, learned counsel for the respondent nos. 4 & 5.

2. Considering the facts and circumstances and the urgency expressed on behalf of the respondent nos. 4 & 5, the instant writ petition is being disposed of at the admission stage.

3. The petitioners, who are 22 in numbers claim that they were tenants under the Chapar Municipal Board in the district of Dhubri. They were allotted shops in the Assam type structure at the Chandina Bazar of the Municipal Board and were doing their business for a long time. The grievance of the petitioners is against notice of eviction dated 04.12.2020 issued by the Executive Officer. It has however been clarified that at that point of time, there was no elected Municipal Board.

4. This Court vide an order dated 22.12.2020 had passed an interim order against the aforesaid eviction notice.

5. This Court has however being informed that the elected Board has now been constituted which is represented by Sri R. Goswami, learned counsel and has also filed affidavit-in-opposition.

6. Shri Ahmed, the learned counsel for the petitioners, by pointing out to the aforesaid affidavit-in-opposition has submitted that 13 of the petitioners seem to have entered into an agreement with the Board towards allotment of rooms in the new structure and only 9 of the petitioners are left out. The learned counsel accordingly submits that if all the petitioners are considered for allotment of rooms in the new structure to be constructed, the grievance of the petitioners would stand redressed.

7. Sri R. Goswami, the learned counsel for the respondent nos. 4 & 5 has however refuted the aforesaid submissions. He has clarified that at no point of time, there has been any agreement with any of the parties to allot rooms in the new structure to be constructed. He however submits that it is only for the purpose of earning some revenue, few persons were allowed to continue in their shops in the old existing Assam Type structure.

8. Sri Goswami, the learned counsel further informed this Court that there is an urgency attached with this matter, in connection with the financial aspect. He submits that under the 14th Finance Commission, an amount of Rs.168.78 lakhs has been allotted to the Dhubri district consisting of 5 numbers of Municipal Boards. So far as the Chapar Municipal Board is concerned, an amount of Rs.97.20 lakh has been allotted. He submits that due to the present litigation, the amount in question has not been able to be utilized and accordingly he apprehends that the amount which was meant for public purpose would revert back.

9. The rival submissions made by the learned counsel have been considered.

10. Construction of a new market complex by the Board is undoubtedly for the interest of public and in such matters, this Court would be absolutely loath in interfering. At the same time, the question of allocation of space in the Market is what has been raised in the present petition.

11. Shri Goswami, the learned counsel has submitted that the allotment would be done by following the due process of law by floating of tenders and no indefeasible rights would accrue upon the petitioners to get such allotment as all persons are to be given equal opportunity. The learned counsel however fairly concedes that the aspect of the petitioners being earlier shopkeepers in the existing structure may be one of the relevant factors which may be taken into consideration.

12. After hearing the parties, this Court is of the opinion that interest of justice would be served if the Board is allowed to go ahead with the construction of the new building of the market complex. So far as the question of allotment of the space/rooms in the new complex, the same has to be done by following the due process of law by means of calling for offers. It is however observed that the Board would be at discretion to give certain weightage to the persons including the petitioners who were the earlier shopkeepers in the existing Assam Type Complex.

13. The writ petition accordingly disposed of in the light of the observations

made above.

14. The interim order passed earlier stands merged with this final order.

JUDGE

Comparing Assistant