

GAHC010194402021



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

Case No. : PIL/76/2021

ALL INDIA KISHAN MAZDOOR SABHA AND 2 ORS
REP. BY ITS CONVENOR, OFFICE ADDRESS- VILL- JIAKUR 2, P.O. JIAKUR,
DIST. KAMRUP, ASSAM

2: ASSAM MOJURI SHRAMIK UNION

REP. BY ITS GENERAL SECRETARY
MRINAL KANTI SHOME
HEAD OFFICE AT DEVAS APARTMENT
FLAT NO. D1/5C
TV STATION ROAD
CHANDMARI
SILCHAR
P.O. TARAPUR
DIST. CACHAR
ASSAM
PIN-788003

3: FORUM FOR SOCIAL HARMONY
REP. BY ITS CONVENOR
HAR KUMAR GOSWAMI
OFFICE ADDRESS- H. NO. 6
OPP. CANARA BANK ATM
SAKTIGARH PATH
BHANGAGARH
GUWAHATI
ASSAM
PIN-78100

VERSUS

THE STATE OF ASSAM AND ANR
REP. BY THE PRINCIPAL SECRETARY TO THE GOVERNMENT OF ASSAM,
REVENUE AND DISASTER MANAGEMENT DEPARTMENT, GOVT. OF

ASSAM, F BLOCK, 1ST FLOOR, ASSAM SECRETARIAT (CIVIL), DISPUR,
GUWAHATI, ASSAM, PIN-781006

2:THE DEPUTY COMMISSIONER

DARRANG
MANGALDOI
ASSAM
PIN-78412

Advocate for the Petitioner : MS. D GHOSH

Advocate for the Respondent : GA, ASSAM

BEFORE
HONOURABLE MR. JUSTICE ACHINTYA MALLA BUJOR BARUA
HONOURABLE MR. JUSTICE ROBIN PHUKAN

Date : 17.02.2023

JUDGMENT & ORDER (ORAL)

(AM Bujor Barua, J)

Heard Mr. Sauradeep Dey, learned counsel for the petitioners. Also heard Ms. N Bordoloi, learned Government Advocate for all the respondents.

2. The three petitioners namely, All India Kishan Mazdoor Sabha represented by its Convenor; Assam MojuriShramik Union represented by its General Secretary, Sri Mrinal KantiShome and Forum for Social Harmony represented by its Convenor Sri Har Kumar Goswami. The petitioners are concerned with certain evictions that took place on 20.09.2021 and 23.09.2021 at villages No.1 Dholpur, No.2 Dholpur and No.3 Dholpur in the Darrang district of Assam. According to the petitioners, the persons who have been subjected to the

evictions are landless people and further that the eviction process was carried out without any show cause notices or without granting sufficient notice of the eviction and as a result, the evicted people have no place to go. The PIL petition contains the following prayers as extracted:

That, in the premises aforesaid, it is most humbly prayed that this Hon'ble Court may kindly be pleased to admit this petition and;

- (i) Issue a writ in the nature of mandamus directing the Respondent authorities to provide adequate compensation to the evicted persons of villages 1 No. Dholpur, 2 No Dholpur and 3 No. Dholpur for violation of provisions of the Assam Public Premises (Eviction of Unauthorised Occupants) Act, 1971 and the fundamental rights of such persons guaranteed under Articles 14 & 21 of the Constitution of India;*
- (ii) Issue a writ in the nature of mandamus directing the Respondent authorities to provide adequate rehabilitation to the evicted persons of villages 1 No. Dholpur, 2 No. Dholpur and 3 No. Dholpur;*
- (iii) Issue a writ in the nature of mandamus prohibiting any future eviction without complying with the provisions of the Chief Minister's Special Scheme for Rehabilitation of Erosion Affected Families in the Assam and the Assam Public Premises (Eviction of Unauthorised Occupants) Act, 1971 and without ensuring an effective rehabilitation plan for those liable for eviction;*
- (iv) Issue an order declaring the provisions of Rule 18 of the Rules under the Assam Land and Revenue Regulation, 1886 as unconstitutional;*
- (v) Pass any other such order as this Hon'ble Court may deem fit and proper.*

-AND-

During the pendency of this application, it is most humbly prayed that this Hon'ble Court may kindly be pleased to pass an interim order directing the Respondent Authorities to refrain from carrying out any evictions in Gorukhuti area under Sipajhar Revenue Circle without following the provisions of the Assam Public Premises (Eviction of Unauthorized Occupants) Act, 1971 and without first ensuring effective rehabilitation for those liable to be evicted.

3. The prayer No.1 is for compensation to the evicted persons of villages No.1 Dholpur, No.2 Dholpur and No.3 Dholpur in the Darrang district of Assam. The prayer No.2 is for a direction to the authorities to provide adequate rehabilitation to the evicted people. The prayer No.3 is for issuing a direction to

the respondents prohibiting any future eviction without complying with the provisions of the Chief Minister's Special Scheme for Rehabilitation of Erosion Affected Families in Assam as well as the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 (for short, the Act of 1971). The prayer No.4 is for declaring the provisions of Rule 18 of the Rules under the Assam Land and Revenue Regulation, 1886 to be unconstitutional (for short, the Regulations of 1886).

4. A reading of the averments made in the PIL petition makes it discernible that the petitioners herein are concerned that the families who were occupying certain Government lands at the aforesaid villages are being evicted without providing for any appropriate rehabilitation. In doing so, certain legal issues have also been raised as to whether the eviction can be carried out without complying with the provisions under the Chief Minister's Special Scheme for Rehabilitation of Erosion Affected Families in Assam as well as the Act of 1971 and the further legal issue on the constitutionality of the provisions of Rule 18 of the Rules under the Regulations of 1886. Considering the averments made in the PIL petition as well as the reliefs sought for, as discernible from the prayers therein, it is apparent that the petitioners are concerned with certain evictions that have been carried out by the authorities at villages No.1 Dholpur, No.2 Dholpur and No.3 Dholpur in the Darrang district of Assam.

5. We notice that the first petitioner being the All India Kishan Mazdoor Sabha represented by its Convenor, the second petitioner a registered trade union being the Assam Mojurishramik Union represented by its General Secretary, Sri Mrinal Kanti Shome and the third petitioner being the Forum for

Social Harmony represented by its Convenor Sri Har Kumar Goswami are all governed by their own by-laws and have their own designated functions. Representing the cause of action, may be in a PIL, as regards eviction from certain Government lands does not, *prima facie*, appear to be an accepted or the designated activities of the All India Kishan Mazdoor Sabha. Similarly, the petitioner No.2 being the Assam MojuriShramik Union of the daily wage earners *prima facie* it would also be beyond their designated activities to undertake an issue regarding eviction from Government land.

6. We have also noticed that this PIL petition is supported by an affidavit by Sri Har Kumar Goswami who is the convenor of the petitioner No.3 being the Forum for Social Harmony and accordingly while retaining the petitioner No.3, we delete the petitioners No.1 and 2.

7. With regard to the relief sought for providing appropriate rehabilitation to the evicted people, we take note of the order dated 24.01.2023 in PIL No.65/2021 which was also for the same cause of action for providing appropriate rehabilitation to the persons who were evicted in the aforesaid eviction process. Accordingly, in this PIL petition also, the same direction is passed as provided in paragraphs 8 to 14 of the order dated 24.01.2023 in PIL No.65/2021 which are extracted as below:

“8.From such point of view, we look into the other prayers of the petitioner i.e. for payment of appropriate compensation under the Right to Fair Compensation and Transparency in land Acquisition, Rehabilitation and Resettlement Act, 2013 as well as the Right to Fair Compensation and

Transparency in land Acquisition and Rehabilitation and Resettlement Rules, 2015.

9. We have taken note of a statement made by Mr. J Handique, learned counsel for the Revenue and Disaster Management Department of the Government of Assam from the records and information provided to him by the departmental officials that approximately about 700 families were affected in the eviction that had been carried forward pursuant to the aforesaid Cabinet decision that may have been taken. A further statement is made upon information being provided by the departmental officials that in the meantime about 600 families have already been resettled by giving alternative plots of land. What remains is that the balance of about approximately 100 families has not been provided with the adequate rehabilitation.

10. In this respect, Mr. J Handique, learned counsel for the Revenue and Disaster Management Department makes a statement that out of such families, some families may have other alternative land elsewhere, but were occupying land from which they were evicted and may have gone back to their original land or are presently not available before the revenue authorities for examining their claim.

11. As 600 families have already been rehabilitated out of the approximately 700 families who were evicted, we are of the view that no further consideration is required in this PIL petition other than in respect of those balance approximately 100 families who according to the learned counsel for the petitioner are yet to be rehabilitated, which is also an admitted position of the respondents in the Revenue and Disaster Management Department.

12. Here again, a further consideration would be whether such people had any alternative land or they are landless people or whether actually they are in requirement of any rehabilitation by allotment of alternative land.

13. In the circumstance, we require such other families from the balance of approximately 100 families who are said to have not been rehabilitated to make their individual applications before the Deputy Commissioner, Darrang providing in detail all materials that may support their claim for allotment of any alternative land for the purpose of rehabilitation. We further provide that in the event any such application is made, the Deputy Commissioner shall pass individual reasoned orders within a period of six months from the date of receipt of such applications from the individual applicants. In doing so, the Deputy Commissioner shall also give the individual applicants an opportunity of hearing and also allow them to produce any relevant materials that they may intend to rely upon to substantiate their claim for allotment of land for the purpose of rehabilitation.

14. By requiring the Deputy Commissioner to pass individual reasoned orders on any such individual applications of the applicants, we clarify that we are not expressing any view that such applicants are entitled to allotment of any such land or that they are not entitled to any such allotment and it is for the Deputy Commissioner to pass its own reasoned orders on the individual facts and circumstance of each of the applications.”

8. As regards the relief sought that future evictions should not be undertaken

without complying with the provisions of the Chief Minister's Special Scheme for Rehabilitation of Erosion Affected Families in Assam, we take note of that no claim has been made in this PIL that the evicted people were affected by any erosion over the land where they were occupying. In the absence of the evicted people being affected by erosion on the land which they were occupying and evicted from, we are unable to agree with the said prayer that any future eviction should not be made without complying with the provisions of the Chief Minister's Special Scheme for Rehabilitation of Erosion Affected Families in Assam. If it is the case of the petitioners that the people who were unauthorizedly occupying the land from which they were evicted were earlier erosion affected people, the remedy for such persons would be to make an appropriate application to the authorities under the said scheme for their rehabilitation as regards their earlier cause of action being affected due to erosion, but the same cannot be made to be an issue for consideration before evicting them from any other land which they may be unauthorizedly occupying thereafter.

9. Regarding the other aspect that the eviction should not be carried out without following the Act of 1971, we take note of the definition of the expression 'public premises' as provided under Section 2(e) of the said Act of 1971 which is extracted as below:

2 [(e) "public premises" means—

(1) any premises belonging to, or taken on lease or requisitioned by, or on behalf of, the Central Government, and includes any such premises which have been placed by that Government, whether before or after the commencement of the Public Premises (Eviction of Unauthorised Occupants) Amendment Act, 1980 (61 of 1980) under the

control of the Secretariat of either House of Parliament for providing residential accommodation to any member of the staff of that Secretariat;

(2) any premises belonging to, or taken on lease by, or on behalf of,—

(i) any company as defined in section 3 of the 3 [the Companies Act, 2013 (18 of 2013)], in which not less than fifty-one per cent. of the paid-up share capital is held by the Central Government or any company which is a subsidiary (within the meaning of that Act) of the first-mentioned company;

(ii) any corporation (not being a company as defined in section 3 of the 3 [the Companies Act, 2013 (18 of 2013)], or a local authority) established by or under a Central Act and owned or controlled by the Central Government;

(iii) any company as defined in clause (20) of section 2 of the Companies Act, 2013 (18 of 2013) in which not less than fifty-one per cent. of the paid-up capital is held partly by the Central Government and partly by one or more State Governments and includes a company which is a subsidiary (within the meaning of that Act) of the first-mentioned company and which carries on the business of public transport including metro railway.

Explanation.—For the purposes of this item, "metro railway" shall have the same meaning as assigned to it in clause (i) of sub-section (1) of section 2 of the Metro Railway (Operation and Maintenance) Act, 2002 (60 of 2002);

(iiia) any University established or incorporated by any Central Act,];

(iv) any Institute incorporated by the Institutes of Technology Act, 1961 (59 of 1961);

[(v) any Board of Trustees or any successor company constituted under or referred to in the Major Port Trusts Act, 1963 (38 of 1963);]

*(vi) the Bhakra Management Board constituted under section 79 of the Punjab Reorganisation Act, 1966 (31 of 1966), and that Board as and when re-named as the Bhakra-Beas Management Board under sub-section (6) of section 80 of that Act, [***]*

[(vii) any State Government or the Government of any Union territory situated in the National Capital Territory of Delhi or in any other Union territory,

(viii) any Cantonment Board constituted under the Cantonments Act, 1924 (2 of 1924); and]

(3) in relation to the [National Capital Territory of Delhi],—

*(i) any premises belonging to the⁵ [Council as defined in clause (9) of section 2 of the New Delhi Municipal Council Act, 1994 (44 of 1994) or Corporation or Corporations notified under sub-section (1) of section 3 of the Delhi Municipal Corporation Act, 1957 (66 of 1957),] of Delhi, or any Municipal Committee or notified area committee, 2 ****

(ii) any premises belonging to the Delhi Development Authority, whether such premises are in the possession of, or leased out by, the said Authority;] [and],

[(iii) any premises belonging to, or taken on lease or requisitioned by, or on behalf of any State Government or the Government of any Union Territory,]

[(iv) any premises belonging to, or taken on lease by, or on behalf of any Government company as defined in clause (45) of section 2 of the Companies Act, 2013 (18 of 2013).

Explanation.—For the purposes of this clause, the expression "State Government" occurring in clause (45) of the said section shall mean the Government of the National Capital Territory of Delhi;]

[(4) any premises of the enemy property as defined in clause (c) of section 2 of the Enemy Property Act, 1968 (34 of 1968);]

10. In the instant case, we take note that the cause of action raised is against an eviction that had been carried out by the State authorities from certain Government land. On a reading of the definition of the expression 'public premises' appearing in Section 2(e) of the Act of 1971, it does not appear to the Court that the Government land from which the persons under consideration were evicted are also public premises. As the Act of 1971 specifically provides for eviction of unauthorized people from public premises, and the procedure

thereof to be followed, we are unable to accept the contention of the petitioners that the provisions of the said Act would also be applicable in respect of an eviction simpliciter from any Government land. From such point of view, we are unable to accept the prayer of the petitioners that in respect of future evictions that may be carried out from the Government lands, the same should not be done without following the provisions of the Act of 1971.

11. As regards the further cause of action raised to declare the provisions of Rule 18 of the Rules under Regulations of 1886 to be unconstitutional, we queried from the learned counsel for the petitioners as to under what ground the challenge is made to Rule 18 and it is the submission of Mr. Sauradeep Dey, learned counsel for the petitioner that as the law is already in place providing for eviction by following the procedure of the Act of 1971, therefore, Rule 18 of the Rules under the Regulations of 1886 would be unsustainable in law.

12. An understanding of the said submission leads to a situation that Rule 18 of the Rules under the Regulations of 1886 has been challenged on the principle of occupied field, meaning thereby, that as the law is already in place, therefore, the other law for the same purpose would be unsustainable in law. Firstly we take note that in Chapter I Clause 1 of the Book 'Assam Land and Revenue Regulation 1886' by Sri KN Saikia, at page 23 it is provided that the settlement Rules were first issued in the year 1894 under Section 158 of the Regulations of 1886 and therefore it has to be understood that Rule 18 of the Rules under the Regulations of 1886 has been in force since 1894, whereas the Act of 1971 was enacted and notified on 23.08.1971. In other words, we have to understand that Rule 18 of the Rules under the Regulations of 1886 is a prior law, whereas

the Act of 1971 is a subsequent law. From such point of view also the principle of occupied field would be inapplicable to declare Rule 18 of the Rules under the Regulations of 1886 to be unconstitutional, *vis a vis*, the Act of 1971.

13. We are unable to arrive at a decision on the unconstitutionality of Rule 18 of the Rules under the Regulations of 1886 on the principle of occupied field *vis a vis*, the Act of 1971. Accordingly, the PIL petition stands closed by providing that the claim of the petitioners for providing rehabilitation would be covered by the provisions provided in paragraphs 8 to 14 of the order dated 24.01.2023 in PIL No.65/2018.

JUDGE

JUDGE

Comparing Assistant