

GAHC010219202012



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

Case No. : WP(C)/1798/2012

AJOY BHATTACHARJEE and 22 ORS
SON OF LATE AKSHAY KR. BHATTACHARJEE R/O SRIKONA GRANT P.O.
SRIKONA DIST. CACHAR, ASSAM.

2: GYANOBALA DAS
D/O LATE JOYNATH DAS R/O VILL- SRIKONA GRANT
P.O. SRIKONA P.S. SILCHAR
DIST. CACHAR
ASSAM.

3: JOHAR CHAKRABARTY

SON OF BENU BUSHAN CHAKROBARTY R/O VILL- SRIKONA GRANT
KONA GRANT
P.O. SRIKONA P.S. SILCHAR
DIST. CACHAR
ASSAM.

4: SMT. SOROLA DAS
W/O SRI KRISHNA DAS R/O VILL- SRIKONA GRANT P.O. SRIKONA P.S.
SILCHAR DIST. CACHAR
ASSAM.

5: MODUMITA ROY
W/O ANJAN ROY R/O VILL- SRIKONA GRANT KONA GRANT
P.O. SRIKONA P.S. SILCHAR
DIST. CACHAR
ASSAM.

6: BONOBA SI DAS
D/O LATE JOYNATH DAS R/O VILL- SRIKONA GRANT P.O. SRIKONA P.S.
SILCHAR
DIST. CACHAR
ASSAM.

7: SMT. KOLPONA DAS
W/O SUJIT DAS R/O VILL- SRIKONA GRANT P.O. SRIKONA P.S. SILCHAR
DIST. CACHAR
ASSAM.

8: RAM MOHAN DAS PURKAYASTHA
SON OF DOSOROTA DAS PURKAYASTHA R/O VILL- SRIKONA GRANT P.O.
SRIKONA P.S. SILCHAR
DIST. CACHAR
ASSAM.

9: SMT. RITA DAS
W/O MANIK DAS R/O VILL- SRIKONA GRANT P.O. SRIKONA P.S. SILCHAR
DIST. CACHAR
ASSAM.

10: SMT. AMOYA RANI DAS
W/O SOSOLAL DAS R/O VILL- SRIKONA GRANT P.O. SRIKONA P.S.
SILCHAR
DIST. CACHAR
ASSAM.

11: MAKADDAS ALI BARBHUIYA
SON OF LATE ASHKOR ALI BARBHUIYA R/O VILL- SRIKONA GRANT P.O.
SRIKONA P.S. SILCHAR
DIST. CACHAR
ASSAM.

12: UTTAM KUMAR DAS
SON OF LATE GOURANGO DAS R/O VILL- SRIKONA GRANT P.O. SRIKONA
P.S. SILCHAR
DIST. CACHAR
ASSAM.

13: SUJOLA DAS @ SUJATA DAS
W/O ROBINDRA DAS R/O VILL- SRIKONA GRANT P.O. SRIKONA P.S.
SILCHAR
DIST. CACHAR
ASSAM.

14: SOMPA RANI DAS
W/O BISWAJIT DAS R/O VILL- SRIKONA GRANT P.O. SRIKONA P.S.
SILCHAR
DIST. CACHAR
ASSAM.

15: CHANDRA SHEKOR ROY

SON OF CHANDAN ROY R/O VILL- SRIKONA GRANT P.O. SRIKONA P.S.
SILCHAR
DIST. CACHAR
ASSAM.

16: KAJOL DAS
SON OF LATE AOSHINI DAS R/O VILL- SRIKONA GRANT P.O. SRIKONA P.S.
SILCHAR
DIST. CACHAR
ASSAM.

17: BISHNU DAS
SON OF ASHULAL DAS R/O VILL- SRIKONA GRANT P.O. SRIKONA P.S.
SILCHAR
DIST. CACHAR
ASSAM.

18: CHANDRA DAS
SON OF ANIL CH. DAS R/O VILL- SRIKONA GRANT P.O. SRIKONA P.S.
SILCHAR
DIST. CACHAR
ASSAM.

19: BINOY ROY
SON OF SUNIL ROY R/O VILL- SRIKONA GRANT P.O. SRIKONA P.S.
SILCHAR
DIST. CACHAR
ASSAM.

20: NABONITA DAS
W/O PARIMOL DAS R/O VILL- SRIKONA GRANT P.O. SRIKONA P.S.
SILCHAR
DIST. CACHAR
ASSAM.

21: ANJAN ROY
SON OF GOPAL ROY R/O VILL- SRIKONA GRANT P.O. SRIKONA P.S.
SILCHAR
DIST. CACHAR
ASSAM.

22: KALYANI DAS
W/O GAUTAM DAS R/O VILL- SRIKONA GRANT P.O. SRIKONA P.S.
SILCHAR
DIST. CACHAR
ASSAM.

23: GITA RANI ROY

W/O DILIP ROY R/O VILL- SRIKONA GRANT P.O. SRIKONA P.S. SILCHAR
DIST. CACHAR
ASSAM

VERSUS

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

2:THE DEPUTY COMMISSIONER

CACHAR
SILCHAR
P.O. SILCHAR DIST. CACHAR
PIN- 788001.

3:THE SETTLEMENT OFFICER

CACHAR and HAILAKANDI
P.O. SILCHAR DIST. CACHAR PIN - 788001.

4:THE ASSISTANT SETTLEMENT OFFICER

SADAR CIRCLE
SILCHAR
DIST. CACHAR
PIN- 788001.

5:THE ADDITIONAL DEPUTY COMMISSIOER

CACHAR AT SILCHAR
P.O. SILCHAR DIST. CACHAR
PIN- 788001.

6:THE ASSAM RIFLES
REP. BY THE OFFICER COMMANDING 861 FIELD WORKSHOP
COY
EME
C/O 99 APO

7:THE UNION OF INDIA

TO BE REP. BY THE SECRETARY MINISTRY OF HOME AFFAIRS
NEW DELHI- PIN- 110001

Advocate for the Petitioner : MR.M H RAJBARBHUIYAN

Advocate for the Respondent : GA, ASSAM

**BEFORE
HONOURABLE MR. JUSTICE MANISH CHOUDHURY**

JUDGMENT & ORDER

Date : 27-07-2023

The writ petition under Article 226 of the Constitution of India has been instituted seeking *inter alia* a direction in the nature of certiorari and/or any other appropriate writ/order for a direction to quash and set aside a Verification Report of the Collector, Cachar, Silchar [Annexure-14] and an Enquiry Report submitted by the Additional Deputy Commissioner, Cachar, Silchar [Annexure-15] and also for a direction to the Deputy Commissioner, Cachar and the Settlement Officer, Cachar and Hailakandi to release/issue/publish Periodic Pattas indicating Dag nos. against areas of land in favour of each of the petitioners as per a copy of the *Chitha* [annexed as Annexure-4(ii)], after compliance of the formalities required for settlement under the provisions of the Assam Land and Revenue Regulation, 1886 and the Assam Fixation of Ceiling of Land Holdings Act, 1956. The petitioners have also sought for a direction to pay the compensation amount amounting to Rs. 1,36,15,640/- to them against acquisition of an area of land measuring 109 Bighas which amount had already been deposited by the Assam Rifles authorities and to pay due *zirat* compensation amount to the petitioners for the aforesaid area of land.

2. The present *lis* in the writ petition can be said to be in continuation of two earlier writ petitions, [i] W.P.[C] no. 2897/2009 [Shri Uttom Kumar Das and others vs. the State of Assam and others] & [ii] W.P.[C] no. 1453/2010 [Mrs. Nabonita Das and another vs. the State of Assam and others]. In the writ petition, W.P.[C] no. 2897/2009, there were 25 nos. of petitioners whereas in the other writ petition, W.P.[C] no. 1453/2010, there were two petitioners, meaning thereby, 27 nos. of petitioners had earlier approached this Court by the said two writ petitions the common subject-matter of which is related to the present writ petition. In the present writ petition, 23 nos. of petitioners have joined together seeking the reliefs, mentioned above. These 23 nos. of petitioners were also the petitioners in the

earlier two writ petitions.

3. A land acquisition proceeding was initiated in the year : 2006 – 2007 by the respondent authorities by registering a land acquisition case as L.A. Case no. 7/2006-07. In connection with the said land acquisition proceeding, a Notification under Section 4 of the Land Acquisition Act, 1894 was published on 25.06.2008 whereby it was notified that an area of land measuring more or less 206 Bighas 02 Kathas 14 Chataks [206B-02K-14Ch] in Village – Srikona Grant, Ph : Chatla Haor, Sub-Division : Silchar, District – Cachar was likely to be needed for a public purpose, that is, construction of Assam Rifles facilities. The said Notification was published in the Assam Gazette Extraordinary in its issue dated 25.06.2008. In the said Notification, a Schedule of Land along with its boundaries, measuring more or less 206B-02K-14Ch including the Dag nos. against respective areas, were included. As per the Notification, the boundary of the southern side was land falling under Dag no. 50 [Kha], 45 [Kha] Dag L.C. Khas & boundary of Indragarh. The said Notification which also invoked the provision of Section 17[4] of the Land Acquisition Act, 1894, was followed by a Declaration under Section 6 of the Land Acquisition Act, 1894 on 27.06.2008. By the Declaration under Section 6, it was notified that the Schedule of Land, already indicated in the Notification under Section 4 of the Land Acquisition Act, 1894 dated 25.06.2008, measuring more or less 206B-02K-14Ch was required by the Government for the purpose of Assam Rifles. In addition to the said area of land measuring 206B-02K-14Ch, another area of land measuring 110 Bighas 10 Kathas 13 Chataks [110B-10K-13Ch] was also taken over by the State respondents and was handed over to the Assam Rifles authorities. It is relevant to mention, at this stage, that the claim of the petitioners herein is related to the said area of land measuring 110B-10K-13Ch. At the time handing over the said area of land measuring 110B-10K-13Ch, it was stated to be Government *Khas* land vested upon it pursuant to a land ceiling acquisition proceeding initiated vide L.C. Case no. 20/1972-73.
4. The Assam Rifles authorities in its affidavit-in-opposition, filed on 20.07.2012, have asserted that the Deputy Commissioner, Cachar handed over physical possession of a total area of land measuring 316 Bighas 13 Kathas 11 Chataks [316B-12K-11Ch], which consisted of [i] 206B-02K-14Ch acquired vide L.A. Case no. 7/2006-07 and [ii] 110B-10K-13Ch, which parcel of land, according to the said respondents, was Government *Khas* land vested in it pursuant

to the land ceiling proceeding vide L.C. Case no. 20/1972-73. Such handing over and taking over of the area of land measuring 316B-12K-11Ch took place on 01.06.2009. The Deputy Commissioner, Cachar stated to have submitted a preliminary estimate amounting to Rs. 6,97,42,057/- against the land acquired vide L.A. Case no. 7/2006-07 and Rs. 1,36,15,640/- for the purported Ceiling Surplus Government *Khas* land handed over to them. It is further stated that pursuant to the estimate submitted by the Deputy Commissioner, Cachar, the Assam Rifles authorities had deposited a sum of Rs. 8,33,57,197/- to the Additional Deputy Commissioner, Cachar vide a Demand Draft dated 04.04.2008 for payment of compensation to the beneficiaries, acquisition cost, etc.

5. Laying claims that in respect of the parcel of land measuring 110B-10K-13Ch, pattas were issued in their favour pursuant to an allotment process initiated by the authorities and they had been in possession of the said parcel of land for more than 20 years as on 18.08.2003, the 27 nos. of petitioners instituted the two writ petitions, mentioned above, that is, [i] W.P. [C] no. 2897/2009 & [ii] W.P.[C] no. 1453/2010. It was claimed that the said area of land measuring 110B-10K-13Ch was taken over from them where pattas were already issued in their favour. As such, the sum of Rs. 1,36,15,640/- already deposited by the Assam Rifle authorities for the area of land measuring 110B-10K-13Ch,, ought to have been disbursed in their favour. The two writ petitions, [i] W.P.[C] no. 2897/2009 & [ii] W.P.[C] no. 1453/2010 were taken up for consideration on 07.01.2011. After hearing the parties, the Court had observed that there was no dispute regarding receipt of the sum of Rs. 1,36,15,640/- in respect of the area of land measuring 110B-10K-13Ch. Taking note of the fact that the petitioners were claiming that pattas in respect of the said area of land that had already been issued in their favour, the two writ petitions were disposed of with a direction to the District Collector, Cachar to verify as to whether any patta in favour of the petitioners and others were issued in respect of the area of land measuring 110B-10K-13Ch and on such verification, if any patta was found to have been issued in respect of land measuring 110B-10K-13Ch or any part thereof, the proportionate amount of compensation as was estimated which had been received by the District Collector, Cachar should be paid to the petitioners and other similarly placed persons. While disposing of the two writ petitions by a common Order dated 07.01.2011, the Court had directed that the entire exercise should be

completed within a period of 3 [three] months from the date of receipt of a certified copy of the Order at the office of the District Collector, Cachar.

6. It was pursuant to the said direction, the Additional Deputy Commissioner, Cachar submitted the Enquiry Report and the District Collector, Cachar submitted the Verification Report, which are impugned in the present writ petition. The Verification Report of the District Collector, Cachar, is substantially based on the Enquiry Report submitted by the Additional Deputy Commissioner, Cachar. As can be found out from the direction made in the common Order dated 07.01.2011 [supra] that there were requirements to verify whether any patta in favour of the petitioners and others were issued in respect of the area of land measuring 110B-10K-13Ch; and if after being such verification, any patta was found to have been issued in respect of the said area of land measuring 110B-10K-13Ch or any part thereof, then the proportionate amount of compensation was to be paid to the petitioners and others similarly situated persons. In the Verification Report, the District Collector-cum-Deputy Commissioner, Cachar had reported that no patta had been issued to the petitioners in respect of the area of land measuring 110 Bighas 10 Kathas 09 Chataks [110B-10K-09Ch]. As no patta was found to have been issued to the petitioners, the District Collector-cum-Deputy Commissioner, Cachar had further reported that there was no question of estimating proportionate amount of compensation for payment to the petitioners.
7. I have heard Mr. M.K. Choudhury, learned senior counsel assisted by Mr. M.H. Rajbarbhuiyan, learned counsel for the petitioners; Mr. A. Bhattacharjee and Ms. N. Bordoloi, learned Standing Counsel, Revenue Department for the respondent no. 1; Mr. B.J. Talukdar, learned senior counsel assisted by Ms. M. Barman, learned Junior Government Advocate, Assam for the respondent nos. 2 – 5; and Mr. C.K.S. Baruah, learned Central Government Advocate [CGC] for the respondent nos. 6 & 7.
8. Mr. Choudhury, learned senior counsel appearing for the petitioners has submitted that the State Government had taken over a large tracts of land from the erstwhile Srikona Tea Estate under the provisions of the Assam Fixation of Ceiling of Land Holdings Act, 1956 by initiating a process vide L.C. Case no. 20/1972-73. The area of land falling under Dag no. 45 [Kha] was included in the said land ceiling process. According to the petitioners, the area

of land under Dag no. 45 [Kha] was 322 Bighas 03 Kathas 03 Chataks [322B-03K-03Ch]. The petitioners have claimed that they and many others were in occupation of the land falling under Dag no. 45 [Kha] since from the year 1982 onwards with plots of land measuring around 4 Bighas/5 Bighas/6 Bighas, etc. In their respective plots of land, the petitioners planted a number of valuable trees and made tea plantation, etc. After completion of the proceedings of L.C. Case no. 20/1972-73, the Deputy Commissioner, Cachar through the Settlement Officer, Cachar & Hailakandi and other revenue staff conducted a survey over the area of land falling under Dag no. 45 [Kha] for the purpose of verifying possession of persons. Acknowledging the fact that the petitioners and others were in continuous possession over the area of land falling under Dag no. 45 [Kha] at Village – Srikona Grant and they were landless persons, the Deputy Commissioner, Cachar vide an Order dated 07.08.2003, had directed for allotment of ceiling surplus land measuring 309 Bighas 8 Kathas 07 Chataks [309B-08K-07Ch] in favour of 68 nos. of persons as per a list prepared and enclosed therewith. According to the petitioners, the Assistant Settlement Officer, Sadar Circle was directed by the Deputy Commissioner to prepare allotment certificates separately against each of the 68 nos. of allottees after assessment of Touzi Bahira [T.B.] revenue and to submit the same to his office through the Settlement Officer, Cachar for further action. The petitioners have claimed that it was after the Order dated 07.08.2003 of the Deputy Commissioner, Cachar, the Settlement Officer vide an Order dated 18.08.2003 [Annexure-4(i)] asked the Assistant Settlement Officer for conversion of the area of Ceiling Surplus Government *khas* land falling within Dag no. 45 into patta land and to allot plots of land, areas of which were indicated therein, in favour of 68 nos. of persons on the premise that those Ceiling Surplus Government *khas* land were under their possession for about last 20 years and above, on deposit of premium @ Rs. 20/- per Bigha. The petitioners have claimed that the process of issuance of patta in terms of the Orders dated 07.08.2003 & dated 18.08.2003, was proceeded with after deposit of Touzi Bahira revenues for a period of about 20 years by the petitioners. But, before pattas were issued and handed over to the petitioners, the processes of acquisition of 206B-02K-14Ch vide L.A. Case no. 7/2006-07 and taking over of the Ceiling Surplus Government *khas* land measuring 110B-10K-13Ch took place. All the valuable tress, tea plantations, etc. standing in the area of land measuring 110B-10K-13Ch were cut down and removed by the Assam

Rifles authorities apart from removing the petitioners therefrom. According to the petitioners, a list was prepared by the revenue authorities accompanied by the Assam Rifles personnel for *zirat* compensation in presence of the petitioners. In the above backdrop of events, Mr. Choudhury has contended that the reliefs sought for in the present writ petition are just and adequate.

9. Mr. Baruah, learned Central Government Counsel [CGC] has submitted that two tracts of land measuring, [i] 206B-02K-14Ch; and [ii] 110B-10K-13Ch, totaling 316B-12K-11Ch, were handed over to the Assam Rifles authorities by the Deputy Commissioner, Cachar on 01.06.2009 subsequent to deposit of a sum of Rs. 8,33,57,197/- by way of a demand draft on 17.04.2008 towards such acquisition. He has further submitted that the said sum of Rs. 8,33,57,197/- was deposited as per the estimate submitted by the Deputy Commissioner, Cachar, that is, [i] Rs. 6,97,42,057/- for lands acquired measuring 206B-02K-14Ch acquired vide L.A. Case no. 7/2006-07; and [ii] Rs. 1,36,15,640/- for the other parcel of land measuring 110B-10K-13Ch purportedly Ceiling Surplus Government *khas* land. After being handed over the said two parcels of land, constructions were made on those lands and the Assam Rifles authorities are in occupation of the said land till date.
10. Mr. Talukdar, learned senior counsel appearing for the respondent nos. 2 – 5 has submitted that there is no dispute as regards acquisition of land measuring 206B-02K-14Ch. It is the other area of land measuring 110B-10K-13Ch in respect of which the petitioners have laid their claims. As the present writ petition is in continuation of the earlier two writ petitions, the issue raised herein is to be considered in terms of the direction made in the common Order dated 07.01.2011. Mr. Talukdar has submitted that it is the first direction which is of relevance. By the first direction, the Court had directed the District Collector, Cachar to verify as to whether any patta in favour of the petitioners and others were issued in respect of the parcel of land measuring 110B-10K-13Ch. If the answer to the said direction is not in the affirmative, the second direction would become redundant. Then, there would be no requirement for disbursal of any proportionate compensation to any of the petitioners and others in respect of the parcel of land measuring 110B-10K-13Ch.
11. Mr. Bhattacharjee and Ms. Bordoloi, learned Standing Counsel, Revenue Department have submitted in similar lines and adopted the submissions of Mr. Talukdar.

12. In the course of proceedings of the writ petition, the petitioners have raised a contention that the relevant records in relation to the process of allotment of pattas to the petitioners were not produced/shown by the District Revenue authorities to them and the same had prevented them to substantiate their claims as regards the fact that the District Revenue authorities had themselves acknowledging the fact that the petitioners were in occupation of the ceiling surplus lands, initiated the process for allotment of pattas in their favour. By an Order dated 28.11.2013, the respondents were directed to produce the records of File no. CRL/LC-6/2001/PT/64-A before the Court at the time of hearing as the respondents failed to produce the said records at the time of hearing on 28.11.2013. Subsequently, an additional affidavit was filed by the Deputy Commissioner, Cachar taking a stand that File no. CRL/LC-6/2001/PT/64-A was not traceable and in that connection, an FIR had been lodged by the then In-Charge, Deputy Commissioner, Cachar on 17.12.2013. Stating the said reasons, it was submitted that the said records could not be produced before the Court. It has been submitted that it is revealed from the statements made in paragraph 16 of the affidavit-in-opposition of the respondent no. 2, filed on 30.04.2013, that pursuant to the Order dated 07.01.2011 of this Court, a process of verification as regards issuance of patta in the name of the petitioners and others was undertaken. When the records of the concerned land was inspected during the course of such verification, serious discrepancies, manipulations, illegalities, etc. were found in the said records. The Deputy Commissioner, Cachar had then ordered the Additional Deputy Commissioner to investigate and verify the matter and to keep the records in his custody in sealed form to prevent further manipulation of the records. From paragraph 3[F] of the Additional Affidavit of the respondent no. 2, filed on 29.01.2014, it has emerged that the records were sealed on 08.08.2011. The respondents have stated that the records so sealed, were not related to File no. CRL/LC-6/2001/PT/64-A. The seal of the trunk was ordered to break open on 21.01.2014. From the list of documents prepared after opening of the seal of the trunk, a number of documents in relation to the process of allotment of pattas in favour of the petitioners at Village – Srikona Grant were enlisted. Those documents related to Village – Srikona Grant *prima facie* indicate about initiation and continuation of a process of allotment of pattas in respect of the area of land falling in Dag no. 45 & 50 at Mouza – Srikona Grant in favour of 68 nos. of persons. According to them, prevention of the petitioners from

accessing the copies of those documents resulted into anomalous situation in view of categorical denial on the part of the respondent authorities, more particularly, the Deputy Commissioner, Cachar in his Verification Report and the Additional Deputy Commissioner in his Enquiry Report.

13. I have considered the submissions of the learned counsel for the parties and have also gone through the case records as well as the pleadings of the parties.
14. The present writ petition is evidently in continuation of the earlier two writ petitions, [i] W.P.[C] no. 2897/2009; & [ii] W.P.[C] no. 1453/2010. The earlier two writ petitions were disposed of by the common Order dated 07.01.2011 with a direction to the Collector-cum-Deputy Commissioner, Cachar to verify as to whether any patta in favour of the petitioners and others were issued in respect of the parcel of land measuring 110B-10K-13Ch and if upon such verification, any patta was found to have been issued in respect of the land measuring 110B-10K-13Ch and part thereof, then the Collector-cum-Deputy Commissioner, Cachar was required to decide about the proportionate amount of compensation needed to be paid to the petitioners and other similarly situated persons. Pursuant to the said directions, the Deputy Commissioner by an Order dated 08.08.2011, entrusted the Additional Deputy Commissioner, Cachar with the responsibility to cause an enquiry. In the course of the said enquiry, the Additional Deputy Commissioner, Cachar issued notices to [a] the petitioners in the two writ petitions, W.P.[C] no. 2897/2009 & W.P.[C] no. 1453/2010; [b] the Commandant, Assam Rifles; [c] Land Acquisition Officer O/o Deputy Commissioner, Cachar; [d] Settlement Officer, Cachar and Hailakandi; [e] Assistant Settlement Officer, Sadar Circle; etc. Notices were published in the newspaper for hearings. Upon appearance on the noticees, their statements were recorded and the relevant records were examined. After an exhaustive enquiry, the Additional Deputy Commissioner, Cachar recorded his findings in the Enquiry Report submitted by him. 23 nos. of findings were recorded by him and thereafter, the Enquiry Report was submitted to the Deputy Commissioner, Cachar on 25.10.2011. On receipt of the Enquiry Report from the Additional Deputy Commissioner, Cachar the same was examined by the Collector-cum-Deputy Commissioner, Cachar and thereafter, prepared the Verification Report which contained the following findings :-

From the Report of the Additional Deputy Commissioner, Cachar, Shri F. Alam

[copy enclosed] it has been found that the acquired land measuring 110B-10K-13Ch was L.C. Khas pertaining to Dag No. 45 & 50 in Village - Srikona Grant, out of that 109B-16K-4Ch is under Dag No. 45 Kha and 0B-14K-9Ch is under Dag No. 50 Kha. No patta was found to have been issued in respect of land measuring 110B-10K-9Ch or any part thereof as per the Enquiry Report of the Additional Deputy Commissioner. As per Report of Settlement Officer, Cachar & Hailakandi District the attestation of record of Village - Srikona Grant has not yet been done, hence, issuance of patta does not arise. Photostat copies of Reports of Settlement Officer, Cachar & Hailakandi is enclosed as per Annexure-I and Annexure-II

Further, on verification of the photocopies of Jamabandi enclosed by the writ petitioners in the Writ Petitions, it has been clearly established that these documents placed before the Hon'ble Gauhati High Court by the writ petitioners are false and fabricated which is evident from the Report of District Record Keeper, enclosed as Annexure-III.

However, 110B-10K-13Ch of Ceiling Khas land was allotted vide the Deputy Commissioner, Cachar's order No. CRL/LC-6/2001/Pt./64-A, dated 07.08.2003 in favour of Shri Uttam Kumar Das and 67 others. In this allotment order, it is specifically mentioned that Allotment Certificate be issued to the allottees. However, the Settlement Officer, Cachar & Hailakandi Districts vide letter No. CSO.211/2003/1942, dated 18.08.2003 directed that necessary patta is to be issued in due course of 3rd R.S. observing all formalities [Annexure-3 of W.P.(C) no. 1453/2010] [copy enclosed as Annexure-IV]. The Settlement Officer also stated that the petitioners were in possession as tenants of Pattadar. In the hand measuring 110B-10K-10Ch there were no recorded tenants which is evident from the Report of Shri G.S. Das, ACS, Assistant Settlement Officer Sadar, Silchar [Copy enclosed as Annexure-V]. Therefore, the Report of the then Settlement Officer was based not on records. The Settlement Officer, Cachar & Hailakandi did not direct issuance of Allotment of Certificate to the allottees first as directed by the Deputy Commissioner, Cachar in his allotment order. Instead, the Settlement Officer, Cachar & Hailakandi Districts directed collection of T.B. at one go for 21 years from the proposed allottees [Annexure-VI] and then directed the Assistant Settlement

Officer, Sadar, Silchar to convert the allotted land to patta land through Conversion Case and issue Patta in due course during 3rd R.S. operation after observing all formalities.

Thus, it is evident that though the process of allotment of land to the 68 allottees was started but it did not culminate in issuance of patta to the petitioners.

As it has been clearly established that no patta has been issued to the petitioner during the ongoing 3rd R.S. operations by the Settlement Officer, Cachar & Hailakandi Districts Silchar till date and as per field enquiry report of L.R. Staff no possession of petitioners are found in the field, which is evident from the Report of ASO, Sadar [as per Annexure-V] dated 29.01.2007. Hence, the question of estimation of proportionate amount of compensation to be paid to the Writ Petitioners and the payment of such compensation received by Collector, Cachar from the Requiring Department, to the writ petitioner does not arise at all.

15. From a perusal of the findings recorded in the Enquiry Report of the Additional Deputy Commissioner, Cachar and the Verification Report of the Deputy Commissioner, Cachar, it has emerged that the said two authorities have arrived at a finding that the process of allotment of land to the 68 nos. of persons was started but it did not culminate into issuance of patta to those 68 nos. of persons. The said two authorities have, thus, concluded that no patta was issued to the petitioners prior to taking over the parcel of land measuring 110B-10K-13Ch. As per the Field Enquiry Report, no possession of the petitioners was found in the parcel of land and measuring 110B-10K-13Ch as such, the petitioners were not entitled to receive any compensation amount out of the sum of Rs. 1,36,15,640/- deposited by the Assam Rifles authorities. The said findings reached by the said two authorities have been seriously disputed by Mr. Choudhury, learned senior counsel appearing for the petitioners. One of the contentions he has raised is that the documents which were the subject-matter of enquiry by the said two authorities, were ordered to be sealed on 08.08.2011 and the petitioners were denied access to those documents. The documents ordered to be sealed on 08.08.2011 were enlisted after the seal of the trunk was opened on 22.01.2014. It is his contention that from the list of the documents which were prepared after opening of the sealed trunk on 22.11.2014, there are documents which

would substantiate the case of the petitioners that they were in occupation of the plots of lands falling within the parcel of land measuring 110B-10K-13Ch, located in Village – Srikona Grant.

16. From the respective contentions of the parties, it has emerged that while the petitioners, on one hand, have claimed that they were in possession of the plots of land falling within the parcel of land measuring 110B-10K-09Ch and the authorities initiated a valid process for allotment of patta in their favour, the respondent authorities, on the other hand, have claimed that the documents relied on by the petitioners were false and fabricated and the allotment process was initiated invalidly in collusion with the petitioners. When the petitioners have contended that their claims that they were in occupation of those parcels of land are established and they were tenants under erstwhile Srikona Tea Estate, the respondent authorities have contended that the petitioners did not have any possession on those lands at the time of handing over the plots of land to the Assam Rifle authorities as Ceiling Surplus Government *khas* land. It is the contention of the State respondents that the fact that the petitioners were asked to deposit *Touzi Bahira* revenue for a period of 21 years at a time, demonstrate that they were neither tenants nor were in occupation of any plot of land within the parcel of land measuring 110B-10K-13Ch. The petitioners have vehemently contended that had the relevant documents been provided to them which were under seal from 08.08.2011 to 22.01.2014 they could have substantiated their claims for compensation in respect of the compensation amount of Rs. 1,36,15,640/-, already deposited by the Assam Rifles and received at the office of the Deputy Commissioner, Cachar.
17. From the discussions made hereinabove and on hearing the respective contentions of the parties, it has emerged that there are a number of disputed questions of fact which require determination before any decision can be arrived at in respect of the reliefs sought for by the petitioners in the present writ petition. It has been settled by a long line of decisions including the decision of the Constitution Bench in **Thansingh Nathmal vs. the Superintendent of Taxes, Dhubri and others**, reported in **AIR 1964 SC 1419**, that the jurisdiction of the High Court under Article 226 of the Constitution is couched in wide terms and the exercise thereof is not subject to any restrictions except the territorial restrictions which are expressly provided in the Articles. But the exercise of the jurisdiction is discretionary. It is not exercised merely

because it is lawful to do so. The very amplitude of the jurisdiction demands that it will ordinarily be exercised subject to certain self-imposed limitations. Resort to the jurisdiction is not intended as an alternative remedy for relief which may be obtained in a suit or other mode prescribed by statute. Ordinarily the writ court will not entertain a petition for a writ under Article 226 of the Constitution of India, where the petitioner has an alternative remedy. It is also settled that the High Court is not deprived of its jurisdiction to entertain a writ petition under Article 226 of the Constitution merely because in order to consider the right of the petitioner to be granted the reliefs sought for question of facts fall to be determined. In a writ petition under Article 226 of the Constitution, the High Court has jurisdiction to try issues both on fact and law. In the process, the High Court has to consider as to what facts are in dispute and what facts are not in dispute and such a situation comes after the exchange of pleadings in the form of affidavits amongst the parties. The writ petition is ordinarily decided on the basis of the affidavits. When a writ petition involves a number of disputed questions of fact falling for determination and requiring appreciation of evidence, both oral and documentary, and for determination of numerous disputed questions of fact, examination of witnesses would be necessary then it may not be convenient to decide such disputes in a proceeding under Article 226 of the Constitution of India and then in such a case, the Court may decline to try the writ petition. In **Thansingh Nathmal**, the Hon'ble Supreme Court has observed that the High Court does not generally enter upon a determination of disputed questions which demand an elaborate examination of evidence to establish the right to enforce which the writ is claimed.

18. From the discussions made hereinabove, it has clearly emerged that the present one is such a case which would require determination on several disputed questions of fact through oral and documentary evidence with examination of witnesses from the parties in a full fledged trial. Thus, the present writ proceeding is not found to be appropriate and proper proceeding to determine such kind of disputed questions of fact, a few of which are already indicated above. In presence of such disputed questions of fact, the prayer for setting aside of the Verification Report of the District Collector-cum-Deputy Commissioner, Cachar and the Enquiry Report of the Additional Deputy Commissioner, Cachar dated 25.10.2011 cannot be countenanced. As a result, the petitioners are not entitled for the

reliefs which are sought for in this writ petition.

19. One of the contentions advanced on behalf of the petitioners that they were prevented from establishing and substantiating their claims due to non-accessibility of the relevant documents, which were sealed during the period from 08.08.2011 to 22.01.2014 deserves consideration. Though a definite conclusion cannot be arrived at by this Court that had those documents been accessed by and/or furnished to the petitioners they could have been able to substantiate their claims, non-supply of those documents which have been enlisted in the list prepared pursuant to opening of the sealed trunk on 22.01.2014, deserves acceptance. From a Communication bearing no. GSO.477/2011/1534 dated 22.01.2014 of the Settlement Officer, Cachar & Hailakandi and addressed to the Deputy Commissioner, Cachar, it can be seen that the sealed trunk was opened on 22.01.2014 and after preparing a list of documents and a report regarding re-sealing of the trunk, the trunk had again been re-sealed. There is no Report available in the case records that after 22.01.2014, there is re-opening of the sealed truck thereafter. Be that as it may, the petitioners have a right to be supplied the documents in respect of Mouza – Srikona Grant found mentioned in the list of documents prepared after re-opening of the trunk on 22.01.2014. In the event any application is made by the petitioners for copies of those documents, the respondent authorities, more particularly, the Deputy Commissioner, Cachar shall furnish copies of those documents related to Mouza – Srikona Grant found mentioned in the list of documents prepared after re-opening of the trunk on 22.01.2014. It is made clear that disposal of the present writ petition in this manner, may not preclude the petitioners to resort to any other remedy as may be permitted under the law. It is further made clear that any observations made hereinabove shall not be construed as observations made on merits of the claims of the petitioners as those observations are made as to whether the issues raised in the writ petition can be decided in a writ proceedings under Article 226 of the Constitution of India. It is, thus, left open for the petitioners to raise all contentions including the contentions about the period spent in pursuing the present writ petition and to make challenges to the Enquiry Report of the Additional Deputy Commissioner, Cachar and the Verification Report of the Collector-cum-Deputy Commissioner, Cachar.

20. The writ petition is disposed of in the aforesaid terms. There shall, however, be no order as to cost.

JUDGE

Comparing Assistant