

GAHC010241082023



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

Case No. : WA/446/2023

RATNESWAR KALITA AND 8 ORS
S/O SRI NARENDRA NATH KALITA
R/O VILL DAKHIN GAON, LAKHARA ROAD, MOUZA- BELTOLA, P.O.
SAWKUCHI, P.S. DISPUR, DIST- KAMRUP, ASSAM, 781019

2: RAMESH BARUAH
S/O LATE RATIKANTA BARUAH

3: KARUNA SAHARIA
S/O LATE TILOK SAHARIAH

4: SMTI. MONIMALA TALUKDAR
W/O LATE ANIL TALUKDAR

5: MOHAN CHANDRA BARMAN
S/O LATE ANANDI RAM BARMAN

6: JAGADISH PATHAK
S/O LATE RAJENDRA PATHAK

7: DINESH CHANDRA DAS
S/O LATE KAZIRAM DAS

8: ISMAIL HUSSAIN
S/O MD. IBRAHIM SHEIKH

9: SMTI GOLAPI CHOUDHURY
S/O LATE ASWINI KUMAR CHOUDHURY

ALL ARE R/O VILL DAKHIN GAON
LAKHARA ROAD
MOUZA- BELTOLA
P.O. SAWKUCHI
P.S. DISPUR

DIST- KAMRUP
ASSA

VERSUS

THE STATE OF ASSAM AND 6 ORS.
REPRESENTED BY THE CHIEF SECRETARY TO THE GOVT. OF ASSAM,
DISPUR, GHY-6, DIST- KAMRUP, ASSAM

2:THE SECRETARY TO THE GOVT. OF ASSAM
REVENUES DEPARTMENT
SETTLEMENT BRANCH
DISPUR
GHY-6
DIST- KAMRUP
ASSAM

3:THE SECRETARY TO THE GOVT. OF ASSAM
FOREST DEPARTMENT
DISPUR
GHY-6
DIST- KAMRUP
ASSAM

4:THE JT. SECRETARY TO THE GOVT. OF ASSAM
REVENUE and DISASTER MANAGEMENT S DEPARTMENT
DISPUR
GHY-6
DIST- KAMRUP
ASSAM

5:THE DY. SECRETARY TO THE GOVT. OF ASSAM
REVENUE and DISASTER MANAGEMENT S DEPARTMENT
DISPUR
GHY-6
DIST- KAMRUP
ASSAM

6:THE DY. COMMISSIONER
GUWAHATI
DIST- KAMRUP
ASSAM

7:DIVISIONAL FOREST OFFICER
KAMRUP EAST DIVISION
BASISTHA
GUWAHATI
DIST- KAMRUP

ASSA

Advocate for the Petitioner : MR. P K GOSWAMI

Advocate for the Respondent : SC, FOREST

BEFORE
HON'BLE MR. JUSTICE MANASH RANJAN PATHAK
HON'BLE MRS. JUSTICE MITALI THAKURIA

ORDER

21-12-2023

(M.R.Pathak, J)

Heard Mr. Parthiv Kumar Goswami, learned Senior counsel assisted by Mr. D Goswami, learned counsel for the appellants as well as Mr. P N Goswami, learned Additional Advocate General, Assam representing the Forest Department of the State.

2. The learned Single Judge, after hearing the appellants as well as the State respondents in their writ petition, by the impugned common judgment & order dated 14.09.2023 disposed of the writ petition WP(C) No. 1767/2012 preferred by the appellants herein along with six others as petitioners and another writ petition, WP(C) No. 1746/2017 that was also preferred by the present appellant Nos.1, 2 & 5 along with three others, with specific observations made at Paragraph 43, which reads as follows –

“43. Accordingly, both the writ petitions therefore stands disposed off with the following observations and directions:

(i) The petitioner Nos. 1, 2, 4, 5, 6, 7, 8, 9 & 10 cannot claim settlement of the land in their occupation as they are occupying lands within the Reserve Forest and as such, they are to be evicted. However, they are granted ninety days time from the date of the instant judgment to vacate the land under their occupation, failing which, the Forest Department of the Government of Assam shall be at liberty to evict them in the manner provided.

(ii) The Petitioner Nos. 3, 11, 12, 13, 14 & 15 who are in possession of Government land also have no right to remain in possession of the Government land. However, this Court grants the liberty to the said Petitioners to submit application for settlement of lands under their occupation within 30 (thirty) days from the date of receipt of a certified copy of the instant judgment. Till such applications are not disposed off by the concerned Respondent Authorities, the said Petitioners shall not be evicted from the land in their occupation.

(iii) It is clarified that all the Petitioners including those Petitioners who are in possession of the Reserve Forest land would be at liberty to file application seeking allotment/settlement of the Government land in the Guwahati city provided that they meet the eligibility criteria as stipulated in Clause 14 of the Land Policy, 2019.

(iv) This Court finds no infirmity with the Office Memorandum dated 10.01.2017 and as such the writ petition being WP(C) No. 1746/2017 stands dismissed.

(v) Interim order so passed earlier ceases to exist in view of the observations and directions passed in the instant judgment.

(vi) In the present facts, this Court is not inclined to impose any costs."

3. Being aggrieved with the said common judgment & order dated 14.09.2023 passed by the learned Single Judge in said WP(C) No. 1767/2012, noted above, those writ petitioners as appellants have filed this writ appeal on 04.12.2023.

4. Mr. P K Goswami, learned Senior counsel appearing on behalf of the appellants made a submission that though certain prayers are made by the appellants in this appeal they are not pressing those, but made a limited prayer that they should be allowed further 90 days time after expiry of the time period as specified at Para 43(i) of the said impugned judgment & order dated 14.09.2023 passed in WP(C) No. 1767/2012, to remain over the land in possession involved in this case so that they can approach the Civil Court for their relief.

5. Mr. P N Goswami, learned Additional Advocate General, Assam appearing for the State respondents has submitted that the prayer of the appellants enabling them to remain in the forest land for another period of 90 days, after expiry of the period of 90 days as specified in

said common judgment & order dated 14.09.2023 at Para 43(i) cannot be further extended, so as to enable them to approach the Civil Court for their redressal of grievance and other relief, as the learned Single Judge after considering all the materials placed before the Court both by the petitioner as well as by the State respondents came to the conclusion that the land involved in the writ petition preferred by the appellants as petitioners is a notified Reserve Forest land, i.e., South Kalapahar Reserve Forest Area as per the Notification issued by the Government of Assam on 12.11.1989 that was published in the Assam Gazette on 06.12.1989 and that the learned Single Judge have already come to the conclusion that the appellants herein have no such right to remain in the said Reserve Forest land, which they are in illegal possession.

6. However, Mr. P N Goswami, learned Additional Advocate General, Assam has submitted that if the appellants submit their respective individual applications seeking allotment/settlement of the Government land in the Guwahati city as specified at Para 43 of the said impugned common judgment & order dated 14.09.2023 passed in WP(C) No. 1767/2012 within a specified period, then the respondent authorities shall consider their such applications within a period of 60 (sixty) days, as laid down at Para 43(iii) of the said common judgment & order dated 14.09.2023, noted above.

7. Mr. Goswami, learned Senior counsel appearing for the appellants, after certain deliberations, has accepted the said proposal as being placed by Mr. P N Goswami, learned Additional Advocate General, Assam for the State respondents.

8. Accordingly, we dispose of this writ appeal with a direction to the appellants herein that they may submit their individual applications seeking allotment/settlement of the Government land in the Guwahati city on or before 28.12.2023, if so desire, as specified at Para 43 in the said judgment & order dated 14.09.2023 passed in WP(C) No. 1767/2012, before the concerned authority in that regard, obtaining necessary acknowledgment(s) from the said authority in that regard,.

9. In the event of filing their such applications within 28.12.2023, the concerned authorities in the State respondents shall dispose of such applications of the appellants for allotment/settlement of the Government land in the Guwahati city, within a period of 60 (sixty) days, i.e., within 28.02.2024.

10. The appellants as well as the State respondents shall comply with the specific observations made by the learned Single Judge, at Para 43, more particularly Para 43 (iii) of the impugned common judgment & order dated 14.09.2023 passed in WP(C) No. 1767/2012, noted above.

11. It is made clear that if any one amongst the appellants fail to submit their individual applications for allotment/settlement of the Government land in Guwahati city as provided in the said judgment & order dated 14.09.2023 on or before 28.12.2023, they shall have to vacate the said Reserve Forest Land that is under their illegal possession forthwith, in terms of the judgment & order dated 14.09.2023 passed by the learned Single Judge in WP(C) No. 1767/2012.

12. For those appellants, who submit their applications seeking allotment/settlement of the Government land in the Guwahati city on or before 28.12.2023, the respondent authorities shall not take any coercive action against them for their eviction from the said Reserve Forest Land till the next 60 (sixty) days i.e., up to 28.02.2024.

13. However, it is also made clear that those appellants who submit their applications seeking allotment/settlement of the Government land in the Guwahati city on or before 28.12.2023, as observed above, during the period of said 60 (sixty) days while in possession of the said Reserve Forest Land, as noted above, the concerned appellants or any one on their behalf shall not do any further construction on the said Reserve Forest Land under their illegal possession and/or shall not change the characteristics of the said Reserve Forest Land, in any manner and in any way.

14. The other findings as well as the observations and directions given by the learned Single Judge in the impugned common judgment & order dated 14.09.2023 passed in WP(C) No. 1767/2012 including at Para 43 shall remain intact.

15. With the above observations and directions, this writ appeal stands disposed of.

JUDGE

JUDGE

Comparing Assistant