

GAHC010256112023



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

Case No. : WP(C)/6569/2023

MONIKHA BORAH AND 19 ORS
W/O NITUL BORAH, R/O- NAHARKATIA, HAJUA PATHAR, P.O. P.S.-
NAHARKATIA, DISTRICT- DIBRUGARH,
ASSAM- 786610

2: RAMEN DAS
S/O LATE BARAN DAS
R/O HAJUA PATHAR
P.O. P.S.- NAHARKATIA
DISTRICT- DIBRUGARH
ASSAM- 786610

3: BORNALI DUTTA
W/O BITUL DUTTA
R/O NEAR WATER SUPPLY OFFICE
HAJUA PATHAR
P.O. P.S.- NAHARKATIA
DISTRICT- DIBRUGARH
ASSAM- 786610

4: ROBIN TANTI
S/O- SATRUGHAN TANTI
R/O- Lengerijan Tea Estate
P.O. P.S.- NAHARKATIA
DISTRICT- DIBRUGARH
ASSAM- 786610

5: SURAJIT DEKA
S/O LATE HARI DEKA
R/O- HUDUPARA
P.O. P.S.- NAHARKATIA
DISTRICT- DIBRUGARH
ASSAM- 786610

6: NARAYAN DEKA
S/O LATE JANAKI DEKA
R/O- HAJUA PATHAR
P.O. P.S.- NAHARKATIA
DISTRICT- DIBRUGARH
ASSAM- 786610

7: MUKUL SUTRADHAR
S/O LATE SOMESHWAR SUTRADHAR
R/O- NAGA GHAT
JOYPUR TOWN
P.O. P.S.- JOYPUR
DISTRICT- DIBRUGARH
ASSAM- 786614

8: RANJU HAZARIKA
W/O PUNESWAR HAZARIKA
R/O- KHATPATHER
SASONI
P.O. P.S.- NAHARKATIA
DISTRICT- DIBRUGARH
ASSAM- 786610

9: MILAN GOGOI
S/O SUNIL GOGOI
R/O- 1 NO. DIGHALIA
SASONI
P.O. P.S.- NAHARKATIA
DISTRICT- DIBRUGARH
ASSAM- 786610

10: BITUPON DEKA
S/O LATE BENIMADHAB DEKA
R/O- NEAR WATER SUPPLY OFFICE
HAJUA PATHAR
P.O. P.S.- NAHARKATIA
DISTRICT- DIBRUGARH
ASSAM- 786610

11: TUTUMONI KALITA
W/O NAKUL CHANDRA KALITA
R/O- HAJUWA PATHER
P.O. P.S.- NAHARKATIA
DISTRICT- DIBRUGARH
ASSAM- 786610

12: DIPEN HANDIQUE
S/O LATE JUGA HANDIQUE

R/O- NAGAON HAJUWA PATHER
P.O. P.S.- NAHARKATIA
DISTRICT- DIBRUGARH
ASSAM- 786610

13: SEWPRASAD JAISWAL
S/O LATE SATMANJAN JAISWAL
R/O- HAJUA PATHAR
P.O. P.S.- NAHARKATIA
DISTRICT- DIBRUGARH
ASSAM- 786610

14: MALATI JAISWAL
W/O LATE SATMANJAN JAISWAL
R/O- HAJUA PATHAR
P.O. P.S.- NAHARKATIA
DISTRICT- DIBRUGARH
ASSAM- 786610

15: MINAKSHI NIRMOLIA BARUAH
W/O ARUP BARUA
R/O- HAJUA PATHAR
P.O. P.S.- NAHARKATIA
DISTRICT- DIBRUGARH
ASSAM- 786610

16: LUKUMANI BAYAN
W/O LATE NARAYAN BAYAN
R/O- NAHARKATIA TOWN NO.3
P.O.- KAMARGAON
P.S.- NAHARKATIA
DISTRICT- DIBRUGARH
ASSAM-786610

17: RUPAM MAZUMDER
S/O RAJIN MAZUMDER
R/O 2 NO. CHALAKATAKI
P.O. P.S. DULIAJAN
DISTRICT DIBRUGARH
ASSAM- 786602

18: MINA BHARALI
D/O TAMBHARAM BHARALI
R/O- RAMPUR GAON
P.O. P.S.- NAHARKATIA
DISTRICT- DIBRUGARH ASSAM- 786610

19: JOHORLAL KARMAKAR

S/O LATE MOTILAL KARMAKAR
R/O LINGERIJAN CHAH BAGICHA
PO & P.S.- NAHARKATIA
DISTRICT- DIBRUGARH
ASSAM- 786610

20: NITUL BORA
S/O LATE PRAMOD BORA
R/O BORKHEMIA GAON NO.1
P.O.- BORKHERMIA
P.S.- NAMRUP
DISTRICT- DIBRUGARH
ASSAM- 78662

VERSUS

THE STATE OF ASSAM AND 5 ORS
REP. BY THE PRINCIPAL SECY TO THE GOVT OF ASSAM, REVENUE AND
DM DEPTT, F BLOCK, 1ST FLOOR, ASSAM, PIN- 781006

2:THE DEPUTY COMMISSIONER
DIBRUGARH
ASSAM
PIN 786003.

3:THE CIRCLE OFFICER
NAHARKATIA REVENUE CIRCLE
NAHARKATIA
DIBRUGARH
ASSAM
PIN NO- 786610

4:BLOCK DEVELOPMENT OFFICER
JOYPORE BLOCK
NAHARKATIA
DIST- DIBRUGARH
ASSAM
PIN NO- 786610

5:THE UNION OF INDIA
REPRESENTED BY SECRETARY
MINISTRY OF RURAL DEVELOPMENT
KRISHI BHAVAN
DR. RAJENDRA PRASAD ROAD
NEW DELHI- 110001

6:SECRETARY
DHADUMIA GAON PANCHAYAT

NAHARKATIA
DIBRUGARH
ASSAM
PIN NO- 78661

Advocate for the Petitioner : MR M BARMAN

Advocate for the Respondent : SR GA,ASSAM

BEFORE
HONOURABLE MR. JUSTICE MANISH CHOUDHURY

JUDGMENT

Date : 14-12-2023

By this writ petition instituted under Article 226 of the Constitution of India, the petitioners, 20 [twenty] in nos., have assailed a contemplated process of eviction, which has been initiated by serving a notice upon them under the hand of the respondent no. 3, that is, the Circle Officer, Naharkatia Revenue Circle, District – Dibrugarh. By the notice, shown to have been issued on 30.10.2023, the petitioners have been informed that they are encroaching upon parcels of Government land and these parcels of Government land, had already been allotted for widening of public road, for establishment of a Sub-Division Office at Naharkatia and for construction of a Cricket Stadium. The petitioners have been informed by the notice that they should vacate the parcels of land, which are under their unauthorised occupation, within a period of 15 [fifteen] days from the date of receipt of the notice.

2. I have heard Mr. M. Barman, learned counsel for the petitioners and Mr. D. Saikia, learned Advocate General, Assam assisted by Mr. R. Borpujari & Ms. P.R. Mahanta, learned Standing Counsel, Revenue and Disaster Management Department for the respondent nos. 1 – 4 & 6; and Ms. A. Gayan, learned Central Government Counsel [CGC] for the respondent no. 5.

3. The learned counsel for the parties have submitted that the pleadings between the parties have already been exchanged and the writ petition can be taken up for final consideration at the motion stage itself. Accordingly, as agreed to by the learned counsel for

the parties, the writ petition has been taken up for final consideration.

4. It is not in dispute that the parcels of land, measuring 48 Bighas, which is the subject-matter of the writ petition, are Ceiling Surplus lands. It is also not in dispute that out of 48 Bighas of land under Dag no. 44 [Part] located in Village – Naharkatia [Na-Gaon] Hazuapathar, a parcel of land measuring 25 Bighas has, later on, been allotted for a playground by the Sub-Divisional Land Advisory Committee [SDLAC] by a Resolution passed in its Meeting, held on 27.02.2023.

5. The case of the petitioners is that they belong to the lower economic strata in the society and having no land in their individual names, they were in lookout of lands and in the process, they came to be in occupation of parts of the parcels of land covered by Dag no. 44 [Part] at Village – Naharkatia [Na-Gaon] Hazuapathar. In the writ petition, the petitioners have stated that some of the petitioners are staying in those lands since a long time. One of the petitioners, that is, the petitioner no. 6 has also been extended the benefit under the Pradhan Mantri Awaz Yojana [PMAY] and on being extended the benefit, he has constructed a PMAY House in the plot of land under his occupation. With regard to their periods of occupation, the petitioners have sought to draw support from various documents including documents issued by Village Land Management Conservation Committee [VLMCC], Naharkatia Revenue Circle and the documents issued by the Gaon Pradhan in their favour. Reliance is placed also in a Judgment and Order dated 03.10.2023 of a coordinate bench of this Court rendered in a writ petition, W.P.[C] no. 3901/2023, to submit that the present petitioners are also similarly situated like the petitioners in the said writ petition, W.P.[C] no. 3901/2023.

6. Au contraire, the learned Advocate General, Assam has submitted that since the parcels of land are Ceiling Surplus land and the petitioners were not cultivating tenants under the previous owner, they do not have any right to be settled in those parcels of land. In the year 2016, a new Sub-Division viz. Naharkatia Civil Sub-Division had been created and for establishment of the infrastructure the newly created Naharkatia Civil Sub-Division including office building, Sub-Divisional Circuit House, etc., 48 Bighas of land under Dag no. 44 [Part] at Village – Naharkatia [Na-Gaon] Hazuapathar was identified, earmarked and allotted.

Thereafter, the Sub-Divisional Land Advisory Committee [SDLAC] in its Meeting, held on 27.02.2023, by a Resolution allotted an area of 25 Bighas for construction of a play ground by carving out that area from Dag no. 44 [Part]. He has, thus, submitted that by 27.02.2023, the allotment of the parcels of land of the entire 48 Bighas under Dag no. 44 [Part] at Village – Naharkatia [Na-Gaon] Hazuapathar was completed. None of the petitioners, who are claiming to be in occupation thereon, had submitted any application for allotment of land at any point of time prior to 27.02.2023. He has contended that neither under the provisions of the Assam Fixation of Ceiling on Land Holdings Act 1956 nor under the Assam Land and Revenue Regulation, 1886 nor under the extant Land Policy, that is, Land Policy – 2019, the petitioners are eligible to be allotted land out of the parcels of land falling under Dag no. 44 [Part] and they are simply encroachers under the law. He has further submitted that each of the petitioners has different credentials and cause of action and the petitioners do not have any common cause of action. He has submitted that the petitioners' applications for allotment of land were considered and after consideration, were rejected on the ground that the plots of land for which the petitioners had sought allotment/settlement, were already reserved for establishment of the Government infrastructure and public playground. He has further submitted that if the petitioners are indigenous landless persons and are eligible to be considered under the extant Land Policy – 2019, they would be at liberty to submit applications seeking allotment/settlement of land at any other place, available at the disposal of the Government for allotment to indigenous landless persons. Referring to the submissions and averments made in the counter affidavit filed by the respondent no. 3, he has submitted that on enquiry, the families of some of the petitioners are found to be having lands at other places. Moreover, the length of unauthorized occupation of each of the petitions are found to be different. He has also drawn attention to the Table in Paragraph 4[E] of the counter affidavit, to submit that 10 [ten] of the petitioners are found not residing at the plots of land located at Village – Naharkatia [Na-Gaon] Hazuapathar, contrary to their claims.

7. Mr. Barman, learned counsel for the petitioners has submitted as regards the contentions made by the State respondents about the length of occupation and about families of some of the petitioners having lands at other locations, they have been controverted in adequate manner in the Reply Affidavit and he has drawn attention to the statements and

averments made in the Reply Affidavit. To buttress his such submissions, Mr. Barman has submitted that the concerned Gaon Pradhan had issued certificates indicating the periods of occupation of each of the petitioners.

8. I have given due consideration to the submissions made by the learned counsel for the parties and have also perused the materials brought on record.

9. Admittedly, as already noted above, the parcels of land covered by Dag no. 44 [Part] located at Village – Naharkatia [Na-Gaon] Hazuapathar are Ceiling Surplus lands. The matter of disposal of Ceiling Surplus land is governed by the provisions of the Assam Fixation of Ceiling on Land Holdings Act, 1956 [‘the Act, 1956’, or ‘1956 Act’, for short] and the Assam Fixation of Ceiling on Land Holdings Rules, 1957. Section 15 of the Act, 1956 has provided for disposal of excess land and it has been provided therein to the effect that, subject to the provisions of the Act, 1956 and Chapter-III thereof in particular, the excess land transferred to and vested in the State Government under Section 7[4] of the 1956 Act, shall be at the disposal of the State Government. As per Section 7[4], the excess land stands transferred to and vested in the State Government free from all encumbrances. The provisions of Section 16 have dealt with the manner of disposal of excess land. As per Section 16, if there is any cultivating tenant in occupation of the land acquired from an owner, then such cultivating tenant is to be given settlement of such land, subject to the other conditions incorporated therein, and on being settled, the cultivating tenant would acquire the status of a land-holder, defined under the Assam Land and Revenue Regulation, 1886.

9.1. Section 17 has provided for the manner of disposal of land which is not settled under Section 16. The State Government is entitled to settle any land which has not been disposed of under Section 16 in the same manner as any other land which is at the disposal of the Government under Section 12 of the Assam Land and Revenue Regulation, 1886 and the State Government is empowered for the purpose of settling any land under Section 17 to eject, if necessary, any person in unauthorized possession. Sub-section [3] of Section 17 has provided that in making settlement under the said Section, preference is to be given as far as practicable to the following categories of persons viz. [a] landless cultivator who has been

rendered homeless due to flood, erosion or earthquake; [b] landless cultivator; and [c] Agricultural Farming Corporation as defined in the Assam Agricultural Farming Corporation Act, 1973. In the Explanation clause to Section 17, it has been explained that the expression, 'landless cultivator' shall mean a person who does not hold any land whether as an owner or tenant or as both exceeding three bighas and whose only means of livelihood is cultivation. Rule 16, Rule 17 and Rule 18 of the Assam Fixation of Ceiling Land Holdings Act, 1956 have laid down the procedure in detail about the manner of disposal of Ceiling Surplus land.

10. It is not the pleaded case of the petitioners that they are either cultivating tenants under the previous owner nor that they fulfil the conditions of landless cultivators as provided in the Explanation clause to Section 17 of the Act, 1956.

11. The issue which has, thus, fallen for consideration is whether the relief sought for in the writ petition in the form of a direction to the respondent authorities not to evict the petitioners from the parcels of land, covered by Dag no. 44 [Part], situated at Village – Naharkatia [Na-Gaon] Hazuapathar, District – Naharkatia [Na-Gaon] Hazuapathar, the petitioners are occupying, can be considered for allotment/settlement in their favour.

12. Entry no. 18 of List II of the 7th Schedule of the Constitution of India, is *inter alia*, land, that is to say, right in or over land. Thus, it is in the province of the State Legislature to make laws on right in or over land. The statute governing laws on right in or over land is the Assam Land and Revenue Regulation, 1886. After it was passed in 1886, the Assam Land and Revenue Regulation was amended from time to time. After Independence, by the Adaption of Laws Order, 1950, the Assam Land and Revenue Regulation, 1886 had been retained and a number of amendments were carried out thereafter. Chapter I of the Assam Land and Revenue Regulation, 1886 [hereinafter referred to as 'the Regulation, 1886', for short] deals with definitions, etc. Chapter II defines the rights of the different classes of persons recognized by the Regulation, 1886 and they are mainly three classes :- [i] Proprietors; [ii] Landholders; and [iii] Settlement-holders other than landholders, including persons holding lands directly under the Government under annual leases, etc.

12.1. Chapter II of the Regulation, 1886 has provided for framing of Settlement Rules by the State Government. Under the provisions of the Regulation, 1886, Settlement Rules have been framed. As per the definition provided for 'Settlement' in Rule 2[f] of the Rules ['the Settlement Rules', for short] framed under the Regulation, 1886, it *inter alia* means the leasing of land at the disposal of the Government. Rule 15 of the Settlement Rules has enjoined that no person shall have any right to settlement merely because he is in occupation of land not included in any lease granted by the State Government either to himself or to any other person. A prohibition is incorporated in Rule 16 of the Settlement Rules to the effect that lease shall be issued on written application only, and no person shall enter into possession of waste land in any area until a lease has been issued to him or otherwise a written permission by the Deputy Commissioner has been granted to him, pending issue of such lease, to enter into possession. 'Waste land' means land at the disposal of the Government, which the Government has not disposed of by lease, grant or otherwise, and which is not included in a forest reserve, or in a forest proposed to be reserved under Section 5 of the Assam Forest Regulation [VII of 1891], or in a protected forest constituted under the allotted as a grazing ground under rules framed under Section 13 of the Regulation, 1886. As per Rule 17 of the Settlement Rules, if an occupant to whom settlement is offered accepts it then he shall be liable for payment of the revenue assessed on the land. A power, under Rule 17A of the Settlement Rules, has been vested in the Deputy Commissioner who may at any time on application or of his own motion, assess increment or grant reduction in the revenue in proportion to the change in the area of the lease as a result of gain by alluvion or by dereliction of a river, or loss by diluvion, during the currency of the settlement, subject to observance of the procedure indicated therein.

13. Rule 5, Rule 15 and Rule 16 of the Settlement Rules are, therefore, relevant for the case in hand and the same are extracted hereunder :-

5. Applications for land. - Application for leases of waste land shall be in writing and shall be presented to the Deputy Commissioner, or to such other Officer as may be empowered by the Deputy Commissioner under Rule 3. They shall be made in such form as the State Government may from time to time direct.

15. Settlement of occupied lands not included in any lease. - No person shall have any right to settlement merely because he is in occupation of land not included in any lease granted by the State Government either to himself or to any other person.

Rule 16 - Prohibition to enter into land until issue of lease. – Lease shall be issued on written application only, and no person shall enter into possession of waste land in any area until a lease has been issued to him or otherwise a written permission by Deputy Commissioner has been granted to him, pending issue of such lease, to enter into possession.

13.1. A combined reading of Rule, 5, Rule 15 and Rule 16 of the Settlement Rules goes to show that no person can enter into possession of any Government land in any area until a lease has been issued to him or otherwise, a written permission has been granted to him by the Deputy Commissioner, pending issue of such lease, to enter into possession of Government land, on the basis of an application submitted under Rule 5. Rule 15 of the Settlement Rules has specifically set forth that no person shall have any right to settlement merely because he is in occupation of land not included in any lease granted by the State Government either to himself or to any other person.

14. It is also not the case of the petitioners that they had, to enter into the possession of Government land, that is, Dag no. 44 [Part] Naharkatia [Na-Gaon] Hazuapathar, submitted any applications for lease for the Government land in question, in writing before the Deputy Commissioner in terms of Rule 5 of the Settlement Rules. When a person enters into possession otherwise than as per the provision of Rule 16 of the Settlement Rules, then such person can only be termed as an encroacher.

15. Rule 18 of the Settlement Rules are also of import and relevance for the purpose of the case in hand. By the Assam Land and Revenue Regulation [Amendment] Act, 1997, sub-rule [2] of Rule 18 has been amended and it was published in the Official Gazette in its issue dated 29.03.1997. For ready reference, the relevant parts of Rule 18 of the Settlement Rules are extracted hereinbelow :-

Rule 18. Ejectment.-

[1] Subject as hereinafter provided, the Deputy Commissioner may eject any person from land over which no person has acquired the rights of a proprietor, landholder, or settlement-holder.

[2] When such person has entered into possession of Government khas land, or Waste land or estate over which no person has acquired the rights of a proprietor, land-holder or settlement-holder or any land that has previously been reserved roads or roadside land or for the grazing of village cattle or for other public purposes, or has entered into possession of land from which he has been excluded by general or special orders and when further, there is no bonafide claim of right involved he may be ejected or ordered to vacate the land forthwith, and the Deputy Commissioner may sell, confiscate or destroy any crop raised, or any building or other construction erected without authority on the land.

[3] [a] In all other cases ejectment shall be preceded by publication of a notice in the manner prescribed below requiring the occupant generally to vacate the land specified in the notice, within 15 days of the date of publication of the notice on the land concerned or in a prominent place in the vicinity thereof, and to remove any buildings, houses, fences or crops, etc., which may have been raised on such land; provided that the Deputy Commissioner may give time to any particular occupant to harvest the crops, if any, growing on such land. Any buildings, houses, fences, crops, etc., which have not been removed in accordance with such notice shall be confiscated to the Government.

[3] [b] The notice referred to in clause [a] of sub-rule [3] above shall be published by affixing a copy thereof in the Notice Board of the office of the Deputy Commissioner or the Sub-Divisional Officer, as the case may be, and also in the Notice Board of the office of the Sub-Deputy Collector within whose jurisdiction the land is situated. A notice shall also be published by affixing a copy thereof on the land concerned or in a prominent place in the vicinity thereof.

[4] Any person or persons required by notice to vacate under the last preceding sub-rule the land which the person or persons occupy, shall comply with the requisition within the time prescribed in the notice, running from the date of its service.

15.1. A conjoint reading of Rule 18[2] and Rule 18[3] of the Settlement Rules makes the distinction regarding the nature of encroachment apparent. Sub-rule [2] of Rule 18 has *inter alia* provided that when a person enters into possession of Government *khas* land, or Waste land over which he has not acquired the rights of a proprietor, land-holder or settlement-holder, there is no claim of bonafide right involved and he may be ejected or ordered to vacate the land forthwith. As per sub-rule [3][a] of Rule 18, in all other cases ejectment shall be preceded by publication of a notice in the manner prescribed requiring the occupant generally to vacate the land specified in the notice, within 15 days of the date of publication of the notice on the land concerned or in a prominent place in the vicinity thereof, and to remove any buildings, houses, fences or crops, etc., which may have been raised on such land; provided that the Deputy Commissioner may give time to any particular occupant to harvest the crops, if any, growing on such land. Any buildings, houses, fences, crops, etc., which have not been removed in accordance with such notice are to be confiscated to the Government.

16. It is not in dispute that the area of land measuring 48 Bighas falling under Dag no. 44 [Part], which is a Ceiling Surplus land and which was at the disposal of the Government in the year 2016, was allotted for the purposes already indicated hereinabove. An area of land measuring 25 Bighas out of the 48 Bighas was carved out and allotted for the purpose of construction of a playground by a Resolution taken in a Meeting of the Sub-Divisional Land Advisory Committee [SDLAC], held on 27.02.2023, on the basis of a proposal received in that regard. From the applications, stated to have been filed by the petitioners, it is noticed that those applications were filed only in the month of April, 2023 [23.04.2023], that is, after the allotment of the entire said 48 Bighas of land of Government Dag no. 44 [Part] was complete on 27.02.2023.

17. Having regard to the rival contentions regarding length of occupation of the parcels of land of Dag no. 44 [Part] by the petitioners, it is relevant to note that it is also not a case of the petitioners that they have been paying *Bedakhali Jarimona* [Encroachment Penalty], which is earlier known as *Touzi Bahira Revenue*.

17.1. The Hon'ble Supreme Court of India in **State of Assam and others vs. Rakha Kanoo [Smt] and others**, reported in 1996 [8] SCC 692, had the occasion to examine the provisions of Rule 16, Rule 17, Rule 17A and Rule 18 of the Settlement Rules framed under the Regulation, 1886 in the context of the right of a person who had entered into possession of the Government land otherwise than in accordance with Rule 16, from whom the Mauzadar had collected amounts in the form of *Touzi Bahira Revenue*. It has been held that such collection of *Touzi Bahira Revenue* from persons other than those covered by Rule 16, Rule 17 and Rule 17A would not confer any right on such person in unauthorized occupation of Government land. It has also been held that such collection has to be regarded as illegal collection and it does not bind the Government, because of the mandate embodied in Rule 16. From the said decision, it has emerged that collection of *Touzi Bahira Revenue* i.e. *Bedakhali Jarimona* [Encroachment Penalty] does not amount to collection of revenue and the possession of a person in unauthorized occupation from whom *Touzi Bahira Revenue* is collected, does not become lawful because of such collection. It is also discernible from the said decision that merely for the fact that *Touzi Bahira Revenue* has been collected from such a person, the person who is a trespasser of Government land, there is no bar for the authorities to evict such person from such land to recover possession of land under Rule 18 of the Settlement Rules.

18. From the materials on record, the petitioners herein are not even found paying *Bedakhali Jarimona* [Encroachment Penalty]. Had it been the case of the petitioners that they have been paying *Bedakhali Jarimona* [Encroachment Penalty], an inference, at best, could have been possible to be drawn about their length of unauthorized occupation of the Government land. But in the case in hand, since it is not the case of the petitioners that they have been paying *Bedakhali Jarimona* [Encroachment Penalty] since a period of time, it is not even possible for this Court in the present writ proceeding to even draw an inference as regards their claims regarding their length of possession. Thus, the petitioners' claim regarding their length of occupation, albeit unauthorised, cannot be ascertained in view of contrary claims made by the State respondents. It is settled that this Court in writ proceedings does not embark into a fact finding exercise.

19. From Rule 18[2] of the Settlement Rules, it is clear that there is no mandate of

issuance of any notice upon the persons falling within the ambit of Rule 18[2] of the Settlement Rules. Sub-rule [3] of Rule 18 contains the mandate that in all other cases which are not covered under sub-rule [2] of Rule 18, ejectment shall be preceded by a notice of 15 days and the notice impugned herein is found to have complied with the said condition. A Division Bench of this court in the writ petition, W.P.[C] no. 4179/2009 in **Md. Ishaque Ali and others vs. State of Assam and others**, decided on 12.08.2016, after taking note of the amendment made in Rule 18 by the Assam Land and Revenue Regulation [Amendment] Act, 1997 has held that no right for a notice, as contemplated under Rule 18[3], is available to a person who comes under Rule 18[2] of the Settlement Rules. It has been observed that Rule 18[2] of the Settlement Rules has empowered the District Magistrate to evict those who have acquired no right of a proprietor, landholder or settlement holder. The amendment carried out on 06.02.2010, 'Circle Officer' has also been added in sub-rule [ii] of Rule 3 of the Settlement Rules and as such, the impugned notice issued by the Circle Officer is found to have not suffered from lack of authority and jurisdiction. In case the land under encroachment comes within the categories of land mentioned in Rule 18[2], then quick clearance through summary proceeding cannot be said to be unwarranted. Finding the occupation of the petitioners therein unauthorized and the land they were occupying valuable Government lands, the Division Bench had observed that as the land was needed to be acquired in public interest, the individual right, if any, must make way. A co-ordinate Bench of this Court in the judgment and Order dated 03.03.2023, rendered in a writ petition, W.P.[C] no. 1156/2023 [**Rupjyoti Bora Buragohain and 9 others vs. the State of Assam and 4 others**] and a batch of 5 [five] other writ petitions, has observed the distinctive nature of the procedure contained in Rule 18[2] and Rule 18[3] of the Settlement Rules and has held that there is a distinction between eviction under Rule 18[2] vis-à-vis eviction under Rule 18[3] and the requirement of issuing notice under Rule 18[2] of the Settlement Rules cannot be read into while interpreting such Rule.

20. The similarity sought to be drawn between the petitioners herein and the petitioners in the writ petition, W.P.[C] no. 3901/2023, cannot be countenanced, save and except the similarity of 1 [one] petitioner herein, that is, the petitioner no. 6, with 4 [four] nos. of petitioners in the writ petition, W.P.[C] no. 3901/2023. The petitioner no. 6 herein has been

extended the benefit under the PMAY Scheme and the 4 [four] petitioners in W.P.[C] no. 3901/2023 were also extended similar benefits. The learned Advocate General, Assam has submitted that the petitioner no. 6 will be extended similar benefits like the 4 [four] petitioners in W.P.[C] no. 3901/2023, as observed in Paragraph no. 21 of the Judgment and Order dated 01.10.2023, rendered in W.P.[C] no. 3901/2023. Such benefit will be extended if possible, in a parcel of land falling within the same Dag no., that is, 44 [Part] and if such arrangement is not possible then such benefit will be extended in a parcel of land in a near vicinity, along with the compensation of Rs. 3,00,000/- and such exercise will be completed within a period of 1 [one] month. In view of such statement made by the learned Advocate General, Assam, no further direction is necessary in so far as the petitioner no. 6 is concerned.

21. In view of the discussion made above and for the reasons assigned therein, this court finds that the writ petition is bereft of any merits and, is, therefore, liable to be dismissed. It is accordingly ordered. With the findings arrived at, the observations made and the dismissal of the writ petition, the respondent authorities are at liberty to proceed in respect of the parcels of land under reference in accordance with law and as per the prescribed procedure.

22. The court has taken notice of the fact that applications were submitted by the other petitioners, other than the petitioner no. 6, claiming themselves to be the deserving indigenous landless persons. In view of such claims of the petitioners and contrary claims from the end of the State respondents, this court is not in a position to determine such factual disputes and such matter can only be gone into by a fact finding authority. Notwithstanding the rejection of the applications for allotment/settlement submitted by these petitioners earlier on the ground that the lands in respect of which these petitioners had sought allotment/settlement had already been allotted/settled for Government infrastructure and public playground, the Court is of the considered view that they should be given another opportunity to submit applications seeking allotment/settlement before the appropriate authority on the premise that they are deserving indigenous landless persons and they are eligible to be allotted/settled under the extant Land Policy – 2019. It is, therefore, observed, having regard to the fact situation obtaining in the case and taking into account the other

obtaining fact situation, that in the event any of these petitioners prefer any application for allotment/settlement of land under the provisions of the Land Policy – 2019 before the Competent Authority as per the procedure on the basis that they are deserving indigenous landless persons, the Competent Authority shall undertake a fact finding exercise to find out the eligibility or otherwise of the applicant and thereafter, consider the application on its own merits as per the provisions of the Land Policy – 2019. Having regard to the humanitarian aspect involved, this court is also of the considered view that such exercise shall be undertaken and completed within a period of 2 [two] months from the date of submission of such applications.

23. While parting with the writ petition and also by taking into the humanitarian aspect is concerned, it is ordered that the State respondents shall provide reasonable opportunity to the petitioners to vacate the land which are under their unauthorized occupation. The petitioners shall vacate the lands under their unauthorized occupation within a reasonable period of time, but not later than 20.01.2024. In the event any of the petitioners do not abide by this direction, the State respondents would be at liberty to take necessary steps for their eviction as per law.

JUDGE

Comparing Assistant