

GAHC010287752018



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

Case No. : WP(C)/21/2019

PARAG RAIDONGIA AND 23 ORS.
S/O LATE SURESH RAIDONGIA
R/O VILL- HUKANPUKHURI GAON P.O. HKANPUKHURI GAON,
CHANDMARI, MAKUM, JUNCTION, DIST. TINSUKIA, ASSAM.

2: SRI PANKAJ RAIDONGIA
S/O LATE SURESH RAIDONGIA
R/O VILL- HUKANPUKHURI GAON P.O. HKANPUKHURI GAON

CHANDMARI
MAKUM
JUNCTION
DIST. TINSUKIA
ASSAM.

3: SMT. RUNUMONI RAIDONGIA
W/O SRI PARAG RAIDONGIA
R/O VILL- HUKANPUKHURI GAON P.O. HUKANPUKHURI GAON

CHANDMARI
MAKUM
JUNCTION
DIST. TINSUKIA
ASSAM.

4: SMT. NARMADA RAIDONGIA
W/O SRI PANKAJ RAIDONGIA
R/O VILL- HUKANPUKHURI GAON P.O. HUKANPUKHURI GAON

CHANDMARI
MAKUM
JUNCTION
DIST. TINSUKIA
ASSAM.

5: SRI GAURAV RAIDONGIA
S/O SRI PANKAJ RAIDONGIA
R/O VILL- HUKANPUKHURI GAON P.O. HUKANPUKHURI GAON

CHANDMARI
MAKUM
JUNCTION
DIST. TINSUKIA
ASSAM.

6: SRI DEB KUMAR KONWAR
S/O LATE DHAN BAHADUR KONWAR

R/O VILL- HUKANPUKHURI GAON P.O. HUKANPUKHURI GAON

CHANDMARI
MAKUM
JUNCTION
DIST. TINSUKIA
ASSAM.

7: SRI ANANTA BAHADUR KONWAR
S/O LATE DHAN BAHADUR KONWAR
R/O VILL- HUKANPUKHURI GAON P.O. HUKANPUKHURI GAON

CHANDMARI
MAKUM
JUNCTION
DIST. TINSUKIA
ASSAM.

8: SRI AMAR BAHADUR KONWAR
S/O LATE DHAN BAHADUR KONWAR
R/O VILL- HUKANPUKHURI GAON P.O. HUKANPUKHURI GAON

CHANDMARI
MAKUM
JUNCTION
DIST. TINSUKIA
ASSAM.

9: SRI MON BAHADUR KONWAR
S/O SRI AMAR BAHADUR
KONWAR

R/O VILL- HUKANPUKHURI GAON P.O. HUKANPUKHURI GAON

CHANDMARI
MAKUM
JUNCTION
DIST. TINSUKIA
ASSAM.

10: SRI JHALKA YADAB
S/O JOGLAL YADAB
R/O VILL- HUKANPUKHURI GAON P.O. HUKANPUKHURI GAON

CHANDMARI
MAKUM
JUNCTION
DIST. TINSUKIA
ASSAM.

11: SRI RABINDRA YADAB
S/O JHALKA YADAB
R/O VILL- HUKANPUKHURI GAON P.O. HUKANPUKHURI GAON

CHANDMARI
MAKUM
JUNCTION
DIST. TINSUKIA
ASSAM.

12: SRI HAINER YADAB
S/O JHALKA YADAB
R/O VILL- HUKANPUKHURI GAON P.O. HUKANPUKHURI GAON

CHANDMARI
MAKUM
JUNCTION
DIST. TINSUKIA
ASSAM.

13: SRI BIRENDRA YADAB
S/O JHALKA YADAB
R/O VILL- HUKANPUKHURI GAON P.O. HUKANPUKHURI GAON

CHANDMARI
MAKUM
JUNCTION
DIST. TINSUKIA
ASSAM.

14: SRI DIPAK PRADHAN
S/O HARKA BAHADUR PRADHAN

R/O VILL- HUKANPUKHURI GAON P.O. HUKANPUKHURI GAON

CHANDMARI
MAKUM
JUNCTION
DIST. TINSUKIA
ASSAM.

15: SRI YAM BAHADUR PRADHAN
S/O LT. LAL BAHADUR PRADHAN
R/O VILL- HUKANPUKHURI GAON P.O. HUKANPUKHURI GAON

CHANDMARI
MAKUM
JUNCTION
DIST. TINSUKIA
ASSAM.

16: SRI BIJOY PRADHAN
S/O HARKA MAN PRADHAN
R/O VILL- HUKANPUKHURI GAON P.O. HUKANPUKHURI GAON

CHANDMARI
MAKUM
JUNCTION
DIST. TINSUKIA
ASSAM.

17: SRI SANJAY PRADHAN
S/O HARKA MAN PRADHAN
R/O VILL- HUKANPUKHURI GAON P.O. HUKANPUKHURI GAON

CHANDMARI
MAKUM
JUNCTION
DIST. TINSUKIA
ASSAM.

18: SRI PRAKASH PRADHAN
S/O HARKA MAN PRADHAN
R/O VILL- HUKANPUKHURI GAON P.O. HUKANPUKHURI GAON

CHANDMARI
MAKUM
JUNCTION
DIST. TINSUKIA
ASSAM.

19: SRI KUBER RANA
S/O LT. SHER BAHADUR RANA
R/O VILL- HUKANPUKHURI GAON P.O. HUKANPUKHURI GAON

CHANDMARI
MAKUM
JUNCTION
DIST. TINSUKIA
ASSAM.

20: SRI BHAKTA BAHADUR GIRI
S/OLT. SIBLAL SANYASI

R/O VILL- HUKANPUKHURI GAON P.O. HUKANPUKHURI GAON

CHANDMARI
MAKUM
JUNCTION
DIST. TINSUKIA
ASSAM.

21: SRI SHANTI DAS
S/O RAJDEO DAS
R/O VILL- HUKANPUKHURI GAON P.O. HUKANPUKHURI GAON

CHANDMARI
MAKUM
JUNCTION
DIST. TINSUKIA
ASSAM.

22: SRI PANKAJ PRADHAN
S/O BHIMLAL PRADHAN
R/O VILL- HUKANPUKHURI GAON P.O. HUKANPUKHURI GAON

CHANDMARI
MAKUM
JUNCTION
DIST. TINSUKIA
ASSAM.

23: SRI BHIMLAL PRADHAN
S/OLT. SHIBLAL PRADHAN
R/O VILL- HUKANPUKHURI GAON P.O. HUKANPUKHURI GAON

CHANDMARI
MAKUM
JUNCTION

DIST. TINSUKIA
ASSAM.

24: SRI BIKASH SINGH BORAILY
S/OLT. DEO SINGH BORAILY
R/O VILL- HUKANPUKHURI GAON P.O. HUKANPUKHURI GAON

CHANDMARI
MAKUM
JUNCTION
DIST. TINSUKIA
ASSAM

VERSUS

THE STATE OF ASSAM AND 2 ORS.
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM,
REVENUE DEPARTMENT,
DISPUR, GUWAHATI, ASSAM.

2:THE DEPUTY COMMISSIONER

TINSUKIA
DIST. TINSUKIA
ASSAM

3:THE CIRCLE OFFICER

TINSUKIA REVENUE CIRCLE

DIST. TINSUKIA
ASSAM

Advocate for the Petitioner : MR. M KHATANAR

Advocate for the Respondent : SC, REVENUE

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

ORDER

02-05-2023

Heard Shri M. Khataniar, learned counsel for the petitioners. Also heard Shri B. Deori, learned State Counsel. Ms. G. Hazarika, learned Standing Counsel, Revenue

Department is also present.

The petitioners who are 24 in numbers claim to be landless persons as their ancestors had lost their lands in the floods of 1950 in the district of Lakhimpur which at that time had also included areas under the present Dibrugarh and Tinsukia districts. The authorities had allowed the ancestors to settle in a ceiling surplus land of Hukanpukhuri NRL Grant No. 37/73 of village Hukanpukhuri, Mouza-Tinsukia wherein the petitioners claim to have been residing continuously. The petitioners claim to have built their residential houses and are also cultivating for their livelihood. The petitioners also claim to be paying "*touzi bahira*" to the Revenue Department.

The cause of action for approaching this Court is threatened eviction as it has been pleaded that on 18.12.2018 some persons identifying themselves to be government officials had come to the place of the petitioners with JCB excavators with a view to evict them. The petitioners claim that at no point of time any notice was issued to them regarding any eviction.

Shri Khataniar, the learned counsel for the petitioner submits that the threatened action is absolutely unreasonable as without taking into the relevant facts and consideration, the said move was taken. The learned counsel for the petitioners further submits that there is some development during the pendency of this writ petition inasmuch as the Government of Assam had announced a Scheme under the name and style "Basundhara" and under the Scheme 'Basundhara-2', the petitioners claim to have submitted their applications alongwith necessary formalities which are under due consideration. The learned counsel further submits that when this writ petition was filed in the year 2019, this Court had passed an interim order dated 04.01.2019 directing the authorities not to evict the petitioners from the land under their possession until further orders. It is accordingly submitted that on the strength of the said interim order dated 04.01.2019, the petitioners are still possessing the land and in the meantime, their cases are also taken up under the 'Basundara-2' Scheme.

Shri B. Deori, learned State Counsel submits that payment of "*touzibahira*" is only

a fine which will not vest any indefeasible right on the petitioners. The learned State Counsel, however, fairly submits that if the Government in its wisdom is considering the cases of the petitioners under the 'Basundhara-2' Scheme, he will not have much objection.

Ms. Hazarika, the learned Standing Counsel, Revenue Department endorses the submission of Shri B. Deori, learned State Counsel.

The rival submissions have been duly considered.

Though this Court finds force in the submission of Shri Deori, the learned State Counsel that payment of "*touzi bahira*" will not vest any indefeasible right to an incumbent to seek allotment as such payment is only in the nature of a fine which has been clarified by the Hon'ble Supreme Court in the case of ***State of Assam and Ors. Vs. Smt. Radha Kanoo and Ors.*** reported in ***(1996) 8 SCC 692***, this Court is of the view that if the cases of the petitioners is taken up for consideration for allotment of land under 'Basundhara-2' Scheme, it is up to the wisdom and discretion of the authorities to pass necessary orders after such consideration.

Accordingly, this writ petition is disposed of by directing that if at all the exercise of eviction is carried out against the petitioners, the same has to be done only by following the due process of law and since the cases of the petitioners for allotment of the land in question is said to be under consideration, the said consideration be brought to a logical conclusion within a reasonable time.

Writ petition accordingly stands disposed of.

JUDGE

Comparing Assistant