

GAHC010288952023



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

Case No. : WP(C)/7471/2023

HAIDOR ALI @ HAIDAR ALI SHEIKH AND 29 ORS
S/O NASIMUDDIN @ NACHIMUDDIN SHEIKH

2: ALI AJGARH @ ALI AJGARH SHEIKH
S/O OMAR ALI @ UMAR ALI SHEIKH

3: MAHIRUDDIN @ MAHIRUDDIN SHEIKH
S/O TASHER ALI @ TACHER ALI

4: MAJIBOR ROHMAN @ MAJIBAR RAHMAN
S/O TASHER ALI @ TACHER ALI

5: BHANU BEWA
D/O SAHAN ALI @ CHAHAN ALI

6: ABIRAN BEWA @ ABIRAN BEOABA
W/O NURUL HOQUE @ NURAL HOQUE

7: FAJIRON BIBI
W/O SOMEJUDDIN @ SAMEJUDDIN MANDAL

8: SAHAR ALI @ SOHOR ALI SHEIKH
S/O DARBESH ALI

9: MANIKJAN BIBI
W/O HAKIMUDDIN @ HAMED ALI

10: Nowsad Ali @ Nausad Ali
S/O Karim Bokxo @ Karim Baksa Sheikh

11: JAMILA BIBI
D/O Hasen Ali @ Hachen Ali Mandal

12: JOYNAL ABEDIN @ JAYNAL ABEDIN

S/O SUJAB ALI

13: SAHJAMAL SK @ SHAHAJAHAN ALI
S/O SUJAB ALI

14: ALI AJGORH MONDAL
S/O MEHER ALI @ MEHER ALI MANDAL

15: KITABALI @ KITAB ALI SHEIKH
S/O NASIBUDDIN @ NACHIMUDDIN SHEIKH

16: MOKSHED ALI @ MAKCHED ALI
S/O IRFAN ALI

17: NOWSHAD ALI @ NAUSAD ALI
S/O NASIMUDDIN @ NACHIMUDDIN SHEIKH

18: KALU SK @ KALU SHEIKH
S/O ABDUL RAHMAN

19: RAFIK ALI @ RAFIQUE ALI
S/O NOWSHAD @ NAUSAD ALI

20: JOYNOB BEWA @ JAYNAB BEWA
D/O HAZRAT @ HAJARAT SARKAR

21: REZIYA BIBI @ REJIYA BIBI
W/O AMZAD ALI @ AMJAD ALI

22: MOYNAL SK @ MAYNAL SHEIKH
S/O SUBU ALI @ CHABUR ALI

23: GOHIRAN BIBI @ GAHIRAN BIBI
W/O KHATIR ZAMAL @ KHATIR JAMAL SHEIKH

24: TARA BHANU BIBI
W/O JAHIRUL JAHIRUL ISLAM

25: AIJUL ALI @ AIJUL SHEIKH
S/O AMAR ALI @ UMAR ALI

26: INSAN ALI MONDAL @ INCHAN ALI MANDAL
S/O NAGAR @ NAGAR ALI MANDAL

27: CHAYED ALI
S/O ASAN ALI

28: ABED ALI @ ABED ALI SHEIKH

S/O KHATTU SHEIKH

29: JOHORUDDIN MONDOL @ JAHAR UDDIN MANDAL
S/O INTA SHEIKH @ INTA MANDAL

30: JABED ALI
S/O ALI AJGOR @ ALI AAJAGAR SHEIKH.

ALL ARE RESIDENTS OF
VILL- PACHIM BHADRAGAON

P.O- BIDYAPUR
P.S.- BONGAIGAON
DIST.-BONGAIGAON
ASSAM

PIN - 78337

VERSUS

THE STATE OF ASSAM AND 7 ORS
REPRESENTED BY ITS COMMISSIONER AND SECRETARY, GOVERNMENT
OF ASSAM, REVENUE DEPARTMENT, DISPUR, GUWAHATI, ASSAM- 781006

2:THE B.T.C.
REPRESENTED BY THE PRINCIPAL SECRETARY TO THE B.T.C.
KOKRAJHAR
ASSAM - 783370

3:THE PRINCIPAL SECRETARY
B.T.C.
KOKRAJHAR
ASSAM - 783370

4:THE SECRETARY (REVENUE)
B.T.C.
KOKRAJHAR
ASSAM - 783370

5:THE DEPUTY COMMISSIONER
CHIRANG
KAJALAGAON
ASSAM - 783385

6:THE ADDITIONAL DEPUTY COMMISSIONER (REVENUE)
CHIRANG
KAJALAGAON
ASSAM - 783385

7:THE SUPERINTENDENT OF POLICE
CHIRANG
KAJALGAON
ASSAM - 783385

8:THE CIRCLE OFFICER
SIDLI REVENUE CIRCLE
SIDLI
CHIRANG
ASSAM- 78337

Advocate for the Petitioner : MR. K N CHOUDHURY

Advocate for the Respondent : SC, REVENUE

BEFORE
HONOURABLE MR. JUSTICE MANISH CHOUDHURY

ORDER

20.12.2023

Heard Mr. K.N. Choudhury, learned senior counsel assisted by Mr. T.R. Sen, learned counsel for the petitioners; Mr. A. Bhattacharjee, learned Standing Counsel, Revenue Department for the respondent no. 1; Ms. R.B. Bora, learned Standing Counsel, BTC for the respondent nos. 2, 3 & 4; and Mr. N. Goswami, learned Junior Government Advocate, Assam for the respondent nos. 5, 6, 7 & 8.

2. The petitioners, in this writ petition, have projected that they are permanent residents of Village – Pachim Bhadrangaon, Sidli Revenue Circle, District - Bongaigaon. The petitioners have further stated that they are living in the village since the time of their predecessors like grandfathers and fathers and their names as well as their predecessors' names are/were recorded in the electoral rolls since a long time. It has been further stated that the petitioners have been living in the said village by constructing permanent/semi-permanent structures/dwelling houses in the respective plots of land under their occupation. The petitioners have approached this Court when they have been served recently with notices termed as Final Public Eviction Notice dated 06.12.2023 by the Circle Officer, Sidli Revenue Circle. In the said Final Public Eviction Notice,

names of 56 nos. of persons including the 30 nos. of petitioners herein, have figured. As per the said Final Public Eviction Notice, the petitioners have been found occupying a part of Government land measuring 186 Bighas 3 Kathas 15 Lessas, covered by Dag no. 487 under Sidli Revenue Circle. By the said notice, the petitioners have been asked to shift from the alleged encroached areas within a period of 15 [fifteen] days. It has further been stated by the petitioners that the Final Public Eviction Notice dated 06.12.2023 was preceded by a notice termed as Public Eviction Notice dated 05.08.2023 wherein the names of same 56 nos. of persons had figured.

3. Mr. Choudhury, learned senior counsel appearing for the petitioners has submitted that on an earlier occasion, 18 nos. of similarly situated persons had approached this Court by way of a writ petition, W.P.[C] no. 4797/2023. As per the observations made in the Order dated 21.08.2023 whereby the said writ petition was disposed of, the petitioners therein had been granted an opportunity to represent their respective cases before the concerned District Commissioner. Mr. Choudhury has further drawn attention to an Order dated 03.02.2020 passed by the Hon'ble Supreme Court of India in Special Leave to Appeal [C] D no. 2121/2020 which arose out of an Order dated 09.12.2019 passed by the Division Bench of this Court in PIL no. 78/2012.

4. The Public Interest Litigation, PIL no. 78/2012 [Prodyut Kr. Bora vs. State of Assam & Ors] was preferred agitating that tribal belts and blocks were created to protect land ownerships of people belonging to tribal and backward classes and to ensure that encroachment does not take place by outsiders. Projecting that encroachment of land by outsiders has been allowed to continue unabated despite provisions of law contained in Chapter X of Assam Land and Revenue Regulation, 1886, as amended, protection of those lands have been sought for by filing the PLI.

4.1. It was in that context, the Division Bench had passed the Order on 09.12.2019 observing *inter alia* that the provisions of Chapter X of the Assam Land and Revenue Regulation, 1886, as amended, [‘the Regulation, 1886’, for short] are required to be implemented and the Deputy Commissioners are required to take utmost care while according permission for transfer of land within the protected belts/blocks. In the PIL, a direction had been passed to the concerned Deputy Commissioners and other related officers to strictly implement in letter and spirit the provisions of Chapter X of the Regulation, 1886. Consequently, the areas in illegal occupation

of non-tribals and other persons who are not eligible to hold possession of land be evicted after following due process of law.

5. The Order passed in Special Leave to Appeal [C] D no. 2121/2020 arose out of the said Order dated 09.12.2019 passed in PIL no. 78/2012 by the Division Bench of this Court. The operative parts of SLP[C] D no. 2121/2020 read as under :-

“The principal grievance of petitioners before this court is that peremptory directions have been issued by the High Court which are likely to be construed as having been issued after recording finding of fact that the petitioners and similarly placed occupants in the concerned area are unauthorized occupants.

This apprehension, in our opinion, is misplaced. For, the tenor of the order which is impugned in these Special Leave Petitions is merely to direct the Deputy Commissioner to proceed against the unauthorized occupants in accordance with law - which presupposes that the Deputy Commissioner must examine the claim of each occupant on case to case basis and after recording satisfaction in light of evidence produced before him proceed to pass appropriate order(s) as per law.

We may add that, if that order is adverse to the occupants, the Deputy Commissioner must give reasonable time to the occupants to take recourse to appropriate remedy as may be permissible in law.

In other words, the Deputy Commissioner shall decide the proceedings uninfluenced by any of the observations made by the High Court in the impugned judgment and order.

It will be open to the Deputy Commissioner to request the High Court to extend the timeline specified in terms of the impugned judgment and order, which request we are certain would be considered appropriately by the High Court.

Besides this, nothing more is required to be clarified. These Special Leave Petitions are disposed of accordingly.”

6. In view of the said direction passed in the Order dated 09.12.2019 in PIL no. 78/2012 and the Order dated 03.02.2020 passed in SLP[C] D no. 2121/2020, the writ petition, W.P.[C] no. 4797/2023 was disposed of by an Order dated 21.08.2023 allowing the petitioners therein, who are stated to be similarly situated like the petitioners herein, to submit individual representations before the jurisdictional Deputy Commissioner ventilating their grievances in respect of the eviction notices. It has been further observed that if any such individual representation[s] were submitted by the petitioner[s] therein within the time period prescribed therein, the same should be considered on merits and disposed of by separate order[s], in the light of the observations made by the Hon'ble Supreme Court of India in the Order dated 03.02.2020 passed in SLP[C] D no. 2121/2020.

7. As. Mr. Choudhury, learned senior counsel appearing for the petitioners has submitted that the instant writ petition is also required to be disposed of in similar manner, the learned counsel representing the respondents have submitted that as the petitioners herein have projected themselves to be similarly situated like the petitioners in the writ petition, W.P.[C] no. 4797/2023, the present writ petition can also be disposed of in the similar manner, taking note of the observations made in the Order dated 09.12.2019 passed in PIL no. 78/2012 and the Order dated 03.02.2020 passed in SLP[C] D no. 2121/2020.

8. In view of the above projected fact situation and the broad consensus arrived at the Bar in the afore-stated manner, the writ petition is disposed of, at the stage of motion, by allowing the petitioners to submit individual representations before the jurisdictional District Commissioner ventilating their grievances as regards Final Public Eviction Notice dated 06.12.2023, by 12.01.2024. If the petitioner[s] herein submit individual representation[s] before the jurisdictional District Commissioner on or before 12.01.2024, the jurisdictional District Commissioner shall consider each of the representation[s] on its own merits and thereafter, dispose of the individual representation[s] of the petitioner[s] by separate orders, in the light of the observations made by in the Order dated 03.02.2020 passed in SLP[C] D no. 2121/2020. It is further observed that the *status quo*, as on date, in respect of the exercise sought to be carried out by the Final Public Notice dated 06.12.2023 and as regards the possession of the petitioners herein in respect of the land in question, shall be maintained, till the conclusion of the exercise by the jurisdictional District Commissioner.

9. This order disposes of the writ petition. No cost.

JUDGE

Comparing Assistant