

GAHC010021142024



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

Case No. : WP(C)/507/2024

JAHADUL HOQUE AND 4 ORS
S/O- MAJEM ALI,
R/O- VILL- HASILA BILL,
P.O, P.S AND DIST- GOALPARA,
ASSAM, PIN-783101

2: HEDAYAT ALI SARKAR
S/O- LATE JOMIRUDDIN
R/O- VILL- HASILA BILL
P.O
P.S AND DIST- GOALPARA
ASSAM
PIN-783101

3: ROFIQUL ISLAM
S/O-LATE HASIMOT ALI
R/O- VILL- HASILA BILL
P.O
P.S AND DIST- GOALPARA
ASSAM
PIN-783101

4: SURMAN ALI
S/O- LATE QURBAN ALI
R/O- VILL- HASILA BILL
P.O
P.S AND DIST- GOALPARA
ASSAM
PIN-783101

5: SAMSER ALI
S/O- JAYNAL ABEDIN
R/O- VILL- HASILA BILL
P.O P.S AND DIST- GOALPARA

ASSAM
PIN-78310

VERSUS

THE STATE OF ASSAM AND 3 ORS
REP. BY THE COMMISSIONER AND SECY. TO THE GOVT. OF ASSAM,
DEPTT. OF REVENUE AND DISASTER MANAGEMENT
DISPUR, GUWAHATI, DISPUR- 781006.

2:THE DISTRICT COMMISSIONER
GOALPARA
PIN-783101

3:THE ASSISTANT SETTLEMENT OFFICER
BALIJANA REVENUE CIRCLE
GOALPARA
ASSAM
PIN-783121

4:THE CIRCLE OFFICER
BALIJANA REVENUE CIRCLE
GOALPARA
ASSAM
PIN-78312

Advocate for the Petitioner : MR. B D KONWAR SR. ADV.

Advocate for the Respondent : SC, REVENUE

BEFORE
HONOURABLE MR. JUSTICE MANISH CHOUDHURY

ORDER

Date : 12-02-2024

Heard Mr. B.D. Konwar, learned Senior Counsel assisted by Ms. S. Jain, learned counsel for the petitioners; Mr. J. Handique, learned Standing Counsel, Revenue Department for the respondent nos. 1 & 4; and Mr. H. Sarma, learned Additional Senior Government Advocate, Assam for the respondent nos. 2 & 3.

2. The petitioners, 5 [five] in nos., have approached this Court stating that they have a common cause of action. It is the case of the petitioners that they are in occupation of

Government plots of land since last about 60 years, constructing dwelling houses etc. thereon. The petitioners have stated that they have been paying *Touzi Bahira* revenue in respect of the plots of land they are occupying individually. The plots of lands are situated at Village – Hasila Bill, Balijana Revenue Circle, District – Goalpara. The petitioners have approached this Court on receipt of an eviction notice dated 28.12.2023 issued under the hand of the respondent no. 3, that is, the Assistant Settlement Officer, Balijana Revenue Circle, District – Goalpara.

3. The said eviction notice is assailed on a number of counts, firstly, there is no mention in the impugned eviction notice about statutory provisions under which the respondent no. 3 has exercised the right to issue such an eviction notice; secondly, there is no mention in the eviction notice about the land details/particulars from which the petitioners have been sought to be evicted; and thirdly, under the Settlement Rules framed under the Assam Land and Revenue Regulation, 1886, it is the authority who comes within the definition provided in Section 3[m] of the Assam Land and Revenue Regulation, 1886, is empowered to issue such an eviction notice and an Assistant Settlement Officer does not come within the definition provided under Section 3[m].

4. Both Mr. Handique and Mr. Sarma, learned State Counsel have fairly submitted that the impugned eviction notice *prima facie* appears to have suffered from above deficiencies and in such view of the matter, necessary steps would be necessary to recall the eviction notice. They have submitted that the Assistant Settlement Officer, Balijana Revenue Circle is also the Circle Officer of Balijana Revenue Circle but the impugned eviction notice has been issued in the capacity of the Assistant Settlement Officer, Balijana Revenue Circle only. They have submitted that if the petitioners are in occupation of Government lands, an exercise for eviction of the petitioners from such Government plot of lands will be undertaken as per the prescribed procedure by issuance of a notice afresh, if so advised.

5. On perusal of the eviction notice dated 28.12.2023 issued by the respondent no. 3, this Court finds force in respect of the three points raised in respect of the said eviction notice. The deficiencies in respect of the impugned eviction notice on the said three counts

have also been fairly admitted by the learned State counsel as both Mr. Handique and Mr. Sarma, learned State Counsel have submitted that the impugned eviction notice has suffered from deficiencies at least on the three counts, as indicated above.

6. In view of the above fact situation obtaining in the case and for the reasons indicated about the deficiencies in respect of the impugned eviction notice dated 28.12.2023, this Court is of the considered view that the writ petition can be allowed without issuance of any notice to the respondents impleaded in the writ petition and at the motion stage itself. As the impugned eviction notice is found to have suffered from deficiencies on three counts, already indicated hereinabove, the impugned eviction notice dated 28.12.2023 is set aside. The writ petition stands allowed to the aforesaid extent. Considering the fact that the petitioners are in occupation of a Government plots of land, the State respondents are at liberty to undertake an exercise for eviction of the petitioners from the said Government land but such exercise must be strictly in accordance with the procedure prescribed by law, more particularly, the Assam Land and Revenue Regulation, 1886 and the Rules framed thereunder.

JUDGE

Comparing Assistant