

GAHC010024342017



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

Case No. : WP(C)/3160/2017

LUHIT HAZARIKA and 8 ORS
S/O. LT. BHOLA HAZARIKA, R/O. GHILAMARA MILAN NAGAR, P.O. and P.S.
GHILAMARA, DIST. LAKHIMPUR, ASSAM.

2: TRIDIP BARUAH

S/O. LT PURNA BARUAH
R/O. GHILAMARA LELUWANI
P.O. and P.S. GHILAMARA
DIST. LAKHIMPUR
ASSAM.

3: RATNESWAR DIHINGIA

S/O. LT. ABHIRAM DIHINGIA
R/O. GHILAMARA TINIALI
P.O. and P.S. GHILAMARA
DIST. LAKHIMPUR
ASSAM.

4: DEEPAK CHANGMAI

S/O. LT. PUNESWAR CHANGMAI
R/O. CHHOWKHAM GHAT
GHILAMARA
P.O. and P.S. GHILAMARA
DIST. LAKHIMPUR
ASSAM.

5: MAHESH KUMAR SARMA

S/O. LT. SATYANARAYAN SARMA
R/O. GHILAMARA TINIALI
P.O. and P.S. GHILAMARA

DIST. LAKHIMPUR
ASSAM.

6: BIJOY GOHAIN

S/O. LT. MOHIBAR GOHAIN
R/O. GHILAMARA TINIALI
P.O. and P.S. GHILAMARA
DIST. LAKHIMPUR
ASSAM.

7: BUDHESWAR HAZARIKA

S/O. LT. BHOLA HAZARIKA
R/O. GHILAMARA TINIALI
P.O. and P.S. GHILAMARA
DIST. LAKHIMPUR
ASSAM.

8: KRISHNA KOCH

S/O. LT. BHABIRAM KOCH
R/O. GAPALPUR
GHILAMARA
P.O. and P.S. GHILAMARA
DIST. LAKHIMPUR
ASSAM.

9: TUNKESWAR GOHAIN

S/O. LT. KON GOHAIN
R/O. GHILAMARA TINIALI
P.O. and P.S. GHILAMARA
DIST. LAKHIMPUR
ASSAM

VERSUS

THE STATE OF ASSAM and 4 ORS.
REP. BY THE COMMISSIONER and SECRETARY TO THE GOVT. OF ASSAM,
PUBLIC WORKS DEPTT., DISPUR, GUWAHATI-6.

2: THE COMMISSIONER and SECRETARY TO THE GOVT. OF ASSAM

REVENUE DEPTT.
DISPUR
GUWAHATI-6.

3:THE CHIEF ENGINEER

ASSAM PUBLIC WORKS DEPTT. ROAD
CHANDMARI
GUWAHATI-3.

4:THE DY. COMMISSIONER
LAKHIMPUR

NORTH LAKHIMPUR
DIST. LAKHIMPUR
ASSAM.

5:THE CIRCLE OFFICER

SUBANSARI REVENUE CIRCLE
GHILAMARA
DIST. LAKHIMPUR
ASSAM

Advocate for the Petitioner : MR.J P KACHARI, MR.P K GOGOI

Advocate for the Respondent : GA, ASSAM,

BEFORE
HONOURABLE MR. JUSTICE ARUN DEV CHOUDHURY

ORDER

30.07.2024

1. Heard Mr. P. K. Gogoi, learned counsel for the petitioners. Also heard Mr. H. Sarma, learned counsel representing the State respondents.
2. The grievance of the petitioners is that their land has been taken over by the PWD Department, Assam in connection with development of State Highway from Gogamukh to Dhakuakhana Sub Division, however, alleging that till date neither any spot verification has been conducted for assessment of the amount of compensation, nor they are paid any

compensation, the petitioners had approached before this Court by filing the present writ petition.

3. The State respondents more particularly, the respondent No. 4 i.e. Deputy Commissioner cum Collector, North Lakhimpur has filed an affidavit through the Additional Deputy Commissioner, North Lakhimpur and has taken a stand that the land was acquired in the year 2014 and due compensation was paid to the land owners whose land was acquired. As per the said affidavit, the process of land acquisition was completed by following due process and the petitioners are the encroachers of PWD (roadside) reserved land and therefore, the petitioners shall not be entitled for compensation for construction made over the PWD (roadside) land inasmuch as such construction itself is illegal. According to the said respondent, there is no liability of the State respondents to pay land acquisition compensation to the petitioners.

4. It is the further stand that in response to an application submitted by the petitioner No. 4, for demarcation of boundary of 1 Katha land covered by Periodic Patta No. 183 and Dag No. 263 of Ghilamara, a notice was issued for demarcation of land and not for spot verification for assessment of compensation, as claimed by the petitioner.

5. The petitioners have resisted such stand of the State respondents by filing a reply-affidavit, wherein a contention is made that the petitioners have been living in their own miyadi patta land. It is their further stand that the actual reserved road side land for PWD is 15 Mtrs in the left side and 22 Mtrs in the right side. However, the respondent authorities has constructed the road beyond such reserve land by encroaching the patta land of the petitioner and therefore, they are entitled for compensation.

6. In view of the aforesaid disputed question raised i.e. whether, actually the petitioners were encroachers and were occupying road side reserved land or whether their patta land has been encroached for construction of road can be determined by the Revenue Authority by way of an enquiry and such disputed facts cannot be determined by this Court in exercise of the power of judicial review.

7. At this stage, Mr. Gogoi, learned counsel for the petitioners submits that the petitioners have already raised such grievance before the Circle Officer, Subansiri Revenue Circle, Ghilamara, Lakhimpur (Annexure-D) of the writ petition and therefore prays that this Court may direct the Deputy Commissioner cum Collector, North Lakhimpur, Lakhimpur to consider the claim of the petitioners.

8. Such prayer has not been objected by Mr. Sarma, learned counsel representing the State respondents.

9. Accordingly, in view of the determination made hereinabove and as agreed to by the learned counsel for the parties, the present writ petition stands disposed of by directing the respondent No. 4, i.e. Deputy Commissioner cum Collector, North Lakhimpur, Lakhimpur to make an enquiry through the concerned Circle Officer to ascertain whether any patta land of the petitioners has been encroached in the process of construction of State Highway, and thereafter, pass a speaking order in this regard.

10. While making such determination, the petitioners may be given a reasonable opportunity of hearing.

11. The aforesaid process shall be completed within a period of 8 (eight) weeks from the date of receipt of certified copy of this order.

12. With the aforesaid observations and directions, this writ petition

stands disposed of. Parties to bear their own cost.

JUDGE

Comparing Assistant