

GAHC010099692018



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

Case No. : WP(C)/3121/2018

BANESWAR MAHILI AND ANR.
S/O- LT RUPAWATI MAHILI, VILL- PURANA KAKI, RAMPUR BONGAON, P.O.
PURANA KAKI, P.S. KAKI, DIST- HOJAI, ASSAM

2: SUNESWAR MAHILI
S/O- LT RUPAWATI MAHILI
VILL- PURANA KAKI
RAMPUR BONGAON
P.O. PURANA KAKI
P.S. KAKI
DIST- HOJAI
ASSA

VERSUS

THE STATE OF ASSAM AND 7 ORS.
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM,
FOREST AND ENVIRONMENT DEPTT., DISPUR, GHY-6

2:THE PRINCIPAL CHIEF CONSERVATOR OF FOREST
JURIPAR
PANJABARI
GHY-37

3:THE DIVISIONAL FOREST OFFICER
NAGAON
SOUTH DIVISION
HOJAI
ASSAM
PIN-782435

4:THE RANGE FOREST OFFICER
KAKI RANGE
KAKI DISTRICT

HOJAI
ASSAM
PIN-782446

5:RAM ABATH CHAUHAN
S/O- GANESH CHAUHAN
VILL- RAMPUR BONGAON
P.O. PURANA KAKI
P.S. KAKI
DIST- HOJAI
ASSAM
PIN-782446

6:RAJKUMAR CHAUHAN
S/O- RAM SANKAR CHAUHAN
VILL- RAMPUR BONGAON
P.O. PURANA KAKI
P.S. KAKI
DIST- HOJAI
ASSAM
PIN-782446

7:RAJENDRA CHAUHAN
S/O- RAM SANKAR CHAUHAN
VILL- RAMPUR BONGAON
P.O. PURANA KAKI
P.S. KAKI
DIST- HOJAI
ASSAM
PIN-782446

8:SMTI. SARASWATI MAHILI
W/O- SRI JAGARU MAHILI
R/O- VILL- AZARBARI
P.O. AZARBARI
P.S. KAKI
DIST- HOJAI
ASSAM
PIN-78244

Advocate for the Petitioner : MR. P J SAIKIA

Advocate for the Respondent : SC, FOREST

BEFORE

HONOURABLE MR. JUSTICE KALYAN RAI SURANA

ORDER

Date : 02.05.2024

Heard Mr. P.J. Saikia, learned counsel for the petitioners, Mr. D. Gogoi, learned standing counsel for the Forest Department, appearing for respondent nos. 1 to 4 and Mr. S. Chauhan, learned counsel appearing for respondent nos. 5 to 7.

2. The case of the petitioners is that they are the legal heirs of Sew Saran Mahili and they have been residing in the land allotted in the name of their said predecessor-in-interest in the year 1952. It is projected that from a RTI reply received from the Public Information Officer, Divisional Forest Office, Nagaon, South Division, Hojai that the names of private respondent nos. 5 to 8 have been recorded in respect of the said land. It is projected that the entry of the names of the private respondents is in violation of the provisions of Schedule Tribes and other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006. As the representation of the petitioners before the respondent authorities have not been considered, the present writ petition has been filed under Article 226 of the Constitution of India.

3. The learned standing counsel for the Forest Department as well as the learned counsel for the private respondents have both opposed the prayers made in this writ petition. However, on a pointed query of the Court as to whether there is any record of the petitioners being heard before the entry of names of the private respondents in respect of their said land, which was allotted in the name of their grandfather (predecessor-in-interest), the learned standing counsel for the Forest Department has submitted that he has not been provided with those documents, if there be any.

4. As the Court finds that there is nothing on record to show that the petitioners were given an opportunity of being heard before the name of the private respondent nos. 5 to 8 in respect of part of land, which is claimed to be allotted in the name of Sew Saran Mahili, the Court is of the considered opinion that this is a fit case where the Divisional Forest Officer, Nagaon, South Division, Hojai be directed to hear both the petitioners and the respondent nos. 6 to 8 in connection with the representation filed by the petitioners so as to determine the entitlement of the parties to possession of respect of the land measuring 12 bigha covered by Dag no. 175, which is located under Kaki range within Rampur forest village, claimed by the petitioners to be allotted in the name of Sew Saran Mahili (since deceased), who is projected to be the predecessor-in-interest of the petitioners.

5. In order to facilitate the said hearing, it is provided that the recording of the said land in the names of private respondent nos. 5 to 8 shall not stand as a bar for the Divisional Forest Officer, Nagaon, South Division, Hojai (respondent no.3) to hear the rights and entitlement of the parties by giving opportunity of hearing to both sides and pass necessary orders. We also provide that the adjudicatory order which will be passed by the Divisional Forest Officer, Nagaon, South Division, Hojai (respondent no.3) would have an overriding effect on and/ or perusal upon the impugned order related of allotment of land in the names of private respondents.

6. This exercise shall be done by the Divisional Forest Officer, Nagaon, South Division, Hojai (respondent no.3) within a period of 2(two) months from the date of production of the certified copy of the order. As both sides are duly represented, the petitioners and the private respondent nos. 5 to 8 are directed to appear before the respondent no.3 on 27.05.2024.

7. It is needless to say that final orders, if any, passed by the authority shall be communicated to the parties.
8. Interim order stands extended till the appearance of the parties before the respondent no.3 and/ or 27.05.2024, whichever is earlier.
9. This writ petition stands partly allowed to the extent as indicated above.

JUDGE

Comparing Assistant