

GAHC010141202021



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

Case No. : WP(C)/4888/2021

PRAHLAD DOLOI AND 16 ORS
SON OF LATE GANDHI DOLOI, RESIDENT OF DAKHIN DHARAMTUL, P.O.
DHARAMTUL, DISTRICT- MORIGAON, ASSAM, PIN- JAGIROAD.

2: BORUN DOLAI
SON OF ANANDA DOLOI
RESIDENT OF RESIDENT OF DAKHIN DHARAMTUL
P.O. DHARAMTUL
DISTRICT- MORIGAON
ASSAM
PIN- JAGIROAD.

3: LILADHAR MEDHI
SON OF BAKUL MEDHI
RESIDENT OF DAKHIN DHARAMTUL
P.O. DHARAMTUL
DISTRICT- MORIGAON
ASSAM
PIN- 782412

4: CHATRASING DAS
SON OF LATE GERELA DAS
RESIDENT OF DAKHIN DHARAMTUL
P.O. DHARAMTUL
DISTRICT- MORIGAON
ASSAM
PIN- JAGIROAD.

5: RAMESH MEDHI
SON OF LATE BAKUL MEDHI
RESIDENT OF DAKHIN DHARAMTUL
P.O. DHARAMTUL
DISTRICT- MORIGAON
ASSAM

PIN- JAGIROAD.

6: GAKHIRATI DAS
SON OF LATE DUMBAR DAS
RESIDENT OF DAKHIN DHARAMTUL
P.O. DHARAMTUL
DISTRICT- MORIGAON
ASSAM
PIN- JAGIROAD.

7: BIRENDRA DAS
SON OF LATE DHIRENDRA DAS
RESIDENT OF DAKHIN DHARAMTUL
P.O. DHARAMTUL
DISTRICT- MORIGAON
ASSAM
PIN- JAGIROAD.

8: BHUMISHWARI DAS
SON OF LATE GUPALI DAS
RESIDENT OF DAKHIN DHARAMTUL
P.O. DHARAMTUL
DISTRICT- MORIGAON
ASSAM
PIN- JAGIROAD.

9: PASEN DAS
SON OF KHAGEN DAS
RESIDENT OF DAKHIN DHARAMTUL
P.O. DHARAMTUL
DISTRICT- MORIGAON
ASSAM
PIN- JAGIROAD.

10: ABANTI KANTA DAS
SON OF LATE DHARANI DAS
RESIDENT OF DAKHIN DHARAMTUL
P.O. DHARAMTUL
DISTRICT- MORIGAON
ASSAM
PIN- JAGIROAD.

11: MANIRAM DAS
SON OF LATE BHOLA DAS
RESIDENT OF DAKHIN DHARAMTUL
P.O. DHARAMTUL
DISTRICT- MORIGAON
ASSAM

PIN- JAGIROAD.

12: SRIMATI RATNA DAS
WIFE OF LATE NANDA DAS
RESIDENT OF DAKHIN DHARAMTUL
P.O. DHARAMTUL
DISTRICT- MORIGAON
ASSAM
PIN- JAGIROAD.

13: SITARAM PATHAK
SON OF LATE ABANTI PATHAK
RESIDENT OF DAKHIN DHARAMTUL
P.O. DHARAMTUL
DISTRICT- MORIGAON
ASSAM
PIN- JAGIROAD.

14: BHUPEN DAS
SON OF KISHOK DAS
RESIDENT OF DAKHIN DHARAMTUL
P.O. DHARAMTUL
DISTRICT- MORIGAON
ASSAM
PIN- JAGIROAD.

15: SANUD DAS
SON OF LATE KATHIRAM DAS
RESIDENT OF DAKHIN DHARAMTUL
P.O. DHARAMTUL
DISTRICT- MORIGAON
ASSAM
PIN- JAGIROAD.

16: RATNESHWAR DAS
SON OF SAMAN DAS
RESIDENT OF DAKHIN DHARAMTUL
P.O. DHARAMTUL
DISTRICT- MORIGAON
ASSAM
PIN- JAGIROAD.

17: RAMESH DAS
SON OF LATE JAM DAS
RESIDENT OF DAKHIN DHARAMTUL
P.O. DHARAMTUL
DISTRICT-MORIGAON
ASSAM

PIN-JAGIROA

VERSUS

THE STATE OF ASSAM AND 3 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO
GOVERNMENT OF ASSAM, WATER RESOURCE DEPARTMENT, DISPUR,
GUWAHATI-6

2:THE DEPUTY COMMISSIONER
MORIGAON
MORIGAON TOWN
DIST-MORIGAON
ASSAM
PIN-782105

3:EXECUTIVE ENGINEER
MORIGAON WATER RESOURCE DIVISION
MORIGAON TOWN
DIST-MORIGAON
ASSAM
PIN-782105

4:CIRCLE OFFICER
MORIGAON TOWN
DIST-MORIGAON
ASSAM
PIN-78210

Advocate for the Petitioner : MR. S S S RAHMAN

Advocate for the Respondent : SC, WATER RESOURCE

BEFORE
HON'BLE MR. JUSTICE KAUSHIK GOSWAMI
ORDER

03.04.2024.

Heard Mr. M.R. Sodial, learned counsel for the petitioners. Also heard Mr. B. Goswami, learned Additional Advocate General, Assam assisted by Ms. M. Barman, learned Government Advocate, Assam for the State respondent.

2) The writ petitioners, by filing the Writ Petition is canvassing non-payment of compensation by the Water Resource Department, Govt. of Assam for construction of embankment from "R/S to T/dvke along both banks of Kopilli river from Charaihagi to Tuklaitup. (L/B) Basundhari to Killing-Kapilli Junction (L/B) and Chaparmukh to Ahatguri Amsoi P.W.D. Road (R/B) including Anti-erosion measures at different reaches."

3) The facts of the case is that the petitioners are the owners and pattadars of different plot of land which are covered by Dag No. 28, Patta No. 224, Dag No. 193, Patta No. 105, Dag No. 14, Patta No. 223, Dag No. 34, Patta No. 154 and Dag No. 300, Patta No.200, Dag No. 519, Patta No. 199, Dag No. 6, Patta No. 141, Dag No. 203, Patta No. 54 Dag No. 154, Patta No. 159, which was acquired by the Water Resource Department for construction of embankment including Anti-erosion measures at different reaches. It is the specific case of the petitioners that the Water Resource Department, Morigaon Division after acquiring the said land of the petitioners, did not pay any compensation amount to the petitioners and accordingly the present petition has been filed.

4) Mr. M.R. Sodial, learned counsel for the petitioners submits that the petitioners' land has been acquired by the Water Resource Department for the subject embankment, without payment of compensation.

5) Mr. B. Goswami, learned Additional Advocate General, Assam submits that the land of the petitioners was not acquired by the Acquiring Authority in connection with the subject embankment, as alleged by the petitioners and as such the petitioners are not entitled for any compensation whatsoever.

6) I have heard the submission at the Bar and perused the materials available on record.

7) It appears from the affidavit-in-opposition filed by the respondent No.2, the District Commissioner, Morigaon, Assam that an inquiry was conducted by the Circle Officer, Morigaon Revenue Circle along with the Executive Engineer, Morigaon Water Resource Division and after conducting the said inquiry, a report was submitted from which it can be seen that the land of the petitioners was not acquired in connection with the subject embankment.

8) Relevant paragraphs of the aforesaid affidavit-in-opposition is reproduced hereunder for ready reference:

4. That with regard to the averments made in paragraph-2 of the writ petition the deponent begs to state that there is no record as such available in the office of the deponent towards acquisition of any land as referred to by the petitioner for construction of embankment from "R/S to T/Dvke along both banks of Kopilli River from Charaihagi to Tuklitup (L/B) Basundhari to Killing-Kapilli Junction (L/B) and Chaparmukh to Ahatguri Amsoi PWD Road (R/B) including Anti- erosion measures at different reaches" by the Water Resource Department. As per report of the Executive Engineer, Morigaon Water Resource Division the areas in the writ petition falls in the left bank embankment where raising and strengthening works were taken up under the scheme mentioned above over already existing embankment on the left bank of River Kopilli at the Dakhin Dharamtul.

It is relevant to state that the embankment in question is partially upon the land bearing Dag No.25 of Patta No.76, Dag No.28 of Patta No.224, Dag No.193 of Patta No. 105, Dag No.14 of

Patta No.223 and Dag No. 6 of Patta No.141 of the Dakhin Dharamtul Revenue village of Uttarkhola Mouza under Morigaon Revenue Circle. It is categorically denied that the embankment is there over the land bearing Dag No.300 of Patta No. 200, Dag No.203 of Patta No.5, Dag No 203 of Patta No 54, Dag No 34 of Patta No 154 and Dag No 154 of Patta No 159.

With a view to find out the actual state of affairs on the of the petitioners, an enquiry was directed to be conducted by the Circle Officer of Morigaon Revenue Circle along with the Executive Engineer, Morigaon Water Resource Division. On such enquiry along with examination of relevant records, the above narrated facts have come to light.

It may also be pertinent to mention that the present embankment was in fact constructed in the year 1960 and in the office of the District Commissioner no data/ record what so ever relating to any land acquisition process during the construction of the said embankment in the year 1960 is available. In view of the matter, no land acquisition has carried out for the purpose of implementation of the present scheme, namely, "R/S to T/Dvke along both banks of Kopilli River from Charaihagi to Tuklitup (L/B) Basundhari to Killing-Kapilli Junction (L/B) and Chaparmukh to Ahatguri Amsoi PWD Road (R/B) including Anti-erosion measures DISTRICTat

different reaches". As the said scheme has been implemented for up gradation (strengthening and raising) and repairing the embankment which is already in existence and therefore no additional land is required for the purpose of execution of the said scheme.

It may not be out of context to mention that the enquiry report that has been submitted by Circle Officer, Morigaon Revenue Circle and Executive Engineer, Morigaon, WR Division in connection states as follows -

i) A Pre-Constructed Embankment is there in Dakhin Dharamtul Revenue village of Uttarkhola Mouza under Morigaon Revenue Circle. The embankment is partially upon the land bearing Dag No 25 of Patta No 76, Dag No 28 of Patta No 224, Dag No 193 of Patta No 105, Dag No 14 of Patta No 223 and Dag No 6 of Patta No 141 of the said village. No embankment is there over the land bearing Dag No 300 of Patta No 200, Dag No 203 of Patta No 54, Dag No 34 of Patta No 154 and Dag No 154 of Patta No 159.

ii) The embankment was first originally constructed in the year 1960 as per report of Water Resource Department and in the office of the District Commissioner, Morigaon has no data regarding the land acquisition process during the construction of the said embankment i.e., in 1960s.

iii) No new land acquisition is executed from office of the District Commissioner, Morigaon regarding the construction or repairing of the said embankment.

iv) Water Resources Department executed the scheme namely "R/S to T/Dyke along both banks of Kopilli River from Charaigahi to Tuklaitup (L/B) Basundhari to Killing-Kopilli Junction (L/B) and Chaparmukh to Ahatguri Amsoi P.W.D Road (R/B) including Anti- erosion measures at different reaches" on both banks of river Kopilli. The up gradation (Strengthening & Raising) and repairing process of the said embankment is made upon the pre-existing

embankment and hence no new land acquisition was made during the said process.

v) As per record the last Dag in the village Dakhin Dharamtul of Uttarkhola Mouza under Morigaon Revenue Circle is 511 and there is no land bearing Dag No 519 as claimed by the petitioners in the said village.

vi) As no embankment is there on the land bearing Dag No 300 of Patta No 200, Dag No 203 of Patta No 54, Dag No 34 of Patta No 154 and Dag No 159 of Patta No 154, hence there is no case of land acquisition in the said plot.

vii) Among all the petitioners, only the Petitioner (SI No-15) Sanat Das, C/O Katiram has land record in his name in Dag No 14 and Patta No 223 at the time of construction of the embankment as per record during the time period of 1960s. The Petitioner (SI-3) Liladhar Medhi, the Petitioner (SI-5) Bakul Medhi, the Petitioner (SI-8) Bhumiswari Das mutated their names subsequently after the land was converted from Annual Patta to Periodic Patta during the year 2002.

viii) It is to be mentioned that all other petitioners (except Sanat Das) or their parents were not the pattadars of the land on which claims have been made against. The land was transferred to the RICT below mentioned petitioners (Pattadars as of now) from the original pattadars in subsequent years as shown below-

a) As per record, during the construction of embankment (i.e., 1960) land bearing Dag No. 25, P.P. 76 was recorded in the name of Mr. Bhaba Kanta Doloi c/o

Haripada. The petitioner Prahlad Doloi (SI No-1) and others mutated their name in the said plot of land in place of the former pattadar Bhaba Kanta Doloi during the year 1999.

b) As per record, during the construction of the embankment land bearing Dag No 28 and Patta No 224 was recorded in the name of Sri Rupī Hira c/o Gendhela. The petitioner Ratneswar Das (SI-16) mutated their name in the said plot of land in place of the former pattadar Chaman Hira during the year 2010.

c) As per record, during the construction of the embankment land bearing Dag No 193 and patta no 105 was recorded in the name of Sri Bhaba Kanta Doloi C/o Padma and Sri Ramananda Chetry C/o Kishan. The petitioner Barun Doloi (SI-2) mutated their name in the said plot of land in place of the former pattadar Sri Bhaba Doiloi and Ramananda Chetry during the year 2001.

d) As per record, during the construction of the embankment land bearing Dag No 6 and Patta No 141 was recorded in the name of Sri Ahalya Hirani C/o Kaliram and Jelengi C/o Kaliram. The petitioner Maniram Das (SI-11) mutated their name in the said plot of land in place of the former pattadar Sri Ahalya Hira during the year 1974”.

9) It is evident from the above that no land of the petitioners has been acquired for the purpose of execution of the present scheme, namely, the "R/S to T/dvke along both banks of Kopilli river from Charaihagi to Tuklaitup. (L/B) Basundhari to Killing-Kapilli Junction (L/B) and Chaparmukh to Ahatguri Amsoi P.W.D. Road (R/B) including Anti-erosion measures at different reaches", as the same has been implanted on the pre-constructed embankment in the Dakhin Dharamtul Revenue Village.

10) That being so, the writ petitioners have failed to make out any case warranting the relief sought for. As such the writ petition stands dismissed.

No order as to cost.

JUDGE

Comparing Assistant