

GAHC010152222017



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

Case No. : WP(C)/7644/2017

BINAY KUMAR BRAHMA
S/O- LT BHIM CHANDRA BRAHMA VILL- BANDUGURI P.O. CHORAIKHOLA
P.S. and DIST- KOKRAJHAR, ASSAM PIN- 783376

VERSUS

THE STATE OF ASSAM and 7 ORS.
REPRESENTED BY THE CHIEF SECRETARY TO THE GOVT. OF ASSAM,
DISPUR, GHY-6

2:THE COMMISSIONER and SECRETARY
TO THE GOVT. OF ASSAM
REVENUE and DISASTER MANAGEMENT AND RELIEF and
REHABILITATION
DEPTT.
DISPUR
GHY-6

3:THE COMMISSIONER and SECRETARY
TO THE GOVT. OF ASSAM
HOME DEPTT.
DISPUR
GHY-6

4:THE DEPUTY COMMISSIONER
KOKRAJHAR
BTAD
ASSAM
P.O. and P.S. and DIST- KOKRAJHAR
BTAD
ASSAM PIN- 783370

5:THE DIRECTOR GENERAL OF POLICE
ASSAM
ULUBARI
GHY-7

6:THE SUPERINTENDENT OF POLICE
KOKRAJHAR
P.O. and P.S. and DIST- KOKRAJHAR
BTAD
ASSAM
PIN-783370

7:THE OFFICER IN CHARGE
KOKRAJHAR POLICE STATION P.O. and P.S. and DIST- KOKRAJHAR
BTAD
ASSAM
PIN-783370

8:THE CIRCLE OFFICER
KOKRAJHAR REVENUE CIRCLE
P.O. and P.S. and DIST- KOKRAJHAR
BTAD
ASSAM
PIN-78337

For the petitioner (s) : Mr. M. Hussain, Advocate

For the respondent (s) : Ms. P. R. Mahanta, SC, Revenue
Ms. S. Baruah, Govt. Advocate

BEFORE
HON'BLE MR. JUSTICE DEVASHIS BARUAH
ORDER

16.02.2024

The instant writ petition has been filed by the petitioner for seeking a mandamus directing the respondents to recover the brother of the petitioner, namely, Dino Nath Brahma from the hands of the extremist who was kidnapped on 25.03.1989 and had remained untraced till date and in respect of which Kokrajhar P.S. Case No.233/1989 was registered.

2. The petitioner has also sought for a mandamus directing the

respondents to pay the just and adequate compensation to the family members of the victim Dino Nath Brahma in the event the brother of the petitioner could not be traced out.

3. From the record it reveals that an FIR was filed before the Officer-in-Charge of Kokrajhar Police Station on 26.03.1989 by the father of the petitioner stating inter-alia that on 25.03.1989 at about 5:00 PM, his son one Dino Nath Brahma went to the residence of one Karendra Kanta Brahma of village Basbari, but he did not return home and it was known that some extremists had kidnapped his son. On the basis of the said FIR, Kokrajhar P.S. Case No.233/1989 was lodged under Section 364 of the IPC. Subsequent thereto, on 24.11.1989, the FR was submitted stating inter-alia that the contents of the FIR was true but no clue could be found in respect to the person which had been missing.

4. The record reveals that the petitioner herein had submitted an application to the Secretary, Relief and Rehabilitation Department of the Government of Assam on 22.03.2017 seeking a compensation of Rs.5,00,000/-. However, as nothing progressed, the petitioner has approached this Court by filing the instant writ petition seeking the prayer mentioned herein above.

5. This Court had issued notice on 11.12.2017. Thereupon, the affidavits have been filed by the respondents as could be seen from the records. In the affidavit filed by the respondent No.2, it has been mentioned that the case of the petitioner falls within the ambit of the notification of the Revenue Department dated 06.06.1996 and the amount of ex-gratia that the petitioner would be entitled to is Rs.1,00,000/-. It was also submitted that although subsequent notification had been issued

on 19.06.2007 and 15.11.2014, but the said notification would only be applicable prospectively, and as such, the petitioner's entitlement is at best Rs.1,00,000/-. In the affidavit filed by the respondent No.4, it has also been categorically stated that the police submitted the FR as they could not trace out the body of the victim nor they could find the culprits and under such circumstances, there is no accrument of right upon the petitioner for payment of ex-gratia compensation at the belated stage.

6. During the course of hearing, the learned counsel for the petitioner submitted that the petitioner may not be entitled to benefits of ex-gratia in terms with the notifications dated 19.06.2007 and 15.11.2014 taking into account that the incident happened in the year 1989. Be that as it may, the learned counsel for the petitioner submitted that in view of the Office Memorandum dated 29.07.2013 issued by the Department of Personnel (Personnel B), Government of Assam wherein it has been stipulated that in case persons killed in extremist violence prior to 2004, but whose relatives did not apply for any appointment prior to 22.06.2004 and had applied after 22.06.2004 or may or may not have received ex-gratia grant under the 2004 notification, i.e. Rs.3,00,000/-, they shall now be entitled to appropriate ex-gratia payment as per the notification dated 22.06.2004 adjusting the amount already received, if any.

7. It has also been submitted by the learned counsel appearing on behalf of the petitioner that as the brother of the petitioner could not be traced out, by virtue of Section 108 of the Indian Evidence Act, 1872, a presumption can be drawn that he has expired.

8. This Court has also heard the learned counsels for the parties and it is the opinion of this Court that as per the notification dated 06.06.1996,

the petitioner herein would be entitled to compensation of Rs.1,00,000/-. The record further reveals that the respondent No.2 has duly admitted that the petitioner would only be entitled to an amount of Rs.1,00,000/- as could be seen from the paragraph No.3 of the affidavit filed by the respondent No.2.

9. This Court has also given an anxious consideration to Clause (IV) (v) of the Office Memorandum dated 29.07.2013 which categorically stipulated that only upon a person being killed in extremist violence, the beneficiary would be entitled to compensation of Rs.3,00,000/-. The said Office Memorandum does not deal as regards a person missing. Under such circumstances taking into account the overall facts, this Court directs the Deputy Commissioner, Kokrajhar to pay an amount of Rs.1,00,000/- to the next of the kin of Late Dino Nath Brahma upon submission of a certified copy of the instant order along with the next of kin certificate.

10. The said exercise be completed within 3 (three) months from the date of submission of a certified copy of the instant order along with the next of kin certificate.

11. In view of the above, the instant petition stands disposed of.

JUDGE