

GAHC010170412021



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

Case No. : PIL/66/2021

LAKHESWAR DEORI AND ANR.

S/O- LT. TIKORAM DEORI, R/O- VILL- SUNPURA, P.S. SANGSHAP, DIST.-
TINSUKIA, ASSAM

2: MOHIM SONWAL

S/O- LT. SOSHIDHAR SONWAL

R/O- VILL- UDOINAGAR

P.O. AND P.S. SADIYA

DIST.- TINSUKIA

ASSA

VERSUS

THE STATE OF ASSAM AND 3 ORS.

REP. BY THE PRINCIPAL SECY. TO THE GOVT. OF ASSAM, REVENUE AND
DISASTER MANAGEMENT DEPTT., DISPUR, GHY-06

2:THE CHIEF SECY. TO THE GOVT. OF ASSAM

DISPUR

GHY-06

3:THE DY. COMMISSIONER

TINSUKIA

OFFICE OF THE DY. COMMISSIONER

P.O. AND P.S. TINSUKIA

TINSUKIA

ASSAM- 786125

4:THE CIRCLE OFFICER

OFFICE OF THE CIRCLE OFFICER

SADIYA REVENUE CIRCLE

P.O. AND P.S. SADIYA

TINSUKIA

ASSAM- 786155

5:ASSAM GORKHA SANMMELLAN
REPRESENTED BY ITS PRESIDENT SHRI KRISHNA BHUJEL
RESIDENT OF MANI KUMAR SUBBA BHAWAN
PALTAN BAZAR
P.S-PALTAN BAZAR
GUWAHATI-07.

6:KRISHNA BHUJEL
PRESIDENT ASSAM GORKHA SANMMELLAN
S/O TIL BAHADUR BHUJEL
R/O H.NO.4
JONAKI MAHANTA PATH PACHIM BORA GAON
GOTA NAGAR
P.S-GORCHUK
GUWAHATI-33
DIST-KAMRUP(M)
ASSAM.

7:RAJU DHAKAL
S/O LATE CHURAMONI SARMAH
GENERAL SECRETARY
ASSAM GORKHA SANMMELLAN
R/O HILL VIEW APARTMENT NEAR STATE ZOO
JONALI
ZOO ROAD
P.O AND P.S-GEETA NAGAR
GUWAHATI-24
DIST-KAMRUP(M)
ASSAM

8:YUVRAJ GODTOLA
PRESIDENT
ASSAM GORKHA SANMMELLAN KAMRUP(M)
DISTRICT COMMITTEE
S/O-PRABAKAR GODTOLA
R/O-PUB MADHAB NAGAR
MALIGAON
P.O-DEVKOTANAGAR
P.S-JALUKBARI RAILWAY HEAD QUATERS
GUWAHATI-11
DIST-KAMRUP(M)
ASSAM

Advocate for the Petitioner : MR H R A CHOUDHURY, MR. I U CHOWDHURY,MR. M SARANIA

Advocate for the Respondent : GA, ASSAM, SC, REVENUE

**BEFORE
HONOURABLE THE CHIEF JUSTICE
HONOURABLE MR. JUSTICE N. UNNI KRISHNAN NAIR**

**Date of hearing : 28.10.2024
Date of Judgment & Order : 08.11.2024**

**JUDGMENT & ORDER (CAV)
(N. Unni Krishnan Nair, J.)**

Heard Mr. H. R. A. Choudhury, learned senior counsel, assisted by Mr. M. A. Choudhury, learned counsel, appearing on behalf of the petitioners. Also heard Mr. Dilip Mazumdar, learned Addl. Advocate General, Assam; Ms. N. Bordoloi, learned standing counsel, Revenue & Disaster Management Department; and Mr. R. P. Sarmah, learned senior counsel, assisted by Mr. M. R. Adhikari, learned counsel; appearing on behalf of their respective respondents.

2. The challenge in the present Public Interest Litigation (PIL) is to a Notification, dated 20.07.2021, issued by the Government of Assam, Revenue(Settlement & Disaster Management Department) towards including the communities mentioned therein, in the list of protected classes of persons in Sadiya Tribal Belt, in exercise of powers conferred by Regulation 160(2) of Chapter X of the Assam Land & Revenue Regulation, 1886(as amended).

3. The petitioners, herein, have projected themselves to belong to the indigenous Scheduled Tribes of the District of Tinsukia, Assam, and being social workers; have proceeded to institute the present Public Interest Litigation(PIL), on behalf of the Scheduled Tribes and original backward

classes of Sadiya Tribal Belt, against the action on the part of the respondent authorities in issuing the said Notification, dated 20.07.2021.

4. The projection made in this Public Interest Litigation (PIL) petition is that the Notification, dated 20.07.2021, came to be issued without the State Government drawing the requisite satisfaction under Regulation 160(1) of Chapter X of the Assam Land & Revenue Regulation, 1886 (as amended), that the communities involved, on account of their primitive condition and lack of education or material advantages, are incapable of looking after their welfare, insofar as, such welfare depends upon their having sufficient land for their maintenance.

5. Mr. Choudhury, learned senior counsel appearing on behalf of the petitioners, by referring to the provisions of Chapter X of the Assam Land & Revenue Regulation, 1886 (as amended), has submitted that the same was so incorporated primarily for the protection of the tribal communities residing in areas covered by it, with the objective of protecting their rights.

6. Mr. Choudhury, learned senior counsel, has further submitted that inclusion of the communities as mentioned in the Notification, dated 20.07.2021, in the list of protected classes of persons residing in Sadiya Tribal Belt; was so issued without satisfying the required conditions as specified under the provisions of Regulation 160(1) of the said Regulation of 1886.

7. Mr. Choudhury, learned senior counsel, has also submitted that on account of issuance of the said Notification, dated 20.07.2021; the rights of

the existing protected classes of persons residing in Sadiya Tribal Belt, has been infringed with. The learned senior counsel has submitted that the communities now included in the list of protected classes of persons residing in Sadiya Tribal Belt, vide Notification, dated 20.07.2021, are all socially, economically and politically advanced communities and accordingly, they are not in the need of any special protection, more particularly, the protection as provided for under the provisions of Chapter X of the Assam Land & Revenue Regulation, 1886(as amended).

8. Mr. Choudhury, learned senior counsel, has also submitted that in terms of the Notification, dated 20.07.2021, and the inclusion of the communities as mentioned therein in the list of the protected classes of persons residing in Sadiya Tribal Belt; the respondent authorities had proceeded to issue land pattas to the members of such communities which has the effect of defeating the very purpose behind incorporation of Chapter X in the Assam Land & Revenue Regulation, 1886(as amended).

9. Mr. Choudhury, learned senior counsel, has further submitted that none of the communities now included in the list of protected classes of persons in Sadiya Tribal Belt, vide Notification, dated 20.07.2021, belonged to the Scheduled Tribe communities and accordingly, the respondent authorities, by inclusion of such communities in the list of protected classes; has violated the provisions of Regulation 160(1) of Chapter X of the Assam Land & Revenue Regulation, 1886(as amended).

10. In the above premises, Mr. Choudhury, learned senior counsel for the petitioners, has submitted that this Court would be pleased to interfere

with the Notification, dated 20.07.2021, along with the consequential steps taken by the respondent authorities in pursuance thereof.

11. Per contra, Mr. Mazumdar, learned Addl. Advocate General, Assam, appearing on behalf of the State respondents, has submitted that the provisions of Chapter X of the Assam Land & Revenue Regulation, 1886 (as amended), is applicable to all backward classes, as would be specified by the State Government in exercise of its power conferred under Regulation 160(2) of the said Regulation of 1886, in protected belts and blocks.

12. Mr. Mazumdar, learned Addl. Advocate General, Assam, has further submitted that the provisions of Chapter X of the Assam Land & Revenue Regulation, 1886 (as amended), were so incorporated in the said Regulation of 1886, with the objective to enable the State Government to specify the backward classes and constitute compact areas as protected belts and blocks. It is submitted that the communities concerned on being so included in the protected list, would be entitled to special protection measures like settlement of government land, rights of settlement holders and land holders.

13. Mr. Mazumdar, learned Addl. Advocate General, Assam, has also submitted that the Notification, dated 20.07.2021, was issued after a due exercise was carried-out by the respondent authorities in the matter to ascertain as to whether the communities so included vide the said Notification, in the list of protected classes in Sadiya Tribal Belt; were actually required to be so included.

14. Mr. Mazumdar, learned Addl. Advocate General, Assam, has submitted that the matter was first considered by a Cabinet Sub-Committee. The said committee had carried-out a detailed examination as regards the living conditions and suffering of the communities so mentioned in the said Notification, dated 20.07.2021. However, since the matter could not be finalized; the Revenue & Disaster Management Department, Assam, was entrusted to examine the issues involved, in the month of June, 2021. On conclusion of the examination of the issue as mentioned hereinabove; a Cabinet Memorandum was prepared considering the materials brought on record. Thereafter, the Cabinet after considering the deliberations made by the Cabinet Sub-Committee, as well as the materials coming on record in the examination as carried-out in the matter by the Revenue & Disaster Management Department and after a thorough deliberation of the issues so arising, in its meeting held on 15.07.2021, approved the proposal for inclusion of Moran, Matak, Ahom, Chutia and Gorkha communities in the list of protected classes of persons residing in the Sadiya Tribal Belt. Thereafter, the Notification, dated 20.07.2021, was so issued by the Revenue & Disaster Management Department, Assam.

15. Mr. Mazumdar, learned Addl. Advocate General, Assam, has submitted that the specifications as made under the provisions of Regulation 160(1) of Chapter X of the Assam Land & Revenue Regulation, 1886(as amended); was duly complied with before the Notification, dated 20.07.2021, was so issued by the State Government under the provisions of Regulation 160 of the Regulation of 1886(as amended).

16. Mr. Mazumdar, learned Addl. Advocate General, Assam, in the above

premises, has submitted that the satisfaction required to be drawn by the State Government under the provisions of Regulation 160(1) of Chapter X of the Assam Land & Revenue Regulation, 1886(as amended); having been so drawn and the decision so arrived at to include the communities as mentioned in the Notification, dated 20.07.2021, in the list of protected classes of persons in Sadiya Tribal Belt, in the absence of materials being brought on record disputing the conclusions so arrived at in the matter by the State Government; the present Public Interest Litigation(PIL) would not mandate a consideration by this Court. Accordingly, the learned Addl. Advocate General, Assam, has submitted that the instant Public Interest Litigation(PIL) is required to be dismissed at the threshold.

17. We have heard the learned counsels appearing for the parties and also considered the materials available on record.

18. The grievance of the petitioners in the present Public Interest Litigation(PIL) is in relation to the inclusion of Moran, Matak, Ahom, Chutia and Gorkha communities in the list of protected classes of persons who are permanently residing in the Sadiya Tribal Belt in exercise of powers as conferred under the provisions of Regulation 160(1) of Chapter X of the Assam Land & Revenue Regulation, 1886(as amended).

19. The petitioners have, in this connection, presented a challenge to the Notification, dated 20.07.2021, so issued by the State Government in exercise of powers as conferred under Regulation 160(2) of the said Regulation of 1886. The Regulation 160 of the aforesaid Regulation of 1886(as amended), being of relevance to the issues arising in the present

proceeding; is extracted hereinbelow for ready reference:

“160. Protection of certain classes.-

(1) Notwithstanding anything hereinbefore contained, the [State] Government may adopt such measures as it deems fit for the protection of those classes who on account of their primitive condition and lack of education or material advantages are incapable of looking after their welfare in so far as such welfare depends upon their having sufficient land for their maintenance.

(2) The [State] Government may, by notification in the Official Gazette, specify the classes of people whom it considers entitled to protection by such measures as aforesaid.”

20. On perusal of the provisions of Chapter X of the Assam Land & Revenue Regulation, 1886(as amended); it is revealed that the said Chapter was so included in the Regulation of 1886(as amended), for the protection of backward classes. The power to determine as to which of the classes would be entitled for protection, was so reposed upon the State Government.

21. The provisions of Regulation 160(1) starts with a non-obstante clause and the same mandates that the State Government shall adopt such measures as it deems fit for the protection of those classes who on account of their primitive condition and lack of education or material advantages, are incapable of looking after their welfare insofar as such welfare depends upon their having sufficient land for their maintenance. The State Government on identification of such classes covered by the provisions of Regulation 160(1) of Chapter X of the Assam Land & Revenue Regulation, 1886(as amended); is required to issue a Notification in the Official Gazette in terms of the provisions of Regulation 160(2) of the Regulation of 1886, specifying the classes of people whom it considers entitled to protection by adopting measures as provided in Regulation 160(1).

22. The State Government in exercise of its powers conferred by Regulation 160(2) of Chapter X of the Assam Land & Revenue Regulation, 1886(as amended), having included the Moran, Matak, Ahom, Chutia and Gorkha communities in the list of protected classes of persons residing in Sadiya Tribal Belt; it is to be examined as to whether prior to issuance of such Notification under the provisions of Regulation 160(2) of the said Regulation of 1886(as amended); the satisfaction as required to be drawn in the matter under the provisions of Regulation 160(1) of the said Regulation of 1886(as amended), was so drawn by the State Government in the matter.

23. At this stage; it is to be noted that during the consideration of the present Public Interest Litigation(PIL); this Court vide order, dated 01.02.2023, having noticed that the condition precedent for issuing a Notification under Regulation 160(2) is the satisfaction required to be arrived at under Regulation 160(1) of Chapter X of the Assam Land & Revenue Regulation, 1886(as amended); had required the respondent authorities to place on record, materials with regard to the satisfaction as arrived at in respect of the inclusion of Moran, Matak, Ahom, Chutia and Gorkha communities, as mentioned in the Notification, dated 20.07.2021, in the list of protected classes of persons in Sadiya Tribal Belt.

24. The respondent authorities have filed an additional affidavit in the matter on 16.07.2024, and therein, had brought on record materials to demonstrate that the satisfaction as drawn by the State Government with regard to the necessity of inclusion of Moran, Matak, Ahom, Chutia and Gorkha communities in the list of protected classes of persons residing in

Sadiya Tribal Belt.

25. A perusal of the said additional affidavit filed by the respondent authorities, would go to reveal that the Cabinet in its meeting held on 21.10.2019, had constituted a Cabinet Sub-Committee to examine the issues related to indigenous inhabitants of Tribal belts and blocks which was contended to be also a part of the policy decision as contained in clause 17.6 of the land policy of the State of 2019. Accordingly, the Cabinet Sub-Committee as constituted on 21.02.2020, deliberated on the issue in its meetings held on 28.08.2020, 10.09.2020, 23.09.2020, 19.10.2020, 29.10.2020, 11.02.2021 and 22.02.2021. The said Committee during its deliberations, had considered the living conditions and sufferings of the said communities now included in the list of protected classes of persons in Sadiya Tribal Belt vide the Notification, dated 20.07.2021. The Cabinet Sub-Committee had also considered the historical perspective of Sadiya and the reasons as brought on record which demonstrated that most of the non-protected people of Sadiya Tribal Belt were yet to get land title showing linkage although they have been living permanently in the area prior to formation of Sadiya Tribal Belt. However, as the examination involved could not be completed by the said Committee; the matter was entrusted to the Revenue & Disaster Management Department, Assam, for further examination in the month of June, 2021. Basing on the deliberations as made by the said Committee as well as basing on the materials collected by the Revenue & Disaster Management Department in course of the examination of the issue as entrusted to it; a Cabinet Memorandum was prepared for inclusion of the communities finding mention in the Notification, dated 20.07.2021, in the list of protected classes of persons in Sadiya Tribal Belt. It is further highlighted that the materials brought on

record in the matter before the Cabinet, had revealed that the said communities due to their primitive condition and lack of educational qualification and/or material advantages of the said communities; were incapable of looking after their welfare, more particularly, the fact that due to illiteracy of the members of the said Communities; the communities, in question, could not get settlement of their land and many of them had lost their land documents.

26. The said additional affidavit further goes to highlight that after making a proper investigation of the community-wise population of the communities involved in Sadiya and ascertaining their numbers; it was found that the members of the said communities were suffering from various reasons including the effects of the great Sadiya earthquake of 1950 followed by severe floods and erosion which had resulted in the said communities losing their belongings as well as other relevant records including the land documents.

27. It is further projected that the Cabinet in its meeting held on 15.07.2021, after considering all the materials brought on record before it which had emanated both from the deliberations of the Cabinet Sub-Committee in its various meetings as well as the materials brought on record in course of the examination of the matter by the Revenue & Disaster Management Department, Assam, and drawing due satisfaction that the communities as specified in the said Notification, dated 20.07.2021, were on account of their primitive condition, lack of education and/or material advantages, were incapable of looking after their welfare and further drawing satisfaction that such welfare depends upon they

having sufficient land for their maintenance; approved the proposal for inclusion of Moran, Matak, Ahom, Chutia and Gorkha communities in the list of protected classes of persons in Sadiya Tribal Belt.

28. Accordingly, it was projected in the said additional affidavit that the satisfaction as required under Regulation 160(1) of Chapter X of the Assam Land & Revenue Regulation, 1886(as amended), was so drawn prior to issuance of the Notification, dated 20.07.2021, in exercise of its powers conferred under Regulation 160(2) of the said Regulation of 1886(as amended).

29. We have perused the materials brought on record highlighting the manner in which the satisfaction was drawn by the State Government under the provisions of the Regulation 160(1) of Chapter X of the Assam Land & Revenue Regulation, 1886(as amended), pertaining to the issue of inclusion of the Moran, Matak, Ahom, Chutia and Gorkha communities in the list of protected classes of persons in Sadiya Tribal Belt. The said additional affidavit was filed on 16.07.2024. However, it is seen that the petitioners have not brought on record any material to dispute the contentions as made in the said additional affidavit.

30. On a perusal of the materials brought on record in support of the satisfaction drawn by the State Government requisite for the inclusion of the communities mentioned in the Notification, dated 20.07.2021, in the list of protected classes of persons in Sadiya Tribal Belt; we find that the same are in compliance of the requirement as spelt-out under the provisions of Regulation 160(1) of Chapter X of the Assam Land & Revenue

Regulation, 1886(as amended).

31. The above position further when viewed in the light of the fact that the petitioners, herein, have not disputed the manner in which the satisfaction was drawn by the State Government; we are of the considered view that it has to be concluded that the respondents State prior to issuance of the Notification, dated 20.07.2021, under the provisions of Regulation 160(2) of Chapter X of the Assam Land & Revenue Regulation, 1886(as amended); had duly drawn the requisite satisfaction as mandated under the Regulation 160(1) of the said Regulation of 1886, and the same would not mandate any interference by this Court. Accordingly, the Notification, dated 20.07.2021, would also not call for any interference.

32. In view of the above discussions and the conclusions reached by us hereinabove, we are of the considered view that the present Public Interest Litigation(PIL) petition would not merit a further consideration and consequently, the same stands closed.

JUDGE

CHIEF JUSTICE

Comparing Assistant