

GAHC010176472009



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

Case No. : WP(C)/5897/2009

DR. DHANI RAM BARUAH and ANR.
CHAIRMAN OF DR. DHANI RAM BARUAH HEART INSTITUTE AND
RESEARCH CENTER HEART CITY, R/O SONAPUR IN THE DIST OF KAMRUP,
ASSAM

2: MISS DALIMI BARUAH
D/O VIBHAK BARUAH
VILL. KAMALAJARI
P.O.KAMALAJARI P.S.SONAPUR
KAMRU

VERSUS

THE STATE OF ASSAM AND ORS
REP. BY THE CHIEF SECY.TO THE GOVT.OF ASSAM DISPUR,GHY-6

2:COMMISSIONER AND SECY. TO THE GOVT.OF ASSAM

HOME DEPTT
DISPUR
GHY-6

3:DIRECTOR GENERAL OF POLICE

ULUBARI
GHY-7

4:OFFICER IN CHARGE

SONAPUR POLICE STATION
SONAPUR

Advocate for the Petitioner : MR.N BARUA
Advocate for the Respondent : MR.B N SARMA

**BEFORE
HONOURABLE MR. JUSTICE MANISH CHOUDHURY**

ORDER

Date : 09.05.2024

Heard Mr. M.K. Choudhury, learned senior counsel for assisted by Ms. N. Dutta, learned counsel for the writ petitioners; and Mr. B.J. Talukdar, learned senior counsel assisted by Ms. P. Devi, learned counsel for all the respondents.

2. The petitioners have instituted the instant writ petition under Article 226 of the Constitution of India seeking mainly two reliefs, *firstly*, a direction to the State respondents to hand over the investigations of three cases – [a] Sonapur Police Station Case no. 134/2009; [b] Sonapur Police Station Case no. 135/2009; and [c] CID Police Station Case no. 18/2012, to the Central Bureau of Investigation [CBI]; and *secondly*, a direction to the State respondents to pay adequate compensation to the petitioners for the damages and losses suffered by them due to the incident, stated to have occurred on 15.12.2009 at the Heart City.

3. In so far as the two cases - [a] Sonapur Police Station Case no. 135/2009; and [b] CID Police Station Case no. 18/2012; are concerned, it has been submitted on behalf of the State respondents that after completion of investigation, charge-sheets under 173[2], CrPC have already been filed in both the cases.

4. Mr. Talukdar, learned senior counsel appearing for the State respondents has placed a copy of a Notification bearing no HMA.19011/79/2017-Political[A]-H&P dated 16.05.2018 of the Home & Political [A] Department, Government of Assam. As per the said Notification, the State Government in Home & Political Department in pursuance of the provision of Section 6 of the Delhi Special Police Establishment Act, 1946 and after sanction was accorded by the Governor of Assam, has handed over investigation of case, Sonapur Police Station Case no. 134/2009 registered for the offences under Sections 302/201/120B/34, Indian Penal Code [IPC] regarding killing of 6 [six] persons of a family [called Jogdal massacre] and any other offences, attempts,

abatement, conspiracy in relation to or in connection with the above-mentioned offences and any other offence/offences committed in the course of same transaction arising out of the same facts and simultaneously launching of criminal prosecution against the guilty persons, to the Central Bureau of Investigation [CBI]. Mr. Talukdar has also furnished a copy of the said Notification to the learned senior counsel appearing for the petitioners.

5. Mr. Choudhury, learned senior counsel appearing for the petitioners has submitted that in view of submission of charge-sheets in two cases - [a] Sonapur Police Station Case no. 135/2009; and [b] CID Police Station Case no. 18/2012; handing over of the investigation of Sonapur Police Station Case no. 135/2009, and any other offence or offences committed in the same transaction, to the Central Bureau of Investigation [CBI] by the Notification dated 16.05.2018, the first relief sought for in the writ petition appears to have been effectively redressed. He has submitted that the issue of assessment and payment of adequate compensation to the petitioners for the damages and losses; suffered by them, due to the incident occurred on 15.12.2009 would remain.

6. In respect of the issues as regards the payment of adequate compensation to the petitioners for suffering damages and losses, if any, resulting from the incident stated to have occurred on 15.12.2009, this Court is of the considered view : that the same would require determination of a number of disputed and complex questions of facts and determination of such disputed questions of facts including assessments of damages, if any, would require both oral and documentary, by the parties which can be possible in a proper instituted suit and for determination of such issues, the present writ proceeding is not the proper remedy.

7. In view of the above fact situation obtaining in the case and considering the present status of the investigation/trial of the afore-mentioned three cases, this Court is considered view that the grievances of the petitioners in respect of the three cases, mentioned hereinabove, have been effectively redressed. So far as the issue regarding claim for compensation, for damages, if any, the petitioners are at liberty to approach the appropriate forum in accordance with law.

8. A copy of the Notification bearing no HMA.19011/79/2017-Political[A]-H&P dated 16.05.2018 of the Home & Political [A] Department, Government of Assam placed by Mr. Talukdar

today, is to be kept with the case records.

JUDGE

Comparing Assistant