



GAHC010205362012

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

**Case No. : WP(C)/1767/2012**

RATNESWAR KALITA and 14 ORS  
S/O SRI NARENDRA NATH KALITA

2: RAMESH BARUAH  
S/O LATE RATIKANTA BARUAH

3: MUKESH RABHA  
S/O SRI SHEIK RABHA

4: KARUNA SAHARIA  
S/O LATE TILOK SAHARIAH

5: ANIL TALUKDAR  
S/O LATE SIBA NATH TALUKDAR

6: MOHAN CHANDRA BARMAN  
S/O LATE ANANDI RAM BARMAN

7: JAGADISH PATHAK  
S/O LATE RAJENDRA PATHAK

8: DINESH CHANDRA DAS  
S/O LATE KAZIRAM DAS

9: ISMAIL HUSSAIN  
S/O MD. IBRAHIM SHEIKH

10: ASWINI KUMAR CHOUDHURY  
S/O LATE LATE BIPIN CHOUDHURY

11: ASWINI KALITA  
S/O LATE BANTI RAM KALITA

12: MANOJ KUMAR SINGH



S/O LATE SHIVANATH SINGH

13: BRIJNATH SARMAH  
S/O LATE RAM BASAN SARMAH

14: TEGINDRA CHETRI  
S/O LATE TUL BAHADUR CHETRI

15: RAJBHOR BHAGAT  
S/O LATE LOKICHAN BHAGAT  
ALL ARE R/O VILL DAKHIN GAON  
LAKHARA ROAD  
MOUZA- BELTOLA  
P.O. SAWKUCHI  
P.S. DISPUR  
DIST- KAMRUP  
ASSA

VERSUS

THE STATE OF ASSAM AND ORS  
REPRESENTED BY THE CHIEF SECRETARY TO THE GOVT. OF ASSAM,  
DISPUR, GHY-6, DIST- KAMRUP, ASSAM

2:THE SECRETARY TO THE GOVT. OF ASSAM  
REVENUES DEPARTMENT  
SETTLEMENT BRANCH  
DISPUR  
GHY-6  
DIST- KAMRUP  
ASSAM

3:THE SECRETARY TO THE GOVT. OF ASSAM  
FOREST DEPARTMENT  
DISPUR  
GHY-6  
DIST- KAMRUP  
ASSAM

4:THE JT. SECRETARY TO THE GOVT. OF ASSAM  
REVENUE and DISASTER MANAGEMENT S DEPARTMENT  
DISPUR  
GHY-6  
DIST- KAMRUP  
ASSAM

5:THE DY. SECRETARY TO THE GOVT. OF ASSAM  
REVENUE and DISASTER MANAGEMENT S DEPARTMENT



DISPUR  
GHY-6  
DIST- KAMRUP  
ASSAM

6:THE DY. COMMISSIONER  
GUWAHATI  
DIST- KAMRUP  
ASSAM

7:DIVISIONAL FOREST OFFICER  
KAMRUP EAST DIVISION  
BASISTHA  
GUWAHATI  
DIST- KAMRUP  
ASSA

Linked Case : WP(C)/1746/2017

RATNESWAR KALITA and 5 ORS.  
S/O. SRI NARENDRA NATH KALITA

2: RAMESH BARUAH  
S/O. LT. RATIKANTA BARUAH

3: SRI MUKESH RABHA  
S/O. LT. SHEIK RABHA

4: SRI ANIL KUMAR TALUKDAR  
S/O. LT. ANANDI RAM BARMAN

5: MOHAN CHANDRA BARMAN  
S/O. LT. ANANDI RAM BARMAN

6: ASWINI KUMAR CHOUDHURY  
S/O. LT. BIPIN CHOUDHURY  
ALL RESIDENTS OF VILL. DAKHIN GAON  
LAKHARA ROAD  
MOUZA- BLETOLA  
P.O. SAWKUCHI  
P.S. DISPUR  
DIST. KAMRUP M  
ASSAM.  
VERSUS



THE STATE OF ASSAM and 9 ORS.  
REP. BY THE CHIEF SECY. TO THE GOVT. OF ASSAM  
DISPUR  
GHY.  
DIST. KAMRUP M  
PIN-781006  
ASSAM.

2:THE SECRETARY  
TO THE GOVT. OF ASSAM  
REVENUE S DEPTT.  
SETTLEMENT BRANCH  
DISPUR  
GHY.  
DIST. KAMRUP M  
PIN-781006  
ASSAM.

3:THE SECRETARY  
TO THE GOVT. OF ASSAM  
FOREST DEPTT.  
DISPUR  
GHY.  
DIST. KAMRUP M  
PIN-781006  
ASSAM.

4:THE ADDL. CHIEF SECRETARY

TO THE GOVT. OF ASSAM  
REVENUE and DISASTER MANAGEMENT S DEPTT.  
DISPUR  
GHY.  
DIST. KAMRUP M  
PIN-781006  
ASSAM.

5:THE COMMISSIONER and SECY.  
TO THE GOVT. OF ASSAM  
REVENUE and DISASTER MANAGEMENT S DEPTT.  
DISPUR  
GHY.  
DIST. KAMRUP M  
PIN-781006  
ASSAM.

6:THE PRINCIPAL SECRETARY  
TO THE GOVT. OF ASSAM  
REVENUE and DISASTER MANAGEMENT S DEPTT.  
DISPUR  
GHY.  
DIST. KAMRUP M



PIN-781006  
ASSAM.  
7:THE JOINT SECRETARY  
TO THE GOVT. OF ASSAM  
REVENUE and DISASTER MANAGEMENT S DEPTT.  
DISPUR  
GHY.  
DIST. KAMRUP M  
PIN-781006  
ASSAM.

8:THE DY. SECRETARY  
TO THE GOVT. OF ASSAM  
REVENUE DISASTER MANAGEMENT S DEPTT.  
DISPUR  
GHY.  
DIST. KAMRUP M  
PIN-781006  
ASSAM.  
9:THE DY. COMMISSIONER

KAMRUP M  
GHY.  
DIST. KAMRUP M  
ASSAM.  
10:THE DIVISIONAL FOREST OFFICER

KAMRUP EAST DIVISION  
BASISTHA GHY.  
DIST. KAMRUP M  
ASSAM.

**BEFORE  
HONOURABLE MR. JUSTICE DEVASHIS BARUAH**

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

For the respondent(s) : Mr. D. Nath, Sr. GA.  
Mr. R. Borpujari, SC, Revenue Deptt.  
Mr. D. Gogoi, SC, Forest Deptt.

Date of hearing and judgment : 14.09.2023



### **JUDGMENT & ORDER (ORAL)**

**1.** Both the writ petitions are taken up for disposal vide the common judgment and order taking into account that the Petitioners in both the writ petitions are same and the issues arising out therein are interrelated.

**2.** The case of the 15 Petitioners in WP(C) 1767/2012 are that they claim that they have constructed their permanent as well as temporary houses in Dag Nos.459, 463, 589, 513, 526, 504, 468, 527, 528, 615, 544 and 548 respectively at Village-Dakhingaon (South Kalapahar) under Mouza-Beltola during the period from 1978 – 1985. The Petitioners claim that they have been living and enjoying their plots of land peacefully and paying the land revenue (Touzi Bahira) to the Revenue Authorities from time to time in respect of their land in occupation. It is further mentioned in the writ petition that the Petitioners' houses were assessed by the Guwahati Municipal Corporation and granted holding numbers. The Petitioners are also enjoying electricity connection on the basis of No Objection Certificates issued by the Guwahati Municipal Corporation.

**3.** It is the further case of the Petitioners that the Respondent authorities especially the Respondent Forest Authorities tried to evict the Petitioners along with other persons from their respective plots of land by demolishing their houses with the help of elephant, bulldozers etc. in the year 2002. Under such circumstances, the Petitioners along with others approached this Court by filing writ petitions which was registered and numbered as WP(C) No.5356/2002, WP(C) No.5206/2002, WP(C) No.5302/2002, WP(C) No.5567/2002 and WP(C)



No.5207/2002. All these writ petitions were disposed off by the common judgment and order dated 15.06.2007 by this Court with a direction to the Respondents, particularly the Chief Secretary to the Government of Assam to constitute an appropriate Committee consisting of officers from concerned department including the Forest and Revenue Departments to look into the matter and to suggest to the Government the actions to be taken to resolve the dispute. This Court further directed that the *status quo* as on 15.06.2007 in respect to the possession be maintained till a decision is taken by the Government.

**4.** It is the further case of the Petitioners that after 2 (two) years on 19.09.2009, the Joint Secretary to the Government of Assam had issued a communication wherein it is seen that a Committee was constituted to submit its report within 2 (two) months on field verification of the records and field position of the land as per existing Rules and procedures of both Revenue and Environment & Forest Department. The said Committee comprised of

1. Deputy Commissioner, Kamrup (Metro)
2. Divisional Forest Officer, Kamrup East Division
3. Settlement officer, Guwahati Re-Settlement Operation,  
Guwahati.
4. Circle Officer, Dispur
5. Representative of G.M.D.A.

**5.** It is the further case of the Petitioners that no steps were taken by the



said Committee so constituted pursuant to the order passed by this Court on 15.06.2007 but on the other hand the Forest Officials/ the Personnel of the Establishment of the Respondent No.7 initiated certain steps for evicting the Petitioners for which the Petitioners approached this Court by filing a writ petition which was registered and numbered as WP(C) No.1767/2012. It is however relevant to mention that the pleadings of WP(C) No.1767/2012 are completely silent as to when such steps were taken by the Respondent Forest Department. This Court further finds it relevant to take note of the reliefs sought for in the said writ petition. It was the prayer of the Petitioners that a direction should be issued to the Respondent Authorities not to evict the Petitioners from their respective plot of lands under their possession as well as also a direction be issued to the Respondents not to evict the Petitioners from the aforesaid plots of land without fully complying with the order dated 15.06.2007 passed by this Court.

**6.** The records reveals that this Court vide an order dated 09.04.2012 issued Notice and further directed that till the next date the interim protection granted by this Court on 15.06.2007 in WP(C) 5356/2002 and other connected cases shall continue. It is also directed that the *status quo* be maintained until the constituted Committee takes a decision in terms of this Court's order dated 15.06.2007. It further reveals from the records that the interim order have been extended from time to time.

**7.** The record further reveals that the Respondent No.7 i.e. the Divisional Forest officer had filed an affidavit-in-opposition on 19.12.2012. In the said affidavit-in-opposition, it was mentioned that the Petitioners constructed their





houses illegally within the notified area of South Kalapahar Reserve Forest, which was declared as Reserve Forest vide final Notification No. FRS.2/82/87 dated 25.09.1989 with an area of 70 hectares. It was mentioned that the area was notified as proposed Reserve Forest vide No. FOR/Sett/108/67/21 dated 13.12.1968 and was published in the Assam Gazette on 02.04.1969. Hearing of claims and objections from the people of the locality were held on 12.04.1981 at 11 a.m. in the premises of the Odalbakra L.P. School and such claims and objections were disposed of accordingly. It was stated that the construction of houses within the notified area of Kalapahar Reserve Forest was illegal as per the provisions of the Assam Forest Regulation, 1891, Forest Conservation Act, 1981 as well as the guidelines/orders passed by the Supreme Court in the case of T.N. Godavarman Thirumulkpad vs. Union of India & Others i.e WP(C) 202/1995]. It was stated that it is the first and foremost duty of the Forest officials to eject all illegal/unauthorized occupation/construction from the notified Reserve Forest area as per the provisions of Section 72(c) of the Assam Forest Regulation, 1891. Further to that, it was also stated that as per the Government Standing Circular No. RSS/483/63/9 dated Shillong, the 23<sup>rd</sup> March 1964 and No. RSS/374/64/8 dated Shillong, the 28<sup>th</sup> October, 1965 were issued in connection with correction of the revenue records as soon as Reserve Forest is constituted. Further to that, the Respondent No.7 had also given a detailed reply to the averments made in the writ petition. In short, the stand of the Respondent No.7 is that as the area in question wherein the Petitioners are in occupation falls within the Notified Reserve Forest, the Petitioners have no right to remain in occupation of the said land.

**8.** It further reveals from the record that an additional affidavit was filed by



the Respondent No.7 on 18.07.2017. Apart from what has been already stated in the affidavit-in-opposition, it was further mentioned that after the declaration of South Kalapahar as Reserve Forest and the extinction of all rights and bar on accrual of forest right after proclamation within the notified area, construction of any houses within that specified territory was illegal in terms of Section 7 and was punishable with imprisonment under Section 25 of the Assam Forest Regulation, 1891 which deals with certain prohibitable acts inside the Reserve Forest area. It was also mentioned that it is an unauthorized act under Section 2 of the Forest Conservation Act, 1980, inasmuch as the said provision debars allotment or use of any forest land or any portion thereof by way of lease or otherwise to any private person or any non-forestry purpose without prior approval of the Central Government. Further to that, it was stated that the Petitioners were liable to be evicted under the provisions of Section 72(c) of the Assam Forest Regulation, 1891 which provides for ejection of any person/building who have entered into any unauthorized occupation/construction without having any authority in the forest reserves. The payment of Touzi Bahira, granting holdings and electricity connection etc. within the notified Reserve Forest cannot confer any right upon the Petitioners to justify a claim on the Reserve Forest land. It was further mentioned that the Government Standing Circular No. RSS/483/63/9 dated Shillong the 23<sup>rd</sup> March 1964 and No.RSS/374/64/8 dated Shillong the 28<sup>th</sup> October, 1965 were issued in connection with barring of any settlement of unclassified State Forest land with anybody without the prior consultation with the Forest Department and prior approval of the Government in the Revenue Department and correction of revenue records as soon as Reserve Forest is constituted. The Respondent No.7 enclosed as Annexure-I the Notification dated 25.09.1989 under Section 17 of



the Assam Forest Regulation, 1891 published in the Assam Gazette dated 06.12.1989 which would show that the land mentioned in the Schedule-A with the description of the boundaries at Schedule-B to the said Notification was declared a Reserve Forest w.e.f. 06.12.1989. Further to that the Assam Gazette Notification under Section 5 of the Assam Forest Regulation, 1891 dated 13.12.1968 whereby it was proposed to constitute a Reserve Forest described in the Schedule was enclosed as Annexure-II.

**9.** This Court further finds it relevant to take note of an affidavit being filed by the Chief Secretary to the Government of Assam on 26.02.2018. In the said affidavit, it was mentioned that pursuant to the order dated 15.06.2007, a Committee was constituted on 19.09.2009 consisting of various officials. It was mentioned that as per the information provided by the District Administration, a meeting of the Committee was held on 28.01.2010 and in the said meeting it was decided that a joint verification by the officials of the Revenue as well as the Forest Department should be carried out for proper verification of the land occupied by the Petitioners in the aforementioned writ petitions. It was stated that a joint inspection/survey was carried out by the officials of the Kamrup East Division and the officials of the Dispur Revenue Circle in presence of the Circle Office, Dispur Revenue Circle on 24.10.2017 and on 08.12.2017 at South Kalapahar Reserve and areas adjacent to Jyotikuchi village under Dispur Revenue Circle. It was mentioned that before initiating the survey works all relevant records, maps and notification of the South Kalapahar Reserve Forest were perused and scrutinized. The said Committee thereupon conducted a spot joint verification on 08.12.2017 in connection with the lands under the occupation of the Petitioners. The Geo Coordinates of the concerning



households were also taken. During physical verification, the Committee noticed that most of the occupants constructed permanent houses and occupied in the South Kalapahar Reserve Forest and were found to be illegal. Further to that it was stated that during verification of Pillar No.10 of South Kalapahar Reserve Forest and the Revenue Map, it was found that the land occupied by the Petitioner Nos.1, 2, 4, 5, 6, 7, 8 & 9 fell within the notified boundary of South Kalapahar Reserve Forest which was notified during the year 1989 by Government Notification no. FRS.2/82/27 dated 25.09.1989 and subsequently which was published in the Gazette Notification dated 06.12.1989 having an area of 70 hectares with well demarcated boundary description. It was further mentioned in the said affidavit that the plots of land under the occupation of Petitioner Nos.3, 10, 11, 12, 13, 14 & 15 were found outside the notified boundary of the South Kalapahar Reserve Forest. Further to that, it was also mentioned that during field verification by the Survey Committee, 4 of the Petitioners were also present in the team. The copy of the Joint Inspection/Survey Report, Google Map were enclosed as Annexure-B to the said affidavit filed by the Chief Secretary, Government of Assam.

**10.** It further reveals that the Chief Secretary to the Government of Assam filed another affidavit on 17.03.2020. In the said affidavit, it was mentioned that vide the letter bearing No. ECF No.3864/2017/160 dated 13.01.2020 issued by the Joint Secretary to the Government of Assam, Revenue & Disaster Management (S) Department to the Deputy Commissioner, Kamrup (M) and other members of the Committee so constituted on 19.09.2009 were communicated with the order dated 16.12.2019 issued by this Court with a request to submit the complete proceedings of the Committee on or before



13.01.2020 with the suggestion that may be made by the Government to resolve the land dispute at hand. The said Committee constituted in terms with the Notification dated 19.09.2009 held a meeting on 21.01.2020 and submitted the minutes of the said meeting duly signed by the members of the Committee through the Deputy Commissioner, Kamrup vide a letter No. KRS.754/2017/185 dated 23.01.2020 addressed to the Joint Secretary to the Government of Assam, Revenue & Disaster Management Department. The Committee during the course of the meeting deliberated upon the joint inspection/survey report in terms of inspection and survey conducted at South Kalapahar Reserve Forest and areas adjacent to Jyotikuchi, Dakhingaon under Dispur Revenue Circle on 24.10.2017 and 08.12.2017 which was submitted by the Divisional Forest Officer, Kamrup East Division vide letter No.B/KE/WP(C)/1211 dated 03.02.2018 and accepted and approved the same. It was further mentioned that as per the Survey Report as well as the Gazette Notification No.IRS.2/62/27 dated 25.09.1989 and Google maps, the occupation of the Petitioners were found to be illegal in the South Kalapahar Reserve Forest. It was further mentioned that vide another communication issued by the Joint Secretary to the Government of Assam, Revenue & Disaster Management Department dated 14.02.2020, all members of the Committee constituted vide the Notification dated 19.09.2009 were called for a discussion on 19.02.2020. Upon such discussion, vide a communication dated 21.02.2020, the Deputy Commissioner, Kamrup (M) submitted a comprehensive report on the issues involved in the instant writ petitions. The suggestions which is a part of Annexure-J to affidavit is reproduced below -

*“1. Gazette Notification brought out in the year of 1989 Dated September 25th declared 70 Hectares of South Kalapahar area as*

*Reserved Forest as per boundary specifications.*

- 2. No encroachment or any claims / rights / compensation was made at that time.*
- 3. Hence it can be safely surmised that the encroachments took place in a much later date.*
- 4. No documents / evidences have been submitted by the Petitioners to counter that their encroachments occurred before the date of notification.*
- 5. The Revenue Receipt submitted by one of the Petitioner, as proof of his possession dates post the date of Gazette Notification and is of a plot of land not associated with the land under dispute and is in the name of an altogether different individual and hence is found irrelevant to the case.*
- 6. That in the hindsight the actions of the petitioners violate the provisions of both Assam Land and Revenue Regulation 1886 and Assam Forest Regulation 1891.*
- 7. That necessary steps may be taken within an allotted timeline for removal of encroachment in light of the guidelines issued by the Revenue & Disaster Management Department vide RSS.1991/2016/1 dated 10.01.2017.*

**11.** This Court further finds it relevant to take note of a document enclosed to the said affidavit filed by the Chief Secretary on 17.03.2020. This document is relevant inasmuch as in the Joint Inspection Report enclosed as Annexure-B to the Affidavit filed by the Chief Secretary on 26.02.2018, it was mentioned that out of 15 Petitioners, 9 Petitioners were inside the Reserved Forest whereas 6 Petitioners were outside. However, in the second Affidavit filed by the Chief Secretary on 17<sup>th</sup> March, 2020 another Joint Inspection Report was enclosed wherein it was mentioned that some of the Petitioners were in occupation of the Reserve Forest. This document was issued on 29.01.2020 by a firm namely



PRECISION Surveying Co to the Divisional Forest Officer, Kamrup East Division, Basistha. In terms with the said document, the Topographical Boundary Survey of the land was done using DGPS equipment of South Kalapahar Reserve Forest on 22.01.2020 and the same was completed on 27.01.2020. During the Survey, the Boundary Pillar No.1 was taken as the reference point and carried the survey for other boundary pillars as available on site with the help of the forest officials and plotted accordingly. On the basis of the GPS coordinates provided to the said company namely PRECISION Surveying Co for the disputed locations, it was found that some location fell within the Reserved Forest boundary and while other locations fell outside the forest boundary and in that regard the details were mentioned in the said communication. From the said communication, it is seen that the Petitioner Nos.1, 2, 4, 5, 6, 7, 8, 9 & 10 were occupying plot of lands inside the Reserved Forest boundary whereas other Petitioners i.e. Petitioner Nos.3, 11, 12, 13, 14 & 15 were occupying the plot of lands outside the forest boundary.

**12.** It is also seen in the records that an additional affidavit was filed by the Secretary to the Government of Assam, Revenue & Disaster Management Department in pursuance to an order passed by this Court on 18.06.2020. By the said additional affidavit, the Secretary to the Government of Assam, Revenue & Disaster Management Department had enclosed the order dated 25.09.1989 which was published in the Assam Gazette on 06.12.1989.

**13.** The Petitioners herein had filed an affidavit-in-reply against the affidavit-in-opposition filed by the Respondent Nos.1 & 2. In the said affidavit-in-reply, it was stated that there was certain contradictions in the two affidavits filed by the



Chief Secretary, inasmuch as the occupation of the Petitioner No.10's land was shown to be outside the notified boundary of the South Kalapahar Reserve Forest in the affidavit filed on 26.02.2018, whereas in the second affidavit filed by the Chief Secretary a communication was enclosed of M/s PRECISION Surveying Co as part of Annexure-J which shows that out of 15 Petitioners, 9 Petitioners i.e. the Petitioner Nos.1, 2, 4, 5, 6, 7, 8, 9 & 10 fell within the Reserve Forest and the location of six Petitioners i.e. Petitioner Nos. 3, 11, 12, 13, 14 & 15 fell outside the Reserve Forest. It was further mentioned that the Petitioners have been in occupation of the said lands by constructing temporary and permanent houses since 1978 – 1985 and have been enjoying their plots of land peacefully without any objection. It was further mentioned that the Respondent No.5 i.e. the Deputy Secretary to the Government of Assam, Revenue & Disaster Management (S) Department vide letter dated 06.11.2020 under No. RSS.195/99/29 addressed to the Deputy Commissioner, Kamrup (Metro) whereby 2 Bighas of land covered by Dag No.464 (Kha), Village-Dakhingaon was allotted in favour of Hiramapur Prathamik Vidyalay. It was further mentioned that the Respondent No.5 had also vide a communication dated 12.09.2001 intimated to the Deputy Commissioner, Kamrup that another plot of land measuring 1 katha 5 Lechas of land covered by Dag No.78 was allotted in favour of Pachim Senaighuli Mahila Samity, Guwahati. It is on the basis of the said the Petitioners had claimed that the lands under the occupation of the Petitioners fell under the Municipal area of the GMC and not under the Reserve Forest. Further to that, it was also mentioned that as the Petitioners were in possession of the said land for 30-40 years, they would be shelter less if they are evicted and as such this Court may direct the State Authorities to take steps under Regulation 28 of the Assam Forest Regulation, 1891 thereby





declaring that the forest in question or any portion thereof under the possession of the Petitioners as ceased to be Reserve Forest. Before proceedings further, this Court finds it relevant to observe that the basis of the Chief Secretary's second affidavit is the report submitted by M/s PRECISION Surveying Co dated 29.01.2020 which is of a later point of time from the Joint Survey Report dated 08.12.2017. The Petitioners however have not placed any document to show that the said Report of the PRECISION Surveying Co dated 29.01.2020 is incorrect.

**14.** It further reveals that pursuant thereto the Petitioners had filed another writ petition challenging the Office Memorandum dated 10.01.2017, whereby the Principal Secretary to the Government of Assam, Revenue & Disaster Management (S) Department detailed out the guidelines for eviction of the encroachers. This Court further finds it relevant to mention that the Petitioners by way of the second writ petitioner i.e. WP(C) 1746/2017 sought for direction upon the Respondents to take action for granting allotment of land occupied by the Petitioners in terms with the Office Memorandum dated 21.02.2014. This Court further finds it relevant to take note of that to the said writ petition, various application seeking settlement by the Petitioners were enclosed.

**15.** This Court vide an order dated 24.03.2017 issued Notice and further directed that the possession of the Petitioners in respect to the land in question shall not be disturbed without leave of the Court. The said order had been continuing since then till date.



**16.** An affidavit-in-opposition had been filed by the Respondent No.10 who is the Divisional Forest officer, Kamrup East Division and the contents of the same are similar to the affidavit-in-opposition filed by the Respondent No.7 in WP(C) No.1767/2012 for which the same is not repeated for the sake of brevity.

**17.** I have heard the learned counsel for the parties and have duly perused the materials on record.

**18.** Although 15 Petitioners have jointly filed both the writ petitions seeking appropriate directions that they should not be evicted from the land in their possession but in view of the facts which had come to light pursuant to the field verifications, the Petitioners can be divided into two groups. One set are those Petitioners who are in occupation of Reserve Forest land and the others who are in occupation of the Government lands. This Court finds it relevant at this stage to note that the payment of Touzi Bahira as claimed by the Petitioners is nothing but a penalty paid for illegal occupation of Government lands and the same would not confer any right upon the Petitioners to claim rights over the lands under their occupation. In the similar vein, assessment made by the Guwahati Municipal Corporation of the holdings of the temporary and permanent structures constructed by the Petitioners and being allotted holding numbers or for that matter the Assam State Electricity Board or presently the APDCL providing the electricity connection to the Petitioners cannot in the opinion of this Court confer any rights upon the Petitioners over the lands under their occupation. In the backdrop of the above, let this Court therefore take into consideration the right of the Petitioners who are possessing lands within the Reserve Forest as well as those Petitioners who are occupying Government

lands other than Revenue Forest lands.

**PETITIONERS OCCUPYING LANDS WITHIN RESERVE FOREST AREA.**

**19.** To understand the right of the Petitioners who are in occupation of Reserve Forest lands, this Court finds it relevant to take note of the provisions of the Assam Forest Regulation, 1891 (for short "the Regulation") and more particularly Chapter-II. In terms with Section 4 of the Regulation, the State Government is empowered to constitute any land at the disposal of the Government, a Reserve Forest in the manner provided in Chapter-II of the Regulation. In terms with Section 5 of the Regulation, when the State Government proposes to constitute any land a Reserve Forest, a Notification would be published in the Official gazette specifying as nearly as possible the situation and the limits of such land; declaring that that it proposes to constitute such land a Reserve Forest and appointing an officer who would be called the Forest Settlement Officer to inquire into and determine the existence, nature and extent of any rights claimed by or alleged to exist in favour of any person in or over any land comprised within such limits and any claim relating to the practice within such limits of jhum cultivation and to deal with the same as provided in Chapter-II. The Forest Settlement Officer shall ordinarily be a person other than a Forest Officer, but a Forest Officer may be appointed by the State Government to assist the Forest Settlement Officer in the inquiry prescribed by the Chapter-II.

**20.** At this stage, this Court finds it relevant to mention that on 13.12.1968, a Notification under Section 5 of the Regulation was issued whereby the Governor of Assam declared that it proposes to constitute a Reserve Forest which was described in the Schedule annexed thereto and appointed the Deputy Commissioner, Kamrup to be the Settlement Officer to inquire into and determine the existence, nature and extent of any rights claimed by or alleged to exist in favour of any person in or over any land comprised within the limits and described in the Schedule to the said notification and any claims relating to practice within such limits of jhum cultivation and to deal with the same as provided in Chapter-II of the Regulation. It is also seen that the Divisional Forest Officer, Guwahati Division was appointed in terms with Section 5(2) of the Regulation to assist the Forest Settlement Officer in the inquiries prescribed under Chapter-II of the Regulation.

**21.** Now coming to Section 6 of the Regulation, it is seen that when a notification has been published under Section 5, the Forest Settlement Officer shall publish in the languages of the country, at the headquarters of each district and sub-division in which any portion of the land comprised in such notification is situated and in each town and village in the neighbourhood of such land a proclamation-

- (a) specifying as nearly as possible the situation and limits of the proposed forests;
- (b) setting forth the substance of the provisions of the next following section;
- (c) explaining the consequences which would ensue on the reservation

of such forest; and

(d) fixing a period of not less than three months from the date of the publication of such proclamation and requiring every person claiming any right or making any claim referred to or mentioned in Section 5 either to present to such officer within such time written notice specifying or to appear before him within such period and state the nature of such right or claim.

**22.** It would be further seen from Section 7 of the Regulation that during the interval between the publication of such proclamation and the date fixed by the notification declaring the forest to be reserved, no right shall be acquired in or over the land comprised in such notification except by succession or under a grant or contract in writing made or entered into by or on behalf of the Government or some person in whom such right or power to create such right was vested when the proclamation was published and on such land no new houses shall be built or plantation formed, no fresh clearings for cultivation or for any other purpose shall be made and no trees shall be cut for the purpose of trade or manufacture except as provided in Sub-Section(2) of Section 7 of the Regulation i.e. with the permission in writing of the Forest Settlement Officer any act done or any clearings lawfully made for jhum cultivation by persons in the habit of practising such cultivation on such land. Therefore from a conjoint reading of Section 6 & 7 of the Regulation, it would be seen that once the proclamation has been issued by the Forest Settlement Officer no rights can be accrued over the land in question except with the permission in writing of the Forest Settlement Officer or any clearance lawfully made for jhum cultivation by persons in the habit of practising such cultivation.



**23.** Section 8 of the Regulation stipulates the inquiry to be conducted by the Forest Settlement Officer in respect to the claims made under Section 6 and the existence of any right of practice mentioned in Section 5 of the Regulation. Section 9 of the Regulation stipulates the powers of the Forest Settlement Officer. Section 11 of the Regulation empowers the Forest Settlement Officer to pass an order specifying the particulars of any claim and admitting or rejecting the same wholly or in part. Section 11(3) of the Regulation empowers the Forest Settlement Officer to acquire such land in terms with the Land Acquisition Act, 1877. There is a provision of appeal given under Section 15 & 16 of the Regulation.

**24.** Section 17 of the Regulation is very pertinent which stipulates about the Notification declaring Forest Reserve and in terms with Section 17(2) from the date so fixed in the notification such forest shall be deemed to be a reserved forest. The records herein would show that the final Notification under Section 17 of the Regulation was issued on 25.09.1989, whereby 70 hectares of lands within the boundary description as mentioned in Schedule-B to the said Notification were declared to be Reserve Forest from the date of publication of the said Notification i.e. w.e.f. 06.12.1989.

**25.** This Court finds it very relevant to take note of Section 18 of the Regulation which stipulates that rights in respect of which no claim were preferred under Section 6 and of the existence of which no knowledge have been acquired by the inquiry under Section 8 shall thereupon be extinguished unless before the publication of such Notification under 17 of the Regulation,

the person claiming them had satisfied the Forest Settlement Officer that he has sufficient cause for not preferring such claim within the period fixed under Section 6. Therefore, from a perusal of Section 18, it is clear that if no claim has been preferred under Section 6 and after the publication of such Notification issued under Section 17 there shall be absolute extinction of such right which were not claimed.

**26.** Section 21 of the Regulation stipulates that no right of any description shall be acquired in or over a reserved forest except by succession or under grant or contract in writing made by or with the previous sanction of the State Government or some person in whom such right or power to create such right was vested when the Notification under Section 17 was published. Section 22 further stipulates that notwithstanding anything contained, no right continued under Section 13 shall be alienated by way of grant, sale, lease or mortgage or otherwise without the previous sanction of the State Government.

**27.** This Court further finds it relevant at this stage to take note of provisions of the Forest (Conservation) Act, 1980 (for short "the Act of 1980"). In Section 2 of the Act of 1980, there is a bar even upon the State Government or other authority for de-reservation of a Reserve Forest without the prior approval of the Central Government. Section 2 of the Act of 1980 being relevant is quoted hereinbelow :

***“2. Restriction on the dereservation of forests or use of forest land for non-forest purpose.— Notwithstanding anything contained in any other law for the time being in force in a State, no State Government or other authority shall make, except with the prior approval of the***

*Central Government, any order directing—*

*(i) that any reserved forest (within the meaning of the expression "reserved forest" in any law for the time being in force in that State) or any portion thereof, shall cease to be reserved;*

*(ii) that any forest land or any portion thereof may be used for any non-forest purpose.*

*(iii) that any forest land or any portion thereof may be assigned by way of lease or otherwise to any private person or to any authority, corporation, agency or any other organization not owned, managed or controlled by Government;*

*(iv) that any forest land or any portion thereof may be cleared of trees which have grown naturally in that land or portion, for the purpose of using it for reforestation.*

***Explanation.***—*For the purposes of this section "non-forest purpose" means the breaking up or clearing of any forest land or portion thereof for—*

*(a) the cultivation of tea, coffee, spices, rubber, palms, oil-bearing plants, horticultural crops or medicinal plants;*

*(b) any purpose other than reforestation, but does not include any work relating or ancillary to conservation, development and management of forests and wild life, namely, the establishment of check-posts, fire lines, wireless communications and construction of fencing, bridges and culverts, dams waterholes, trench marks, boundary marks, pipelines or other like purposes".*

**28.** Therefore, from the above, it would be seen that Regulations and more particularly Chapter-II stipulates a manner in which a Government land can be made a Reserve Forest. It starts with a Notification under Section 5 followed by a proclamation under Section 6 and thereupon an inquiry being conducted by the Forest Settlement Officer and finally the issuance of the Notification under





Section 17 of the Regulation. It is also seen that if any rights are not saved in terms with Chapter-II or no rights were claimed during the process of inquiry pursuant to the proclamation; not only new rights cannot be created but the pre-existing rights also stands extinguished. Now reading the Regulation along with the Act of 1980 shows that even the State Government cannot de-reserve a Reserved Forest on its own without the prior approval of the Central Government. The above, therefore, would clearly show that even the State Government in the present scenario cannot even grant settlement or even confer any rights upon the Petitioners who are in occupation of lands within the Reserve Forest. Further to that, as the Petitioners herein could not show a single document that their rights were saved prior to the issuance of Notifications under Section 17 i.e. the Notification dated 25.09.1989, which came into effect w.e.f. 06.12.1989, the Petitioners in occupation of land within the Reserve Forest cannot have any right over the land in their possession. Under such circumstances, the steps so taken by the Respondent Forest Authority to evict the Petitioners cannot be said to be bad in law for which no Writ can be issued directing the Respondent Forest Department not to evict the Petitioners who are in possession of the Reserve Forest land.

#### **RIGHTS OF THE PETITIONERS OCCUPYING GOVERNMENT LAND**

**29.** In order to ascertain, what right a person has occupying Government lands, it would be relevant to take note of some of the provisions of the Assam Land and Revenue Regulation, 1886 (for short referred to as "the Regulation of 1886") as well as the Settlement Rules framed therein. Chapter-II of the Regulation of 1886 stipulates the rights over the land. Section 6 of the Regulation of 1886 clearly stipulates that no right of any description shall be deemed to have been or shall be acquired by any person over any land to which



Chapter-II of the Regulation of 1886 applies, except those which have been mentioned in Sub-Clause (a) to (d) of Section 6 which are rights of the proprietors, land holders and settlement-holders other than landholders, as defined in the Regulation 1886 and other rights acquired in the manner provided by the Regulation 1886 [Sub-Clause (a)]; rights legally derived from any right mentioned in Sub-Clause (a) [Sub-Clause (b)]; rights acquired under section 26 and 27 of the Indian Limitation Act, 1877 [Sub-Clause (c)] and rights acquired by any person as tenant under the Rent Law for the time being in force [Sub-Clause (d)]. The Proviso to Section 6 stipulates that nothing in the said provision shall be held to derogate from the terms of any lease granted by or on behalf of the Government.

**30.** Section 7, 8 & 9 stipulates the rights of the proprietor; status of the land-holder how acquired and the rights of the land-holder respectively. Section 11 stipulates the rights of the settlement-holders who is not a land-holder. Section 12, 13 & 14 are relevant, inasmuch as, a power had been conferred upon the Government to make Rules for disposal of Government land and ejectment therefrom of unauthorized occupier; to make Rules for allotment of grazing grounds and to make Rules for allotment of lands for tribes practising jhum or migratory cultivation respectively. The said Sections i.e. Section 12, 13 & 14 are relevant in view of the Section 15 inasmuch as the said provision stipulates that no person shall acquire, by length of possession or otherwise, any right over lands disposed of or allotted under Section 12, Section 13, or Section 14 beyond that which is given by the Rules made under the said Section. Sections 27 & 29 stipulates about the power of the State Government to make Rules. On the basis of Section 12, 13 & 14 read with Sections 27 & 29, the Settlement Rules



have been made. In the said Settlement Rules, how settlement is to be made have been mentioned amongst others.

**31.** This Court finds it relevant to take note of Rule 16 of the Settlement Rules which stipulates that lease shall be issued on written application only and no person shall enter into possession of waste land in any area until a lease has been issued to him or otherwise a written permission by the Deputy Commissioner had been granted to him pending issue of such lease to enter into possession. This Rule is relevant for the purpose of understanding that the waste lands which have been defined in Rule 2(b) of the Settlement Rules cannot be entered into and possessed by any person without a lease issued in his favour or without a written permission by the Deputy Commissioner granting it to him pending issue of any lease.

**32.** This Court further finds it relevant to take note of another provision i.e. Rule 18 which stipulates about ejectment. In terms with Rule 18(1), the Deputy Commissioner may eject any person from the land over which no person has acquired the right of a proprietor, landholder, or settlement-holder. In terms with 18(2) of the Settlement Rules, when a person had entered into possession of Government Khas land or waste land or estate over which such person had not acquired the right of a proprietor, land-holder or settlement-holder or any land that has been previously reserved for roads or roadside land or for the grazing of village cattle or for other public purposes or has entered into possession of land from which he had been excluded by any general or special order and when further there is no bona fide claim of right involved, such person may be ejected or ordered to vacate the land forthwith and the Deputy Commissioner



may sell, confiscate or destroy any crop raised, or any building or other construction erected without authority on the land. In terms with Sub-Rule (3) of Rule 18, in all other cases ejectment shall be preceded by publication of a notice in the manner prescribed before requiring the occupant generally to vacate the land specified in the notice within 15 days of the date of publication of the notice on the land concerned or in a prominent place in the vicinity thereof and to remove any buildings, houses, fences or crops, etc. which may have been raised on such land provided that the Deputy Commissioner may give time to any particular occupant to harvest the crops, if any, growing on such land. Any buildings, houses, fences, crops, etc., which have not been removed in accordance with such notice shall be confiscated to the Government. Therefore, from the perusal of Sub-Rule (2) and (3) of Rule 18, it would be seen that if a person does not have a bona fide claim of right involved he may be ejected or ordered to vacate the land forthwith whereas in all other cases ejectment shall be preceded by publication of notice of 15 days.

**33.** In the instant case, it would be seen that admittedly six of the Petitioners i.e. Petitioner Nos.3, 11, 12, 13, 14 & 15 are in possession of Government lands. The Petitioners have not acquired any right of proprietor, land-holder or settlement-holder or have been granted any permission to occupy such land. The payment of Touzi Bahira as already stated hereinabove is only a penalty for illegal occupation of Government land and the same does not create any rights upon the Petitioners to remain in occupation of lands under their possession. Further to that, the assessment of holdings by the Guwahati Municipal Corporation as well as the electricity connection so provided by the erstwhile Assam State Electricity Board (ASEB) or the present Assam Power Distribution



Company Limited (APDCL) would not confer any rights upon the Petitioners to remain in occupation of the Government khas land or waste land.

**34.** Be that as it may, this Court however finds it relevant to observe that there is mark distinction as regards the status of the Petitioners, who are in occupation of Government waste lands from those Petitioners, who are in occupation of Reserve Forest lands, inasmuch as, upon waste lands the Government can consider to grant allotment/settlement of the lands in their occupation subject to permissible limits but in respect of Reserve Forest lands, there can be no creation of any right of settlement or allotment. For this marked difference, this Court is also of the opinion that the Petitioners i.e. Petitioner Nos.1, 2, 4, 5, 6, 7, 8, 9 & 10 cannot be treated similarly by the Respondent Authorities with the Petitioners i.e. Petitioner Nos.3, 11, 12, 13, 14 & 15.

**35.** In the backdrop of the above, the question therefore arises as to what relief(s) this Court can grant on the basis of the above analysis.

**36.** The learned counsel appearing on behalf of the Petitioners submits that the Petitioners have also applied for allotment as per the then existing Land Policy of 1989 for settlement of the lands under their possession. It is however not known as to what happened to such applications. Be that as it may, the said Land Policy of 1989 is no longer in force, inasmuch as the Government of Assam, Revenue and Disaster Management Department had in the year 2019 adopted a new Land Policy known as the Land Policy, 2019. The said Land Policy deals with various aspects of allotment/settlement of lands in the State of



Assam for agricultural, homestead, special cultivation for non-agricultural purposes etc. The said Land Policy also deals with encroachment on eviction. For the purpose of the instant case, Clause 14 of the Land Policy would be relevant as the same relates to settlement and reservation of lands in towns.

**37.** In terms with Clause 14.2 of Land Policy 2019, an indigenous person who has no homestead land in his name or in the name of his family in the State and is required to reside at Guwahati city or in urban areas by the very nature of his occupation/service, would be eligible to get land in Guwahati city or in urban area provided further that the said indigenous person has sufficient ground to justify that he has not been able to purchase land in Guwahati City/other towns. Clause 14.3 is very relevant, inasmuch as the State Government would not consider settlement of any Government land in Guwahati city or in other town areas under the possession of an individual or other persons merely on the ground that the person concerned is in occupation of such land irrespective of the period of such occupation or encroachment. The State Government may consider in such circumstances to grant settlement or to evict such persons as the case may be. In terms with Clause 14.4 of the Land Policy, indigenous landless persons who have been under continuous occupation of Government land since or prior to 28.06.2001 may be considered for settlement of maximum of 1 (one) Katha 5 (five) Lechas of land in case of Guwahati and 1 (one) Katha 10 (ten) Lechas of land in case of other towns as one time measure for homestead purpose, if they apply for it, irrespective of having land in rural areas subject to realization of due premium. In terms with Clause 14.5, if any land in excess the permissible limit is found under occupation of the person with whom settlement is to be offered, such excess is to be surrendered by the person to

the Government and in the event of any locational problem and if it is not practically possible to surrender such excess land, such land may be settled subject to the approval from the Government with the person to that extent and on realization of premium at rates, as may be notified by Government from time to time. The Government however retains its authority to review such benefits and period of its applicability as and when required. Clause 14.6 is very relevant for the purpose of instant dispute inasmuch as for allotment/settlement of land in notified water bodies/hills/ecological sites and vulnerable to land slide/erosion etc shall not be considered. However, verification shall be conducted in the hilly areas of Guwahati to identify the land in the event of settlement thereon, ensuring that the natural topography, gradient of the hill, biodiversity, environmental and ecological aspects are not affected from such settlement.

**38.** In view of the above analysis of relevant Sub-Clauses of Clause 14 of the Land Policy, 2019, it is seen that the conditions to be eligible for settlement have been duly mentioned. It is also seen that merely remaining in possession of the Government lands would not entitle as a matter of right to get settlement over the said land in question. It would depend upon the discretion of the State Government in the manner recognized by law. It would also be seen that the maximum land that can be settled is 1 (one) Katha 5 (five) Lechas in case of Guwahati city and 1 (one) Katha 10 (ten) Lechas in case of other towns as a onetime measure. Further to that, allotment/settlement of land in notified water bodies/hills/ecological sites and vulnerable to land slide/erosion etc. shall not be considered subject to what has been stipulated in Clause 14.6 of the Land Policy.

**39.** In the backdrop of the above, it is the opinion of this Court that all the Petitioners herein would be at liberty to apply for settlement/allotment of lands provided the Petitioners satisfies the eligibility criteria. The Petitioner Nos.1, 2, 4, 5, 6, 7, 8, 9 & 10 cannot claim settlement of the lands under their occupation as they are occupying land within the Reserve Forest for the reasons already above mentioned in the earlier part of the instant judgment. The Petitioner Nos. 3, 11, 12, 13, 14 & 15 would be at liberty to claim settlement over their lands under their possession. It shall however be within the discretion of the State Government to grant settlement or not in such lands under the occupation of the Petitioner Nos. 3, 11, 12, 13, 14 & 15 or grant settlement in such other lands as deemed fit taking into consideration the Land Policy of 2019.

**40.** This Court during the course of the hearing was of the opinion that 60 (sixty) days' time be given to the Petitioner Nos.1, 2, 4, 5, 6, 7, 8, 9 & 10 from the date of the judgment to vacate the land under their occupation. However, Mr. M. Nath, learned Senior Counsel appearing on behalf of the Petitioners submitted that the Petitioner Nos.1,2, 4, 5, 6, 7, 8, 9 & 10 be granted 90 (ninety) days' time from today on the ground that it would be difficult for the Petitioners to vacate their lands under their occupation within a period of sixty days. In view of the said submission, this Court in the interest of justice grants ninety days' time from today to the Petitioner Nos.1, 2, 4, 5, 6, 7, 8, 9 & 10 to vacate the lands under their occupation, failing which, the Respondent Forest Department shall be at liberty to take such action for evicting the Petitioner Nos.1, 2, 4, 5, 6, 7, 8, 9 & 10 from the lands under their occupation.

**41.** As regards the Petitioner Nos. 3, 11, 12, 13, 14 & 15, liberty is given to



submit their application in terms with Land Policy, 2019. It is made clear that if they submit their application within 30 (thirty) days from today, the said Petitioner Nos. 3, 11,12, 13, 14 & 15 shall not be evicted from their respective possession till the disposal of their applications for settlement/allotment.

**42.** Now coming to the writ petition being WP(C) No.1746/2017, this Court would like to observe that from a bare perusal of the Office Memorandum dated 10.01.2017, it is seen that the same is in accordance with the provisions of Regulation 1886 as well as the extant Land Policy of 2019. Further to that, nothing could be shown by the writ Petitioners as to how the Office Memorandum dated 10.01.2017 is contrary to the provisions of law. Under such circumstances, this Court finds no merit in the said writ petition.

**43.** Accordingly, both the writ petitions therefore stands disposed off with the following observations and directions :

(i) The Petitioner Nos.1, 2, 4, 5, 6, 7, 8, 9 & 10 cannot claim settlement of the land in their occupation as they are occupying lands within the Reserve Forest and as such, they are to be evicted. However, they are granted ninety days time from the date of the instant judgment to vacate the land under their occupation, failing which, the Forest Department of the Government of Assam shall be at liberty to evict them in the manner provided.

(ii) The Petitioner Nos. 3, 11,12, 13, 14 & 15 who are in possession of Government land also have no right to remain in possession of the Government land. However, this Court grants the liberty to the said



Petitioners to submit application for settlement of lands under their occupation within 30 (thirty) days from the date of receipt of a certified copy of the instant judgment. Till such applications are not disposed off by the concerned Respondent Authorities, the said Petitioners shall not be evicted from the land in their occupation.

(iii) It is clarified that all the Petitioners including those Petitioners who are in possession of the Reserve Forest land would be at liberty to file application seeking allotment/settlement of the Government land in the Guwahati city provided that they meet the eligibility criteria as stipulated in Clause 14 of the Land Policy, 2019.

(iv) This Court finds no infirmity with the Office Memorandum dated 10.01.2017 and as such the writ petition being WP(C) 1746/2017 stands dismissed.

(v) Interim order so passed earlier ceases to exist in view of the observations and directions passed in the instant judgment.

(vi) In the present facts, this Court is not inclined to impose any costs.

**44.** Registry is directed to furnish a copy of the instant judgment to Mr. R. Borpujari, learned Standing Counsel for the Revenue Department; Mr. D. Gogoi, learned Standing Counsel for the Forest Department and Mr. D. Nath, learned Senior Government Advocate for effective compliance.

**JUDGE**

**Comparing Assistant**