



GAHC010132442020

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

Case No. : WP(C)/4563/2020

JABED ALI AND 16 ORS.
S/O HASEN ALI
RESIDENT OF VILLAGE DHALPUR,

2: ABU SHAMA
S/O KUDDUS ALI
RESIDENT OF VILLAGE KIRAKATA
PS SIPAJHAR
DIST DARRANG
ASSAM

3: AMZAD
S/O MAHAR ALI
VILLAGE DHALPUR
PS MANGALDAI

4: MUSLIM
S/O ROHIZ UDDIN
VILLAGE NO. 1 OFURA

PS MANGALDAI

DIST DARRANG
ASSAM

5: AYNAL HOQUE
S/O ISMAIL SHIEKH
VILLAGE BULLKHATI

PS MANGALDAI
DIST DARRANG
ASSAM

6: MAHURUDDIN AHMED



S/O DILBAR ALI
VILLAGE BHETI BAZAR
PS SIPAJHAR
DIST DARRANG
ASSAM

7: MAINUDDIN ALI
S/O JULHASH ALI
VILLAGE KIRAKATA PS SIPAJHAR
DIST DARRANG
ASSAM

8: AMANAT ALI
S/O ISMAIL SHEIKH
RESIDENT OF VILLAGE BULLKHATI
PS MANGALDAI
DIST DARRANG
ASSAM

9: MD. SALAM ALI
S/O KISMAT ALI
VILLAGE KIRAKATA

PS SIPAJHAR
DIST DARRANG
ASSAM

10: BABU @ BABUL ALI
S/O HASEN ALI
VILLAGE NO/. 1 OFURA
PS MANGALDAI
DIST DARRANG
ASSAM

11: AYNAL HOQUE
S/O SOLEMAN ALI
RESIDENT OF VILLAGE KACHUMARI NONKE

PS KACHUMARA
DIST BARPETA
ASSAM

12: FAZAR
S/O SOYED ALI
RESIDENT VILLAGE BAKRITARY

13: AYUB ALI @ AIBALI
S/O KADDUS ALI



VILLAGE KIRAKATA

PS MANGALDOI

DIST DARRANG
ASSAM

14: OSMAN GANI @ GANI ALI
S/O SUBAHAN ALI
VILLAGE DHALPUR
PS MANGALDAI
DIST DARRANG
ASSAM

15: HUSSEN ALI
S/O MD. ARFAN ALI
VILLAGE NO. 1 OFURA
PS MANGALDAI
DIST DARRANG
ASSAM

16: KAYUM ALI
S/O ATA ALI
VILLAGE NO. 1 OFURA
PS MANGALDAI
DIST DARRANG
ASSAM

17: BADSHA ALI
S/O IDRIS ALI
RESIDENT OF VILLAGE BORLAKHETI

PS MANGALDAI

DIST DARRANG
ASSAM

ALL ARE PRESENTLY RESIDING AT VILLAGE NAPARA PAM
PO LAOPARA
PS MUKALMUA
MOUZA PUB BARKHETRI
DIST NALBARI ASSA

VERSUS

THE STATE OF ASSAM AND 4 ORS.
REPRESENTED BY THE COMMISSIONER AND SECRETARY,
REVENUE (SETTLEMENT) DEPARTMENT TO THE GOVT. OF ASSAM
DISPUR, GUWAHATI 6



2:THE DIRECTOR OF LAND RECORD
GOVT. OF ASSAM
REHABARI
GUWAHATI 8

3:THE DIRECTOR OF LAND AND REVENUE DEPARTMENT

GOVT. OF ASSAM
JURIPAR
GUWAHATI 22

4:THE DEPUTY COMMISSIONER
NALBARI
NALBARI ASSAM

5:THE CIRCLE OFFICER

REVENUE CIRCLE BARKHETRI
DIST NALBARI ASSA

Advocate for the Petitioner : MR. A PARAMANIK

Advocate for the Respondent : GA, ASSAM

WP(C)/4865/2020

JABED ALI AND 16 ORS
S/O- HASEN ALI
R/O- VILL- NAPARA PAM
P.O. LAOPARA
P.S. MUKALMUA
MOUZA- PUB BARKHETRI
DIST.- NALBARI
ASSAM

2: ABU SHAMA
S/O- KUDDUS ALI
R/O- VILL- KIRAKATA
P.S. SIPAJHAR
DIST.- DARRANG
ASSAM
PRESENTLY R/O- VILL- NAPARA PAM
P.O. LAOPARA
P.S. MUKALMUA



MOUZA- PUB BARKHETRI
DIST.- NALBARI
ASSAM

3: AMZAD
S/O- MAHAR ALI
R/O- VILL- DHALPUR
P.S. MANGALDOI
PRESENTLY R/O- VILL- NAPARA PAM
P.O. LAOPARA
P.S. MUKALMUA
MOUZA- PUB BARKHETRI
DIST.- NALBARI
ASSAM

4: MUSLIM
S/O- ROHIZ UDDIN
R/O- VILL- NO 1 OFURA
P.S. MANGALDOI
DIST.- DARRANG
ASSAM
PRESENTLY R/O- VILL- NAPARA PAM
P.O. LAOPARA
P.S. MUKALMUA
MOUZA- PUB BARKHETRI
DIST.- NALBARI
ASSAM

5: AYNAL HOQUE
S/O- ISMAIL SHEIKH
R/O- VILL- BULLKHATI
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S/O- DILBAR ALI
R/O- BHETI BAZAR
P.S. SIPAJHAR
DIST.- DARRANG
ASSAM
PRESENTLY R/O- VILL- NAPARA PAM



P.O. LAOPARA
P.S. MUKALMUA
MOUZA- PUB BARKHETRI
DIST.- NALBARI
ASSAM

7: MAINUDDIN ALI
S/O- JULHASH ALI
R/O- VILL- KIRAKATA
P.S. SIPAJHAR
DIST.- DARRANG
ASSAM
PRESENTLY R/O- VILL- NAPARA PAM
P.O. LAOPARA
P.S. MUKALMUA
MOUZA- PUB BARKHETRI
DIST.- NALBARI
ASSAM

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S/O- ISMAIL SHEIKH
R/O- VILL- BULLKHATI
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MOUZA- PUB BARKHETRI
DIST.- NALBARI
ASSAM

9: MD. SALAM ALI
S/O- KISMAT ALI
R/O- VILL- KIRAKATA
P.S. SIPAJHAR
DIST.- DARRANG
ASSAM
PRESENTLY R/O- VILL- NAPARA PAM
P.O. LAOPARA
P.S. MUKALMUA
MOUZA- PUB BARKHETRI
DIST.- NALBARI
ASSAM

10: BABU @ BABUL ALI
S/O- HASEN ALI
R/O- VILL- NO 1 OFURA



P.S. MANGALDOI
DIST.- DARRANG
ASSAM
PRESENTLY R/O- VILL- NAPARA PAM
P.O. LAOPARA
P.S. MUKALMUA
MOUZA- PUB BARKHETRI
DIST.- NALBARI
ASSAM

11: AYNAL HOQUE
S/O- SOLEMAN ALI
R/O- VILL- KACHUMARI NONKE
P.S. KACHUMARA
DIST.- BARPETA
ASSAM
PRESENTLY R/O- VILL- NAPARA PAM
P.O. LAOPARA
P.S. MUKALMUA
MOUZA- PUB BARKHETRI
DIST.- NALBARI
ASSAM

12: FAZAR
S/O- SOYED ALI
R/O- VILL- BAKRITARY
PRESENTLY R/O- VILL- NAPARA PAM
P.O. LAOPARA
P.S. MUKALMUA
MOUZA- PUB BARKHETRI
DIST.- NALBARI
ASSAM

13: AYUB ALI @ AIBALI
S/O- KADDUS ALI
R/O- VILL- KIRAKATA
P.S. MANGALDOI
DIST.- DARRANG
ASSAM
PRESENTLY R/O- VILL- NAPARA PAM
P.O. LAOPARA
P.S. MUKALMUA
MOUZA- PUB BARKHETRI
DIST.- NALBARI
ASSAM

14: OSMAN GANI @ GANI ALI
S/O- SUBAHAN ALI



R/O- VILL- DHALPUR
P.S. MANGALDOI
DIST.- DARRANG
ASSAM
PRESENTLY R/O- VILL- NAPARA PAM
P.O. LAOPARA
P.S. MUKALMUA
MOUZA- PUB BARKHETRI
DIST.- NALBARI
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15: HUSSEN ALI
S/O- MD. ARFAN ALI
R/O- VILL- NO 1 OFURA
P.S. MANGALDOI
DIST.- DARRANG
ASSAM
PRESENTLY R/O- VILL- NAPARA PAM
P.O. LAOPARA
P.S. MUKALMUA
MOUZA- PUB BARKHETRI
DIST.- NALBARI
ASSAM

16: KAYUM ALI
S/O- ATA ALI
R/O- VILL- NO 1 OFURA
P.S. MANGALDOI
DIST.- DARRANG
ASSAM
PRESENTLY R/O- VILL- NAPARA PAM
P.O. LAOPARA
P.S. MUKALMUA
MOUZA- PUB BARKHETRI
DIST.- NALBARI
ASSAM

17: BADSHA ALI
S/O- IDRIS ALI
R/O- VILL- BORLAKHETI
P.S. MANGALDOI
DIST.- DARRANG
ASSAM
PRESENTLY R/O- VILL- NAPARA PAM
P.O. LAOPARA
P.S. MUKALMUA
MOUZA- PUB BARKHETRI
DIST.- NALBARI



ASSAM
VERSUS

THE STATE OF ASSAM AND 3 ORS
REP. BY THE COMM. AND SECY.
REVENUE (SETTLEMENT) DEPTT. TO THE GOVT. OF ASSAM
DISPUR
GHY-06

2:THE DIRECTOR OF LAND RECORD
GOVT. OF ASSAM
REHABARI
GHY-08

3:THE DY. COMMISSIONER
NALBARI
DIST.- NALBARI
ASSAM

4:THE CIRCLE OFFICER
REVENUE CIRCLE BARKHETRI
DIST.- NALBARI
ASSAM

Advocate for : MR. A PARAMANIK
Advocate for : GA
ASSAM appearing for THE STATE OF ASSAM AND 3 ORS

BEFORE
HONOURABLE MR. JUSTICE SANJAY KUMAR MEDHI

JUDGMENT

Date : 19-03-2021

Heard Shri A Ali, learned counsel for the petitioners. Also heard Shri BJ Talukdar, learned Standing Counsel, Revenue Department as well as Shri G Pegu, learned State Counsel, Assam.

2. The case projected in the writ petition is that the petitioners are flood affected and had purchased certain plots of land at Village-Napara under Mouza-Pub-Barkhetri, Police Station-Mukalmua in the district of Nalbari, Assam covered by Dag No.1 from the holder and occupier by executing some Kacha Sale Deed and since then, they are in occupation over the said



plots of land. The petitioners also claim to have paid land revenue which was collected by the Mouzadar of the concerned Mouza. However, vide the impugned orders dated 21.01.2020 and 11.11.2020, the petitioners were directed to vacate their respective lands as the same was Government land.

3. Shri Ali, learned counsel for the petitioners fairly submits that though the land in question is Government land, they are flood affected persons and are in possession of the same since long and has also been paying the land revenue. He accordingly submits that the eviction drive is not reasonable and rather, steps should be taken for settlement of the land in the names of the petitioners. By drawing the attention of this Court to the additional-affidavit filed on 25.11.2020 in WP(C) No.4563/2020, it is submitted that the petitioners have been discriminated inasmuch as similarly situated persons have not been served with such notice.

4. On the other hand, Shri Talukdar, learned Standing Counsel submits that when the land in question is Government land, the petitioners cannot claim as a matter of right for settlement. Further, the petitioners are only encroachers over Government land and the impugned action is absolutely in the larger interest of public. He further submits that the land revenue said to have been paid are not '*Khajna*' but '*Touzi*' and therefore, no right would vest upon the petitioners by such payment. As regards the point taken up in the additional-affidavit, the learned counsel for the Revenue Department submits that Article 14 of the Constitution of India being a positive right, no case for discrimination can be made out by bringing on record other instances where action has not been taken.

5. Shri Pegu, learned State Counsel appearing on behalf of the respondent nos. 3 and 4 has endorsed the submission of Shri Talukdar, learned Standing Counsel and submits that the writ petition is neither tenable on facts nor in law.

6. Having given anxious considerations on the respective cases projected by the parties, this Court is of the view that admittedly the land in question being a Government land, the impugned orders dated 21.01.2020 and 11.11.2020 for eviction cannot be faulted with.

Payment of revenue as contended by the petitioners stands belied by a cursory glance of the receipts which have been annexed to the writ petitions which clearly indicate that the payment is under the head of 'Touzi', which is nothing but a fine for occupying the Government land and this position has been well settled by a Division Bench of this Court in the case of **State of Assam Vs. Radha Kanoo**, reported in **(1996) 8 SCC 692**. The relevant paragraph, being paragraph 5, is quoted hereinbelow:

“5. It is true, as pointed out by Shri Goswami that mauzadars have been given right to collect touzi of miscellaneous land revenue in the appropriate cash form prescribed in the instructions and that on collection the mauzadar is enjoined to deposit the collection so made in the manner prescribed. The question is: whether the persons who enter into possession otherwise than in accordance with Rule 16 would be recognised to be a person to have duly entered into possession of the government wasteland and thus entitled to be recognised in touzi possession of the land, even though they may have paid revenue to mauzadars? The mauzadar as an agent of the government cannot clothe himself with any higher right than is given as an agent to collect revenue on behalf of the government and has no power to create any right under Rule 16. His collection of land revenue from persons other than those covered by Rules 16, 17 and 17-A would not confer any right on such persons in unauthorised occupation. At best such collection must be only illegal collection and it does not bind the government. A reading of Rule 16 clearly indicates its mandatory character. The person is entitled to enter into possession in two characters, namely, settlement of a written lease granted by the Deputy Commissioner pursuant to a written application; or by a written permission given by the Deputy Commissioner pending settlement. In either of the events, a person is entitled to enter into possession of government wasteland and from such person the mauzadar is entitled to collect the revenue, as contemplated in terms of lease. Since Rule 17 or 17-A gives express power to the Deputy Commissioner either to increase the revenue as specified in the lease or to

reduce the revenue, as circumstances warrant under Rule 17-A this would indicate that the mauzadar is a local revenue collection agent of the government to collect revenue only in respect of the persons who rightly and lawfully entered into possession of the lands pursuant to orders in Rule 16. No other person has got any legitimacy to make any payment to the mauzadars. Nor the mauzadar has any power to collect such land revenue from the trespasser; nor shall it bind the government which is contrary to the provisions of Rule 16. Any other interpretation would be clearly repugnant to the scheme of the relevant provisions of the Regulation and the Rules. The administrative instructions issued to the mauzadars for revenue collection do not override the statutory operation of the Regulation and the Rules nor do they give legitimacy to illegal acts of mauzadar for which he would be liable to disciplinary action. The High court, therefore, was clearly in error in holding that Touzi Bahira Revenue collected by mauzadar would amount to collection of revenue and that the possession of such person would not become unlawful and no action under Rule 18 is called for unless action is taken to terminate a non-existent lease or to pass any proper order and then to recover possession of lands from the encroacher in accordance with the provisions of the Assam Public Premises (Eviction of Unauthorised Occupants) Act, 1976 (20 of 1976)."

7. This Court further finds force in the submission of the learned counsel for the respondents that not taking similar steps of eviction against similarly situated persons cannot be a relevant consideration inasmuch as the rights guaranteed under Article 14 is a positive right and cannot be negatively construed.

8. In view of the aforesaid facts and circumstances, this Court is of the view that no grounds have been able to be established for interference with the orders dated 21.01.2020 and 11.11.2020 by which eviction has been sought for.

9. Consequently, the prayer for issuance of writ in the nature of mandamus for



permanent settlement of the petitioners on the Government land stands rejected. Settlement being within the domain of the State Government, this Court would not like to embark upon the said jurisdiction.

10. The writ petitions are accordingly dismissed.

JUDGE

Comparing Assistant