



GAHC010146582023

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

Case No. : WP(C)/3901/2023

KUCHUMI SONOWAL AND 14 ORS.
R/O NAGAON HOJUWA PATHER,
NAHARKATIA, DIST- DIBRUGARH, ASSAM. PIN- 786610.

2: DIMBESWAR RAJKHOWA
S/O PANDU RAJKHOWA
R/O NAGAON HOJUWA PATHER
NAHARKATIA
DIST- DIBRUGARH
ASSAM. PIN- 786610.

3: PRONATI SAIKIA
W/O LAKHINATH NIRMOLIA R/O NAGAON HOJUWA PATHER
NAHARKATIA
DIST- DIBRUGARH
ASSAM. PIN- 786610

4: PUNAM HAZARIKA
W/O DIPAK HAZARIKA
R/O NAGAON HOJUWA PATHER
NAHARKATIA
DIST- DIBRUGARH
ASSAM. PIN- 786610

5: RINA RAJKHOWA
D/O PANDU RAJKHOWA
R/O NAGAON HOJUWA PATHER
NAHARKATIA
DIST- DIBRUGARH
ASSAM. PIN- 786610

6: BIRBOL GOWALA
S/O LETAKU GOWALA
R/O NAGAON HOJUWA PATHER



NAHARKATIA
DIST- DIBRUGARH
ASSAM. PIN- 786610.

7: PURABI RONGSWAL
W/O LATE KULEN RONGSWAL
R/O NAGAON HOJUWA PATHER
NAHARKATIA
DIST- DIBRUGARH
ASSAM.PIN- 786610

8: TULTULI BORAH
W/O DIMHBESWAR BORAH
R/O NAGAON HOJUWA PATHER
NAHARKATIA
DIST-DIBRUGARH
ASSAM.PIN- 786610

9: SASBASATI KHARIYA
W/O RAJU KHARIYA
R/O NAGAON HOJUWA PATHER
NAHARKATIA
DIST- DIBRUGARH
ASSAM.PIN- 786610

10: BIPUL GOWALA
S/O CHUNU GOWALA
R/O NAGAON HOJUWA PATHER
NAHARKATIA
DIST- DIBRUGARH
ASSAM.PIN- 786610

11: MOHAN KHARIYA
S/O CHAMARA KHARIYA
R/O NAGAON HOJUWA PATHER
NAHARKATIA
DIST- DIBRUGARH
ASSAM.PIN- 786610

12: ARATI HAZARIKA
D/O SARBA HAZARIKA
R/O NAGAON HOJUWA PATHER
NAHARKATIA
DIST-DIBRUGARH
ASSAM.PIN- 786610

13: KUSUMA GOGOI



D/O BIKA GOGOI
R/O NAGAON HOJUWA PATHER
NAHARKATIA
DIST-DIBRUGARH
ASSAM.PIN- 786610

14: LAKHI NATH NIRMOLIA
S/O BISNU NIRMOLIA
R/O NAGAON HOJUWA PATHER
NAHARKATIA
DIST- DIBRUGARH
ASSAM.PIN- 786610

15: DIPAK HAZARIKA
S/O TIPHESHWAR HAZARIKA
R/O NAGAON HOJUWA PATHER
NAHARKATIA
DIST- DIBRUGARH
ASSAM.PIN- 786610

VERSUS

THE STATE OF ASSAM AND ANR
REPRESENTED BY THE PRINCIPAL SECRETARY TO THE GOVERNMENT OF
ASSAM,
REVENUE AND DISASTER MANAGEMENT DEPARTMENT,
F BLOCK, 1ST FLOOR, ASSAM SECRETARIAT (CIVIL),
DISPUR, GUWAHATI, ASSAM.
PIN- 781006.

2:THE DEPUTY COMMISSIONER
DIBRUGARH
ASSAM
PIN- 786003

For the Petitioner :

Mr. Manas Barman, Adv.

For the Respondents:

Mr. D. Saikia, AG, Assam.

Mr. R. Borpujari, SC, Revenue Deptt., Assam.

**BEFORE
THE HON'BLE MR. JUSTICE SUMAN SHYAM**

Date of hearing : 03/10/2023.

Date of judgement : 03/10/2023



JUDGEMENT AND ORDER (ORAL)

1. Heard Mr. Manas Barman, learned counsel appearing for the writ petitioners. I have also heard Mr. D. Saikia, learned Advocate General, Assam, assisted by Mr. R. Borpujari, learned Standing Counsel, Revenue and Disaster Management Department, Assam, appearing for the respondents.
2. The writ petitioners herein, numbering 15 in total, have jointly approached this Court by filing the instant writ petition seeking protection from the proposed move to evict them from the plots of land under their occupation on the basis of oral instructions issued by the Circle Officer of Naharkatia Revenue Circle.
3. The facts of the case, in a nutshell, are that the writ petitioners herein claim to be the residents of Na-gaon Hojuwa Pathar, Naharkatia in the district of Dibrugarh. As per the case projected through the pleadings, the petitioners are in occupation of land covered by sarkari dags. Some of the writ petitioners have also constructed dwelling houses over the land under their occupation with the assistance of grants provided under the "Prima Minister's Awas Yojana – Gramin" (PMAY-G). While the writ petitioners were occupying the aforesaid plots of sarkari land, the Circle Officer, Naharkatia Revenue Circle, (who is not a party to the writ petition) had allegedly issued oral instructions to the petitioners to vacate the land within two days as the land is required for some public project. As per the statement made in the writ petition, the Circle Officer had also assured the writ petitioners to provide them with alternative housing in a neighbourhood.
4. An affidavit-in-opposition has been filed on behalf of the respondent no.2 i.e. the Deputy Commissioner, Dibrugarh, Assam, refuting the allegations made in the writ petition. As per the projection made in the counter affidavit, the petitioners are encroachers of land covered by Govt. Dag Nos. 44, 55 and 56, situated at Na-Gaon, Hajuwa Pathar village. Although, they were offered alternative land, yet, only 6(six) petitioners have submitted copies of relevant documents including the copies of Aadhar card and voter ID and the rest of them are yet to submit any documentary evidence in support of their claim. It has also been stated in the counter affidavit that a proposal has already been sent to the sub-Divisional Land Advisory Committee (SDLAC) for allotment of land in favour of the writ petitioners,



which proposal has also been approved in the meeting of the SDLAC held on 26/09/2022. It has further been stated that the land in question is required for the purpose of construction of a Mini Stadium at Na-Gaon Rajohuwa Khel Pathar, Naharkatia, for which, a construction contract has already been awarded to M/s. Ganapati Construction Company, Guwahati.

5. Mr. M. Barman, learned counsel for the writ petitioners has argued that his clients belonged to the economically vulnerable section of the society and are surviving with the meager income generated by them. Mr. Barman has further argued that his clients do not intend to obstruct any infrastructure development project meant for the public but in the present case, since the petitioners have been sought to be evicted without serving any prior notice and also without providing them any alternative land, hence, the action initiated by the Circle Officer, Naharkatia Revenue Circle is *per se* illegal and as such, liable to be set aside by this Court. Mr. Barman has further argued that the Circle Officer, Naharkatia does not have the jurisdiction to evict illegal encroachers of 'sarkari land'.

6. In response, Mr. D. Saikia, learned Advocate General, Assam, has argued that the land occupied by the writ petitioners is required for the purpose of construction of the "Mini Stadium" at Naharkatia since the same forms part of the contiguous land, which would be necessary for setting up the infrastructure. Mr. Saikia has further submitted that all the writ petitioners have already been offered allotment of "sarkari land" in their names in the adjoining area which is covered by the same daga and all of them had also earlier agreed to the said proposal. According to Mr. Saikia, some of the petitioners have been taken possession of the newly allotted land. Notwithstanding the same, the petitioners have approached this Court by filing this writ petition only to extract undue benefits from the State and, therefore, the writ petition deserves to be dismissed on such count alone. In support of his above arguments, Mr. Saikia has invited the attention of this Court to the affidavits filed by the petitioners stating that they are in possession of "sarkari land" and have applied for settlement of Government land for construction of house.

7. It is also the submission of the learned AG, Assam, that out of the 15 petitioners, only 4 (four) of them had availed financial assistance under the PMAY-G scheme to the tune of Rs. 1,30,000/- each for construction of their houses. Therefore, if the Court directs, the said petitioners would be adequately compensated enabling them to make constructions of



new houses. Mr. Saikia, learned AG, Assam, has further argued that save and except the 4 (four) petitioners, none of the other writ petitioners have constructed any house over the land and, therefore, those petitioners cannot claim compensation on account of construction of house.

8. In his reply argument, Mr. Barman has submitted that the alternative land offered by the Government is not liveable as the same does not have proper approach road. Further, the land being low lying land, is also having water-logging problems. According to Mr. Barman, the affidavits sworn by the writ petitioners was on a misrepresentation of facts and, therefore, the same ought not to be taken into account by this Court for deciding the writ petition. Mr. Barman has also prayed for some more time to file rejoinder affidavit with a request to take up the impleadment application registered as IA(C) 3011/2023 filed on behalf of the writ petitioners on 30/09/2023 seeking impleadment of as many as 7 official respondents including the Circle Officer, Naharkatia Revenue Circle.

9. I have considered the submissions advanced by the learned counsel for both the parties and have also gone through the materials available on record.

10. As has been noted herein above, it is not in dispute that all the writ petitioners are in occupation of 'sarkari land'. The land in the occupation had never been allotted in their favour. From the documents annexed to the counter affidavit filed by the respondent no. 2, it appears that out of the 15 petitioners, only four petitioners, viz. the petitioner no. 1 Smt. Kuchumi Sonowal, the petitioner no. 6 Sri Birbal Gowala, petitioner no. 10 Sri Bipul Gowala and the petitioner no. 11 Sri Mohan Khariya had constructed dwelling house by availing the grant under the PMAY-G scheme to the tune of Rs. 1,30,000/- each. There is nothing available on record to even remotely indicate that save and except these four petitioners, any of the remaining petitioners had made any construction over the "sarkari land" under their occupation.

11. From the pleadings containing in the writ petition, it is not clear as to how the petitioners could construct permanent dwelling houses over a plot of 'sarkari land' with PMAY-G funds without obtaining the approval of the district Administration. It is not in dispute that the four petitioners had availed PMAY-G funds to construct the houses. It is, therefore,

difficult to presume that such construction took place without the knowledge and approval of the concerned officials including the respondent no. 2. Be that as it may, it is also not in dispute that the land occupied by the petitioners is required so as to complete the construction of the Mini Stadium at Naharkatia. The stadium is intended to provide a sporting arena for the residents of Naharkatia and the adjoining areas in the district of Dibrugarh and, therefore, is undoubtedly a project meant for greater public benefit. Under the circumstances, if the "sarkari land" under the occupation of the writ petitioners is required by the District Administration for construction of the stadium, the said process, if carried out in accordance with law, cannot be obstructed by filing a writ petition before this Court. Therefore, the only question that would arise for consideration in this writ petition is as to whether, the respondents are seeking to takeover possession of the land by following the due process of law or not.

12. As has been noted herein above, the writ petitioners do not have any semblance of title over the plot of Govt. land under their possession. If that be so, do the petitioners have a status which is different from that of encroachers of 'sarkari land' and if so, by virtue of Rule 18(2) of the Assam Land and Revenue Regulations, 1886, is any prior notice required to be served upon the petitioners. This issue has been dealt with by this Court in the case of **Taher Ali Vs. State of Assam and 2 others [WP(C) 6158/2019]**, **Md. Salak Uddin Vs. The State of Assam and others [WP(C) 1057/2022]** as well as in the case of **Bimal Chandra Das Vs. State of Assam and others** reported in **2018 (1) GLR 30** expressing divergent views on the requirement of service of notice under Rule 18(2) of the Settlement Rules upon encroachers of Government khas land.

13. In the case of **Taher Ali (Supra)**, it was held that in case of encroachers over "sarkari khas" land, there was no requirement for serving eviction notice upon the encroachers under Rule 18(2) of the Settlement Rules. However, in the case of **Bharati Das and 2 others Vs. State of Assam and others [WP(C) 9025/2019]**, the learned Single Judge has held that when there is a *bona fide* claim of right over the land, prior notice under Rule 18(2) is required to be served. What is, however, significant to note is that in both the decisions, there is unanimity on the question of compliance of the Rule of *audi alteram partem* even in case of eviction of encroachers upon Government land. The requirement of

compliance of the Rules of *audi alteram partem* becomes even more significant when the land under the occupation of the encroachers is used for residential purposes. Therefore, there can be hardly any doubt about the fact that even the encroachers of sarkari land, used for dwelling purposes, cannot be evicted from the land in question merely on the basis of oral instruction giving just 2 (two) days time to vacate the land as has been done in this case. Therefore, the move on the part of the Circle Officer, Naharkatia to evict the writ petitioners from the land on the basis of oral instruction, cannot be approved by this Court.

14. Coming to the next issue as to whether the Circle Officer would have the jurisdiction to take action under Rule 18(2) of the Assam Land and Revenue Regulations, the said question is no longer *res integra* in view of the decision of this Court in the case of **Taher Ali (Supra)** wherein, this Court had held that the power of delegation of the Deputy Commissioner of the District can be extended to the Sub-Divisional Officer as well as the Circle Officer in view of the provisions of Rule 3(11) of the Settlement Rules. Therefore, it cannot be said that the Circle officer did not have the authority or jurisdiction under the law to initiate action for eviction of illegal encroachers upon 'sarkari land'.

15. This leads us to the vital issue i.e. whether the writ petitioners are liable to be evicted from the land under their occupation. This Court finds that although the petitioners are encroachers of 'sarkari land', yet, the district Administration has already initiated action for making allotment of alternative land to the petitioners in the adjoining plot, which according to the learned AG, Assam, is covered by the same dag. The averments made in paragraph 8 of the counter affidavit filed by the respondent no. 2 also projects the said position. Therefore, those statements are being extracted herein below for ready reference :-

'8. That with regard to the averments made in paragraph 7 of the writ petition the deponent begs to state that proposal was considered for construction of Mini Stadium at Nagaon Rajohuw Khel Pathar, Naharkatia LAC, Dibrugarh. For construction of the stadium a large area of land is required accordingly, land measuring 30B-0K-0Ls covered by Part of Govt. Dag No (s) 44, 55 and 56 situated at Hajua Pathargaon under Joypur Mouza has been selected for allocation to stadium. On physical verification it is found that some portion of land has been under unauthorized occupation of some persons. After negotiation, the occupants have agreed to vacant the land, if they were



given land settlement in a nearby location. After that proposals for settlement of land to the occupants were prepared as per procedures along with affidavits where in point no. 2 of the said affidavits submitted by the petitioners it is stated that the land will be used for residential purpose by constructing a house. Thereafter, proposals were sent to the Sub-Divisional Land Advisory Committee (SDLAC) for recommendation. The proposal was recommended in the SDLAC meeting held on 26/09/2022.

The deponent states that administrative approval has been accorded by Public Works Z(building & NH) Department for construction of a Mini Stadium at Nagaon Rajohuwa Khel Pathar Naharkatia LAC vide Approved Number AA/PWB_22-23(1)_1510 dated 27/09/2022. Thereafter, vide order under memo no. CS/T/TB-1/19/2022/19 dated 30/11/2022 the construction Contract has been awarded to Ganapati Construction Company, Guwahati.

The deponent states that vide order dated 21/01/2023 the LR staff of Naharkatia Revenue Circle were assigned to show the new land recommended for settlement to the beneficiaries at Hajuapathar Gaon under Joypur Mouza and to demarcate the same. The Road and drain development work at the new land settlement area has been carried out by Joypur Development Block. Even after demarcation of land to each beneficiaries and development work of Road and Drain in propose settlement site, one family shifted and 9 others started part construction but all have not shifted to allotted site.

The Executive Engineer, PWD, Naharkatia, Duliajan and Chabua Territorial Building Division vide letter dated 24/05/2023 has requested for demarcation of boundary for construction of Mini Stadium at Nagaon Rajohuwa Khel Pathar, Naharkatia. On 24/06/2023 the Circle Officer, Naharkatia Revenue Circle, Naharkatia, requested the occupants to visit his office for discussion on 26/06/2023. The discussion were held and the occupants were requested to vacant the land and shift to the new location where alternative settlement of and have been given to them as agreed upon."

16. The petitioners have not filed any rejoinder affidavit controverting the averments



made in the counter affidavit. As such, this Court is left with no option but to accept the statements made in the counter affidavit as true and correct.

17. During the course of arguments, Mr. Barman had sought three weeks time to file the rejoinder affidavit. However, such a prayer made by Mr. Barman is found to be un acceptable for the following reasons.

18. Firstly the respondents have been consistently expressing urgency in the matter by submitting that construction work of an important public project is being stalled due to operation of the interim order passed in the present proceeding and, therefore, this matter calls for expeditious disposal.

19. Secondly, on 18/09/2023, when the writ petition was listed before this Court, none had appeared for the writ petitioners, as a result of which, the interim order was not extended any further. Consequently, the petitioners had to approach this Court by filing IA(C) No. 2861/2023 praying for extension of the interim order on the ground that if the petitioners are evicted from the land during the pendency of the writ petition, the same would pose immense prejudice and hardship to them. Taking note of the submission made at the Bar and notwithstanding the urgency expressed by the learned Standing Counsel, Revenue and DM Department, Assam, a fresh interim order directing maintenance of *status quo* was passed by this Court on 20/09/2023 in IA(C) 2861/2023 arising out of WP(C) 3901/2023 by fixing the matter today for admission hearing. By the order dated 20/09/2023, it was clarified that the writ petition would be taken up for disposal at the stage of admission hearing today and the parties were asked to come prepared accordingly. Under the circumstances, if the petitioners were indeed serious about filing rejoinder affidavit, there was no reasons as to why the same could not have been brought on record in the meantime.

20. Thirdly, since the petitioners are occupying 'sarkari land' without having any document of title and considering the stand of the administration that they are willing to allot 'sarkari land' to the petitioners, so as to mitigate their sufferings, this Court does not find any justifiable ground to keep the writ petition pending any further, thereby obstructing the construction of the Mini Stadium, more so, when the SDLAC has already approved the proposal for allotment of land to be made in favour of the petitioners in the adjoining area



covered by the same dag.

21. In so far as the house constructed by the four petitioners under the PMAY-G scheme is concerned, it appears that the houses were constructed sometime around 2017-2019 by availing an assistance under PMAY-G scheme to the tune of Rs, 1,30,000/- and, therefore, taking into account the inflation, efforts in construction of the houses, the inconvenience that would have to be caused to the four petitioners for shifting their houses as well as the stand taken by the learned AG, Assam that they would be suitably compensated, this Court is of the opinion that for the ends of justice, a direction is required to be issued by this Court to pay adequate compensation to the four writ petitioners. Therefore, this writ petition is being disposed of with the following observations and directions :-

- (i) All the writ petitioners shall be allotted land in the adjoining area by issuing separate allotment orders if not already done.
- (ii) In case of the 4 (four) writ petitioners who had constructed dwelling houses with financial assistance under PMAY-G scheme, they will be paid an amount of Rs. 3 lakhs (three lakhs) each as compensation for the houses so constructed, so as to enable them to construct houses afresh.
- (iii) Upon completion of the process under the Sl. No. (i) and (ii) above, the petitioners shall be given 15 days notice in writing asking them to vacate the land on their own.
- (iv) If the petitioners or any of them fail to vacate the land even after expiry of 15 days notice period, as provided by this Court, in that event, the District Administration will be at liberty to proceed for eviction of the petitioners from the land by demolishing the constructions therein without serving any further notice.

With the above observations, the writ petition stands disposed of.

There shall be no order as to costs.

JUDGE

Sukhamay

Comparing Assistant