

GAHC010266282022



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

Case No. : WP(C)/317/2021

CHAMEN ALI AND 4 ORS
S/O- MONSER ALI SK @ MONSER ALI
R/O- RAJABALA BHALUKKANDI
P.O. PATAKATA
P.S. SOUTH SALMARA
DIST.- SOUTH SALMARA-MANKACHAR
PIN- 783127
ASSAM

2: ANOWAR ALI
S/O- MONSER ALI SK @ MONSER ALI
R/O- RAJABALA BHALUKKANDI
P.O. PATAKATA
P.S. SOUTH SALMARA
DIST.- SOUTH SALMARA-MANKACHAR
PIN- 783127
ASSAM

3: ALI CHAN
S/O- MONSER ALI SK @ MONSER ALI
R/O- RAJABALA BHALUKKANDI
P.O. PATAKATA
P.S. SOUTH SALMARA
DIST.- SOUTH SALMARA-MANKACHAR
PIN- 783127
ASSAM

4: ASHAN ALI
S/O- MONSER ALI SK @ MONSER ALI
R/O- RAJABALA BHALUKKANDI
P.O. PATAKATA
P.S. SOUTH SALMARA
DIST.- SOUTH SALMARA-MANKACHAR

PIN- 783127
ASSAM

5: SANOWAR ALI
S/O- MONSER ALI SK @ MONSER ALI
R/O- RAJABALA BHALUKKANDI
P.O. PATAKATA
P.S. SOUTH SALMARA
DIST.- SOUTH SALMARA-MANKACHAR
PIN- 783127
ASSAM
VERSUS

THE COMMISSIONER AND SECRETARY TO THE GOVT OF ASSAM AND 6
ORS
REVENUE AND DISASTER MANAGEMENT DEPTT.
DISPUR
GHY-6

2:THE COMM. AND SECY.
EDUCATION HIGHER DEPTT.
GOVT. OF ASSAM
DISPUR
GHY-6

3:THE DY. COMMISSIONER
SOUTH SALMARA-MANKACHAR
ASSAM

4:THE SUB DIVISIONAL OFFICER
(CIVIL) SOUTH SALMARA
MANCACHAR

5:THE EXECUTIVE ENGINEER
PWD (BUILDING) DIVISION
DHUBRI
ASSAM

6:THE CIRCLE OFFICER
SOUTH SALMARA REVENUE CIRCLE
SOUTH SALMARA
ASSAM

7:SUPERINTENDENT OF POLICE
SOUTH SALMARA-MANKACHAR
ASSAM

8:MAHESH KUMAR CHANANI
S/O- LT. MATHURAM CHANANI
R/O- WARD NO. 18
SBI COLONY
HOJAI
DIST.- HOJAI
ASSAM

PIN- 782435.

Advocate for : MR. M DUTTA

Advocate for : SC

HIGHER EDU appearing for THE COMMISSIONER AND SECRETARY TO THE
GOVT OF ASSAM AND 6 ORS

Linked Case : WP(C)/1018/2021

ABUL KALAM AND 2 ORS
S/O LATE AYAT ALI
RESIDENT OF RAJABALA BHALUKKANDI
PO PATAKATA
PS SOUTH SALMARA
DIST SOUTH SALMARA MANKACHAR
ASSAM 783127

2: ABDUL HUSSAIN
S/O LATE AYAT ALI
RESIDENT OF RAJABALA BHALUKKANDI
PO PATAKATA
PS SOUTH SALMARA
DIST SOUTH SALMARA MANKACHAR
ASSAM 783127

3: ABDUL MOZID
S/O LATE AYAT ALI
RESIDENT OF RAJABALA BHALUKKANDI
PO PATAKATA
PS SOUTH SALMARA
DIST SOUTH SALMARA MANKACHAR
ASSAM 783127
VERSUS

THE STATE OF ASSAM AND 6 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE GOVT.
OF ASSAM
REVENUE AND DISASTER MANAGEMENT DEPARTMENT
DISPUR
GUWAHATI 6

2:THE COMMISSIONER AND SECRETARY
EDUCATION HIGHER DEPARTMENT
GOVT. OF ASSAM
DISPUR GUWAHATI 6

3:THE DEPUTY COMMISSIONER

SOUTH SALMARA MANKACHAR
ASSAM
783127
4:THE SUB DIVISIONAL OFFICER (CIVIL)
SOUTH SALMARA MANKACHAR
783127
5:THE EXECUTIVE ENGINEER

PWD (BUILDING) DIVISION
DHUBRI
ASSAM 783301
6:THE CIRCLE OFFICER

SOUTH SALMARA REVENUE CIRCLE
SOUTH SALMARA
ASSAM 783127
7:SUPERINTENDENT OF POLICE
SOUTH SALMARA MANKACHAR
ASSAM 783127

Advocate for : MR. M DUTTA
Advocate for : GA
ASSAM appearing for THE STATE OF ASSAM AND 6 ORS

Linked Case : WP(C)/2411/2021

SUKCHAN ALI AND 15 ORS
S/O LATE MAMUD ALI
RESIDENT OF VILLAGE BOIDDOR GAON
PO TUMNI
PS SOUTH SALMARA
DIST SOUTH SALMARA MANKACHAR
ASSAM
783127

2: INAM HUSSAIN @ IMAN ALI

S/O LATE ROSTOM ALI

RESIDENT OF VILLAGE TUMNISIMLA
PO TUMNI
PS SOUTH SALMARA
DIST SOUTH SALMARA MANKACHAR
ASSAM
783127

3: ABUL HUSSAIN

S/O LATE ROSTOM ALI

RESIDENT OF VILLAGE TUMNISIMLA
PO TUMNI
PS SOUTH SALMARA
DIST SOUTH SALMARA MANKACHAR
ASSAM
783127

4: A MOZID @ MAZID ALI

S/O LATE ROSTOM ALI

RESIDENT OF VILLAGE TUMNISIMLA
PO TUMNI
PS SOUTH SALMARA
DIST SOUTH SALMARA MANKACHAR
ASSAM
783127

5: GUTU SHEIKH @ GHUTU MUNSHI

S/O SIKIM UDDIN

RESIDENT OF VILLAGE TUMNISIMLA
PO TUMNI
PS SOUTH SALMARA
DIST SOUTH SALMARA MANKACHAR
ASSAM
783127

6: JOHIRAN BEWA @ JOHIRAN NESSA BEWA
D/O SIKIM UDDIN

RESIDENT OF VILLAGE TUMNISIMLA
PO TUMNI
PS SOUTH SALMARA
DIST SOUTH SALMARA MANKACHAR
ASSAM
783127

7: BHULI BIBI

W/O BIDESHI SHEIKH

RESIDENT OF VILLAGE RAJABALA BHALUKKANDI
PO PATAKATA
PS SOUTH SALMARA

DIST SOUTH SALMARA MANKACHAR ASSAM 783127

8: ABDUL MATIN
S/O LATE ABUL KASHEM
RESIDENT OF VILLAGE RAJABALA BHALUKKANDI
PO PATAKATA
PS SOUTH SALMARA
DIST SOUTH SALMARA MANKACHAR ASSAM 783127

9: A MONNAF @ MONNAF ALI
S/O LATE ABUL KASHEM
RESIDENT OF VILLAGE RAJABALA BHALUKKANDI
PO PATAKATA
PS SOUTH SALMARA
DIST SOUTH SALMARA MANKACHAR ASSAM 783127

10: MOTLEBUR RAHMAN
S/O LATE ABUL KASHEM
RESIDENT OF VILLAGE RAJABALA BHALUKKANDI
PO PATAKATA
PS SOUTH SALMARA
DIST SOUTH SALMARA MANKACHAR ASSAM 783127

11: ASMOT ALI
S/O LATE SODAGAR ALI @ SODAGAR SHEIKH
RESIDENT OF VILLAGE RAJABALA BHALUKKANDI
PO PATAKATA
PS SOUTH SALMARA
DIST SOUTH SALMARA MANKACHAR ASSAM 783127

12: SAMSUL @ SAMSUL SK

S/O LATE SODAGAR ALI @ SODAGAR SHEIKH
RESIDENT OF VILLAGE RAJABALA BHALUKKANDI
PO PATAKATA
PS SOUTH SALMARA
DIST SOUTH SALMARA MANKACHAR ASSAM 783127

13: SOBIAL HOQUE @ SOPIAL HOQUE
S/O LATE SODAGAR ALI @ SODAGAR SHEIKH
RESIDENT OF VILLAGE RAJABALA BHALUKKANDI
PO PATAKATA
PS SOUTH SALMARA
DIST SOUTH SALMARA MANKACHAR ASSAM 783127

14: INAM ALI @ IMAN ALI
S/O LATE SODAGAR ALI @ SODAGAR SHEIKH
RESIDENT OF VILLAGE RAJABALA BHALUKKANDI

PO PATAKATA
PS SOUTH SALMARA
DIST SOUTH SALMARA MANKACHAR ASSAM 783127

15: ASOR ALI @ ASHRAB ALI
S/O LATE SODAGAR ALI @ SODAGAR SHEIKH
RESIDENT OF VILLAGE RAJABALA BHALUKKANDI
PO PATAKATA
PS SOUTH SALMARA
DIST SOUTH SALMARA MANKACHAR ASSAM 783127

16: FULCHAN ALI
S/O LATE SODAGAR ALI @ SODAGAR SHEIKH
RESIDENT OF VILLAGE RAJABALA BHALUKKANDI
PO PATAKATA
PS SOUTH SALMARA
DIST SOUTH SALMARA MANKACHAR ASSAM 783127
VERSUS

THE COMMISSIONER AND SECRETARY TO THE GOVT OF ASSAM REVENUE
AND DM DEPTT AND 6 ORS
DISPUR
GUWAHATI 06

2:THE COMMISSIONER AND SECRETARY
EDUCATION HIGHER DEPARTMENT
GOVT OF ASSAM
DISPUR
GUWAHATI 06

3:THE DEPUTY COMMISSIONER

SOUTH SALMARA MANKACHAR
ASSAM
4:THE SUB DIVISIONAL OFFICER (CIVIL)
SOUTH SALMARA MANKACHAR
ASSAM
5:THE EXECUTIVE ENGINEER
PWD (BUILDING) DIVISION
DHUBRI
ASSAM
6:THE CIRCLE OFFICER
SOUTH SALMARA REVENUE CIRCLE
ASSAM
7:SUPERINTENDENT OF POLICE
SOUTH SALMARA MANKACHAR
ASSAM

Advocate for : MR. M DUTTA

Advocate for : GA

ASSAM appearing for THE COMMISSIONER AND SECRETARY TO THE GOVT
OF ASSAM REVENUE AND DM DEPTT AND 6 ORS

Linked Case : WP(C)/983/2021

ABDUL AZIZ MIAH AND 3 ORS
S/O LATE BANIJ ALI
R/O RAJBALA BHALUKKANDI
P.O. PATAKATA
P.S. SOUTH SALMARA
DIST. SOUTH SALMARA MANKACHAR
PIN 783127
ASSAM.

2: BAHAR ALI

S/O LATE BANIJ ALI
R/O RAJBALA BHALUKKANDI
P.O. PATAKATA
P.S. SOUTH SALMARA
DIST. SOUTH SALMARA MANKACHAR
PIN 783127
ASSAM.

3: IBRAHIM ALI

S/O LATE BANIJ ALI
R/O RAJBALA BHALUKKANDI
P.O. PATAKATA
P.S. SOUTH SALMARA
DIST. SOUTH SALMARA MANKACHAR
PIN 783127
ASSAM.

4: BHALIJAN BIBI

D/O LATE BANIJ ALI
R/O RAJBALA BHALUKKANDI
P.O. PATAKATA
P.S. SOUTH SALMARA
DIST. SOUTH SALMARA MANKACHAR
PIN 783127
ASSAM.
VERSUS

THE STATE OF ASSAM AND 6 ORS
REPRESENTED BY THE COMMISSIONER AND SECY. TO THE GOVT. OF
ASSAM
REVENUE AND DISASTER MANAGEMENT DEPTT.
DISPUR
GUWAHATI 6

2:THE COMMISSIONER AND SECY.

EDUCATION HIGHER DEPTT.
GOVT. OF ASSAM
DISPUR
GUWAHATI 6
3:THE DEPUTY COMMISSIONER

SOUTH SALMARA MANKACHAR
ASSAM
PIN 783127
4:THE SUB DIVISIONAL OFFICER
(CIVIL)
SOUTH SALMARA
MANCACHAR
PIN 783127
5:THE EXECUTIVE ENGINEER

PWD (BUILDING) DIVISION
DHUBRI
ASSAM
PIN 783301
6:THE CIRCLE OFFICER

SOUTH SALMARA REVENUE CIRCLE
SOUTH SALMARA
ASSAM
PIN 783127
7:SUPERINTENDENT OF POLICE

SOUTH SALMARA MANKACHAR
ASSAM
PIN 783127
8:SRI MAHESH KUMAR CHANANI
S/O LATE MATHURAM CHANANI
R/O WARD NO. 18
SBI COLONY
HOJAI
PIN- 782435
DIST. HOJAI
ASSAM.

Advocate for : MR. M DUTTA

Advocate for : SC

HIGHER EDU appearing for THE STATE OF ASSAM AND 6 ORS

Linked Case : WP(C)/2414/2021

AMIR ALI AND 7 ORS

S/O JURAN ALI

RESIDENT OF VILLAGE TUMNISIMLAKANDI

PO TUMNI

PS SOUTH SALMARA

DIST SOUTH SALMARA MANKACHAR

ASSAM 783127

2: ABUL KALAM AZAD

S/O JURAN ALI

RESIDENT OF VILLAGE TUMNISIMLAKANDI

PO TUMNI

PS SOUTH SALMARA

DIST SOUTH SALMARA MANKACHAR

ASSAM 783127

3: ARFAN ALI

S/O PORAN BASHI

RESIDENT OF VILLAGE TUMNISIMLAKANDI

PO TUMNI

PS SOUTH SALMARA

DIST SOUTH SALMARA MANKACHAR

ASSAM 783127

4: OSMAN ALI

S/O PORAN BASHI

RESIDENT OF VILLAGE TUMNISIMLAKANDI

PO TUMNI

PS SOUTH SALMARA

DIST SOUTH SALMARA MANKACHAR

ASSAM 783127

5: HOBIBOR RAHMAN

S/O LATE MONSER ALI

RESIDENT OF VILLAGE TUMNISIMLAKANDI

PO TUMNI

PS SOUTH SALMARA

DIST SOUTH SALMARA MANKACHAR

ASSAM 783127

6: HAMED ALI
S/O LATE MONSER ALI
RESIDENT OF VILLAGE TUMNISIMLAKANDI
PO TUMNI
PS SOUTH SALMARA
DIST SOUTH SALMARA MANKACHAR
ASSAM 783127

7: CHAMEN ALI @ SAMEN ALI
S/O LATE MONSER ALI
RESIDENT OF VILLAGE BHALUKKANDI
PO PATAKATA
PS SOUTH SALMARA
DIST SOUTH SALMARA MANKACHAR
ASSAM 783127

8: ANSER ALI
S/O LATE NALU SHEIKH
RESIDENT OF VILLAGE BHALUKKANDI
PO PATAKATA
PS SOUTH SALMARA
DIST SOUTH SALMARA MANKACHAR
ASSAM 783127
VERSUS

THE COMMISSIONER AND SECRETARY TO THE GOVT OF ASSAM
REVENUE AND DM DEPTT AND 6 ORS
DISPUR
GUWAHATI 06

2:THE COMMISSIONER AND SECRETARY
EDUCATION HIGHER DEPARTMENT
GOVT OF ASSAM
DISPUR
GUWAHATI 06

3:THE DEPUTY COMMISSIONER

SOUTH SALMARA MANKACHAR
ASSAM

4:THE SUB DIVISIONAL OFFICER (CIVIL)
SOUTH SALMARA MANKACHAR
ASSAM

5:THE EXECUTIVE ENGINEER
PWD (BUILDING) DIVISION
DHUBRI
ASSAM

6:THE CIRCLE OFFICER

SOUTH SALMARA REVENUE CIRCLE
ASSAM
7: SUPERINTENDENT OF POLICE
SOUTH SALMARA MANKACHAR
ASSAM

Advocate for : MR. M DUTTA

Advocate for : GA

ASSAM appearing for THE COMMISSIONER AND SECRETARY TO THE GOVT
OF ASSAM
REVENUE AND DM DEPTT AND 6 ORS

**BEFORE
HONOURABLE MR. JUSTICE MANISH CHOUDHURY**

JUDGMENT AND ORDER [ORAL]

Date : 15.02.2024

All the 5 [five] writ petitions – W.P.[C] no. 317/2021, W.P.[C] no. 983/2021, W.P.[C] no. 1018/2021, W.P.[C] no. 2411/2021 & W.P.[C] no. 2414/2021 – are preferred seeking to invoke the extra-ordinary and discretionary jurisdiction of this Court under Article 226 of the Constitution of India *inter alia* to assail an Order under Memo no. HRS.2/2011/113 dated 27.11.2015 passed by the Sub-Divisional Officer [Civil], South Salmara - Mankachar Sub-Division, Hatsingimari, District – South Salmara - Mankachar, Assam. The writ petition, W.P.[C] no. 317/2021 has been preferred by 5 [five] nos. of petitioners whereas in the writ petition, W.P.[C] no. 983/2021, there are 4 [four] nos. of petitioners. The writ petitions, W.P.[C] no. 1018/2021, W.P.[C] no. 2411/2021 & W.P.[C] no. 2414/2021 are preferred by 3 [three] petitioners, 16 [sixteen] petitioners and 8 [eight] petitioners respectively.

2. As all the five writ petitions have been preferred by the petitioners stating that they are espousing a common cause of action and the controversy involved

in all the five writ petitions is same, all the five writ petitions are taken up together for consideration, as agreed to by the learned counsel for the parties. It is submitted by the learned counsel for the parties that exchange of pleadings in all the writ petitions are complete, with the submission that the affidavit-in-opposition filed by the respondent no. 3 would cover the case of the State respondents in respect of all the writ petitions.

3. It is the case of the petitioners that they are inhabitants of Revenue Village – Rajabala Bhalukkandi within the South Salmara Revenue Circle, District - South Salmara - Mankachar, Assam. It is the further case of the petitioners in all these writ petitions that they are periodic patta holders holding different parcels of patta lands, as mentioned in their respective pattas. The petitioners have, thus, claimed that they come within the ambit of the definitions of land-holder and/or settlement-holder, as defined under the Assam Land and Revenue Regulation, 1886.

4. The *lis* has arisen due to a decision taken by the State Government to set up and establish a Model Degree College at the Revenue Village - Rajabala Bhalukkandi. The matter of setting up a Model Degree College in South Salmara - Mankachar district is part of a decision of the State Government to set up Model Degree Colleges in 12 districts of Assam. In view of the decision to set up the Model Degree College within the Revenue Village - Rajabala Bhalukkandi, a necessity had arisen to look out for parcels of land required for setting up such a Model Degree College. It was in the said process of making allocation of land for setting up the Model Degree College at Revenue Village - Rajabala Bhalukkandi, the impugned Order dated 27.11.2015 came to be passed. By the

said impugned Order passed in a case registered as *Relinquishment Case no. HRS.2/2011/113*, different parcels of land, measuring 39 Bighas 02 Kathas 12 Lessas [39B-02K-12L] in total, which were earlier patta lands, have been converted to Sarkari [Government] lands. The landholdings of the petitioners which were stated to be by virtue of the pattas, were within the said total area of land measuring 39B-02K-12L.

5. By an Order dated 19.06.2019, the Deputy Commissioner, South Salmara - Mankachar, Hatsingimari directed the Circle Officer, South Salmara Revenue Circle to hand over possession of the area of land measuring 39B-02K-12L, converted by the Order dated 27.11.2015 to Sarkari [Government] land, to the Executive Engineer, PWD [Building], Dhubri Division for construction of the Model Degree College in terms of a direction given by the Secretary to Government of Assam, Education [Higher] Department & Mission Director, RUSA [Assam]. By an Order dated 29.11.2020, the Deputy Commissioner, South Salmara - Mankachar had instructed the Officer In-Charge, South Salmara Police Station to take necessary action in order to facilitate construction of the Model Degree College, which was purportedly obstructed by the local public.

6. I have heard Mr. M. Dutta, learned counsel for the petitioners in all the writ petitions; Mr. D. Mozumder, learned Additional Advocate General, Assam assisted by Ms. G. Hazarika, learned Standing Counsel, Revenue & Disaster Management Department; Ms. P.R. Mahanta, learned Standing Counsel, Higher Education Department; Ms. M. Barman, learned Junior Government Advocate, Assam; Mr. B. Gogoi, learned Standing Counsel, Public Works Department [PWD] for all the State respondents; and Mr. A. Deka, learned counsel for the

respondent no. 8 in W.P.[C] no. 317/2021 & W.P.[C] no. 983/2021.

7. Mr. Dutta, learned counsel appearing for the petitioners has submitted that apart from assailing the Order dated 27.11.2015 passed by the Sub-Divisional Officer [Civil], South Salmara - Mankachar Sub-Division, Hatsingimari, the petitioners are also assailing the subsequent and consequential Orders, dated 19.06.2019 and dated 29.12.2020. Referring to the impugned Order dated 27.11.2015, Mr. Dutta has submitted that the proceedings undertaken by the respondent authorities in converting the patta lands of the petitioners into Government Khas lands in respect of the area of land measuring 39B-02K-12L were in violation of the principles of natural justice as the petitioners were not heard by the authority who had passed the Order dated 27.11.2015. He has drawn attention to the contents of some of the Letters of Resignation [*Istafa*] on the basis of which different parcels of patta land had been converted to Khas [Government] lands. It is the specific case of the petitioners that none of the Letters of Resignation [*Istafa*] was signed by any of the petitioners accepting any proposal to relinquish their respective periodic patta lands. If the State authorities were in requirement of the petitioners' patta lands, steps should have been taken under the provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 [the RFCTLARR Act, for short]. The procedure followed by the State respondents in the present case is clearly in infringement of the constitutional right of the petitioners guaranteed under Article 300A of the Constitution of India.

8. Mr. Mozumder, learned Additional Advocate General, Assam appearing for

the State respondents has submitted that in the cases in hand, the State respondents had followed the statutory prescription contained in the Assam Land and Revenue Regulation, 1886 [‘the Regulation, 1886’, for short] and the procedure prescribed in the Rules, framed under the Regulation, 1886. It is his submission that all the petitioners who had patta lands within the area of land measuring 39B-02K-12L, Revenue Village – Rajabala Bhalukkandi, had submitted Relinquishment [*Istafa*] forms subscribing their signatures thereon and in addition, they had also made statements before the authorities mentioning, in clear terms, that they would like to relinquish voluntarily their rights in respect of the pattas and areas mentioned therein. He has further submitted that the impugned Order of converting patta lands to Sarkari [Government] land was passed on 27.11.2015 and thereafter, possession of the entire parcels of land, measuring 39B-02K-12L, was handed over in the year 2019 to the contractor, who was awarded contract-work of constructing the Model Degree College after completion of a competitive bidding process, initiated by a Press Notice dated 30.05.2019 by the Chief Engineer, PWD [Building], Assam. Pursuant to the Notice to Proceed with the contract-work, issued on 06.01.2020, the contractor had proceeded to execute the contract-work and in the process, completed a substantial part of the construction. It was only after construction of a substantial part of the Model Degree College, the petitioners had approached this Court by instituting these writ petitions in the year 2021. Thus, the writ petitions are filed after prolonged period of delay and as such, the writ petitions were not to be entertained on the ground of delay and laches. It is his further contention that the petitioners at the earlier point of time in 2015 had voluntarily relinquished their rights in respect of their periodic patta lands but after about 6 years, have approached this Court

through the writ petitions, by an act of volte-face, to assail the process leading to the Order dated 27.11.2015 with the allegation that the entire process was vitiated on some irrelevant factors.

9. Mr. Deka, learned counsel appearing for the respondent no. 8 in W.P.[C] no. 317/2021 & W.P.[C] no. 983/2021 has submitted that the respondent no. 8 emerged as the successful bidder in the competitive bidding process initiated for awarding the contract work of constructing the Model Degree College at Revenue Village – Rajabala Bhalukkandi. He has also referred to the Press Notice dated 30.05.2019 whereby the Chief Engineer, PWD [Building], Assam invited on-line bids for awarding the contract-work of construction of the Model Degree College in South Salmara - Mankachar district at an approximate contract bid value of Rs. 839.923 lakh within a period of 18 months. After emergence of the respondent no. 8 as the successful bidder, the respondent no. 8 was asked to proceed to execute the contract-work by a Notice to Proceed dated 06.01.2020. After handing over of possession of the site, comprising 39B-02K-12L, the respondent no. 8 completed about 39% of the contract-work and against the contract-work, he had also received about 24% of the contract price till 26.02.2021. It is his submission that during the year 2020, there was no objection to the execution of the contract-work but subsequent to two Orders - dated 03.02.2021 passed in W.P.[C] no. 317/2021 and dated 15.02.2021 passed in W.P.[C] no. 983/2021 - directing the parties to maintain *status quo*, the execution of the contract-work was halted.

10. I have given due consideration to the submissions of the learned counsel for the parties and have also perused the materials brought on record by the

parties through their pleadings.

11. The main controversy in these writ petitions is with regard to the matter of relinquishment as recorded in the Order dated 27.11.2015 of the Sub-Divisional Officer [Civil], South Salmara - Mankachar Sub-Division, Hatsingimari. From the contents of the said Order, it emerges that the basis of converting periodic patta lands measuring 39B-02K-12L into Government [Khas] land was the Relinquishment [*Istafa*] forms submitted and the statements made by the petitioners before the respondent authorities.

12. Chapter II of the Assam Land and Revenue Regulation, 1886 has defined the rights of the different classes of persons recognized by the Regulation, 1886 and there are mainly three classes :- [i] Proprietors; [ii] Land-holders; and [iii] Settlement-holders other than land-holders, including persons holding lands directly under the Government under annual leases, etc. Chapter II also provides for issue of Settlement Rules by the State Government. 'Proprietor' means, as per Section 2[f] of the Regulation, 1886, the owner of any estate permanently settled or entered on the Deputy Commissioner's register of revenue-free estates. As per Section 2[g], 'land-holder' means any person deemed to have acquired the status of a land-holder under Section 8. Under Section 2[h], 'settlement-holder' means any person, other than a proprietor, who has entered into an engagement with the Government to pay land revenue and includes a land-holder. 'A Periodic Lease', as per Rule 2[d] of the Rules, means a lease granted for more than one year and in the case of town, a lease for a period longer than three years. Subject to any restrictions, conditions and limitations contained therein, a periodic lease, the term of which is not less than

ten years, conveys to the lessee the right of a land-holder. An 'Annual lease', as per Rule 2[c], means a lease granted for one year only and confers no right in the soil beyond a right of user for the year for which it is given. It confers no right of inheritance beyond the year of issue. It confers no right of transfer or of sub-letting and shall be liable to cancellation for any transfer or subletting even during the year of issue. Rule 2[f] has defined 'Settlement', which means leasing of land at the disposal of the Government and includes the operations of survey, classification and report, preliminary to such leasing. How a person acquires the status of a land-holder has been prescribed in Section 8 of the Regulation, 1886. As per Section 11 of the Regulation, 1886, a settlement-holder who is not a land-holder, shall have no rights in the land held by him beyond such period as are expressed in the settlement lease. A settlement-holder has a permanent, heritable and transferable right of use and occupancy in respect of the land for which he has been offered settlement.

13. Section 10 and Section 34 of the Regulation, 1886 have provided as under : -

10. Any land-holder who, after the commencement of this Regulation, voluntarily *relinquishes* any land and ceases to pay the revenue assessed thereon shall at once forfeit his status of land-holder in respect of that land.

34. Effect of acceptance of settlement –

When a settlement has been accepted, the revenue fixed thereby and no more shall be payable from such date and for such term, as the State Government may fix in this behalf :

Provided that —

- [a] The revenue shall be liable to revision according to the law for the time being in force;
- [b] a settlement shall not be final as against the Government until it has been sanctioned by the State Government;
- [c] in the case of gain by allusion, or by dereliction of a river, or loss by deluvion, during the currency of the settlement, increment shall be assessed and reductions granted by the Deputy Commissioner according to such limitations as to the extent of gain or loss and such other conditions as may be prescribed; and
- [d] in any local area to which the State Government may, by notification, apply this clause, *a settlement-holder may, after giving notice at the time and in the manner prescribed, relinquish the estate of which he has accepted a settlement or any part thereof on which a separate part of the revenue has been apportioned and shall thereupon be released from all future obligation to pay the revenue of the estate, or the part thereof so apportioned, as the case may be,*

Note – Clause [d] of section 34 has been applied to all the districts within which the Regulation is in force.

14. From a reading of the provisions contained in Section 10, quoted hereinabove, it emerges that when any land-holder voluntarily *relinquishes* any land and ceases to pay the revenue assessed thereon, he forfeits the status of a land-holder in respect of that land. Similarly, a settlement-holder can *relinquish* the estate in respect of which he has accepted a settlement or any part thereof, after giving notice at the time and in the manner prescribed. If a settlement-holder makes *relinquishment* in the above-manner, he stands released from all future obligations to pay revenue assessed.

15. Rule 24 of the Rules framed under the Regulation, 1886, reads as under :-

24. Resignation –

If any settlement-holder wishes to *relinquish* the whole of his estate, or any entire fields [dags] within his estate he shall, after paying all the land revenue due from him in respect of the estate or fields proposed to be *relinquished*, tender a written petition to the Deputy Commissioner or other officer empowered in this behalf. The latest date for filling such petition shall be the 15th February. If the latest date falls on a gazetted holiday, petitions for *relinquishment* may be tendered on the first opening day after such holiday.

16. Thus, a combined reading of the above provisions contained in the Regulation, 1886 and the Rules framed under the Regulation, 1886, it is evident that both the land-holder as well as the settlement-holder can *relinquish* his entire plot of land or any part of it. Such *relinquishment* has to be voluntary, meaning thereby, there shall not be any element of force, coercion, misrepresentation, etc.

17. The petitioners have relied on various documents like *Jamabandis* [Records of Rights], revenue paying receipts, etc. to substantiate their claims that they were holding periodic patta lands. The Order dated 27.11.2015 has also reflected the periodic patta numbers and dag numbers, held by the pattadars whose names are recorded therein.

18. The Order dated 27.11.2015 has mentioned that the Assistant Settlement Officer, South Salmara Revenue Circle vide his Communication dated 15.10.2015

had forwarded duly signed Relinquishment [*Istafa*] forms in respect of 58 nos. of pattadars/legal heirs of pattadars, as shown therein, with schedule of lands indicating each of those persons' respective share for *relinquishment* of periodic patta lands measuring 39B-02K-12L, in Revenue Village – Rajabala Bhalukkandi, South Salmara Revenue Circle, District – Dhubri. The Order has further recorded that the revenue in respect of those patta lands were found paid up to 2015 – 2016. The Order has also recorded that the pattadars whose names are reflected therein, were duly heard and the pattadars had stated before the Sub-Divisional Officer [Civil], South Salmara - Mankachar Sub-Division, Hatsingimari that they had signed the Relinquishment [*Istafa*] forms and they had no objection regarding Relinquishment [*Istafa*] in respect of their respective plots of land. The Sub-Divisional Officer [Civil], South Salmara - Mankachar Sub-Division, Hatsingimari has stated that he had reached his opinion that the area of land, measuring 39B-02K-12L, can be converted to Sarkari [Government] land for the purpose of establishing of the Model Degree College, after perusal of [i] the Report of the Assistant Settlement Officer, South Salmara Revenue Circle; [ii] on the basis of the hearing afforded to the pattadars/legal heirs of the pattadars; and [iii] in view of the consents given by the pattadars/legal heirs of the pattadars through the Relinquishment [*Istafa*] forms. On the said basis, the Sub-Divisional Officer [Civil], South Salmara - Mankachar Sub-Division, Hatsingimari has ordered for conversion of the area of land measuring 39B-02K-12L from periodic patta lands to Sarkari [Government] lands and the Assistant Settlement Officer, South Salmara Revenue Circle was directed to correct the land records and submit a report.

19. At this stage, it is also relevant to mention few other events which had

occurred during the period subsequent to the Order dated 27.11.2015 till the institution of these writ petitions. On 30.05.2019, the Chief Engineer, PWD [Building], Assam issued a Press Notice whereby the said authority invited bids from Class I[A] contractors for the contract-work, 'Establishment of Model Degree Colleges in 12 districts of Assam [in South Salmara district]' ['the contract-work', for short] at an approximate value of Rs. 839.923 lakh. The competitive bidding process so initiated was an on-line bidding process and the time of completion of the contract-work was mentioned as 18 months. From a document named 'Certificate of handing over and taking over of allotted land', it appeared that the area of land measuring 39B-02K-12L situate at Revenue Village – Rajabala Bhalukkandi was handed over to the Public Works Department [PWD] by the Circle Officer and the Assistant Settlement Officer, South Salmara Revenue Circle on 04.09.2019. By a Notice dated 06.01.2020, the Chief Engineer, PWD [Building], Assam instructed the contractor [the respondent no. 8 in W.P.[C] no. 317/2021 & W.P.[C] no. 983/2021] who was awarded the contract-work at a contract value of Rs. 8,74,12,024.00, to proceed with the execution of the contract-work, 'Establishment of Model Degree colleges in 12 districts of Assam [in South Salmara district]'. The respondent no. 8 has brought on record a report of the Executive Engineer, PWD [Building], Assam dated 26.02.2021 wherein it has been reported that the contract-work had been executed till 26.02.2021, to the extent of 39% and out of the contract price, 24% had already been disbursed to the respondent no. 8. From the said document, it transpires that at the time of institution of these writ petitions, the contract-work of construction of the Model Degree College at Village - Rajabala Bhalukkandi within the South Salman Revenue Circle had progressed to the extent of 39% [approx.].

20. The right to property is no longer a fundamental right. It has been provided in Article 300A of the Constitution of India that no person shall be deprived of his property save by authorities of law. Thus, right against deprivation of property unless in accordance with procedure established by law, is a constitutional right under Article 300A. Therefore, the State is obligated to comply with the procedure laid down for relinquishment/resignation. The expression, '*Istafa*' means resignation/relinquishment. Relinquishment takes place when a land-holder/settlement-holder withdraws/abandons his rights voluntarily from a plot of land, as such land-holder/settlement-holder. The procedure for relinquishment /resignation has been laid down in the Regulation, 1886 and the Rules framed thereunder, quoted hereinabove. The State respondents have asserted that due procedure had been followed in the case in hand as the petitioners had voluntarily submitted the Relinquishment [*Istafa*] forms, duly witnessed by two witnesses, and had also made statements before the authorities that they were willingly relinquishing their patta lands for the purpose of construction of the Model Degree College. While the State respondents have asserted that the procedure followed leading to the passing of the impugned order was the proper procedure in respect of cases of relinquishment/resignation of lands, the petitioners have not been able to show with the support of any cogent materials that such procedure was not the proper procedure. The State respondents have asserted that all the procedure required to be followed as per the statutory provisions contained in Section 10 and Section 34 of the Regulation, 1886 and Rule 24 of the Rules framed under the Regulation, 1886 were duly followed and the petitioners had voluntarily submitted the Relinquishment [*Istafa*] forms, thereby, surrendering their patta

lands in favour of the State for the construction of the Model Degree Colleges, undoubtedly a public project. To buttress such contentions, the State respondents by producing the documents, stated to be signed by the pattadars who had *relinquished* the plots of land, have asserted that all those pattadars of the area of land, measuring 39B-02K-12L, some of whom are petitioners herein, have made their statements before the respondent authorities voluntarily by clearly stating that they had no objection if their respective patta lands, described fully in those statements, were made Khas [Government] lands for the purpose of construction of the Model Degree College in South Salmara Revenue Circle.

21. It has been strenuously contended on behalf of the petitioners that the respondent authorities during the process undertaken for obtaining the purported Letters of Resignation, committed forgeries of documents. Drawing attention to an additional affidavit filed in the writ petition, W.P.[C] no. 2411/2021, it has been contended that in the process, the respondent authorities had resorted to forgery inasmuch as one of the Relinquishment [*Istafa*] forms contained signature of one Ajial, son of Abdul Kasham. It has been sought to project that Abdul Kasham had no son named Ajial and Ajial was, in fact, one of the sons of Late Sodagar Ali @ Sodagar Shiekh. On the basis of a death certificate issued by the authority, it has been projected that the person named Ajial expired on 03.06.1999. Mr. Mozumdar, learned Additional Advocate General, Assam has submitted that such allegation regarding forgery of signature of a deceased person has been brought by filing an additional affidavit only today, that is, on the day the writ petitions are supposed to be finally considered. Disputing the genuineness of the contents of

the death certificate, he has submitted that when the death certificate in respect of Ajial Hoque and the statement recorded by one Aijal during the course of *relinquishment* proceedings are considered together, one can clearly notice a number of serious discrepancies in the said document, which has been produced by the petitioners with much delay, after maintaining conspicuous silence for a prolonged period.

21.1. Drawing attention to another additional affidavit filed by the writ petitioners in the writ petition, W.P.[C] no. 1018/2021 today, the learned counsel for the petitioners has contended that the records of the *relinquishment* proceedings go to indicate that one Ayat Ali Dewani had *relinquished* a plot of land measuring 3 Bighas 3 Kathas 3 Lessas [03B-03K-03L], covered by Dag no. 172/174 & Patta no. 114, but such plot of land, described therein, was never purchased by Ayat Ali Dewani. It has been contended that three petitioners therein had purchased the plot of land measuring 03B-03K-03L during 1970s and Ayat Ali Dewani was not a purchaser of the said plot of land. Yet, Relinquishment [*Istafa*] form on the basis of which the respondent authorities had converted the said patta land into Khas [Government] land bore the signature of Ayat Ali Dewani. Such allegation made on behalf of the petitioners has been seriously disputed by Mr. Mozumder with the contention that all the three petitioners had subscribed their signatures in the concerned Relinquishment [*Istafa*] form, which were not disputed, and the Relinquishment [*Istafa*] form was also witnessed by two witnesses, who had also subscribed their signatures thereon. Mr. Mozumder has contended, that there was a conspicuous silence on the part of the three petitioners, all sons of Ayat Ali Dewani, for a prolonged period from 2015 till date, and it can be easily

concluded that such conspicuous silence is for reasons other than *bona fide*.

21.2. The above discussion go to indicate that two issues raised by the petitioners, which are seriously objected by the respondents, are clearly disputed questions of fact. That apart, the petitioners have contended that the Relinquishment [*Istafa*] forms were not obtained in a proper manner. The petitioners have gone on to contend that the signatures appearing in the Relinquishment [*Istafa*] forms were all forged and they never appeared before the authorities like the Assistant Settlement Officer, South Salmara Revenue Circle and/or the Sub-Divisional Officer [Civil], South Salmara - Mankachar Sub-Division, Hatsingimari, District – South Salmara - Mankachar, Assam at any point of time anterior to 27.11.2015.

22. It is not the case of the petitioner that the authority who had passed the Order dated 27.11.2015 did not have the authority and jurisdiction to pass such an order. Thus, it is not a case of lack of authority and jurisdiction.

23. It has been settled by a long line of decisions that the jurisdiction of the High Court under Article 226 of the Constitution of India is couched in wide terms and the exercise thereof is not subject to any restrictions except the territorial restrictions which are expressly provided in the Article. But the exercise of the jurisdiction is discretionary and it is not to be exercised merely because it is lawful to do so. The very amplitude of the jurisdiction demands that it will be exercised subject to certain self imposed limitations. It is also settled that the High Court is not deprived of its jurisdiction to entertain a writ petition under Article 226 of the Constitution merely because in order to

consider the right of the petitioner to be granted the relief sought for questions of facts fall to be determined. In a writ petition under Article 226 of the Constitution, the High Court has jurisdiction to try issues both of fact and law. In the process, the Court has to consider as to what facts are in dispute and what facts are not in dispute and such a state comes after the exchange of pleadings in the form of affidavits amongst the parties is complete. A writ petition is ordinarily decided on the basis of affidavits. When in a writ petition disputed questions of fact are involved requiring appreciation of evidence, both oral and documentary, and for determination of such disputed questions of fact, examination of witnesses would be necessary then it may not be convenient to decide such disputes in a proceeding under Article 226 of the Constitution and then in such a case, the Court may decline to try a writ petition. Though no authority is required to be cited for such settled proposition of law, the decision of the Hon'ble Supreme Court of India in *Gunwant Kaur vs. Municipal Committee Bhatinda*, reported in [1969] 3 SCC 769; *Noble Resources Ltd. vs. State of Orissa and another*, reported in [2006] 10 SCC 236; and *State of Kerala and others vs. M.K. Jose*, reported in [2015] 9 SCC 433, can be referred to as references. It is also settled, as has been observed by a Constitution Bench of the Hon'ble Supreme Court of India in *Thansingh Nathmal vs. The Superintendent of Taxes, Dhubri and others*, reported in AIR 1964 SC 1419, that the High Court in its jurisdiction under Article 226 of the Constitution does not generally enter upon a determination of questions which demand an elaborate examination of evidence to establish the right to enforce which the writ is claimed.

24. From the discussion made above, this Court is of the unhesitant view that

the present one is such a case where the petitioner have sought to bring allegations that the process leading to passing of the Order dated 27.11.2015 was vitiated due to acts of forgery, etc. and they were illegally deprived of their landholdings. On analysis, it is found that such allegations are bald, allegations without any convincing supporting materials for a writ court to arrive at a *prima facie* view that the relinquishment proceedings was vitiated in any manner. The signed Relinquishment [*Istafa*] forms and the statements recorded of the petitioners, with two witnesses subscribing their signatures on such statements, do not assist the allegations of the petitioners. It has become, the petitioners burden to establish the allegations of forgery, etc. The allegations of forgery of signatures, obtaining signature of dead person, etc. are serious questions of facts. The same would require determination of several disputed and complicated questions of facts including examination of alleged forged documents through both oral and documentary evidence with examination of witnesses from the parties in a full fledged trial. In such obtaining fact situation, the present writ proceedings is found to be not the proper and appropriate proceedings to determine such kind of disputed and complex questions of facts. Having regard to the scope and ambit of the power of judicial review in a case involving disputed and complex questions of facts and the discussion made above with regard to the facts and circumstances obtaining in the case, this Court is of the considered view that the disputes sought to be raised by the petitioners in these writ petitions, as mentioned above, cannot be answered in favour of the petitioners in view of availability of *prima facie* materials to the contrary. Those disputed and complex questions of facts cannot also be decided without appreciation of evidence – oral and documentary and expert - to be led by the parties. As a consequence, this Court is of the considered view that the

petitioners have not been able to make out any cause to make interference either to the Order dated 27.11.2015 or to the Order dated 19.06.2019 or to the Order dated 29.11.2020. As a corollary, the writ petitions are not merited and they are accordingly dismissed. The interim orders, if any, passed in these writ petitions, stand recalled. It is, however, made clear that dismissal of the writ petitions may not preclude the petitioners to resort to any other remedy as may be permissible under the law, before appropriate forum. There shall, however, be no order as to cost.

JUDGE

Comparing Assistant