

GAHC010059942017



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

Case No. : WP(C)/8058/2017

SUBUR UDDIN and 2 ORS
S/O-LT NAYEB ALI SK R/O- VILL- BHALUKDHUBI, P.O. BHALUKDHUBI, P.S.
and DIST-GOALPARA, ASSAM

2: LOKMAN HUSSAIN
S/O- SOBAHAN ALI R/O-VILL-NIDANPUR PART-II
P.O. and P.S. and LAKHIPUR
DIST- GOALPARA
ASSAM

3: AZAHARUL ISLAM
S/O-LT HAYAT ALI SORKER
AGED ABOUT 45 YRS R/O- VILL-KUMRIPARA
P.S. and DIST-GOALPAR

VERSUS

THE STATE OF ASSAM and 10 ORS
TO BE REPRESENTED BY THE CHIEF SECRETARY TO THE GOVT. OF
ASSAM, FOREST DEPTT., DISPUR, GHY-6

2:THE SECRETARY
TO THE GOVT OF ASSAM
FOREST DEPTT.
DISPUR
GHY-6

3:PRINCIPAL CHIEF CONSERVATOR OF FOREST
AND HEAD OF THE FOREST FORCE
ASSAM
PANJABARI
GHY-37

4:DEPUTY COMMISSIONER

GOALPARA
P.O. and DIST- GOALPARA
ASSAM
PIN-783101

5:DIVISIONAL FOREST OFFICER
GOALPARA FOREST DIVISION
P.O. BALADMARI
PS and DIST-GOALPARA
PIN-783121

6:RANGE FOREST OFFICER
LAKHIPUR
P.O. and PS LAKHIPUR
DIST-GOALPARA
DIST- GOALPARA
ASSAM
PIN-783129

7:RANGE FOREST OFFICER
GOALPARA RANGE
P.O. BALADMARI and PS and DIST- GOALPARA
PIN-783121

8:THE CIRCLE OFFICER
BALIJANA CIRCLE
PO BALADMARI
P.S. and DIST- GOALPARA
PIN-7831218

9:THE CIRCLE OFFICER
LAKHIPUR
P.O. and DIST- GOALPARA
ASSAM
PIN-783129

10:THE CIRCLE OFFICER
MATIA CIRCLE
P.O. and P.S. MATIA
DIST- GOALPARA
ASSAM
PIN-783125

11:DEPUTY COMMISSIONER
GOALPARA
P.O. and DIST- GOALPARA
ASSAM
PIN-78310

Advocate for the Petitioner : MR.D HUSSAIN

Advocate for the Respondent : MR. P N GOSWAMI (SC, FOREST DEPARTMENT)

**BEFORE
HONOURABLE MR. JUSTICE KAUSHIK GOSWAMI**

ORDER

Date : 09-05-2024

- 1.** Heard Mr. S.B. Laskar, learned counsel for the petitioners. Also heard Mr. D. Gogoi, learned Standing Counsel, Forest Department and Ms. S. Barua, learned Government Advocate for the State respondent.
- 2.** By filing the instant writ petition, the petitioners are challenging the notices dated Nil issued by the respondent Nos. 5 and 6, i.e. Forest Range Officer, Lakhipur & Goalpara Forest Range, whereby the petitioners were directed to vacate their land within 31st December, 2017.
- 3.** The case of the petitioners is that the petitioners were living in the subject land from time immemorial in the house constructed by their ancestor along with cultivable land. By issuing the impugned notice the Range Forest Officer, Goalpara Forest Range has alleged that the subject land has been illegally occupying, which is Reserved Forest Land / Proposed Reserved Forest Land of the Forest Department. It further appears that there has been a direction to vacate the land within 31st December, 2017. Against the aforesaid notice, the petitioners who have been staying in the subject land where their ancestors have built and constructed house and cultivating paddy etc. have filed the instant writ petition. It appears that this Court by order dated 20.12.2017, while

issuing notice was pleased to grant in the interim that the petitioners should not be dispossessed from the occupying area in the Proposed Reserved Forest.

4. Heard the parties at length.

5. Relevant regulation pertaining to Reserved Forest of Chapter 2 of the Assam Forest Regulation, 1891 are reproduced hereunder for ready reference.

“6. Proclamation by Forest-settlement-officer- When a notification has been published under Section 5, the Forest-settlement-officer shall publish in the language of the country, at the headquarters of each district and subdivision in which any portion of the land comprised in such notification is situate, and in every town and village in the neighbourhood of such land, a proclamation-

- (a) specifying, as nearly as possible, the situation and limits of the proposed forest;
- (b) setting forth the substance of the provisions of the next following section;
- (c) explaining the consequences which, as hereinafter provided, will ensue on the reservation of such forest, and
- (d) fixing a period of not less than three months from the date of 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 period a written notice specifying or to appear before him within such period and state the nature of such right or claim.

7. Bar of accrual forest rights after proclamation- (1) During the interval between the publication of such proclamation and the date fixed by the notification declaring the forest to be reserved as hereinafter provided, 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 persons in whom such right or power to create such right was vested when the proclamation was published; and on such land no new house 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 hereinafter provided.

(2) Nothing in this section shall be deemed to prohibit any act done with the permission in writing of the Forest-settlement-officer, or any clearings lawfully made for jhum-cultivation by persons in the habit of practising such cultivation on such land.

8. Inquiry by Forest-settlement-officer- (1) The Forest- settlement-officer shall take down in writing all statements made under Section 6, and shall inquire into all claims made under that section and the existence of any right or practice mentioned in Section 5 in respect of

which no claim is made.

(2) The Forest-settlement-officer shall at the same time consider and record any objection which the Forest-officer, if any, appointed under Section 5 to assist him, may make to any such claim or with respect to the existence of any such right or practice.”

6. Regulation 8 of the Assam Forest Regulation, 1891 provides that a Forest Settlement Officer shall inquire as regards the claims made by the affected land owner.

7. It appears from the aforesaid provision of law that upon notification being published u/s 5 proclaiming the subject land as Proposed Reserved Forest, the Forest Settlement Officer has power under Regulation 8 to make inquiry, if any claim is made u/s 6. In the instant case it appears that the subject land of the petitioners have been proclaimed to be Proposed Forest Reserve Land. The petitioners having raised a dispute as regards the nature of the land, the claim of the petitioners is entitled to be enquired by the Forest Settlement Officer u/s 8.

8. Mr. D. Gogoi, learned Standing Counsel, Forest Department fairly concedes to the aforesaid proposition.

9. In view of the aforesaid, this Court is of the considered view that this writ petition can be disposed of with a direction to the petitioners to file respective claim before the jurisdictional Forest Settlement Officer and as and when such claim is made before the Forest Settlement Officer, the same shall be considered in accordance with law within a period of 3(three) months from the date of receipt of the respective claims.

10. Needless to clarify that if such claim is filed within a period of 15 (fifteen) days from today, the interim order passed by order dated 20.12.2017 shall continue till disposal of the claim by the jurisdictional Forest Settlement Officer.

11. The Forest Authority shall be at liberty as granted earlier by this Court by order dated 20.12.2017 to invite claims and objections u/s 6 of the Regulation and complete the process for proclamation of the reserved forest.

12. With the above observations and directions, the instant writ petition stands disposed of.

JUDGE

Comparing Assistant