

GAHC010020012024



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

**Case No. : WP(C)/508/2024**

SWAPAN MAJUMDAR AND 14 ORS  
AGED ABOUT 51 YEARS  
SON OF LATE SAMACHARAN MAJUMDAR (FATHER) AND SMTI. GITARANI  
MAJUMDAR (MOTHER)  
RESIDENTS OF PUKHURIPAR, WARD NO.3, MARIANI TOWN,  
P.O AND P.S.- MARAIANI,  
DIST.-JORHAT, ASSAM

2: GOPAL DUTTA  
AGED ABOUT 43 YEARS  
SON OF SUBHASH DUTTA  
RESIDENTS OF PUKHURIPAR  
WARD NO.3  
MARIANI TOWN

P.O AND P.S.- MARAIANI

DIST.-JORHAT  
ASSAM

3: SAJID ALI @ MAINUL ALI  
AGED ABOUT 46 YEARS  
SON OF ABUTALIB  
RESIDENTS OF PUKHURIPAR  
WARD NO.3  
MARIANI TOWN

P.O AND P.S.- MARAIANI

DIST.-JORHAT  
ASSAM

4: ARCHANA RANI BHADRA  
AGED ABOUT 65 YEARS

WIFE OF LATE NIHAR KANTI BHADRA

RESIDENTS OF RAILWAY COLONY

WARD NO. 5  
MARIANI TOWN

P.O AND P.S.- MARAIANI

DIST.-JORHAT  
ASSAM

5: SUDHARSAN BISWAS @ SHYAMAL BISWAS  
AGE 44 YEARS  
SON OF RANJIT BISWASH  
RESIDENTS OF RIFIUJI COLONY

P.O AND P.S.- MARAIANI

DIST.-JORHAT  
ASSAM

6: NARAYAN PAL @ TANKU PAL  
AGED ABOUT 61 YEARS  
SON OF AJAJ KU PAL  
RESIDENTS OF PUKHURIPAR  
WARD NO.3  
MARIANI TOWN

P.O AND P.S.- MARAIANI

DIST.-JORHAT  
ASSAM

7: ADHIR DEY  
AGED ABOUT 62 YEARS  
SON OF SURENDRALAL DEY  
RESIDENTS OF NATUNMATI

P.O AND P.S.- MARAIANI

DIST.-JORHAT  
ASSAM

8: INDRAJIT SAIKIA @ INDRA SAIKIA  
AGED ABOUT 47 YEARS  
SON OF PUNESWAR SAIKIA  
RESIDENTS OF KATHKOTIA

P.O AND P.S.- MARAIANI

DIST.-JORHAT  
ASSAM

9: SUBIR SEN  
AGED ABOUT 37 YEARS  
SON OF JHANTU SEN  
RESIDENTS OF RAILWAY COLONY WARD

P.O AND P.S.- MARAIANI

DIST.-JORHAT  
ASSAM

10: SRI DIGANTA BORAH  
AGED ABOUT 49 YEARS  
SON OF LAKSHINATH BORA  
RESIDENTS OF NATUN MATI

P.O AND P.S.- MARAIANI

DIST.-JORHAT  
ASSAM

11: ARATI ACHARJEE  
AGED ABOUT 65 YEARS  
WIFE OF NANI GOPAL ACHARJEE  
RESIDENT OF NATUN MATI  
WARD NO. 4  
MARAIANI TOWN  
P.O AND P.S.- MARAIANI

DIST.-JORHAT  
ASSAM

12: MINTU GHOSH  
AGED ABOUT 49 YEARS  
SON OF LATE NANIGOPAL GHOSH  
RESIDENTS OF NATUN MATI

P.O AND P.S.- MARAIANI

DIST.-JORHAT  
ASSAM

13: ASHISH NATH

AGED ABOUT 47 YEARS  
SON JIBAN KRISHNA NATH  
RESIDENTS OF NATUN MATI

P.O AND P.S.- MARAIANI

DIST.-JORHAT  
ASSAM

14: BIJU MAHAJAN  
AGED ABOUT 35 YEARS  
SON OF SHANKAR MAHAJAN  
RESIDENT OF SHANKARDEB COLONY

P.O AND P.S.- MARAIANI

DIST.-JORHAT  
ASSAM

15: SRI SUKUMAR DEY  
AGED ABOUT 49 YEARS

SON OF SUDHANSU DEY

RESIDENT OF KALIBARI

P.O AND P.S.- MARAIANI

DIST.-JORHAT  
ASSA

VERSUS

THE NORTH EAST FRONTIER RAILWAY AND 3 ORS  
REPRESENTED HEREIN BY THE GENERAL MANAGER, MALIGAON,  
GUWAHATI, ASSAM- 781011

2:THE ASSISTANT DIVISIONAL ENGINEER  
N. F. RAILWAY  
MARAIANI-785634

3:THE ESTATE OFFICER  
N. F. RAILWAY  
TINSUKIA  
ASSAM-786125

4:THE DIVISIONAL MANAGER  
N. F. RAILWAY

TINSUKIA  
ASSAM-78612

**Advocate for the Petitioner : MR S BORTHAKUR**

**Advocate for the Respondent : DY.S.G.I.**

**BEFORE  
HONOURABLE MR. JUSTICE MANISH CHOUDHURY**

**ORDER**

**02.02.2024**

Heard Mr. S. Borthakur, learned counsel for the petitioners and Mr. H. Gupta, learned Central Government Counsel [CGC] for all the respondents.

2. The petitioners, 15 [fifteen] in nos., have joined together to prefer the instant writ petition under Article 226 of the Constitution of India to seek a direction in the nature of mandamus to the respondent authorities not to evict them from their places of occupation until and unless due process under the Public Premises [Eviction of Unauthorized Occupant] Act, 1971 is followed.

3. From Annexure-F appended to the writ petition, it is noticed that 15 [fifteen] nos. of writ petitioners had earlier preferred a writ petition, W.P.[C] no. 2218/2020 and many of those 15 [fifteen] nos. of writ petitioners are writ petitioners in the present writ petition. The writ petition, W.P.[C] no. 2218/2020 was preferred to assail an eviction notice dated 14.12.2013 issued purportedly under the provisions of the Public Premises [Eviction of Unauthorized Occupant] Act, 1971 [‘the 1971 Act’, for short]. During the course of the said writ proceedings, it was submitted by the learned Standing Counsel, N.F. Railway that the Railway authorities would not evict the petitioners therein without following due process of law as provided in the 1971 Act. During the pendency of the writ petition, W.P.[C] no. 2218/2020, another notice stood issued on 27.01.2016 to the petitioners therein purportedly under the provisions of the 1971 Act. When the writ petition, W.P.[C] no. 2218/2020 came up

for consideration on 11.11.2020, there was consensus among the parties that the notice dated 27.01.2016 was issued in conformity with the provisions of the 1971 Act and, thus, there was no legal impediment for the authorities to go ahead with the aforesaid proceedings. The writ petition was, therefore, disposed of on 11.11.2020 by granting leave to the respondent authorities to proceed in terms of the notice dated 27.01.2016 and to bring the said proceedings to its conclusion. It was further observed that the petitioner should be granted opportunities to file objections to bring their stands on record before any decision was taken in the matter.

4. In the instant writ petition, the petitioners have averred that in response to the show cause notice dated 27.01.2016 issued under Section 4 of the 1971 Act, all the petitioners submitted their objections/replies to the said show cause notice in due time. It has been contended that the proceedings initiated by the show cause notice dated 27.01.2016 has not been brought to any conclusion till date.

5. Mr. Gupta, learned CGC has submitted that the present writ petition has been preferred by concealment of material facts. Placing a copy of an Order dated 12.12.2018 passed in a writ petition, W.P.[C] no. 8522/2018, Mr. Gupta has submitted that few of the present petitioners were the writ petitioners in W.P.[C] no. 8522/2018. The writ petition, W.P. [C] no. 8522/2018 was preferred challenging legality and correctness of an Order dated 26.09.2016 passed by the Estate Officer, N.F. Railway, Tinsukia directing the petitioners to vacate the railway lands occupied by them. Finding that there was provision for appeal under Section 9 of the 1971 Act against an order of eviction passed by the Estate Officer, N.F. Railway, Tinsukia before the Court of learned District Judge of the concerned district, the writ petition was disposed of by the Order dated 12.12.2018 granting liberty to the petitioners therein to file an appeal under Section 9 of the 1971 Act before the concerned appellate authority.

6. On perusal of the Order dated 12.12.2018 passed in the writ petition, W.P.[C] no. 8522/2018, more particularly, the names of the petitioners therein and the names of the petitioners in the present writ petition, it is noticed that many of the present petitioners were

petitioners in W.P.[C] no. 8522/2018. On further perusal of the statements and averments made in the present writ petition, this Court finds that there is no whisper in the present writ petition as regards filing and disposal of the writ petition, W.P.[C] no. 8522/2018. Thus, it is evident that the present writ petition has been filed with concealment of material facts.

7. Mr. Gupta, learned CGC has further submitted that an appeal, preferred pursuant to the Order dated 26.09.2016 by the Estate Officer, N.F. Railway, Tinsukia and subsequent to notice dated 27.01.2016, under Section 9 of the 1971 Act has been registered and numbered as Misc. Appeal/000004/18 and the said appeal is presently pending before the Court of learned Additional District & Sessions Judge, Jorhat. He has submitted that the next hearing date of the appeal is scheduled on 09.02.2024.

8. In this connection, the following observations made in *Prestige Lights Ltd. vs. State Bank of India*, reported in [2007] 8 SCC 449 and *K.D. Sharma vs. Steel Authority of India Limited and others*, reported in [2008] 12 SCC 481, can be appropriately referred to.

8.1. In *Prestige Lights Ltd.* [supra], the Hon'ble Supreme Court of India has observed in the following manner :-

33. .... The High Court is exercising discretionary and extraordinary jurisdiction under Article 226 of the Constitution. Over and above, a court of law is also a court of equity. It is, therefore, of utmost necessity that when a party approaches a High Court, he must place all the facts before the Court without any reservation. If there is suppression of material facts on the part of the applicant or twisted facts have been placed before the Court, the writ court may refuse to entertain the petition and dismiss it without entering into merits of the matter.

8.2. The Hon'ble Supreme Court of India in *K.D. Sharma* [supra], has observed in the following words :-

34. The jurisdiction of the Supreme Court under Article 32 and of the High Court under Article 226 of the Constitution is extraordinary, equitable and discretionary. Prerogative writs mentioned therein are issued for doing substantial justice. It is, therefore, of utmost necessity that the petitioner approaching the writ court must come with clean hands, put forward all the facts before the court without concealing or suppressing anything and seek an appropriate relief. If there is no candid disclosure of relevant and material facts or the petitioner is guilty of misleading the court, his petition may be dismissed at the threshold without considering the merits of the claim.

\* \* \* \* \*

36. A prerogative remedy is not a matter of course. While exercising extraordinary power a writ court would certainly bear in mind the conduct of the party who invokes the jurisdiction of the court. If the applicant makes a false statement or suppresses material fact or attempts to mislead the court, the court may dismiss the action on that ground alone and may refuse to enter into the merits of the case by stating, “*We will not listen to your application because of what you have done.*” The rule has been evolved in the larger public interest to deter unscrupulous litigants from abusing the process of court by deceiving it.

\* \* \* \* \*

38. .... As per settled law, the party who invokes the extraordinary jurisdiction of this Court under Article 32 or of a High Court under Article 226 of the Constitution is supposed to be truthful, frank and open. He must disclose all material facts without any reservation even if they are against him. He cannot be allowed to play “hide and seek” or to “pick and choose” the facts he likes to disclose and to suppress (keep back) or not to disclose (conceal) other facts. The very basis of the writ jurisdiction rests in disclosure of true and complete (correct) facts. If material facts are suppressed or distorted, the very functioning of writ courts and exercise would become impossible. The petitioner must disclose all the facts having a bearing on the relief sought without any qualification.....

9. As the present writ petition is found preferred with concealment of material facts, as



have been alluded hereinabove, the writ petition is not to be entertained and accordingly, the writ petition is dismissed imposing a cost of Rs. 25,000/- [Rupees twenty five thousand only], which amount the petitioners shall deposit with the Registry of this Court within 15 [fifteen] days from today. On deposit of the said amount, the Registry will remit the said amount in favour of 'the Gauhati High Court Legal Services Committee'.

**JUDGE**

**Comparing Assistant**