

GAHC010079742023



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

Case No. : WP(C)/2056/2023

MD. SOHIDUL ISLAM AND 6 ORS.
S/O- TAHEJ ALI, R/O- VILL- KALGACHIA, MOUZA- RUPSHI, REVENUE
CIRCLE- KALGACHIA, DIST.- BARPETA, ASSAM, PIN- 781319

2: MUNNAF ALI
S/O- TOMOJ UDDIN
R/O- VILL- KALGACHIA
MOUZA- RUPSHI
REVENUE CIRCLE- KALGACHIA
DIST.- BARPETA
ASSAM
PIN- 781319

3: SHOHIDUL ISLAM
S/O- LATE OMOR ALI
R/O- VILL- KALGACHIA
MOUZA- RUPSHI
REVENUE CIRCLE- KALGACHIA
DIST.- BARPETA
ASSAM
PIN- 781319

4: SAFIUR RAHMAN
S/O- LATE OMOR ALI
R/O- VILL- KALGACHIA
MOUZA- RUPSHI
REVENUE CIRCLE- KALGACHIA
DIST.- BARPETA
ASSAM
PIN- 781319

5: HAMEDA KHATUN
D/O- A. KHALEQUE
R/O- VILL- KALGACHIA

MOUZA- RUPSHI
REVENUE CIRCLE- KALGACHIA
DIST.- BARPETA
ASSAM
PIN- 781319

6: MD. NAZMUL HAQUE
S/O- KADER ALI
R/O- VILL- KALGACHIA
MOUZA- RUPSHI
REVENUE CIRCLE- KALGACHIA
DIST.- BARPETA
ASSAM
PIN- 781319

7: SONA MIYA
S/O- TUFAN ALI
R/O- VILL- KALGACHIA
MOUZA- RUPSHI
REVENUE CIRCLE- KALGACHIA
DIST.- BARPETA
ASSAM
PIN- 78131

VERSUS

THE STATE OF ASSAM AND 5 ORS.
REP. BY ITS COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM,
DEPTT. OF FISHERY, DISPUR, GUWAHATI- 781006

2:THE DEPUTY COMMISSIONER
BARPETA
P.O.
P.S. AND DIST.- BARPETA
ASSAM
PIN- 781301

3:THE ADDITIONAL DEPUTY COMMISSIONER (REVENUE)
BARPETA
P.O.
P.S. AND DIST.- BARPETA
ASSAM
PIN- 781301

4:THE ADDITIONAL DEPUTY COMMISSIONER (FISHERY)
BARPETA
P.O.
P.S. AND DIST.- BARPETA

ASSAM
PIN- 781301

5:THE CIRCLE OFFICER
KALGACHIA REVENUE CIRCLE
KALGACHIA
DISTRICT- BARPETA
ASSAM
PIN- 781319

6:SRI GOPAL SARKAR
S/O- LATE MADUSUDAN SARKAR
R/O- VILL- SALEKURA
P.O. AND P.S. JANIA
DIST.- BARPETA
ASSAM
PIN- 78131

Advocate for the Petitioner : MR. SAILENDRA DEKA, MR J DAS

Advocate for the Respondent : GA, ASSAM, MS. R DUTTA (r-6),MR. S KATAKI (r-6)

Linked Case : WP(C)/2172/2021

GOPAL SARKAR
S/O- LT. MADHUSUDAN SARKAR
R/O- VILL- SALEKURA
P.O. JANIA
P.S. JANIA
BARPETA- 781314
DIST.- BARPETA
ASSAM

VERSUS

THE STATE OF ASSAM AND 2 ORS
REP. BY COMM. AND SECY. TO THE GOVT. OF ASSAM
FISHERY DEPTT.
DISPUR
GHY-06

2:THE DY. COMMISSIONER

BARPETA
P.O. AND P.S. BARPETA
PIN- 781301
BARPETA
ASSAM

3:THE CIRCLE OFFICER
KALGACHIA REVENUE CIRCLE
KALGACHIA
P.O. KALGACHIA
PIN- 781319
DIST.- BARPETA
ASSAM

Advocate for : MR. S KATAKI
Advocate for : GA
ASSAM appearing for THE STATE OF ASSAM AND 2 ORS

BEFORE
HONOURABLE MR. JUSTICE MICHAEL ZOTHANKHUMA

ORDER

04.12.2024

1. Heard Mr. S. Deka, learned counsel for the petitioners in WP(C) 2056/2023. Also heard Ms. U. Das, learned counsel for the State respondents and Mr. S. Kataki, learned counsel for the respondent no.6 as well as Counsel for the petitioner in WP(C) 2172/2021.
2. These two writ petitions are being taken up together for disposal, in view of the fact that the subject matter in issue involved is intertwined with each other.
3. The issue in WP(C) 2056/2023 is that the land of the petitioners covered by K.P. Patta Nos.384, 387, 349, 358, 500 and 30 of Revenue Village-Kalgachia,

Mouza-Rupshi Revenue Circle- Kalgachia, District-Barpeta, Assam has been included in Balasuti Beel Fishery, which has been settled with the respondent no.6 for a period of 7 years. The petitioners' prayer in WP(C) 2056/2023 is that a direction should be issued, not to allow the respondent no.6 to carry out fishing activities over the lands of the petitioners, which is covered with water.

4. The case of the respondent no.6 in WP(C) 2056/2023, who is also the petitioner in WP(C) 2172/2021, is that the respondent no.6 was settled with the Balasuti Beel Fishery for a period of 7 years. The Circle Officer, Kalgachia Revenue Circle, vide letter dated 29.01.2021 directed the respondent no.6 to appear for a hearing, regarding a complaint received by him with regard to the fishing activity being undertaken by the respondent no.6. Vide the letter dated 29.01.2021, the petitioner was also directed not to continue his fishing activity. Thus a challenge was made to the said restraining order dated 29.01.2021 in WP(C) 2172/2021.

5. The issue that has to be decided is as to whether the fishery that has been settled with the respondent no.6 covers the lands of the petitioners. The Balasuti Beel Fishery was registered with the Registrar of Fisheries in the year 1920, with an area of 4198 Bighas. On the other hand, the land Pattas that were issued to the petitioners, had been issued in the year 1967 onwards.

6. During the proceedings of this case, the Deputy Commissioner, Barpeta had been directed to cause an inquiry, with regard to the lands covered by the petitioners' Pattas and as to whether the said lands were within the notified

boundaries of the fishery in question. Three reports with regard to the above direction has been made. The first report was made on 02.05.2024, the second report was made on 22.10.2024 and the third report was made on 08.11.2024. The 3 reports dated 02.05.2024, 22.10.2024 and 08.11.2024 issued by the Circle Officer, Kalgachia Revenue Circle have each got small discrepancies.

7. The report dated 02.05.2024 has been issued by the Circle Officer, Kalgachia Revenue Circle, Kalgachia and addressed to the Additional Deputy Commissioner (Fishery), Barpeta, which states as follows :

“Sub :- Submission of hearing of report in connection with W.P.(c) No. 2056/2023 of Hon'ble Gauhati High Court

Ref :- No. BRF.1/2016/302 Dtd. 25/01/2024

Sir,

With reference to the subject cited above, I have the honour to submit herewith hearing report in connection with W.P.(c) No. 2056/2023 of Hon'ble Gauhati High Court that as per based on hearing of both the parties Md. Shohidul Islam S/O.- Bhahes Ali & others Six nos vs Gopal Sarkar on date 30/04/2024.

The following points were observed:-

1) There is no land record where Balisuti Beel' is mentioned. As per records and field verification it is come to knowledge that the schedule of the Balisuti Beel fishery does not match with present course of the portion leased due to change the course of the river Beki.

2). It may be noted that the course of the Balisuti Beel has been shifted to a new location which run through a series of periodic patta dags and Govt dags as it is seen that a certain track of the Balisuti Beel has been dried up in areas that fall under Balarpathar, Udmari & Showpur.

3) And It is true that today the water body covers periodic patta land covering nos. 379, 380, 381, 382, 383, 77, 372, 373, 724, 291, 292, 294, 370, 371, 367, 366, 364, 368, 369, 363, 361, 362, 358, 359, 395, 396, 355, 356, 430, 431, 432, 433, 428, 429, 438, 439, 440, 441, 442, 443, 444,

*523, 524, 526, 527, 528, 522,
521,580,581,582,583,584,585,621,622,623,625,626,578,
579 of village Kalgachia & Dag Nos. 18, 19, 20, 21, 22, 26,27,28,29, 30 &
31 of village Amguri under Kalgachia Rev. Circle, Kalgachia.*

*4) It is also known during the hearing that some part of earlier leased
beel has dried up and pattadar are using as agricultural land, however, in
the above mentioned periodic patta dag the fish rearing by the lesse is
noticed.*

Submitted for favour of your kind information and necessary action."

8. On considering the fact that the matter pertains to disputed questions of fact, which cannot be decided in a writ proceeding, this Court is of the view that the District Commissioner, Barpeta should make a fresh verification with regard to the claims of the petitioners and the respondent no.6, as to whether the area of the fishery overlaps the lands of the petitioners.

9. The counsels for the petitioners, the respondent no.6 and the State Government submit that they do not have any objection if the grievance of the petitioners and the respondent no.6 is decided by the District Commissioner, Barpeta.

10. Accordingly, on the consent of the parties, this Court directs the Deputy Commissioner to cause an inquiry, as to whether the lands of the petitioners fall within the notified boundaries of the fishery. If the lands of the petitioners are found to fall within the notified boundaries of the fishery, the area of the fishery will supersede the area of the petitioners' Pattas to the extent that the petitioners' land fall within the notified areas of the fishery. If the lands of the petitioners do not fall within the notified boundaries of the fishery, the

respondent no.6 shall not undertake any fishing activity or any other activity on the lands of the petitioners.

11. The Deputy Commissioner shall cause the inquiry to be completed within a period of 3 (three) months after receipt of a copy of this order and by giving an opportunity of hearing to the petitioners, the respondent no.6 and the Fishery Department. The decision taken should thereafter be communicated to the parties.

12. The report dated 22.10.2024 and 08.11.2024 issued by the Circle Officer, Kalgachia Revenue Circle, Kalgachia are made a part of the record and marked as Annexure-X & Y respectively.

13. The writ petition is accordingly disposed of.

JUDGE

Comparing Assistant