

GUWAHATI 05

4:THE DEPUTY COMMISSIONER CUM COLLECTOR
KAMRUP M ASSAM

5:THE DISTRICT COMMISSIONER AND CHAIRMAN
DISTRICT DISASTER MANAGEMENT AUTHORITY
KAMRUP M ASSAM

6:THE CIRCLE OFFICER
GUWAHATI REVENUE CIRCLE
GUWAHATI
KAMRUP M ASSA

Advocate for the Petitioner : MR. J I BORBHUIYA

Advocate for the Respondent : GA, ASSAM

BEFORE
HONOURABLE MR. JUSTICE MANISH CHOUDHURY

ORDER

Date : 23.02.2024

Heard Mr. J.I. Borbhuiya, learned counsel for the petitioners; Mr. S. Baruah, learned Junior Government Advocate, Assam for the respondent nos. 1, 4, 5 & 6; Ms. N. Bordoloi, learned Standing Counsel, Revenue & Disaster Management Department for the respondent no. 2; and Mr. S. Bora, learned Standing Counsel, GMC for the respondent no. 3.

2. The petitioners, 43 in nos., have preferred the instant writ petition stating that they have a common cause of action. The petitioners have claimed that they are legal representatives/heirs of persons/successors of persons who were Indian citizens and after partition in the year 1947, came to India from their erstwhile places of residence, which were located in the then East Pakistan [now Bangladesh]. It is the further case of the petitioners that upon migration of their predecessors to India, they were treated as refugees and the State Government in the Revenue Department allowed them to stay in a parcel of land, covered by Dag no. 815 [old], on the bank of river Bharalu. According to the petitioners, on being so located, their families have been staying in the said parcel of land, covered by Dag no. 815 [old] and later on, renumbered as Dag no. 1682 [new], since the year 1951.

Attention has been drawn to an Order dated 19.04.1956 of the Deputy Commissioner, Kamrup [Annexure-1] to submit that by the said Order, the refugees, that is, the petitioners' families were allowed to occupy the said parcels of land, covered by Dag no. 815 [old]/1618 [new] on T.B. basis till they were provided lands at other places, subject to the conditions mentioned therein. The petitioners have stated that at an earlier point of time, the petitioners' families were served with evictions notices/orders by the Additional Deputy Commissioner, Kamrup. In a proceeding before the Assam Board of Revenue in the form of Case nos. 97RA[K]/90 and 37RA[K]/89, the Assam Board of Revenue had recorded a finding that notices under Rule 18[2] and Rule 18[3] could be issued to the encroachers of Government Land without any valid authority and the Board of Revenue had found that in the case of those appellants, there was a valid permission to occupy the Government land and as such, they had a bonafide right to claim against the eviction notices issued under Rule 18[2] and Rule 18[3] of the Settlement Rules. With the said findings, the notices issued to the appellants therein were quashed. With such contentions, the petitioners have stated that they have a bonafide claim to continue in occupation of the parcel of land, covered by Dag no. 815 [old]/1682 [new] on the bank of river Bharalu, by keeping a distance of 10 ft. as indicated in the Order dated 19.04.1956. The petitioners have approached this Court as they have been served with eviction notices, all dated 13.02.2024, by the respondent no. 6 on the ground that the petitioners are encroaching the Government Land covered by Dag no. 1862 [new] of Village – Sahar Ulubari Part – II illegally, with the further observation that in the event the noticees-petitioners do not vacate the parcel of land under Dag no. 1682 [new], the process for their eviction would be taken under Rule 18[2] of the Settlement Rules in the stretch from Arya Nagar to Chabipul.

3. Mr. Baruah, learned Junior Government Advocate, Assam has sought some time to obtain instructions in the matter.

4. Mr. Borbhuiya, learned counsel for the petitioners has submitted that the petitioners are in possession of necessary documents as regards their refugee status.

5. Issue notice, returnable on 04.03.2024.

6. Having regard to the projections made on behalf of the petitioners on the basis of the documents annexed to this writ petition, as already alluded hereinabove, this Court is of the view that the petitioners have been able to make out a *prima facie* case for interim protection. Accordingly, it is observed that till the returnable date, the eviction notices, all dated 13.02.2024 [Annexure-8 colly], shall remain suspended.

7. The names of Ms. N. Bordoloi, learned Standing Counsel, Revenue & Disaster Management Department and Mr. S. Bora, learned Standing Counsel, GMC be reflected in the respondents' side in the cause-list.

JUDGE

Comparing Assistant