

(2023) 05 GAU CK 0014

In the Gauhati High Court

Case No : Writ Petition (Civil) No. 4775 Of 2022

Abdur Rouf And 56 Ors

APPELLANT

Vs

State Of Assama And 5 Ors

RESPONDENT

Date of Decision : 09-05-2023

Acts Referred:

Assam Forest Regulation, 1891 — Section 3(8), 4, 5, 6, 6(d), 8, 11(1), 11(2), 17, 18, 29, 30, 72(e), 74, 75
Forest Conservation Act, 1980 — Section 2
Scheduled Tribes and Other Traditional Forest Dwellers (Recognition Of Forest Rights) Act, 2006 — Section 2, 2(c), 2(f), 2(o), 2(p)(iii)
Assam Land and Revenue Regulations, 1886 — Section 40, 41

Citation : (2023) 05 GAU CK 0014

Hon'ble Judges : Achintya Malla Bujor Barua, J

Bench : Single Bench

Advocate : H R A Choudhury

Final Decision : Dismissed

Judgement

1. Heard Mr. H.R.A. Choudhury, learned senior counsel for the petitioners and Mr. P.N. Goswami, learned Addl. Advocate General for all the respondents.

2. The fifty seven writ petitioners have instituted this writ petition with the following prayer:

"Under the circumstances, it is prayed that Your Lordships may be pleased to admit this petition, call for records, issue a Rule calling upon the Respondents to show cause as to why a Writ in the nature of Mandamus and/or any other writ of like nature shall not be issued commanding the Respondents to take necessary steps for entering the names of the petitioners in the Jamabandi Register of Old Solamona Boro Forest Village in terms of Letter No.FGH.18/G/74/3069 dated 6.11.1974 and Order No. 262 dated 31.12.1975 so as to enable them to pay the revenues and/or as to why a direction shall not be issued restraining the Respondents from evicting the petitioners from their respective land without due

process of law and/or as to why a further direction shall not be issued to the Respondents to allow the petitioners to enjoy their continuous possession of their land at Old Solamona Boro Sobri Forest Village without any interference by the Respondents authority and cause or causes being shown and after hearing the parties be pleased to make the Rule absolute, giving full and complete relief to the petitioners and/or pass such other or further order or orders as Your Lordships may deem fit and proper.

-AND-

Pending disposal of the Rule, Your Lordship may be pleased to issue necessary direction to the Respondents restraining them from evicting the petitioners from their respective land without due process of law.

And for this, the petitioners as in duty bound shall ever pray."

3. A reading of the prayer makes it discernible that the writ petitioners seek for a direction to the respondents in the Forest Department of the Government of Assam as well as the Deputy Commissioner, Karimganj and Circle Officer, Patharkandi Revenue Circle to take necessary steps to enter the names of the petitioners in the Jamabandi Register in respect of Old Solamona Boro Sobri Forest Village in terms of letter No. FGH.18/G/74/3069 dated 06.11.1974 of the then Conservator of Forests, Hills, Assam, Shillong namely M.A. Islam as well as the office order No. 262 dated 31.12.1975 of the Divisional Forest Officer, Cachar Division, Silchar. The letter of the Conservator of Forests, Hills dated 06.11.1974 is extracted as below:

"Since there are one hundred to two hundred bighas of land are available without tree Forests and which were encroached by Rang Reang people and have been evicted from time to time and that these vacant land may not be encroached by outsiders, the so sixty six land less people as certified by the S.D.O., Karimganj vide his no. KES.3(Pt)/73/30, dt. 4.5.74 may be allotted there land after proper survey each getting five bighas of Rupit land and two bighas of Bari land on regular Forest village terms. The map after survey and the exact land available should be sent to this office for record.

The land in Dhubri are may not be thrown open for the present."

4. The order of the Divisional Forest Officer, Cachar Division, Silchar dated 31.12.1975 is also extracted as below:

"Subject to abiding by the existing Forest Village rules inforce Sri Moinul Hoque and 55 (fifty five) others (as per list enclosed) are hereby ordered to be entertained as Forest Villagers with 5 (five) bighas of rupit land and 2 (two) bighas of Bari land each with the sanctioned boundary of Old Solamona Forest Village under Longai Reserve Forests of Karimganj Range with immediate effect as per approval of the Conservator of Forests Hills, Assam vide Nos. FGH.18/C/74 5069 dt. 6.11.74 and FGH.18/C/74-75/3124 dt. 4.8.75 with immediate effect.

The possession of land should be given on demarcation in field and on obtaining written undertaking that they will obey the rules and Regulations in force.

The entry into the Jamabandi Register should also be made accordingly.”

5. The petitioners in the prayer also seek for a direction to restrain the respondents from evicting the petitioners from their respective land without following the due process of law or further to issue a direction to the respondents to allow the petitioners to enjoy their continuous possession of their land at Old Solamona Boro Sobri Forest Village without any interference. A reading of the subsequent prayers makes it discernible that the purpose of the writ petition is for a direction in favour of the petitioners that their occupation of the land at Old Solamona Boro Sobri Forest Village be declared to be permanent in nature so that their enjoyment of the land continues and to allow them to enjoy the land in perpetuity.

6. A reading of the letter dated 06.11.1974 of the Conservator of Forest, Hills, Assam, Shillong makes it discernible that about hundred to two hundred bighas of land are available without tree forests and such forest land were earlier encroached by Rang-Reang community and the forest department had undertaken the process under the law to evict the Rang-Reang people from the forest land and so in order to protect the forest land and to ensure that the Rang-Reang people do not come back and encroach the forest land again, the Conservator of Forest deemed it appropriate that sixty six landless people from outside as certified by the Sub-Divisional Officer Karimganj by his order No.KRS.3(pt)/73/30 dated 04.05.74 may be allotted land after proper survey by giving five bighas of rupit land and two bighas of bari land on regular Forest Village terms to such sixty six outsider landless people. If certain indigenous tribal people had entered and occupied some forest land and the authorities deemed it appropriate that such indigenous people should be evicted from the forest land so as to protect the land, and an eviction process was carried out and the encroachers were removed, it cannot be that to ensure that the same people do not come back and encroach the land again and the land should be allotted to some outsider people comprising of sixty six landless people and such act would be unacceptable under the law.

7. The list of sixty six landless people is available at page 47 to the writ petition and are extracted as below:

Name & address

Area of land held by the
person

Remarks

1.Abdul Khalique

Nil

Category 'A'

S/O HajiFarid Ali

Vill- Bataya

2.Sarif Uddin

S/O AbdurRahman Vill. Bataya

Nil

Do 'A'

3. AbdurRahim

S/O Late Usman Ali Vill. Bataya

Nil

Do 'A'

4. Abdul Hamid S/O Farid Ali

Vill. Do

Nil

Do 'A'

5. Abdul Hannan S/O Do

Vill. Do

Nil

Do 'A'

6. Abdul Mannan S/O Do.

Vill. Do

Nil

Do 'A'

7. MatiurRahman S/O Late Abdul Bari

Vill. Singaria

Nil

Do 'A'

8. Abdul Karim S/O Late Said Ali

Vill. Do

Nil

Do 'A'

9. Abdul Mannan S/O Late Madris Ali

Vill. Do

Nil

Do 'A'

10. Riaz Uddin

S/O Late Mirjan Ali Vil. Do

3 bigas

Do 'B'

11. Mohib Ali

S/O Late Masaddar Ali Vill. Do

1½"

Do Do

12. Sakawat Ali

S/O Late Nisar Ali Vill. Do

2"

Do Do

13. Abdus Sahid S/O Makram Ali

Vill. Do

Nil

Do 'A'

14. AtaurRahman S/O Late Abdul Bari

Vill. DO

1 block

Do 'B'

15. Manajjir Ali

S/O Late Chand Mia Vill. do

3 block

Do 'B'

16. Abdul Gafur S/O Late Said Ali

Vill. Do

1 block

Do 'B'

17. Abdul Rakib S/O Late Mosir Ali

Vill. do

Nil

Do 'A'

18. MahmadurRahman

S/O Late Abdul Bari Vill. do

Nil

Do 'A'

19. Habib Ahmed S/O Late Abdul Bari

Vill. Do

Nil

Do 'A'

20. Abdul Malik Choudhury S/O Late Mahmad Ali Choudhury Vill. do

3 bigas

Do 'A'

21. MuhiburRahman S/O Late Manazzir Ali

Vill. Singaria

Nil

Do 'A'

22. S/O Vil.

Ilas Ali Late Said

Keotkona Ali

Nil

Do'A'

23. Isak Ali

S/O Late Ilas Ali Vill. do

Nil

Do

'A'

24. Ibrahim Ali S/O Do

Vill. do

Nil

Do 'A'

25. Idris Ali S/O do

Vill. do

Nil

Do 'A'

26. Basir Ali S/O do

Vill. do

Nil

Do 'A'

27. Suhag Mia

S/O Late Kurban Ali Vill. do

Nil

Do 'A'

28. AbdusSabur S/O Saib Ali

Vill. do

Nil

Do 'A'

29. Manazzir Ali S/O Ibrahim Ali

Vill. do

Nil

Do 'A'

30. AbdurRahman

S/O Late Hasan Ali Vill. Do

Nil

Do 'A'

31. RahimaBibi W/o Yousuf Ali

Vill. Kanakpur

Nil

Do 'A'

32.Rafique Uddin S/O Wajid Ali

Vill. do

1½ biga

Do 'A'

33. AtaurRahman S/O AbdusSubhan

Vill. do

3 biga

Do 'A'

34. Matasin Ali S/O Wazid Ali

Vill. do

Nil

Do 'A'

35. Abdul Fatha S/O GulamIrpan

Vill. Niamotkhani

Nil

Do 'A'

36. Matasin Ali

S/O Said Ali Vill. Singaria

Nil

Do 'A'

37. Abdul Musabbir S/O Sajid Ali

Vill. Taltola

Nil

Do 'A'

38. SajjadurRahman S/O Anjob Ali

Vill. Niamotkhani

Nil

Do 'A'

39. Firoj Ali S/O Jafar Ali

Vill. Khagail

Nil

Do 'A'

40. Muzammil Ali S/O Kurban Ali

Vill. do

Nil

Do 'A'

41. MoinulHaque S/O Wajid Ali

Vill. Gandharavakhani

2 bigas

Do 'B'

42. Suruj Ali

S/O Makbul Ali

Nil

S/O Idris Ali Vill. do

44. Mosaddar Ali S/O Suruj Ali

Vill. do

2 bigas

Do

45. Suai Mia

S/O Late Masab Ali Vill. do

Nil

Do

46. AbdurRahim S/O Ambar Ali

Vill. do

2 bigas

Do 'B'

47. AbdurRazzak S/O Intaj Ali

Vill. do

Nil

Do 'A'

48. Abdul Haque

S/O Said Ali Vill. do

2 bigas

Do 'B'

49. Moin uddin S/O Sunahar Ali

Vill. Uttar Bandar Kona

3 bigas

Do

50. SaiburRahman S/O Yakub Ali

Vill. Gandharabakhani

1 block

Do

51. KutinaBibi W/o Late Isak Ali

Vill. do

Nil

Do

52. Abdul Jabbar S/O Anjir Ali

Vill. do

2 b- 10 k

Do

53. Siddek Ali S/O Matasin Ali

Vill. do

Nil

Do

54. Abdul Rakib

S/O Sonahar Ali Vill. Uttarbandarkuna

3b.

Do

55. Akaddas Ali S/O Wajid Ali

Vill. do

Nil

Do

56. Asaduddin S/O Sonahar Ali

Vill do

2 bigas

Do

57. AbdurRouf S/O Farid Ali

Vill. Haitarkha

Nil

Do

58. Abdul Noor S/O Manir Ali

Vill. Hoithorkha

3 bigas

Do

59. Firoj Ali S/O Saman Ali

Vil. do

2 bigas

Do

60. Abdul Wakil

S/O Late Musobbir Ali Vill. Do

Nil

Do

61. Intaj Ali

S/O Monohar Ali Vill. Bilbari

2 bigas

Do

62. Mantaj Ali S/O Umar Ali

Vill. ChoudhuryTilla

1½ bigas

Do

63. Roab Ali S/O Jawaid Ali

Vill. Faridkona

1 b 5 k

Do

64. Abdul Kadir S/O Fatir Ali

Vill. Balia

Nil

Do

65. Abdul Majid S/O Do

Vill. Do

Nil

Do

66. Abdul Noor

S/O Turab Ali Vill. Saidkhani

3 bigas

Do

8. No material is available to form any view as to who these outsider people are and from where they have come from and as to why they have been allotted the land inside the forest.

9. The Order No.262 dated 31.12.1975 of the Divisional Forest Officer Cachar Division Silchar provides that subject to abiding of the existing forest village Rules, Mainul Hoque and 55 others, were handed over possession of the land after demarcation by taking a written undertaking that they will abide by the Rules and Regulation in force and further that the names of the said persons should be entered in the Jamabandi register maintained for the purpose.

10. A further reading of the letter of the Conservator of Forest dated 06.11.1974 makes it discernible that some further forest land in the Dhubri district are sought to be allotted in such manner, but it could not be so done. Such provision is also indicative that there was an intension to destroy the forest land in the

same manner in other districts also.

11. We have heard the learned senior counsel for the petitioner, Mr. HRA Choudhury, on the rights that the present petitioners may have to have their names entered in the Jamabandi maintained for the purpose and also for a direction that their occupation in the land should be made permanent in nature so that they can enjoy it in perpetuity.

12. Mr. HRA Choudhury learned senior counsel refers to the Rules for Establishment and Control of Forest Village (for short, the Establishment Rules), purportedly made under Sections 72(e), 74 and 75 of the Assam Forest Regulation 1891 (for short, the Regulation of 1891). Sections 72(e), 74 and 75 of the Regulations of 1891 are extracted as below:

"72.The State Government may make rules consistent with this Regulation:

(e) generally, to carry out the provisions of this Regulation."

"74. Every person who exercises any right in a reserved forest or village forest, or who is permitted to remove any forest produce from, or to pasture cattle, or practise jhum cultivation in, such forest, and every person who is employed by such person in such forest and every person in any village contiguous to such forest who is employed by the [Government] or who receives emoluments from the [Government] for services to be performed to the community, shall be bound to furnish. without unnecessary delay, to the nearest Forest Officer or Police Officer any information which he may possess respecting the occurrence of a fire in or near such forest, or the commission of or intention to commit, any forest offence, and shall assist any Forest Officer, or Police Officer demanding his aid –

(a) in extinguishing any fire occurring in such forest;

(b) in preventing any fire which may occur in the vicinity of such forest from spreading to such forest ;

(c) in preventing the commission in such forest of any forest offence ; and

(d) when there is reason to believe that any such offence has been committed in such forest, in discovering and arresting the offender."

"75. All money, other than fines' payable to the [Government] under this Regulation, or under any rule made thereunder, or on account of the price of any forest produce, or of expenses incurred in the execution of this Regulation in respect of any forest produce, may, if not paid when due, be recovered under the law for the time being in force as if it were an arrear of land revenue."

13. By referring to the Establishment Rules, Mr. HRA Choudhury, learned senior counsel submits that the petitioners have been put into possession inside the reserved forest land under the said Rules and that under the Rules they have a legal right of their names being entered in the Jamabandi, and as some kind of heritable right is also provided in the Rules itself, therefore, most of the

petitioners being the second generation of the persons who are put into possession inside the forest land as per the order dated 06.11.1974 have a permanent heritable and a legal right in perpetuity for occupying the forest land and also to regularize the process by having their names entered in the Jamabandi.

14. On the submission of the learned senior counsel for the petitioner, we have noticed two aspects are to be looked into. The first aspect would be as to what would be the implication of the Establishment Rules made under Sections 72(e), 74 and 75 of the Regulations of 1891 and further the relevance of entering the names of the petitioners in the Jamabandi and under what law is the concept of a Jamabandi being governed. As the Establishment Rules have been framed under Sections 72(e), 74 and 75 of the Regulations of 1891, we required Mr. PN Goswami, learned Additional Advocate General, Assam appearing for the respondents to refer to any relevant provision under the Regulations of 1891 which may contain the provisions of establishing a forest village. As per the petitioners, the concept of forest village is given to be understood to mean that it will be a village which will be inhabited by people and would be located inside the notified reserved forest. Mr. PN Goswami, learned Additional Advocate General for the purpose refers to Section 29 of the Regulations of 1891 which provides for constitution of 'village forest' and that of Section 30 which is a rule making power for framing of Rules for the village forest.

15. Apart from the aforesaid provisions, Mr. PN Goswami, Additional Advocate General is candid enough to say that there is no provision in the Regulations of 1891 providing for establishing any forest village. Accordingly, we examine as to whether village forest as provided in Section 29 of the Regulations of 1891 and a forest village as provided in the Establishment Rules are one and the same in its meaning and purport. Rule 1 of the Establishment Rules provides that forest village may be established within the limits of any reserved forest on sites and locations of which will be approved by the Conservator of Forest in writing, which makes it explicit that the location of the forest village would be within the location of the reserved forest. On the other hand, Section 29 of the Regulations of 1891 provides that the State Government may by notification in an official gazette constitute any land at the disposal of the Government a village forest for the benefit of any village community or group of village communities, and may, in like manner, vary or cancel any such notification.

16. Section 29 of the Regulations of 1891 makes it explicit that the location of the village forest to be constituted would be over any land at the disposal of the Government. Section 3(8) of the Regulation of 1891 defines 'land at the disposal of the Government' to mean land in respect of which no person has acquired a permanent, heritable and transferable right of use and occupancy under law for the time being in force; or any right created by grant or lease made or continued by or on behalf of the Government not being land vested for the purposes of the Central Government.

17. Section 3(8) and Section 29 of the Regulations of 1891 are extracted as below:

Section 3(8) defines land at the disposal of the Government in negative terms i.e., all such land, other than the land over which any person may have acquired a permanent, heritable and transferable right of use and occupancy under law for the time being in force; or any right created by grant or lease made or continued by or on behalf of the Government not being land vested for the purposes of the Central Government.

Section 29. Constitution of village forests. - (1) The State Government may by notification in the official Gazette, constitute any land at the disposal of the Government a village-forest for the benefit of any village-community or group of village-communities and may, in like manner, vary or cancel any such notification.

(2) Every such notification shall specify the limits of such village forests.

18. A reading of Section 3(8) makes it discernible that the residual land at the disposal of the Government would be the land over which no permanent, heritable and transferable right of use and occupancy under any law for the time being in force had been granted to any person, nor any right had been created by grant or lease made or continued by or on behalf of the Government and not being land vested for the purposes of the Central Government.

19. In other words, we are required to interpret the provisions of Section 3(8) of the Regulations of 1891 as to whether the residual land would mean all such lands in the State of Assam over which no permanent, heritable and transferable right of use and occupancy have been granted to any person, nor any right had been created by grant or lease made or continued by or on behalf of the Government and land not being vested for the purposes of the Central Government would also include the land under the reserved forests or the residual land would mean the land other than the land included in the reserved forest.

20. The meaning of residual land, whether it would also include land under the reserved forest can be discerned from the provisions of Section 29 of the Regulations of 1891. A reserved forest is constituted in exercise of the powers under Section 4 of the Regulations of 1891 which provides that the State Government may constitute any land at the disposal of the Government, a reserved forest in the manner provided therein. The manner to constitute a reserved forest is provided under Section 5 of the Regulations of 1891 which inter alia provides that whenever it is proposed to constitute any land a reserved forest, the State Government by publishing a notification in the Official Gazette specify, as nearly possible, the limits of such land and in doing so to also appoint an officer called the Forest Settlement Officer to enquire into and determine the existence, nature and extent of any rights claimed or alleged to exist in favour of any person over any land within such limits. Section 6 (d) of the Regulations of 1891 provides for fixing a period of not less than three months from the date of

publication of Section 5 proclamation requiring every person claiming any right to submit a written notice to the Forest Settlement Officer and Section 8 provides for an enquiry to be made by the Forest Settlement Officer. Section 11 (1) provides that in respect of a claim to any right within the limits of the land proclaimed for the purpose of constituting the reserved forest, the Forest Settlement Officer shall pass an order specifying the particulars of such claim by admitting or rejecting the claim wholly or in part. Section 11 (2) provides that if any such claim is admitted wholly or in part, the Forest Settlement Officer may come to an agreement with the claimant for surrender of the right or to exclude the land from the limits of proposed forest or proceed to acquire the land.

21. From the provisions of Section 11(2) it is apparent that upon a reserved forest being notified under Section 17 of the aforesaid regulations, no claim or right of any person remains over the land under the reserved forest. Section 18 of the Regulations of 1891 makes it further explicit that even if any right could have been claimed by any person, but not claimed under Section 6, such rights would also stand extinguished unless before publication of Section 17 Notification, such person makes a claim under Section 6.

22. As the procedure referred in Section 4 of the Regulation of 1891 to constitute any land at the disposal of the Government a reserved forest, in terms of the provisions of Section 5 to Section 18, which is a code by itself, we have to understand that the further notification referred in Section 29 to constitute any land at the disposal of the Government a 'village forest' would have to be a notification over any land which would not be covered by the notification under Section 17 of the Regulations of 1891. Meaning thereby, that such land which had already been declared to be notified as reserved forest under Section 17 would not be a residual land to be covered by any further notification to constitute a 'village forest' under Section 29.

23. Accordingly, any notification under Section 29 of the Regulations of 1891 to constitute a 'village forest' would not and can not include any land under a reserved forest which had already been notified under Section 17. Consequently, the concept of 'village forest' as provided in Section 29 of the Regulations of 1891 and the concept of 'forest village' provided in Rule 1 of the Establishment Rules would have to be understood to be not the same concept or interchangeable with each other.

24. In the context of such conclusion, when we look into the Establishment Rules, it is noticed that the Rules are framed under Sections 72(e), 74 and 75 of the Regulations of 1891. Section 72(e) of the Regulations of 1891 provides for the additional powers to make Rules by the State Government which again would have to be consistent with the provisions of the Regulations itself and further to generally carry out the provisions of the Regulations. Section 74 provides that every person who exercises any right in a reserved forest, or village forest or who is permitted to remove any forest produce or to pasture cattle or practice jhum cultivation in such forest and every person who is employed by such person

in such forest and every person in any village contiguous to such forest who is employed by the Government shall be bound to furnish to the nearest forest officer or any police officer any information which he may possess as regards occurrence of a fire in or near a forest. Section 75 provides that all money other than fines payable to the Government under the Regulations of 1891, if not paid, when due, can be recovered under the law as an arrear of land revenue.

25. A reading of Section 72(e) of the Regulations of 1891 makes it discernible that it is an additional power to make Rules consistent with the provisions of the Regulations and generally to carry out the provisions of the Regulations. When the Regulations itself does not provide for the concept of 'forest village', any Rules that may be framed in exercise of the power under Section 72(e) cannot be understood to be providing for creation of a 'forest village'.

26. But Section 74 refers to a person who exercises any right in a reserved forest or in a 'village forest', or who is permitted to remove any forest produce or to pasture cattle or practice jhum cultivation in such forest or who is employed in such forest and provides that if such persons possess any information in respecting the occurrence of any fire in or near such forest, or the commission or intention to commit any forest offence, such person shall without any delay furnish the information to the nearest forest officer or a police officer.

27. The dominant purpose of Section 74 is that the information regarding occurrence of any fire in or near a forest, or commission or intention to commit any forest offence, is available with any such persons, referred therein, they are bound to furnish the information to the nearest forest officer or police officer. While describing the persons referred therein mention is made of such persons who may exercise any right in a reserved forest or a 'village forest', or who may be permitted to remove any forest produce, pasture cattle or practice jhum cultivation, or who is employed in such forest. While describing the persons mentioned therein, no reference is made of any 'forest village,' although, the rights mentioned therein may be over a reserved forest or a 'village forest'. The term 'village forest' in Section 74 would have to be understood to be a 'village forest' under Section 29 of the Regulations of 1891 and not to be any 'forest village' within the reserved forest.

From the provisions of Section 74 also, no conclusion can be arrived that for carrying out the provisions of the Regulations of 1891, the State Government had been authorized to frame any Rule providing for creation of a 'forest village'.

28. Section 75 of the Regulations of 1891 is for providing the manner in which any money due to the Government in respect of any forest produce or for any other purpose under the Regulations can be recovered. Section 75 also does not provide for any such provision in the Regulations for creating a 'forest village' within a reserved forest.

29. From a conjoint reading of Sections 72(e), 74 and 75 of the Regulations of 1891, it is discernible that the additional rule making power of the State

Government does not empower for creating any 'forest village'. From such point of view, although Rules 1 and 2 of the Establishment Rules, refer to 'forest village', or establishing a 'forest village' within the limits of any reserved forest, it cannot be read to be a village established or created within a reserved forest, where the persons who may be in occupation of such village would have the rights and entitlements as may be available to the persons in occupation of otherwise a village simplicitor.

30. By the letter dated 06.11.1974 of the then Conservator of Forests, Hills, Assam, Shillong, it had been provided that as hundred to two hundred bighas of land are available without tree forests within the reserved forest which were earlier occupied by Rang Reang people and who have been evicted, therefore, sixty six landless people be allotted five bighas of rupit land and two bighas of bari land on regular 'forest village' terms. In terms of the letter of the Conservator of Forests, the Divisional Forest Officer, Cachar Division, by his order dated 31.12.1975 had ordered that the persons who were allotted the land be entertained as forest villagers over the respective allotted land. As the concept of a 'forest village' itself is unavailable under the Regulations of 1981, although, the term 'forest village' has been used in the letter dated 06.11.1974 of the Conservator of Forests, Hills, Assam and the order dated 31.12.1975 of the Divisional Forest Officer, Cachar Division, the term 'forest village' referred in the said letter dated 06.11.1974 and the order dated 31.12.1975 cannot be equated with that of the legal rights that may flow in favour of the occupants of otherwise a village simplicitor. Although the term 'forest village' has been used in the letter dated 06.11.1974 and the order dated 31.12.1975, the right of the occupants that may flow would be governed only by the law related to forests.

31. The reserved forests in Assam are governed by the provisions of the Regulations of 1891 as well as that of the Forest Conservation Act 1980. The Regulations of 1891 recognises certain rights over the land included in the reserved forest like that of Right of Pasture, Right to Forest Produce, Right of Way, Right to Water Course etc. From such point of view, the rights that may accrue to the persons who are beneficiaries of the letter dated 06.11.1974 and the order dated 31.12.1975 cannot exceed the rights that have been provided in the Regulations of 1891. Although the letter dated 06.11.1974 and the order dated 31.12.1975 purportedly issued under the Establishment Rules may have provided some further rights, but such rights, if in conflict or beyond the rights as provided in the Regulations of 1891, cannot have any legal sanction or recognition.

32. Further, Section 2 of the Forest Conservation Act, 1980 (for short, the Act of 1980) provides that notwithstanding anything contained in any other law for the time being in force in a State, no State Government or any other authority shall make, except with the prior approval of the Central Government, any order directing, amongst others, that any forest land or any portion thereof may be used for any non-forest purpose and that any forest land or any portion thereof

be assigned by way of lease or otherwise to any private person. The explanation to Section 2 of the Act of 1980, provides that non-forest purpose means breaking up or clearing any forest land or portion thereof for cultivation of tea, coffee etc., or for any purpose other than reforestation purpose, but does not include any work relating or ancillary to conservation, development, and management of forests and wildlife, namely, the establishment of check-posts, fire-lines, concert zone of fencing bridges, pipelines etc., or other light purposes. Even if we go by the explanation to Section 2 of the Act of 1980, it is noticed that it would be impermissible to convert or use any forest land within a reserved forest for the purpose of allotment of land, where other non-forest activities like cultivation, homestead etc., can be carried out, even though the purpose thereof may be cited for management of forest. Although the spirit may be applicable, but we are not relying on the provisions of the Act of 1980, inasmuch as, the rights claimed in this writ petition are pursuant to a letter dated 06.11.1974 and an order dated 31.12.1975, which apparently are prior to the Act of 1980.

33. The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition Of Forest Rights) Act, 2006 (for short, the Act of 2006) has been enacted to recognize and vest the forest right and occupation in forest land in forest dwelling scheduled tribes and other traditional forest dwellers who have been residing in such forest for generations, but whose rights could not be recorded. The statement of objects and reasons of the Act of 2006 provides that forest dwelling tribal people and forests are inseparable and one cannot survive without the other. Although Section 2(f) of the Act of 2006 defines a 'forest village', but such definition would be for the purpose of the Act of 2006, inasmuch as, Section 2 begins with the expression 'in this Act' and secondly, except for in Section 2(p) (iii) no reference is made to the expression 'forest village' in the Act of 2006.

34. In any view of the matter, the Act of 2006 is for the purpose to recognize and vest forest rights and occupation in forest land in the forest dwelling scheduled tribes and other traditional forest dwellers, where both expressions are defined in the Act of 2006 itself. From such point of view also, it cannot be understood that a forest land inside the reserved forest can be allotted to a group of persons merely by providing that as certain tribal people have been evicted from the forest land, therefore, in order to ensure that they do not re-encroach the land, the land inside the forest land be now allotted to some other persons. In order to claim the legal rights over forest lands under the Act of 2006, the claimants would have to be either a forest dwelling scheduled tribe or a traditional forest dweller, where both the concepts are defined. The petitioners who were allowed to occupy the forest land inside the reserved forest as per the letter of the Conservator of Forest dated 06.07.1974 are apparently neither forest dwelling scheduled tribal nor they are other traditional forest dweller as per the definitions in Section 2(c) and 2(o) of the Act of 2006. From such point of view also no legal right has accrued to the petitioners under the Act of 2006. Although the term 'forest village' finds place in Sections 2(f) and 2(o) of the Act of 2006, but the provisions thereof cannot give a meaning or legitimacy that the land in

occupation of the petitioners inside a reserved forest would be a forest village. Further the reference and meaning given to the term 'forest village' in Section 2(f) and 2(o) is only for the purpose of the Act of 2006 and subjected to 'unless the context otherwise requires'. As the letter dated 06.11.1974 and order dated 31.12.1975, allowing the petitioners to remain in the reserved forest is under the Regulation of 1891, the concept of forest village would also have to be examined within the provisions of the Regulations of 1891 and no attempt can be made to under the concept by referring to Section 2(f) and 2(o) of the Act of 2006.

35. In the background of the aforesaid propositions, the claim of the petitioners for entering their names in the Jamabandi Register of Old Solamona Boro Forest Village in terms of the letter dated 06.07.1974 and order dated 31.12.1975 so as to enable them to pay the revenue and also to restrain the respondents from evicting the petitioners from their respective lands would have to be examined.

36. The Jamabandi or in other words the Records of Rights in respect of land is governed by the provisions of Section 40 of the Assam Land and Revenue Regulations 1886 (for short, the Regulations of 1886). The note following Section 40 of the Regulations of 1886 provides that the records of rights is the jamabandi based on the chitha and field map. Section 41 of the Regulations of 1886 provides for the entries in the jamabandi and their effect to the extent that it shall be founded on the basis of actual possession and all disputes regarding such entries, whether taken up by the Settlement Officer on its own motion or on an application of a party shall be investigated and decided on the basis of possession and all such persons not in possession, but claiming a right to be included in the jamabandi shall be referred to the proper Court.

37. A reading of the provisions of the Section 40 and 41 of the Regulations of 1886 make it discernible that the concept of jamabandi is applicable only in respect of those land where a person may acquire the right of a proprietor, land holder, or settlement holder or any other allotment as may be acceptable under Chapter II of the Regulations of 1886, which provides for rights over land. The land of the petitioners involved in this writ petition is admittedly a land located inside a reserved forest where Chapter II of the Regulations of 1886 is inapplicable. From such point of view the prayer made in the writ petition to include the names of the writ petitioners in respect of their land located inside a reserved forest in the jamabandi would be unacceptable inasmuch as, the concept of jamabandi under the Regulations of 1886 is itself inapplicable in respect of a land inside a reserved forest.

38. The other prayer of the writ petitioners to enter their names in the jamabandi so as to enable them to pay the land revenues would also have to be unacceptable inasmuch as, the concept of payment of land revenue is only in respect of such lands covered by Chapter II of the Regulations of 1886 providing for rights over land.

39. With regard to the other prayer of the petitioners for restraining the

respondents from evicting them from their respective lands, again it is noticed that the respective lands of the petitioners are located within a reserved forest. The procedure for evicting a person from any land over which no person has acquired a right of a proprietor, settlement holder or a land holder is provided under Rule 18 of the Rules under the Regulations of 1886 and the procedure under Rule 18 is available only in respect of such lands covered by the Regulations of 1886. Admittedly, when the land of the petitioners is inside a reserved forest, any eviction that may be made by the authorities would have to be under the law of eviction applicable to a forest land and there can be no direction to restrain any eviction by relating the claim to any entry to be made in a jamabandi.

40. In such view of the matter, none of the prayers of the petitioners to enter their names in the jamabandi, to pay the land revenue and also to restrain the authorities from evicting them from the land inside the reserved forest would be acceptable.

41. But, however, as the petitioners claim that as they are landless people as depicted in the letter dated 06.07.1974, they may submit applications for allotment of lands under the appropriate land policy of the Government of Assam. In the event, it is done, such applications may be taken up as per law by following the relevant procedure and it may be brought to its logical end within three months of making any such application.

42. Writ petition stands dismissed in the above terms.