

**(2009) 10 GAU CK 0039**

**In the Gauhati High Court**

**Case No :** Writ Petition (C) No's. 3840 and 5043 of 2008

Baburam Narzar and Others

APPELLANT

Vs

State of Assam and Others

RESPONDENT

**Date of Decision :** 22-10-2009

**Acts Referred:**

Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 — Section 2, 3, 4, 4(1)

**Citation :** (2010) 1 GLR 544 : (2009) 4 GLT 983

**Hon'ble Judges :** H.N. Sharma, J

**Bench :** Single Bench

**Advocate :** A. Dasgupta and K.M. Haloi, for the Appellant; D. Das and H.M. Phukan, for the Respondent

## **Judgement**

H.N. Sarma, J.—The subject matter of challenge and the reliefs sought for in both the writ petitions being common leading to determination of common question of law, both the matters were heard analogously and are being disposed of by this common judgment.

2. Heard Mr. A. Dasgupta, Learned Counsel for the petitioner and Mr. D. Das, learned Standing Counsel, Bodoland Territorial Council as well as the learned Central Government Counsel for the respondents.

3. Writ Petition (C) No. 5043/08 has been filed by a group of 25 petitioners alleging that they belong to Scheduled Tribe (Bodo) ("ST") community of Assam residing in Saralpara forest village under the Haltugaon forest division in the district of Kokrajhar, Assam and their names have been entered in the voter list of 30 No. Kokrajhar (East) ST Legislative Assembly Constituency as inhabitants of Saralpara village. The petitioners were the victims of ethnic clashes of 1996 that took place between the Boro and Adivasi people and they shifted to Naharani Relief Campus near Bhutan Border established by the state authorities. Subsequently, they came back to their place of residence at Saralpara village in the year 1998. Due to re-eruption of ethnic clashes they were again shifted to

Naharani relief camp and thereafter to Lahoripara relief camp. Upon prevailing harmony between the two rival groups, the petitioners and other group of persons returned to their original place of residence and constructed their thatched houses and started their normal avocation. On 22.9.2008, some officials of SSB department came to their place and asked them to vacate the said place and also demolished some of the thatched houses, constructed by them.

4. The petitioners claim that they are forest dwellers and they have no other source of livelihood other than the forest land under their occupation. They have acquired rights u/s 3 of the Scheduled Tribes and other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 ("the Act") which includes granting of patta and lease over the land occupied by the petitioners including the right of settlement. But the authorities not having recognized the said right, the petitioners have filed this writ petition praying to stop the eviction of the petitioners from their dwelling houses and agricultural land situated in the No. 1 Sonapur of Saralpara forest village and to allow the petitioners to reside peacefully in the Saralpara forest village as forest dwellers and to settle the land under their occupation, in their name.

5. W.P.(C) No. 3840/08 has been filed by a group of seventeen petitioners alleging that they are traditional forest dwellers residing in the forest village of Ultapani area in the Kokrajhar district of Assam. Being the victim of ethnic clashes between the Boro and Adivasis in 1996 they took shelter in the relief camp in the Saralpara forest village in the district of Kokrajhar. Subsequently, they were shifted to the Bismuri relief camp in the same district as the earlier camp was attacked by some armed miscreants. The petitioners and other similarly situated persons were granted rehabilitation grant at the rate of Rs. 10,000 each and were asked to shift to their original residential place. Accordingly, the petitioners constructed their dwelling houses in their original place of residence at Ultapani area of Kokrajhar but they have been evicted by the forest personnel from their dwelling houses. The petitioners allege that the action of the Government by rehabilitating them in different forest villages indicate that the Government Had setup different villages for settlement of the petitioners and accordingly they are not liable to be evicted. The petitioners have filed this writ petition praying for a declaration that they are entitled to stay in different forest villages like Saralpara and Ultapani in the district of Kokrajhar, Assam and they have acquired necessary rights recognized under the aforesaid Act.

6. The petitioners further allege that they are also entitled to get protection under the Assam Forest Regulation, 1891 as forest villagers apart from the rights under the Act. The various requests of the petitioners to include them as forest villagers and the related rights not having been accepted by the authorities, they have filed the writ petition with the prayers to stop eviction of the petitioners from their dwelling houses and for adequate compensations and to allow to

rebuild their residential houses in forest villages within the Kokrajhar district.

7. Controverting the claim of the petitioners counter affidavits have been filed in both the cases by the respondent Nos. 2 and 4 in WP(C) No. 3840/08 and a separate counter has been filed the respondent Nos. 6 and 7 in W.P.(C) No. 5043/08.

8. The respondents categorically deny the petitioners to be the residents of Sonapur No. 1 Saralpara forest village and the Saralpara Forest Village is inhabited only by the people of Nepali community. It is further contended that there is no village in the name of Sonapur No. 1 as per forest record and the names of the petitioners do not find place in the revenue record of Saralpara Forest village. It is also stated that under the Haltugaon Forest division, there are twenty-five Nos. of forest villages and the Saralpara forest village was established way back in the year 1909 which is fully inhabited by the people belonging to the Nepali community which is also confirmed by the revenue record. The respondents allege that the petitioners have recently encroached the forest land in the year 1990 itself and they are not forest dwellers and are not entitled to any protection under the Act as they do not fulfill the conditions prescribed under the Act.

9. Mr. A. Dasgupta, Learned Counsel for the petitioners has strenuously submitted that the petitioners are the victim of circumstances and they being subjected to ethnic clashes/disturbances that took place in the area between the Adhivasis and tribal people and accordingly they were provided shelter in different relief camps established by the State authorities. It is further urged that the petitioners belongs to the recognized Scheduled Tribes and they being in occupation of their land within the forest village for a long period of time, they are entitled to the protection granted under the Act. Learned Counsel has referred to such protection and various rights and recognition thereof as provided under Sections 3 and 4 of the Act. It is contended that in spite of petitioners having fulfilled the necessary conditions precedent as prescribed u/s 4 of the Act, the State respondents have failed to discharge their obligation to recognize the petitioners as forest dwellers.

10. Submission made on behalf of the petitioner have been strictly resisted by the respondents contending that the petitioners are the recent encroachers in the area and no semblance of rights as forest dwellers could be acquired by the petitioners entitling their protection under the Act. It is also contended that the State Government has already paid pecuniary compensation to the petitioners for their rehabilitation in their original places and that does not mean that their rights as forest dwellers have been accepted and confirmed. The petitioners have not satisfied the requirements as forest dwellers either under the Act or under the provision of Assam Forest Regulation and they being mere encroachers of the forest land, no such right in their favour can be recognized. The land encroached by the petitioners falls within boundary of reserved forest and hence they are not entitled to continue their possession therein and are liable to be evicted. Under

Forest Conversation Act, 1980 none of the activities as alleged by the petitioners are permissible nor any person other than the recognized forest villagers are entitled to claim any right of settlement or construction of residential houses within the reserved forest area. In this backdrop of facts, the action taken by the respondent authorities to evict the petitioners from the forest land is fully justified, contended by the Learned Counsel for the respondents.

11. Submissions of the Learned Counsel for the parties have received due attention of the court. From the materials available on record and the proved facts, it is established that neither the petitioners nor their ancestors were/are the residents under the forest, village area or any other forest village under the Haltugaon Forest Division. The area in question falls within the Chirang Reserve Forest which was constituted as reserve forest land by the Government vide Notification published in the year 1898. The Haltugaon Forest Division covers the original area of 59,632 hectares. The Saralpara village covers an area of 10,000 hectares and out of which almost 3,000 hectares are under encroachment. The Saralpara forest village was established way back in the year 1999. The name of the forest villagers can be found in the Jamabandi which is an authenticate revenue record prepared by the Revenue authority. Neither in the revenue record nor in any other document the names of the petitioners are found as forest villagers.

12. The Act (Act 2 of 2007) was enacted to recognize and vest the forest rights and occupation in forest land in forest dwelling Scheduled Tribes and other traditional forest dwellers who have been residing in such forests for generations but whose rights could not be recorded; to provide for a framework for according the forest rights so vested and the nature of evidence required for such recognition and vesting in respect of forest land.

13. The basis of submission for claiming the rights acquired by the petitioners, as made by Mr. Dasgupta, Learned Counsel for the petitioners flows from the provision of Section 4 of the Act. In order to appreciate the submission of the learned Counsel, let us have a close scrutiny of the relevant sections of the Act, which are quoted below:

2. (c) "forest dwelling Scheduled Tribes" means the members or community of the Scheduled Tribes who primarily reside in and who depend on the forests or forest lands for bona fide livelihood needs and includes the Scheduled Tribe pastoralist communities;

(d) "Forest land" means land of any description falling within any forest area and includes unclassified forests, undemarcated forests, existing or deemed forests. protected forests, reserved forests, Sanctuaries and National Parks;

(f) "forest villages" means the settlements which have been established inside the forests by the forest department of any State Government for forestry operations or which were converted into forest villages through the forest reservation process and includes forest settlement villages, fixed demand

holdings, all types of taungya settlements, by whatever name called, for such villages and includes lands for cultivation and other uses permitted by the Government.

(o) "other traditional forest dweller" means any member or community who has for at least three generations prior to the 13th day of December, 2005 primarily resided in and who depend on the forest or forests land for bona fide livelihood needs.

14. The forest rights of forest dwelling Scheduled Tribes and other traditional forest dwellers on all forest land are mentioned in Section 3 of the Act which are as follows:

(a) right to hold and live in the forest land under the individual or common occupation for habitation or for self-cultivation for livelihood by a member or members of a forest dwelling Scheduled Tribe or other traditional forest dwellers;

(b) community rights such as nistar, by whatever name called, including those used in erstwhile Princely States, Zamindari or such intermediary regimes;

(c) right of ownership, access to collect, use, and dispose of minor forest produce which has been traditionally collected within or outside village boundaries;

(d) other community rights of uses or entitlements such as fish and other products of water bodies, grazing (both settled or transhumant) and traditional seasonal resource access of nomadic or pastoralist communities;

(e) rights including community tenures of habitat and habitation for primitive tribal groups and pre-agricultural communities;

(f) rights in or over disputed lands under any nomenclature in any State where claims are disputed;

(g) rights for conversion of Pattas or leases or grants issued by any local authority or any State Government on forest lands to titles;

(h) rights of settlement and conversion of all forest villages, old habitation, unsurveyed villages and other villages in forests, whether recorded, notified or not into revenue villages;

(i) right to protect, regenerate or conserve or manage any community forest resource which they have been traditionally protecting and conserving for sustainable use;

(j) rights which are recognized under any State law or laws of any Autonomous District Council or Autonomous Regional Council or which are accepted as rights of tribals under any traditional or customary law of the concerned tribes of any State;

(k) right of access to biodiversity and community right to Intellectual property and traditional knowledge related to biodiversity and cultural diversity;

(l) any other traditional right customarily enjoyed by the forest dwelling Scheduled Tribes or other traditional forest dwellers, as the case may be, which are not mentioned in Clauses (a) to (k) but excluding the traditional right of hunting or trapping or extracting a part of the body of any species of wild animal;

(m) right to in situ rehabilitation including alternative land in cases where the Scheduled Tribes and other traditional forest dwellers have been illegally evicted or displaced from forest land of any description without receiving their legal entitlement to rehabilitation prior to the 13th day of December, 2005.

15. Sub-section 3(2) provide certain exception as regards use of forest land as contemplated under the Forest (Conservation) Act, 1980, for the purpose of setup schools, hospital, anganwadis, fair price shops, etc., Section 4 of the Act provided for recognition of and vesting of forest rights in forest dwelling Schedule Tribes and other traditional forest dwellers.

16. u/s 4(1) of the Act, the Central Government recognize and vest forest rights in forest dwelling Scheduled Tribes and other traditional forest dwellers notwithstanding anything contained in any other law for the time being in force, and subject to the provisions of this Act.

17. From a close scrutiny of the relevant provision of the Act, it transpires that in order to claim the forest rights as contained in Section 3 of the Act and for recognition of such rights as contained in Section 4 of the Act, a person must fall within the category of such person under the definition as contained in Section 2(c) and Section 2(o) of the Act. But in the averments made in this two writ petitions and the counter affidavits as well as other documents made available before me, do not disclose that the petitioners falls within the aforesaid category of persons as define u/s 2(c) and 2(o) of the Act.

18. The necessary conditions precedent for recognition of the rights under the Act as "forest dwellers" as contained in Section 3 of the Act not having been fulfilled by the petitioners, they could not satisfy then-claims as "forest dwelling Schedule Tribes" or "other traditional forest dweller" within the meaning of the Act. In such a situation, the recognition of their rights u/s 4 of the Act does not arise.

19. The petitioners being found encroachers of the forest land, actions of the authorities in taking necessary steps for their eviction from such forest land cannot be termed as illegal or without jurisdiction and accordingly no interference is called for against such action of the authority. No declaration under Sections 3 and 4 of the Act can be given in favour of the petitioners, on the basis of the proved facts of the case.

20. However, in view of the circumstances to which the petitioners are subjected, I would observe that it would be open for the State respondents to rehabilitate the petitioners in some other areas, other than forest land as per the prevailing policy of the State Government. Since the petitioners have been rendered

homeless, such consideration may be taken by the authority in an expeditious manner.

21. Both the writ petitions stand disposed of with the above order.

22. Interim order(s), if any passed earlier, stands vacated.

23. No costs.