

(2023) 01 GAU CK 0051

In the Gauhati High Court

Case No : Public Interest Litigation No. 65 Of 2021

Debabrata Saikia

APPELLANT

Vs

State Of Assam And 7 Ors

RESPONDENT

Date of Decision : 24-01-2023

Acts Referred:

Constitution Of India, 1950 — Article 14, 19, 21
Code Of Criminal Procedure, 1973 — Section 176, 190

Citation : (2023) 01 GAU CK 0051

Hon'ble Judges : Achintya Malla Bujor Barua, J; Robin Phukan, J

Bench : Division Bench

Advocate : Z Hussain

Final Decision : Disposed Of

Judgement

1. Heard Mr. S A Barbhuyan, learned counsel for the petitioner and Mr. J Handique, learned counsel for the respondents in the Revenue and Disaster Management Department, Government of Assam.

2. The petitioner Sri Deabrata Saikia in paragraph 2 of the public interest litigation (in short PIL) petition states that he has been a Member of the Legislative Assembly of Assam from No. 104 Nazira Legislative Assembly Constituency since the year 2011 and is also the Leader of the Opposition in the Assembly and that the petitioner has been espousing social and public causes and has also served as the President of the Youth for Social Welfare, which is a leading NGO in Assam working to create awareness on health, environment and social issues and helping those who are below the poverty line as well as PROBAAH, which is a grassroot level NGO assisting self-help groups in capacity building.

3. In this PIL petition, the petitioner is concerned with certain evictions in respect of the land bearing Dag No. 2 (Pt) and Dag No. 3 (Pt) of village Dhalpur No. 1 and village Dhalpur No. 3 in the Sipajhar Mouza of Sipajhar Revenue Circle in the

Darrang district.

4. Without going into various submissions made in the PIL petition as regards the entitlement of the persons who are affected by the evictions and are represented by the petitioner, we take note of the prayers made in this PIL petition, which are extracted as below:-

"1) to issue a writ of certiorari or a writ, order or direction of a similar nature, calling for the original records and quashing of the aforesaid Cabinet Decision or such other cabinet decision regarding setting up of agro farm/model project in Sipajhar, Assam;

2) to issue a writ of mandamus or a writ, order or direction of a similar nature to direct respondents to adhere to and grant compensation to project affected families in accordance with the National Rehabilitation and Resettlement Policy, 2007 (F No. 26011/4/2007-LRD) dated 31.10.2007 and State of Assam's Updated Resettlement Framework being followed by the Flood and River Erosion Management Agency of Assam(FREMAA) as well The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013;

3) to issue a writ of prohibition to restrain the respondents from taking any steps pursuant to the decision of Cabinet to set up agro farm in Sipajhar, Darrang, Assam including to evict any project affected persons/ families in Dholpur village in the Darrang district, Assam.

4) to direct respondents authorities to conduct meaningful consultation with the evicted persons and formulate schemes for their rehabilitation, resettlement and compensation in a time-bound manner and with reference to The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Rules 2015, and in consonance with the well-established principles of law laid down by the High Courts and Supreme Court,

5) to direct respondent authorities to consider application on behalf of the evicted persons for allotment and settlement of the said land in terms specified by the Assam Land and Revenue Regulation, 1886 and the Rules framed there under and land policies formulated time to time for allotment/ settlement of land to the landless and to exercise discretion judiciously and in good faith while considering such applications,

6) to direct respondents authorities to set up a Revenue Circle Level Committee for the Sipajhar Revenue Circle under the 2020 "Chief Minister's Special Scheme for Rehabilitation of Erosion Affected Families in Assam" and evaluate individual claims on behalf of the evicted persons under the said Scheme,

7) to direct respondent authorities to conduct a detailed Social Impact Assessment in terms provided by The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 read with The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Rules 2015, and ascertain, inter alia, number of

affected families, Impact on livelihood, settlements etc and thereafter submit the Social Impact Assessment report for consideration of this Hon'ble Court,

8) to direct Respondent No.6 to conduct a fair and independent investigation in a time bound manner, under the scrutiny of this Hon'ble Court, into the deaths of Maynal Haque and Sheikh Farid and injuries caused to several other persons and register a First Information Report in respect of prima facie commission of cognizable offences by the police officers, under the Indian Penal Code and applicable laws,

9) to direct Respondent No.6 to continually apprise this Hon'ble Court of the investigation undertaken in respect of commission of alleged offences,

10) to direct that a magisterial inquiry under Section 176 of the Cr. P.C is conducted in the deaths of Maynal Haque and Sheikh Farid and report therefore is sent to the Judicial Magistrate having jurisdiction over the Sipajhar area under Section 190 Cr.P.C.

11) to direct the respondents authorities to pay compensation to the families of the deceased persons for egregious violation of their fundamental rights under Articles 14, 19 and 21 of the Indian Constitution, by the respondent authorities

12) to direct respondent No.1 to conduct mandatory Social Impact Assessment and follow the principles of The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 and the settled principles of law, in letter and in spirit, in respect of evictions sought to be carried out in the State of Assam, and/or pass such further or other order/orders as Your Lordships may deem fit and proper in the interest of justice."

5. A reading of prayer No.1 and prayer No. 3 make it discernible that the petitioner intends to assail certain Cabinet decision of the Government of Assam regarding setting up of an agro farm/model project at Sipajhar in the Darrang district of Assam. Prayer No. 2 makes it discernible that in respect of those people who may be evicted pursuant to the aforesaid process, certain compensation be granted in accordance with the National Rehabilitation and Resettlement Policy, 2007 as well as the updated Resettlement Framework being followed by the Flood and River Erosion Management Agency of Assam (FREMAA). A part of the prayer No. 2 and the prayer No. 4 make it discernible that the petitioner also seeks for compensation under the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (in short Act of 2013) and Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Rules, 2015 (in short Rules of 2015). Prayer No. 5 seeks for a consideration of the application on behalf of the people who are evicted for allotment and settlement of land under the Assam Land and Revenue Regulation 1886 as well as the Land Policies formulated from time to time, whereas the prayer No. 6 again pertains to certain claims under the 2020 Chief Minister's special scheme for rehabilitation of erosion affected people of Assam.

6. After hearing the learned counsel for the parties, what is discernible is that approximately 700 families were evicted from their respective lands and that in respect of the land from which the evictions were made, there is also a Cabinet decision to set up an agro farm/model project in the Sipajhar area of Darrang district of Assam. After perusal of the PIL petition as well as hearing the learned counsel for the petitioner, no material nor any ground could be pointed out to enable the Court to arrive at any such conclusion so as to interfere with a Cabinet decision of the Government of Assam to set up an agro farm/model project at Sipajhar.

7. Circumstances under which an interference of a Cabinet decision can be made is circumscribed and it cannot be that a Cabinet decision would be interfered for an oblique purpose of seeking certain rehabilitation which may be required pursuant to any such eviction or displacement that may take place while implementing such Cabinet decision.

8. From such point of view, we look into the other prayers of the petitioner i.e. for payment of appropriate compensation under the Right to Fair Compensation and Transparency in land Acquisition, Rehabilitation and Resettlement Act, 2013 as well as the Right to Fair Compensation and Transparency in land Acquisition and Rehabilitation and Resettlement Rules, 2015.

9. We have taken note of a statement made by Mr. J Handique, learned counsel for the Revenue and Disaster Management Department of the Government of Assam from the records and information provided to him by the departmental officials that approximately about 700 families were affected in the eviction that had been carried forward pursuant to the aforesaid Cabinet decision that may have been taken. A further statement is made upon information being provided by the departmental officials that in the meantime about 600 families have already been resettled by giving alternative plots of land. What remains is that the balance of about approximately 100 families has not been provided with the adequate rehabilitation.

10. In this respect, Mr. J Handique, learned counsel for the Revenue and Disaster Management Department makes a statement that out of such families, some families may have other alternative land elsewhere, but were occupying land from which they were evicted and may have gone back to their original land or are presently not available before the revenue authorities for examining their claim.

11. As 600 families have already been rehabilitated out of the approximately 700 families who were evicted, we are of the view that no further consideration is required in this PIL petition other than in respect of those balance approximately 100 families who according to the learned counsel for the petitioner are yet to be rehabilitated, which is also an admitted position of the respondents in the Revenue and Disaster Management Department.

12. Here again, a further consideration would be whether such people had any

alternative land or they are landless people or whether actually they are in requirement of any rehabilitation by allotment of alternative land.

13. In the circumstance, we require such other families from the balance of approximately 100 families who are said to have not been rehabilitated to make their individual applications before the Deputy Commissioner, Darrang providing in detail all materials that may support their claim for allotment of any alternative land for the purpose of rehabilitation. We further provide that in the event any such application is made, the Deputy Commissioner shall pass individual reasoned orders within a period of six months from the date of receipt of such applications from the individual applicants. In doing so, the Deputy Commissioner shall also give the individual applicants an opportunity of hearing and also allow them to produce any relevant materials that they may intend to rely upon to substantiate their claim for allotment of land for the purpose of rehabilitation.

14. By requiring the Deputy Commissioner to pass individual reasoned orders on any such individual applications of the applicants, we clarify that we are not expressing any view that such applicants are entitled to allotment of any such land or that they are not entitled to any such allotment and it is for the Deputy Commissioner to pass its own reasoned orders on the individual facts and circumstance of each of the applications.

15. In view of the subsequent circumstance as indicated above, we are of the view that no further adjudication is required in the claim made in this PIL petition and accordingly the PIL petition stands closed.