

(2023) 01 GAU CK 0052

In the Gauhati High Court

Case No : Public Interest Litigation No. 69 Of 2021

Nirupama Borgohain And 11 Ors

APPELLANT

Vs

State Of Assam And 10 Ors

RESPONDENT

Date of Decision : 24-01-2023

Acts Referred:

Citation : (2023) 01 GAU CK 0052

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

Bench : Division Bench

Advocate : B C Das

Final Decision : Disposed Of

Judgement

1. Heard Mr. A.R. Sikdar, learned counsel for the petitioner. Also heard Mr. J Handique, learned counsel for the Revenue and Disaster Management Department, Government of Assam, representing the respondent No.1—9.

2. We have noticed that the respondent Nos.10 & 11 are officers under the Govt. of Assam and arrayed as respondents by name but in the absence of any specific allegation, which requires a further adjudication, we deem it appropriate that Mr. J. Handique would also represent the said two respondents.

3. In this writ petition, the petitioners by claiming to be conscious and responsible citizens and being well informed about certain forced evictions of vulnerable sections of the society by the State authorities at Village Dhalpur and being concerned by the sufferings caused by the State action, has instituted this Writ Petition on the following prayers:-

"Under the above facts and circumstances, it is therefore prayed that Your Lordships would be pleased to admit this petition, call for the records, issue a rule calling upon the respondents to show cause as to why a writ in the nature of mandamus/certiorari shall not be issued directing/commanding the respondents-

1. to provide free ration, shelter, drinking water, sanitation facilities, medical care

immediately without failure to the displaced evictees of char village Dhalpur 1, 2 & 3 under Sipajhar Revenue Circle of Darrang district and such arrangement shall continue for a period of six months and thereby ensure the same as basic amenities for survival of the evictees as human being and to arrange/start the schooling facilities to the children of said evicted families,

2. to frame a Standard Operating Procedure (SOP) monitored by this Hon'ble Court to be followed strictly in carrying out future eviction, if any, within the State of Assam incorporating a pre condition for rehabilitation of the evictees and to provide the basic amenities like food, shelter, drinking water, sanitation and medical care to the evictees/displaced persons following eviction with a further condition that on failure of such arrangement as pre condition the respondent state authority would be debarred from carrying out any eviction.

3. to set aside and quash the cabinet decision so far as it relates to setting up of Agro Farm/model project in Sipajhar, Darrang.

4. to grant compensation to the project affected families in accordance with the National Rehabilitation and Re settlement Policy, 2007 dated 31.10.2007 updated by the state of Assam being followed by the Flood/River Erosion Management Agency of Assam (FREMAAA) as well as Right to Fair Compensation and Transparency in land Acquisition, Rehabilitation and Re Settlement Act, 2013.

5. to formulate a scheme of Rehabilitation, Resettlement and compensation to the evicted families in a time bound manner as per provision of Right to Fair Compensation and Transparency in Land Acquisition Rehabilitation and Resettlement Rules, 2015 and in consonance with other settled law of the land,

6. to consider for allotment and settlement of any evicted person on the land where from he is evicted in terms of the provisions under Assam land and Revenue Regulation, 1886 and the rules framed there under,

7. to set up a Revenue Circle Level Committee for rehabilitation of erosion affected families in Assam and to evaluate the individual claims on behalf of the evicted person under said scheme,

8. to conduct a detailed Social Impact Assessment in terms of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 read with Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Rules, 2015.

9. to conduct a fair and independent investigation in a time bound manner, under the scrutiny of this Hon'ble Court in to the death of Mainul Hoque and Sheikh Farid and the injuries caused to other persons and register an FIR in respect of prima facie commission of offence by the responsible police officers and Administrative Officers to punish them in accordance with law.

10. to pay compensation of Rs.25,00,000 (twenty five lakhs) to the families of the deceased, and Rs.5,00,000/- (five lakhs) to each injured person in the

interest of justice.”

4. Reading of prayer 3 makes it discernable that the petitioners intend to assail certain Cabinet Decisions taken by the Govt. of Assam for setting up an Agro Farm/Model Project at Sipajhar in Darrang District, whereas the other prayers are for seeking rehabilitation of the affected people, although certain claims have made that they are erosion affected people. It is not understood that if the people were evicted from certain Government lands for some other purpose, how they can be erosion affected people.

5. From such point of view, the approach of the petitioners appears to be misconcieved. But the petitioners also seek compensation of Rs.25 lacs each, to the families of the deceased and Rs.5 lacs each, to the injured persons, with reference to certain incidents of police firing that took place, while the eviction process was being carried out.

6. Upon hearing the learned counsel for the parties and upon perusal of the materials available on record, it is apparent that in this PIL petition also, the petitioners are seeking for interfering with the Cabinet Decision taken by the Govt. of Assam to set up an Agro Farm/Model Project at Sipajhar in Darrang District. The petitioners also seek for rehabilitation of the affected people who may be evicted while implementing the such Cabinet Decision and further as there were certain incidents of police firing, where some people died and some others were injured, compensation are also sought for such people.

7. With regard to the prayer No.1 and 3 for interfering with a Cabinet Decision and the cause of action raised for rehabilitating the evicted people, it is noticed that the same issues were also raised in the PIL No.65/2021 (Debabrata Saikia vs. State of Assam), which had been given its final consideration by the order dated 24.01.2023, wherein, in paragraph Nos.6 to 13 thereof, it has been provided, as extracted:-

“6. After hearing the learned counsel for the parties, what is discernible is that some 400 to 500 families were evicted from their respective lands and that in respect of the land from which the eviction 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 which may lead the Court to arrive at any such conclusion to interfere with a Cabinet decision of the Government of Assam to set up an agro farm/model project at Sipajhar.

7. Interference of a Cabinet decision is circumscribed and it cannot be that a Cabinet decision would be interfere 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. 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.

8. 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 had already been resettled by giving alternative plots of land. What remains is the balance of about approximately 100 families who had not been provided with the adequate rehabilitation of alternative land.

9. 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.

10. As 600 families had 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 and it is also an admitted position of the respondents in the Revenue and Disaster Management Department.

11. Here again, a further consideration would be whether such people had any alternative land or they are landless people or actually whether they are in requirement of any rehabilitation by allotment of alternative land.

12. 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.

13. 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 any 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.”

8. The same provision in paragraph Nos.7 & 8, in the order dated 24.01.2023, in PIL No.65/2021 (Debabrata Saikia vs. State of Assam), in respect of the cause of action assailing the Cabinet Decision would also be applicable in the present writ petition.

9. With regard to the cause of action raised for rehabilitating the evicted people, the provisions of para 8 to 13 order dated 24.01.2023, in PIL No.65/2021, would also be applicable in the present PIL petition and the respondents may act accordingly.

10. As regards the cause of action raised for compensation of Rs.25 lacs for each of the deceased and Rs.5 lacs for each the injured in the police firing, we have taken note of the order dated 24.01.2023 in the PIL (Suo Moto) No.6/2021 (XXX and 41 others vs. In Re-the State of Assam and 5 others), that an “One-man Inquiry Commission” has been appointed for the purpose. The respondent may act in the same terms, as the order dated 24.01.2023, in the PIL (Suo Moto) No.6/2021.

11. We have been informed that there is policy in place of the Govt. of Assam, in the Home Department for payment of compensation to the deceaseds and the injureds arising out of any incident of police firing, which is reflected in the Notification No.FEB.330/2014/1(B/S)-A, dated 6th December, 2014, of the Finance (Establishment-B) Department, Dispur, Guwahati.

12. As regards the claim for compensation, if the State Authorities have not paid the compensation as per the said notification, the affected families may make their application before the Deputy Commissioner, Darrang, who shall examine the matter and pass a reasoned order thereon.

13. With the above observation, the PIL stands closed.