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2026:GAU-AS:2362

**THE GAUHATI HIGH COURT**  
**(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)**

**Case No. : WP(C)/773/2016**

JUBARAJ THOUSEN and 2 ORS.  
S/O JOYBHANDRA THOUSEN

2: RAHUL THOUSEN  
S/O JOYBHANDRA THOUSEN

3: CHAN SINGH THOUSEN  
S/O LT. MUGDHAN THOUSEN  
ALL ARE R/O VILL. NABHANGA  
P.O. JUGIJAN  
P.S. HOJAI  
DIST- NAGAON  
ASSAM  
PIN-78243

VERSUS

THE STATE OF ASSAM AND 5 ORS  
REP. BY THE SECY., REVENUE and DISASTER MANAGEMENT DEPTT.,  
GOVT. OF ASSAM, DISPUR, GHY-6

2:THE CHAIRMAN  
ASSAM BOARD OF REVENUE  
P.O. PAN BAZAR  
GHY-1

3:THE DY. COMMISSIONER  
NAGAON  
P.O. and DIST- NAGAON  
ASSAM  
PIN-782001

4:THE ADDL. DY. COMMISSIONER R  
NAGAON

P.O. and DIST- NAGAON  
ASSAM  
PIN-782001

5:THE SUB-DIVISIONAL OFFICER CIVIL  
HOJAI  
SANKARDEV NAGAR  
P.O. HOJAI  
DIST- NAGAON  
ASSAM  
PIN-782435

6:THE CIRCLE OFFICER  
HOJAI REVENUE CIRCLE  
HOJAI  
P.O. HOJAI  
DIST- NAGAON  
ASSAM  
PIN-78243

**Advocate for the Petitioner** : MS R D KAKATI, MR.A ADHIKARY,MR.B KUMAR,MR.P SARMAH,MR.S K SINGHA,MS.D SHARMA

**Advocate for the Respondent** : , GA, ASSAM

**BEFORE**  
**HONOURABLE MR. JUSTICE ARUN DEV CHOUDHURY**

**ORDER**

**Date : 18-02-2026**

1. Heard Mr. B. Chakraborty, learned counsel for the petitioners. Also heard Mr. R Borpujari, learned counsel for the respondents.

2. The present writ petition questions the legality and validity of one undated eviction notice and eviction order issued in Encroachment Case No. 10-2013, Nagaon, under the signature of the Sub-Divisional Officer (C), Hojai, Sankardev

Nagar. Yet another challenge is the order dated 2-3-2015, passed by the Additional Deputy Commissioner (Revenue), Nagaon, Assam, in an appeal preferred by the petitioners against the aforesaid eviction notices, whereby the eviction notice/eviction orders (supra) were upheld.

3. The further challenge is an order dated 26-11-2015, passed by the Assam Board of Revenue in Case No.92 RA(N)/2015, preferred by the petitioners, whereby their challenge to the aforesaid notices/orders was negated.

4. The petitioners claimed to be landless indigenous tribal people of Assam belonging to economically and socially weaker sections and contends that their occupation for more than four decades over the plot of land was bona fide and that they are entitled to rehabilitation under the Land Policies of Assam, read with Settlement Rules framed under Assam Land and Revenue Regulation, 1886, hereinafter referred to as, Regulation 1886.

5. The fact that the land in question is Government land is not in dispute. It is also not in dispute that the petitioners have been paying "**Bedokholi Khajana.**"

6. The Revenue Authority initiated an encroachment case registered as Encroachment Case No.10/2013, and accordingly, a notice under section 18(2)/18(3) under Settlement Rules was issued. The contents of the notice reflect that the petitioners were directed to vacate the land under their possession by demolishing their house and

taking away the materials, etc., immediately, otherwise they will be evicted forcefully and will be fined.

7. Subsequently, a similar notice was issued with a schedule of the land. Being aggrieved, the petitioners preferred an appeal before the learned Additional Deputy Commissioner, (Revenue), Nagaon, Assam, which was also dismissed under an order dated 02-03-2015.

8. In the aforesaid order, based on a report of the Circle Officer, Hojai Revenue Circle, dated 25-6-2014, it was recorded that the subject land under Dag No.157 of Nabhanga Beel Kismat, Jugijan Mouza, measuring 20 Bighas, 03 Kathas, 07 Lecha, is a Wet land and that no proposal can be accepted for and on behalf of any individual or organization.

9. The petitioners challenged the aforesaid order before the Assam Board of Revenue in R.A Case No.92(N)/2015.

10. The learned Board of Revenue under its order dated 26-11-2015, passed by the Chairman, Assam Board of Revenue in Case No.92 RA(N)/2015, dismissed the petition on the ground that the petitioner is admittedly an encroacher and has no title over the land he is occupying and in such a situation, whatever reason he might have given, would not be in accordance with law in as much as, settlement cannot be claimed in a wet land. It was further observed that even if it is not a wet land, that does not confer any right on them.

11. A Division Bench of this court in **WP(C) 1057/2022 (Md. Salak Uddin Vs. State of Assam and 2 Ors.)**, while dealing with a reference as to whether a notice is required to be issued under Section 18(2) of the Settlement Rules framed under the Assam Land and Revenue Regulation, 1886, has made certain conclusion. Since such conclusions are important and a determinative factor in the adjudication of an eviction process, the same are set out in the following manner:

I. Rule 18(2) of the Settlement Rules clearly shows that the Deputy Commissioner or such authority duly empowered under Rule 3 of the Settlement Rules has to arrive at a subjective satisfaction that there is no bona fide claim of right.

II. Revenue authorities cannot be permitted to unilaterally decide as to whether an occupier/ possessor has a bona-fide claim of right involved inasmuch as it would require adjudication of both law and facts and without providing an opportunity to the occupier/possessor, such decision would be in violation of the principle of natural justice which in turn would violate Article 14,19 and 21 of the Constitution.

III. Though Rule 18 (2) is silent on the question of issuance of the notice, the use of the word 'forthwith' does not necessarily and absolutely exclude the prior application of the audi alteram partem Rule inasmuch as immediacy or urgency requiring swift action is a situational fact, having a direct nexus with

*the likelihood of adverse effect.*

IV. *Bona-fide claim, in case of Government khas land or waste land, may involve a bona-fide claim of right to claim settlement over the land on the basis of the settlement Rules and the extant land policy of the Government of Assam.*

V. *In respect of other lands i.e. lands previously reserved for roads or roadside lands, or for grazing of village cattle or for other public purposes or the occupant had entered into possession of land from which he has been excluded by general or special order, such lands are outside the purview of settlement. In this nature of lands, there may be various situations, where the question of disputes pertaining to the boundary or there may be disputes pertaining to reservations or de-reservation for grazing of village cattle or for that matter, there may be a dispute that the persons who have been granted the settlement in respect of a land even prior to being previously reserved for the purpose, may arise.*

VI. *Under such circumstances, issuance of a notice shall be necessary to form a subjective satisfaction, which is in consonance with the principles of natural justice inasmuch as the same will facilitate a just, fair and transparent procedure, which are facets of Article 14, 19 and 21 of the Constitution.*

12. In the backdrop of the aforesaid authoritative

pronouncement, on the face of an undated notice, such mandate is not satisfied inasmuch as no reasonable opportunity was given to the petitioners, except asking them to vacate the premises. Therefore, such notice is not sustainable under the law, more particularly, under the scheme of the Settlement Rules.

13. That being the position, all subsequent actions/decisions shall also fall.

14. The record reveals that neither the Additional Deputy Commissioner nor the learned Assam Board of Revenue considered this aspect of the matter, and, based on the report of the evicting authority, passed the impugned orders.

15. At this stage, Mr. Borpujari learned standing counsel, Revenue Department, submits that the matter may be relegated to the revenue authority for fresh consideration with a reasonable opportunity of hearing to the petitioners to establish their bona fide right to claim.

16. That being the position, the proposed eviction, based on the undated notice and order dated 02.03.2015, passed by the Addl. Deputy Commissioner (Revenue) and the order dated 26.11.2015, passed by the Assam Board of Revenue, stands set aside and quashed.

17. The petitioners shall not be evicted without following the due process of law as envisaged and as prescribed by the Division Bench in Salak Uddin (supra).

18. Accordingly, it is ordered that the Deputy Commissioner, Hojai Sankardev Nagar, shall issue a fresh notice to the petitioners by giving them 15 days' time from the date of receipt of such notice, affording them an opportunity to raise their bona fide claim within the aforesaid period of 15 days. Thereafter, based on the decision, necessary action may be taken within a period of another 15 days from the passing of such order after providing a copy of such reasoned order to the petitioners.

19. As regards the claim of the petitioners for settlement over government khas land/waste land under the extent land policy, it is the opinion of this court that, in the given facts of the present case, more particularly, the pleaded case of the petitioners that they are indigenous landless tribal people, it requires a balancing of two constitutional imperatives: on one hand, the State's obligation to lawfully utilize its land for public purposes, for larger societal benefit/ preservation of wet land, and on the other hand, the imperative to protect vulnerable citizens from arbitrary displacement as elucidated by the Apex Court in ***Olga Tellis Vs. Bombay Municipal Corporation*** reported in ***AIR 1986 SC 180*** and by Delhi High Court in ***Sudama Singh Vs. Government of Delhi & Another*** reported in ***2010 168 DLT 218***, recognizing the right to shelter as integral to the right to life under Article 21 of the Constitution of India, though the right to shelter may not be relatable to a specific area/location.

20. The welfare State, even when enforcing lawful eviction, must ensure that the actions are informed by fairness, dignity and consideration for rehabilitation, consistent with the Directive Principles of State Policy, particularly Articles 38 and 39 of the Constitution of India, which mandate equitable distribution of resources and protection of weaker sections.

21. It is true that the Assam Land Policy, 2019, incorporates the aforesaid constitutional mandates by expressly providing rehabilitation benefits to landless indigenous persons, subject to verification of their socio-economic status and the absence of alternative land holdings.

22. For the reasons recorded hereinabove, this Court therefore finds that while the eviction notices and reservation of land/ wet land is legally sustainable; the petitioners shall have a further right to claim the benefit of settlement, if they fulfill the conditions envisaged under the land policy/settlement rules.

23. The State, as a model welfare entity, cannot push citizens into homelessness without due determination of their rights and eligibility for rehabilitation under applicable policies. Application of such principles does not undermine public interest but strengthens social justice in the course of development.

24. Consequently, it is also provided that in the event the petitioners are found to be occupying lands which cannot

otherwise be settled, the District Commissioner, Hojai in consultation with the Principal Secretary to the Government of Assam, Revenue and Disaster Management Department and the Deputy Commissioner, Nagaon shall undertake an individualized assessment of rehabilitation claim of each of the petitioners strictly in terms of the Assam Land Policy, 2019 and Settlement Rules framed under Regulations, 1886. Such assessment shall involve proper verification of landlessness, indigenous status, socioeconomic vulnerability and absence of alternative accommodation.

25. The exercise shall be completed within 90 days. In the event an order is passed directing the eviction of the petitioners, the petitioners may not be evicted for this 90-day period.

26. The writ petition stands disposed of.

**JUDGE**

**Comparing Assistant**