

GAHC010120862016



2026:GAU-AS:5498

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

Case No. : WP(C)/6655/2016

SIDDEK ALI MAZUMDER and 51 ORS.
S/O. LT. ABDUL LATIF MAZUMDER, VILL. JAMALPUR FOREST, P.O.
JAMALPUR, P.S. DHOLAI, DIST. CACHAR, ASSAM.

VERSUS

THE STATE OF ASSAM AND 8 ORS
REP. BY THE COMM. and SECY. TO THE GOVT. OF ASSAM, ENVIRONMENT
AND FOREST DEPTT., DISPUR, GHY.-06.

B E F O R E

HON'BLE MR. JUSTICE SANJAY KUMAR MEDHI

Advocate for the petitioners : Shri A. R. Bhuyan, Advocate.
Advocates for the respondents : Shri D. Gogoi, SC, Forest Department.

Date on which judgment is reserved : NA

Date of pronouncement of judgment : **21.04.2026**

Whether the pronouncement is of the
operative part of the judgment? : NA

Whether the full judgment has been pronounced? : Yes

JUDGMENT AND ORDER

52 numbers of writ petitioners have joined together in filing this application under Article 226 of the Constitution of India with the following prayer:

“(A) direct / command the State Respondent more particularly the Respondent No. 1 to 7 to do the needful for conversion of Jamalpur Forest village under Hawaithang Forest Range to Revenue Village;

(B) direct / command the Respondent No. 1, to 7 to do the needful for settlement of land to the Petitioners in Jamalpur Forest Village;

(C) direct / command the Respondents No. 1 and 2 to dispose of the representation / memorandum dated 20/9/2016 within a specified period;

-AND-

Upon cause / causes being shown by the respondents and on perusal of records and hearing the parties be pleased to make the Rule absolute.

-AND-

In the interim pending final disposal of this writ petition Your Lordships may graciously be pleased to direct the Respondents not to evict the petitioners from their respective lands of Jamalpur Forest Village under Hawaithang Forest Range.

And your humble petitioner as in duty bound shall ever pray for your Lordship's kind act.”

2. As per the facts projected, the petitioners are residing in the Jamalpur Forest village under Hawaithang Forest Range in the district of Cachar since a long period of time. There have been approaches made by their predecessors for allotment of land in their names. The petitioners have earlier also approached this Court and there was a direction to consider their cases. However as no action has been taken for allotment of land by converting the same into revenue villages, the petitioners had approached this Court.

3. I have heard Shri A. R. Bhuyan, learned counsel for the petitioners. I have also heard Shri D. Gogoi, learned Standing Counsel, Forest Department.

4. Shri Bhuyan, the learned counsel has submitted that though the Forest Conservation Act had come into force in the year 1980, there have been moves to make allotment of land to the petitioners by converting the same into revenue villages. In this regard, the learned counsel has drawn the attention of this Court to various communications dated 12.06.1978, 20.02.1982 and 28.06.1995. In all those communications, detail reports were called for to initiate the process. He has also referred to an order dated 06.03.1987 passed by this Court in Civil Rule 258/1987 wherein there was an observation for disposal of the representation of the petitioners by the Forest authorities within a period of 15 days and within those 15 days, no move be taken for their eviction. Reliance has also been placed upon a communication dated 01.03.2003 issued by the Principal Chief Conservator of Forest, Assam to the Conservators of Forest on the aspect of regularization of encroachments pre 1980. He has submitted that the petitioners have been in possession of the respective lands prior to the aforesaid enactment of 1980 and therefore entitled to the allotment of land. The learned counsel has also relied upon the ***Schedule Tribes and other Traditional Forest Dwellers (Recognition of Forest Rights) Act 2006*** and has submitted that even under the said Act, the petitioners would be entitled to certain benefits.

5. *Per contra*, Shri Gogoi, the learned Standing Counsel, Forest Department has submitted that the Act of 2006 would not come into operation in this case, inasmuch as the petitioners do not fulfill the requirement of the said Act. By drawing the attention of this Court to the averments made in paragraph 4 of the writ petition, the learned Standing Counsel has submitted that the

petitioners came to reside in the aforesaid area sometime in the year 1974. He has submitted that admittedly the petitioners would not come within the definition of “*Forest Dwelling Scheduled Tribes*” as defined in Section 2 (c) and the only other definition which may come into operation is the definition of “*Other Traditional Forest Dweller*” as defined in Section 2 (o). However, the said definition also requires that a member of the community should be there for the last 3 generations and this condition is also not fulfilled by the petitioners.

6. As regards the various communications relied upon the petitioners, the learned counsel for the Department has submitted that inter - office communication would not vest any right. In this connection, he has placed reliance upon the case of ***Mahadeo & Ors Vs Smt. Sovan Devi & Ors*** reported in ***(2023) 10 SCC 807*** and the relevant observations made by the Hon’ble Supreme Court are extracted herein below:

“ It is well settled that inter-departmental communications are in the process of consideration for appropriate decision and cannot be relied upon as a basis to claim any right. This Court examined the said question in a judgment reported as Omkar Sinha v. Sahadat Khan, 2022 SCC OnLine SC 601. Reliance was placed on Bachhittar Singh v. State of Punjab, AIR 1963 SC 395 to hold that merely writing something on the file does not amount to an order. Before something amounts to an order of the State Government, two things are necessary. First, the order has to be expressed in the name of the Governor as required by clause (1) of Article 166 and second, it has to be communicated. As already indicated, no formal order modifying the decision of the Revenue Secretary was ever made. Until such an order is drawn up, the State Government cannot, in our opinion, be regarded as bound by what was stated in the file. The said judgment was followed in K.S.B. AH v. State of Andhra Pradesh, (2018) 11 SCC 277 and Dyna Technologies Pvt. Ltd. v. Crompton

Greaves Limited, (2019) 20 SCC 1.

7. With regard to the principal prayer for conversion of forest land into a revenue land, the learned Standing Counsel has submitted that the Act of 1980 lays down a clear restriction in Section 2 for such dereservation and one of the essential requirements is the prior approval of the Central Government. He has submitted that no such prior approval of the Central Government could be brought on record by the petitioners.

8. In this regard, he has also placed reliance upon the case of the Hon'ble Supreme Court in ***State of Karnataka and Ors. Vs Gandhi Jeevan Collective Farming Co-operative Society Limited*** reported in ***(2025) INSC 1461***. In the said case, the Hon'ble Supreme Court has referred to the case of ***Centre for Environmental Law, WWF – 1 vs Union of India*** reported in ***(2000) SCC Online SC 119*** wherein the observations that no dereservation would be affected is still operative. The strict interpretation of Section 2 of the Act of 1980 made in the said case in paragraphs 14 & 15 have also been pressed into service which reads as follows:

“14. This Court in a catena of decisions has passed numerous mandatory directions prohibiting de-reservation of forest. Granting permission to cultivate the forest land would essentially require clearing of forest and such a course of action is in the teeth of Section 2 of the Forest (Conservation) Act, 1980 which precludes de-reservation or use of forest land for non-forestry purposes without prior approval of the Central Government. The provision reads as follows:-

"2. Restriction on the de-reservation of forests or use of forest land for non-forest purpose.

(1) Notwithstanding anything contained in any other law for the time being in force in a State, no State Government or other authority shall make, except with the prior approval of the Central Government, any order directing-

(i) that any reserved forest (within the meaning of the expression "reserved forest" in any law for the time being in force in that State) or any portion thereof, shall cease to be reserved;

(ii) that any forest land or any portion thereof may be used for any non-forest purpose;

or (iii) that any forest land or any portion thereof may be assigned by way of lease or otherwise to to any authority, any private person corporation, agency or any other organisation, subject to such terms and conditions, as the Central Government may, by order, specify

(iv) that any forest land or any portion thereof may be cleared of trees which have grown naturally in that land or portion, for the purpose of using it for reafforestation.

Explanation. For the purposes of this section "non-forest purpose" means the breaking up or clearing of any forest land or portion thereof for-

(a) the cultivation of tea, coffee, spices, rubber, palms, oil-bearing plants, horticulture crops or medicinal plants;

(b) any purpose other than reafforestation, but does not include any work relating to or ancillary to conservation, development and management of forests and wildlife, such as-

(i) silvicultural operations including regeneration operations;

(ii) establishment of check-posts and infrastructure for the front line forest staff;

- (iii) establishment and maintenance of fire lines;*
- (iv) wireless communications;*
- (v) construction of fencing, boundary marks or pillars, bridges and culverts, check dams, waterholes, trenches and pipelines;*
- (vi) establishment of zoo and safaris referred to in the Wild Life (Protection) Act, 1972 (53 of 1972), owned by the Government or any authority, in forest areas other than protected areas;*
- (vii) eco-tourism facilities included in the Forest Working Plan or Wildlife Management Plan or Tiger Conservation Plan or Working Scheme of that area; and*
- (viii) any other like purposes, which the Central Government may, by order, specify.*

(2) The Central Government may, by order, specify the terms and conditions subject to which any survey, such as, reconnaissance, prospecting, investigation or exploration including seismic survey, shall not be treated as non-forest purpose."

(Emphasis supplied)

15. Thus, no permission could have been granted to perpetuate the illegality committed while granting the lease of the forest land to the respondent-Cooperative Society."

9. The rival submissions have been duly considered and the materials placed before this Court have been carefully perused.

10. As indicated above, the prayer in this writ petition is for conversion of the Jamalpur Forest Village under Hawaithang Forest Village to revenue village. Conversion of forest areas has to be dealt with in accordance with the **Forest Conservation Act, 1980** wherein there is a clear restriction on dereservation of forest or use of forest land for non forest purpose. For ready reference the

aforesaid provision is extracted herein below:

“2. Restriction on the dereservation of forests or use of forest land for non-forest purpose.— Notwithstanding anything contained in any other law for the time being in force in a State, no State Government or other authority shall make, except with the prior approval of the Central Government, any order directing— (i) that any reserved forest (within the meaning of the expression “reserved forest” in any law for the time being in force in that State) or any portion thereof, shall cease to be reserved: (ii) that any forest land or any portion thereof may be used for any non-forest purpose. Explanation.—For the purposes of this section “non-forest purpose” means the breaking up or clearing of any forest land or portion thereof for any purpose other than reafforestation.”

11. Amongst others, there is a requirement of a prior approval of the Central Government for such dereservation which is admittedly not there in the instant case. The learned counsel for the petitioners had relied upon a communication dated 01.03.2003 issued by the PCCF to various Conservators of Forest on the aspect of regularization of pre 1980 encroachments. However, a bare perusal of the said communication would reveal that such regularization is possible only when the State Government had taken a decision prior to the enactment of 1980. In the instant case, admittedly no such decision could be brought on record.

12. In any case, considering the objective of the Act of 1980, dereservation of forest land cannot be done in a routine manner and only in very rare and exceptional cases involving overwhelming public interest such dereservation may be possible.

13. As regard the communications of 1978, 1982 and 1995, this Court is of the view that such communication by which detail reports were called for

would not vest any right on the petitioners. In this connection, this Court finds force in the argument advanced by Shri Gogoi, the learned Standing Counsel who has relied upon the case of ***Mahadeo*** (supra) wherein the Hon'ble Supreme Court by relying upon the earlier cases including the case of Bachhittar Singh Vs State of Punjab reported in ***AIR 1963 SC 395*** has laid down that inter departmental communications would not vest any right.

14. As regards the Act of 2006, this Court is of the view that the said Act would not come to the aid of the petitioners as they would not fall within the definition of forest dwelling schedule tribal as per the Section 2 (c) or "other traditional forest dwellers" as per Section 2 (o).

15. In view of the aforesaid discussions, this Court is of the opinion that no relief can be granted to the petitioners in this case. Accordingly, the writ petition stands dismissed.

JUDGE

Comparing Assistant