

GAHC010136802019



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

Case No. : PIL 78/2012

1:PRODYUT KUMAR BORA
S/O SRI LAKSHMIKANTA BORA R/O TILIKIAM
BEZGAON P.S. PULIBOR
DIST. JORHAT
ASSAM.

VERSUS

1:THE STATE OF ASSAM AND 8 ORS
REP. HEREIN BY THE CHIEF SECRETARY TO THE GOVT. OF ASSAM
SACHIVALAYA
DISPUR
GUWAHATI- 781006.

2:THE SECRETARY TO THE GOVT. OF ASSAM
SACHIVALAYA
DISPUR
GUWAHATI- 781006.

3:THE SECRETARY TO THE GOVT. OF ASSAM
WELFARE OF PLAINS TRIBES AND BACKWARD CLASS DEPT.
SACHIVALAYA
DISPUR
GUWAHATI- 781006.

4:THE DEPUTY COMMISSIONER
KAMRUP METRO.

5:THE DEPUTY COMMISSIONER
KAMRUP
NORTH GUWAHATI.

6:THE DEPUTY COMMISSIONER

DHEMAJI
DIST. DHEMAJI.

7:THE DEPUTY COMMISSIONER
TINSUKIA
DIST. TINSUKIA.

8:THE DEPUTY COMMISSIONER
GOALPARA
DIST. GOALPARA.

9:THE DEPUTY COMMISSIONER
MORIGAON
DIST. MORIGAON.

10:MARKUSH BASUMATARY
S/O- LT. RAJENDRA BASUMATARY
R/O VILL.- SOUTH GANDABIL
V.C.D.C. AMGURI
P.S.- AMGURI
DIST.- CHIRANG
BTAD
ASSAM.

11:THE B.T.C.
REP. BY THE PRINCIPAL SECY.
B.T.C.
KOKRAJHAR
DIST.- KOKRAJHAR, ASSAM.

12:THE PRINCIPAL SECY.
B.T.C.
KOKRAJHAR
ASSAM.

Counsel for petitioner	:	Mr. S Borthakur
Counsel for respondent Nos.1, 3 to 9	:	Mr. TC Chutia, Additional Senior Govt. Advocate
Counsel for respondent No.2	:	Mr. D Saikia, Senior Standing Counsel, Revenue Department Ms. N Bordoloi
Counsel for respondent Nos.11 & 12	:	Ms. B Bhuyan, Standing Counsel, BTC

**BEFORE
HON'BLE THE CHIEF JUSTICE MR. AJAI LAMBA
HON'BLE MR. JUSTICE ACHINTYA MALLA BUJOR BARUA**

09-12-2019

(Ajai Lamba, C.J.)

Mr. Prodyut Kumar Bora has preferred this petition in purported public interest with the plea that tribal belts and blocks in the State of Assam were created in the year 1948 by the Government of Assam. The said decision was taken to protect the interest of the tribal people, backward classes (including traditional community of the State).

It has been projected before the Court that the tribal belts and blocks were created to protect land ownership of people belonging to tribal and backward classes and to ensure that encroachment does not take place by outsiders.

2. Learned counsel for the petitioner has impressed on the Court that in case encroachments are made on such areas, the sanctity of tribal area would be violated.

It has been projected that over the years encroachment of land by outsiders has been allowed to continue unabated despite provisions of law contained in Chapter X of Assam Land and Revenue Regulations (as amended) 1886 (for short 'Regulations of 1886'). It has been projected that the Government however, is not making any serious attempts in stopping further alienation of land of the tribal/indigenous people, hence this petition.

4. Affidavit of Ms. Gitanjali Bhattacharyya, Joint Secretary to the Govt. of Assam, Revenue and Disaster Management Department posted in Dispur, Guwahati-6, sworn on 13.11.2019 is available on record. In paragraphs 12 and 13 of the affidavit the following has been said.

"12. That the answering deponent likes to state that as a measure to protect the land rights of the indigenous people of Assam, the Government of Assam has constituted a committee on 06.02.2017 under the Chairmanship of Shri H.S Brahma, IAS, (Retd.). The Committee has submitted report on 30.12.2019 and suggested measures for the protection of the land rights of indigenous people of Assam. Covering all the aspects regarding the allotment/settlement of land, a new Land Policy has been approved

which was approved by the Cabinet on 21.10.2019, however this new Policy awaits gazette Notification.

Some of the clauses under the New Land Policy, 2019 on the protection of the land rights of the Tribal people in the protected Belts and Blocks are stated below;

(i) 17.1 The implementation of the provisions of the Chapter X of the Assam Land and Revenue Regulation, 1886 in respect of land belonging to protected classes shall be ensured.

(ii) 17.2 Deputy Commissioners shall take utmost care in case of according permission for transfer of land within protected Belts/Blocks. They should see that no non-eligible person get permission of acquiring land within Protected Belts and Blocks. All provisions of Chapter X of Assam Land and Revenue Regulation, 1886 shall be followed scrupulously including removal of non-eligible person from Protected Belt and Block area.

(iii) 17.3 for proper implementation of the provision of the Chapter X of Assam Land and Revenue Regulation, 1886 the services of the officials which were created and posted by the Government for that purpose to look after the land would be invariably used for specific purpose.

(iv) 17.4 Further, purchasing of land in protected belt/block by a non-protected person in the name of protected class under any partnership and keeping the land under his occupation and if it appears to be a benami one, it shall be strictly prohibited. In such cases, appropriate procedure as defined by law shall be resorted to evict the unauthorized occupier. Further, endeavor shall also be made to check any attempt to possess land in protected belt and block by ineligible person by executing Power of Attorney.

In case of transfer of land to registered co-operative society/farms/company etc., Deputy Commissioners will ensure that all the members including office bearers of such society/farm etc are from the

protected classes of person notified by the Government.

However, government Departments/ Institutions/ Organizations/ Corporations/ Company and other Government Bodies may be allotted land for public purpose.

(v) 17.5 Deputy Commissioners shall not accord permission for land transfer in protected belts and blocks in contravention of provisions of Chapter X of the Assam Land and Revenue Regulation, 1886.

Provided henceforth, Deputy Commissioners, shall not accord permission for land transfer in the protected belt/block falling within Kamrup(M) and Kamrup District without prior approval from the Government.

13. That the answering deponent also begs to state that in compliance to the directions of the Hon'ble Gauhati High Court, Status Report of the Tribal Belts and Blocks of Assam as on 30.09.2019 has been called from the Deputy Commissioners of the Districts having Tribal Belts and Blocks alongwith Principal Secretary, Bodoland Territorial Council (BTC), Kokrajhar with a specific format from the Revenue and Disaster Management (Settlement) Department, Dispur and the reports received from the districts, a compiled report on the Status of land in Tribal Belts and Blocks of Assam as on 30.09.2019 (except BTC) has been prepared and furnished and annexed with this instant affidavit in opposition whereas status report of the Tribal Belts and Blocks in BTC has been received from the Secretary, Bodoland Territorial Council (BTC) is also been enclosed herewith."

5. We find that in context of pleadings in paragraph 13, documents have been placed on record as Annexures-F, G and H. The said documents are extracted hereinbelow for ready reference;

STATUS OF LAND IN THE TRIBAL BELTS AND BLOCKS OF ASSAM AS ON 30.9.2019

Sl. No.	Name of the Districts	Name of the Tribal Belts & Blocks	Area of A.P. and P.P. land	Area of Govt. land		Total Area	Area of Encroachment of Govt. land by		No. of persons and area of encroachment by Non-protected class in Patta land		No. of persons and area of Govt. land made free from encroachment		No. of persons and area of Patta land made free from encroachment by non-eligible person as per provisions of Chapter X		Remarks
				PGR/VGR	Others		Protected Classes	Non-Protected Classes	No.	Area	No.	Area	No.	Area	
	I	II	III	IV	V	VI	VII	VIII	IX	X	XI	XII	XIII	XIV	XV
1.	Bongaigaon	Bijni Tribal Block	A.P.=332B-4K-16Ls P.P.=1138B-4K-2Ls	PGR=80 8B-3K-19Ls VGR=28 3B-4 K-10Ls	1298B-4K-2Ls	3010B-4K-8Ls	145B-4K-10Ls	677B-3K-17Ls	2725	1476B-2K-18Ls	176	251B-3K-12Ls	NIL	NIL	
2.	Darrang	Pakoribari Tribal Block	A.P.=101B-4K-13Ls P.P.=116 B-4 K-18Ls	NIL	291B-3K-12Ls	510 B-2K-13Ls	NIL	NIL	NIL	NIL	NIL	NIL	NIL	NIL	The area is completely eroded by river Jia Dhansiri.

	I	II	III	IV	V	VI	VII	VIII	IX	X	XI	XII	XIII	XIV	XV
3.	Dhemaji	Murkong Selek Tribal Belt	A.P.=36116B-0K-0Ls P.P.=33517B-0K-0Ls	2185B-0K-0Ls	271031B (Wet land, Char Chapon, Govt. Khas Land, Govt. Reserved Land)	830526 B	103839 B	7611 B	NIL	NIL	57	11 Bigha	NIL	NIL	
4.	Goalpara	Bordamal Tribal block	A.P.=1290B-0K-9Ls P.P.=5236 B-0K-12Ls	NIL	12620B-2K-11Ls	19146B-3K-12Ls	ST=4648 B-0K-0Ls	43B-4K-10Ls by 72 no.s of families	NIL	NIL	NIL	NIL	NIL	NIL	NIL
		Hatigram Tribal Block	A.P.=1274B-4K-13Ls P.P.=8907 B-1K-6Ls	NIL	30857B-2K-9Ls	41039B-3K-8Ls	ST=8207 B-4K-19Ls	NIL							
		Khardang Tribal Block	24140B-0K-14Ls	312B-0K-10Ls	51387B-0K-13Ls	75839B-1K-17Ls	NIL	NIL							
5.	Kamrup	South Kamrup Tribal Belt	23932B-0K-1.5Ls	11139B-2K-13Ls	48111B-4K-10.5Ls	552536B-0K-1.5Ls	42143B-1K-11Ls	165B-4K-18Ls	NIL	NIL	949 4	25980B-4K-16Ls	NIL	NIL	
6.	Kamrup (M)	South Kamrup Tribal Belt	124536 B-0K-13.5 Ls	3554 B-0K-17Ls	74081 B-3K-10.5 Ls	202172 B-0K-1 Ls	12605B-1K-13Ls	4087 B-0K-5Ls	1019	816B-1K-15Ls	182	324B-1K-12Ls	5	27B-0K-0Ls	

	I	II	III	IV	V	VI	VII	VIII	IX	X	XI	XII	XIII	XIV	XV
7.	Lakhimpur	North Lakhimpur sub Mountain Tribal Belt	A.P.=69977B-1K-16Ls P.P.=211067B-2K-7Ls	PGR=62 37B-0K-5Ls VGR=64 25B-0 K-1Ls	179391B-2K-18Ls	473098B-2K-7Ls	74755B-3K-12Ls	32956B-1K-8Ls	NIL	NIL	94	139B-0K-15Ls	NIL	NIL	
		Ranganadi Tribal Block Lohit Suti Tribal Block North Lakhimpur River Rani Tribal Block Subansiri Tribal Block Charikoria Tribal Block Dikrang Tribal Block	A.P.=20931B-0K-3Ls P.P.=46936B-4K-19Ls	PGR=13 59B-1K-11Ls VGR=74 179B-0 K-7Ls	107732B-3K-3Ls	251139B-0K-3Ls	57581B-3K-1Ls	7035B-1K-8Ls			465	5704B-0K-2Ls			

	I	II	III	IV	V	VI	VII	VIII	IX	X	XI	XII	XIII	XIV	XV
8.	Morigaon	Tetelia Tribal Block	24508B-1K-03Ls	4786B-2K-1L	12668B-0K-6Ls	41962B-3K-10Ls	13399B-4K-4Ls	489B-4K-3Ls	93	42B-2K-0Ls	20	12B-2K-10Ls	NIL	NIL	
		Ghagua Tribal Block	19071B-1K-05Ls	750B-1K-17Ls	7274B-4K-10Ls	26996B-2K-12Ls	3768B-3K-6Ls	413B-2K-12Ls	NIL	NIL	NIL	NIL	NIL	NIL	
		Palahguri Tribal Block	6635B-3K-1Ls	1011B-0K-10Ls	7721B-2K-10Ls	15368B-1K-1Ls	1806B-4K-6Ls	1454B-1K-6Ls	25	72B-1K-0Ls	NIL	NIL	NIL	NIL	
		Bagariguri Tribal Block	793B-1K-1Ls	NIL	645B-0K-9Ls	1438B-1K-10Ls	200B-0K-0Ls	73B-2K-19Ls	NIL	NIL	NIL	NIL	NIL	NIL	
		Gobha Tribal Block	19662B-3K-6Ls	2823B-4K-12Ls	6223B-1K-06Ls	30650B-3K-12Ls	2271B-2K-7Ls	39B-2K-09Ls	237	58B-4K-91Ls	NIL	NIL	NIL	NIL	
		Bahakajari Tribal Block	1316B-4K-4Ls	NIL	1656B-1K-08Ls	2991B-1K-03Ls	927B-1K-10Ls	371B-0K-3Ls	335	202B-0K-01Ls	NIL	NIL	NIL	NIL	
		Baranga Pathar Tribal Block	5127B-1K-17Ls	601B-1K-05Ls	8749B-0K-16Ls	14477B-3K-18Ls	380B-2K-09Ls	2959B-3K-11Ls	NIL	NIL	NIL	NIL	NIL	NIL	
		Jamadari Tribal Block	4082B-1K-4Ls	126B-3K-15Ls	4263B-3K-10Ls	6797B-2K-5Ls	2825B-2K-8Ls	NIL	NIL	NIL	NIL	NIL	NIL	NIL	

	I	II	III	IV	V	VI	VII	VIII	IX	X	XI	XII	XIII	XIV	XV
9.	Nagaon	Bagariguri Tribal Block	17982B-1K-10Ls	595B-2K-4Ls	5303B-4K-8Ls	23881B-3K-2Ls	1727B-1K-11Ls	94B-4K-15Ls	NIL	NIL	NIL	NIL	NIL	NIL	
		Amsoi Tribal Block	12236B-1K-10Ls	NIL	13461B-0K-18Ls	25697B-2K-8Ls	1030B-3K-18Ls	NIL	NIL		4	18B-1K-5Ls			
		Batabari Tribal Block	7585B-4K-17Ls	784B-2K-16Ls	660B-3K-11Ls	9031B-1K-4Ls	420B-1K-10Ls	219B-0K-12Ls	NIL		NIL	NIL			
		Bor Kachari Tribal Block	19123B-1K-17Ls	673B-2K-1Ls	3294B-0K-17Ls	23090B-4K-15Ls	987B-3K-1Ls	NIL	NIL		NIL	NIL			
		Borpathar Tribal Block	4260B-3K-5Ls	PGR=NIL VGR=40B	12729B-3K-6Ls	17030B-1K-11Ls	9361B-0K-4Ls	1493B-2K-12Ls	NIL		NIL	NIL			
		Amguri Chang Tribal Block	863B-3K-14Ls	NIL	906B-1K-9Ls	1770B-0K-3Ls	403B-2K-13Ls	NIL	NIL		NIL	NIL			
		Phulaguri Chang Tribal Block	812B-4K-3Ls	NIL	2010B-1K-15Ls	2823B-0K-18Ls	1239B-0K-8Ls	NIL	NIL		NIL	NIL			

	I	II	III	IV	V	VI	VII	VIII	IX	X	XI	XII	XIII	XIV	XV
10.	Sonitpur	Chariduar Belt & Block	A.P.=2102 B-1K-2Ls P.P.=23066 B-2K-0Ls	195B-1K-0Ls	7441B-4K-1Ls	32805B-3K-3Ls	5340B-1K-7 Ls	2101 B-2K-14Ls	4770	5603B-2K-1Ls	1	12B-0K-0Ls	NIL	NIL	
11.	Tinsukia	Tirap Tribal Belt	33846B-3K-17Ls	211B-4K-10Ls	256341B-1K-13Ls	290400B-0K-0 Ls	45304B-2K-12Ls	21095 4B-4k-1Ls	1420	3046B-1K-0Ls	23	184B-2K-1Ls	NIL	NIL	
		Abor Michimi Pahar	17918B-4K-1Ls	488B-2K-7Ls	48378B-4K-15Ls	667508B-1K-3Ls	6976B-3K-16Ls	12625 B-2K-10Ls	NIL	NIL	NIL	NIL	NIL		
		Sadiya Tribal Belt	28784B-2K-14Ls	3151B-4K-16Ls	186678B-1K-7Ls	590480B-0K-0Ls	74589B-0K-13Ls	11208 9B-0k-13Ls	NIL	NIL	37	15B-2K-0Ls	NIL		
			Grand Total=859334B-2K-14Ls	Grand Total=12 2720B-3K-7Ls	Grand Total=13 63211B-2K-8Ls	Grand Total=42742 21B-0K-5Ls	Grand Total=47 6887B-1K-9Ls	Grand Total=2080 90B-4K-6Ls	Grand Total=1 0634	Grand Total=1 1318B-0K-18Ls	Grand Total= 105 53	Grand Total=3 2653B-3K-12Ls	Grand Total =5	Grand Total= 27B-0K-0Ls	

Encroachers of Protected and Non- Protected families under BTAD.

Sl. No.	Name of District	Name of Tribal Belt & Block	Total No. of Encroachers	Area of Encroachment			Total No. of Encroachers (Protected)	Area of Encroachment			Total No. of Encroachers (Non-Protected)	Area of Encroachment			Remarks
				B	K	L		B	K	L		B	K	L	
1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16
1	Kokrajhar	Balaghat Nayekgaon Tribal Block, Parbat-Jowar (Parbatjhora) Tribal Belt, Sidli Tribal Belt, Santal Colony Block, Dotma Tribal Belt, Ripu Tribal Belt, Bijni Tribal Block, Gobardhana Tribal Block,	8240	21806	3	17	6855	18770	1	13	1385	3036	2	4	
2	Chirang	Bajegaon Tribal Block, Kharija Bijni Tribal Block, Chapaguri Tribal Belt, Tamulpur Tribal Belt, Baksa Tribal Belt, Kalaigaon Tribal Belt, Tetli Bhaguria Tribal Block, Kocharipara Tribal Block, Bhuyakhat Tribal Block, Tezial Tribal Block, Dolgaon Tribal Block,	4628	20909	2	3	2511	15501	4	1	2117	5407	3	2	
3	Baksa		23266	91361	0	17	13426	56941	1	12	9180	31010	0	15	Institution-660 Nos., 3409B-3K-10Ls
4	Udalguri		65589	255627	3	12	60864	240283	2	4	4725	15344	1	8	
Grand Total: -			101723	389705	0	9	83656	331496	4	10	17407	54798	2	9	Institution-660 Nos., 3409B-3K-10Ls

Name of Tribal Belts and Blocks with area under BTC.

Sl No.	Name of Tribal Belt & Blocks	Area of Land	Remarks
1.	Balaghat Nayekgaon Tribal Block	78777 Bighas	
2.	Parbat Jowar (Parbatjhora) Tribal Belt	323187 "	
3.	Sidli Tribal Belt	602837 "	
4.	Santal Colony Block	57930 "	
5.	Dotma Tribal Belt	38185 "	
6.	Ripu Tribal Belt	160644 "	
7.	Bijni Tribal Block	235759 "	
8.	Gobordhana Tribal Block	38348 "	
9.	Bajegaon Tribal Block	6528 "	
10.	Kharija Bijni Tribal Block	34932 "	
11.	Chapaguri Tribal Belt	163578 "	
12.	Tamulpur Tribal Belt	444538 "	
13.	Baksa Tribal Belt	333982 "	
14.	Kalaigaon Tribal Belt	1199409 "	
15.	Tetell Bhanguria Tribal Block	10117 "	
16.	Kocharipara Tribal Block	9656 "	
17.	Bhuyakhat Tribal Block	9299 "	
18.	Tezial Tribal Blcok	8867 "	
19.	Dolgaon Tribal Block	38299 "	
Total :-		37,94,872 Bighas	

6. On going through the above extracted portion from the affidavit filed by Joint Secretary concerned and the accompanying documents, it becomes evident that the State of Assam has taken measures to protect land rights of indigenous people of Assam. So much so a new land policy has been prepared which was approved by the Cabinet on 21.10.2019. Sri Saikia learned senior counsel appearing for the respondent State assisted by Ms. N Bordoloi has informed the Court that the concerned department has already notified the policy vide the Notification dated 30.11.2019.

Consequently, it has been decided interalia that-(i) the provisions of Chapter X of Regulations of 1886 are required to be implemented.

(ii) Deputy Commissioners are required to take utmost care while according permission for transfer of land within the protected belts/blocks. The Deputy Commissioners have been enjoined with the duty that no non-eligible person gets permission to acquire land within the protected belts and blocks.

Other related directions have also been issued.

7. In paragraph 13 above extracted, it has been stated as a matter of fact that in deference to directions of the Court status report was called for from Deputy Commissioners of the districts having tribal belts and blocks. The related authorities have furnished information in regard to various areas indicated in Annexures-F, G and H hereinabove in which there is unauthorised encroachment.

8. The Court appreciates that the necessary exercise to identify illegal encroachment over tribal area/land has been carried out.

The needful having been done, this Court directs the concerned Deputy Commissioner and other related officers to strictly implement in letter and spirit the provisions of Chapter X of the Regulations of 1886. Consequently, the areas in illegal occupation of non-tribals and other persons who are not eligible to hold possession of land be evicted after following due process of law.

9. We find that Deputy Commissioners of Bongaigaon, Kamrup (Metro), Morigaon, Sonitpur and Tinsukia have been given the responsibility to do the needful, under the policy adopted by the State of Assam. In such circumstances, we hereby direct the Deputy

Commissioners of the abovementioned districts to take necessary action as required by law against the encroachers and file their personal affidavits verifying the action taken in regard to removing illegal encroachment from the tribal area.

10. Likewise we direct the Principal Secretary of Bodoland Territorial Council area namely, Kokrajhar, Chirang, Baksa and Udalguri to file his personal affidavit with regard to action taken for removal of illegal encroachment from the said areas.

11. Let the affidavits be filed in the Registry of this Court on or before 3.2.2020.

12. List on **5.2.2020**.

13. Let a copy of this order be forwarded to Chief Secretary of State of Assam for onward transmission to concerned officers named above for immediate compliance.

It is made clear that in case appropriate steps are not taken to give effect to this order the Court would consider imposing costs, to be recovered from salary of the concerned officers who are found responsible in causing delay in process of this Court.

JUDGE

CHIEF JUSTICE

9.12.2019

Comparing Assistant