



GAHC010183892019



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

**Case No. : WP(C)/5559/2019**

SAHIDUL ISLAM AND 7 ORS.  
S/O SAHIDUR RAHMAN, R/O VILL. LALOTAPU, P.O. PANPUR, DIST.  
SONITPUR, ASSAM

VERSUS

THE STATE OF ASSAM AND 4 ORS.  
SECRETARY TO THE GOVT. OF ASSAM, REVENUE DEPTT. DISPUR,  
GUWAHATI-6

2:THE DEPUTY COMMISSIONER  
SONITPUR  
DIST. SONITPUR  
ASSAM  
TEZPUR

3:THE CIRCLE OFFICER  
NADUAR REVENUE CIRCLE  
SOOTEA  
DIST. SONITPUR  
ASSAM  
PIN-782124

4:THE PRESIDENT  
NADUAR ANCHALIK PANCHAYAT  
NADUAR  
DIST. SONITPUR  
ASSAM  
PIN-782124

5:THE PRESIDENT  
DAKHIN CHILABANDHA GAON PANCHAYAT



SONITPUR  
DIST. SONITPUR  
ASSAM  
PIN-78212

**Advocate for the Petitioner** : MR. N BORAH, MR. H MAZUMDER

**Advocate for the Respondent** : GA, ASSAM, MR. P SUNDI, SC. REVENUE

Linked Case : WP(C)/5673/2019

HABIBULLAH  
S/O- ABDUL JALIL  
R/O- VILL- LALTAPU  
P.O. PANPUR  
DIST- SONITPUR  
ASSAM

VERSUS

THE STATE OF ASSAM AND 4 ORS.  
REP. BY THE SECY. TO THE GOVT. OF ASSAM  
REVENUE DEPTT.  
DISPUR  
GHY-6

2:THE DY. COMMISSIONER  
SONITPUR  
DIST- SONITPUR  
ASSAM  
TEZPUR

3:THE CIRCLE OFFICER  
NADUAR REVENUE CIRCLE  
SOOTEA  
DIST- SONITPUR  
ASSAM

4:THE PRESIDENT  
NADUAR ANCHALIK PANCHAYAT  
NADUAR  
DIST- SONITPUR



ASSAM

PIN-

5:THE PRESIDENT  
DAKHIN CHILABANDHA GAON PANCHAYAT  
SONITPUR  
DIST- SONITPUR  
ASSAM

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Advocate for : MR. N BORAH  
Advocate for : GA  
ASSAM appearing for THE STATE OF ASSAM AND 4 ORS.

Linked Case : WP(C)/5670/2019

FAKAR UDDIN  
S/O- KHALILUR RAHMAN  
R/O- VILL- LALTAPU  
P.O. PANPUR

DIST- SONITPUR  
ASSAM

VERSUS

THE STATE OF ASSAM AND 4 ORS.  
REP. BY THE SECY. TO THE GOVT. OF ASSAM  
REVENUE DEPTT.  
DISPUR  
GHY-6

2:THE DY. COMMISSIONER  
SONITPUR  
DIST- SONITPUR  
ASSAM  
TEZPUR

3:THE CIRCLE OFFICER  
NADUAR REVENUE CIRCLE  
SOOTEA  
DIST- SONITPUR  
ASSAM

4:THE PRESIDENT



NADUAR ANCHALIK PANCHAYAT  
NADUAR  
DIST- SONITPUR  
ASSAM

PIN-

5:THE PRESIDENT  
DAKHIN CHILABANDHA GAON PANCHAYAT  
SONITPUR  
DIST- SONITPUR  
ASSAM

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Advocate for : MR. N BORAH  
Advocate for : GA  
ASSAM appearing for THE STATE OF ASSAM AND 4 ORS.

Linked Case : WP(C)/5677/2019

SAIFUL ISLAM  
S/O- ABDUL KADIR  
R/O- VILL- DIGHALICHAPORI  
P.O- JAMUGURI  
DIST- SONITPUR  
ASSAM

VERSUS

THE STATE OF ASSAM AND 4 ORS  
REP. BY THE SECRETARY TO THE GOVT OF ASSAM  
REVENUE DEPTT  
DISPUR  
GUWAHATI- 06

2:THE DEPUTY COMMISSIONER  
SONITPUR  
DIST- SONITPUR  
ASSAM  
TEZPUR

3:THE CIRCLE OFFICER  
NADUAR REVENUE CIRCLE  
SOOTEA  
DIST- SONITPUR  
ASSAM



4:THE PRESIDENT  
NADUAR ANCHALIK PANCHAYAT  
NADUAR  
DIST- SONITPUR  
ASSAM

5:THE PRESIDENT  
DAKHIN CHILABANDHA GAON PANCHAYAT  
SONITPUR  
DIST- SONITPUR  
ASSAM  
PIN-

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Advocate for : MR. N BORAH  
Advocate for : MR. H MAZUMDER appearing for THE STATE OF ASSAM AND 4  
ORS

Linked Case : WP(C)/5668/2019

ABDUL RASHID @ RASHID ALI  
S/O- ALIMUDDIN  
R/O- VILL- DIGHALICHAPORI  
P.O. JAMUGURI  
DIST- SONITPUR  
ASSAM

VERSUS

THE STATE OF ASSAM AND 4 ORS.  
REP. BY THE SECY. TO THE GOVT. OF ASSAM  
REVENUE DEPTT.  
DISPUR  
GHY-6

2:THE DY. COMMISSIONER  
SONITPUR  
DIST- SONITPUR  
ASSAM  
TEZPUR

3:THE CIRCLE OFFICER  
NADUAR REVENUE CIRCLE  
SOOTEA  
DIST- SONITPUR



ASSAM

4:THE PRESIDENT  
NADUAR ANCHALIK PANCHAYAT  
NADUAR  
DIST- SONITPUR  
ASSAM

PIN-

5:THE PRESIDENT  
DAKHIN CHILABANDHA GAON PANCHAYAT  
SONITPUR  
DIST- SONITPUR  
ASSAM

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Advocate for : MR. N BORAH  
Advocate for : GA  
ASSAM appearing for THE STATE OF ASSAM AND 4 ORS.

Linked Case : WP(C)/5680/2019

HANIF ALI  
S/O- LATE ABDUL KARIM  
R/O- VILL-DIGHALICHAPORI  
P.O- JAMUGURI  
DIST- SONITPUR  
ASSAM

VERSUS

THE STATE OF ASSAM AND 4 ORS  
REP. BY THE SECRETARY TO THE GOVT OF ASSAM  
REVENUE DEPTT  
DISPUR  
GHY- 6

2:THE DEPUTY COMMISSIONER  
SONITPUR  
DIST- SONITPUR  
ASSAM  
TEZPUR

3:THE CIRCLE OFFICER  
NADUAR REVENUE CIRCLE



SOOTEA  
DIST- SONITPUR  
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4:THE PRESIDENT  
NADUAR ANCHALIK PANCHAYAT  
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DIST- SONITPUR  
ASSAM  
PIN-

5:THE PRESIDENT  
DAKHIN CHILABANDHA GAON PANCHAYAT  
SONITPUR  
DIST- SONITPUR  
ASSAM  
PIN-

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Advocate for : MR. N BORAH  
Advocate for : GA  
ASSAM appearing for THE STATE OF ASSAM AND 4 ORS

Linked Case : WP(C)/5674/2019

FAIZUL ISLAM  
S/O- ABDUL HASAN  
R/O- VILL- LALTAPU  
P.O- PANPUR  
DIST- SONITPUR  
ASSAM

VERSUS

THE STATE OF ASSAM AND 4 ORS  
REP. BY THE SECRETARY TO THE GOVT OF ASSAM  
REVENUE DEPTT  
DISPUR  
GUWAHATI- 06

2:THE DEPUTY COMMISSIONER  
SONITPUR  
DIST- SONITPUR  
ASSAM  
TEZPUR



3:THE CIRCLE OFFICER  
NADUAR REVENUE CIRCLE  
SOOTEA  
DIST- SONITPUR  
ASSAM

4:THE PRESIDENT  
NADUAR ANCHALIK PANCHAYAT  
NADUAR  
DIST- SONITPUR  
ASSAM

5:THE PRESIDENT  
DAKHIN CHILABANDHA GAON PANCHAYAT  
SONITPUR  
DIST- SONITPUR  
ASSAM  
PIN-

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Advocate for : MR. N BORAH  
Advocate for : GA  
ASSAM appearing for THE STATE OF ASSAM AND 4 ORS

Linked Case : WP(C)/5666/2019

ABDUL SAHID @ SAHID ALI  
S/O ALI MUDDIN  
R/O VILL. DIGHALICHAPORI  
P.O. JAMUGURI  
DIST. SONITPUR  
ASSAM

VERSUS

THE STATE OF ASSAM AND 4 ORS.  
REP. BY THE SECRETARY TO THE GOVT. OF ASSAM  
REVENUE DEPTT. DISPUR  
GUWAHATI-6

2:THE DEPUTY COMMISSIONER  
SONITPUR  
DIST. SONITPUR  
ASSAM  
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3:THE CIRCLE OFFICER  
NADUAR REVENUE CIRCLE  
SOOTEA  
DIST. SONITPUR  
ASSAM

4:THE PRESIDENT  
NADUAR ANCHALIK PANCHYAT  
NADUAR  
DIST.SONITPUR  
ASSAM

5:THE PRESIDENT  
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SONITPUR  
DIST. SONITPUR  
ASSAM

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Advocate for : MR. N. BORAH  
Advocate for : GA  
ASSAM appearing for THE STATE OF ASSAM AND 4 ORS.

**BEFORE**

**HON'BLE MR JUSTICE ARUN DEV CHOUDHURY**

For the Petitioner : Mr. N Borah, Advocate.  
For the Respondents : Mr. H Sarma, GA  
Ms. P Mahanta, SC, Revenue & Disaster Management  
Department.  
Date of Hearing : 26.07.2024  
Date of Order : 26.07.2024

**JUDGMENT AND ORDER(ORAL)**

1. Heard Mr. N Borah, learned counsel for the petitioners. Also heard Mr. H Sarma, learned counsel representing the Deputy Commissioner, Sonitpur district and Circle Officer, Na-Duar Revenue Circle and Ms. P Mahanta, learned standing counsel for the Revenue and Disaster Management Department. None appears



for the P&RD Department.

2. These batch of writ petitions are taken up together for final disposal as the petitioners have approached this court assailing a notice of eviction dated 26.07.2019 issued by the Circle Officer, Na-Duar Revenue Circle, whereby the petitioners are sought to be evicted from their business premises.

3. The case of the petitioners is that the petitioners are shop owners and occupying shops within the area of Amdara Bhairabi Weekly Market, which is being run and settled under Na-Duar Anchalik Panchayat. It is the further case of the petitioners that in the notice issued by the respondent Circle Officer, there is no description of the Government land upon which the shops of the petitioners are allegedly standing. Therefore, without specifying the land in question, the notice could not have been issued.

4. The learned counsel for the petitioners further contends that they are having bona-fide claim over their shops as they are running their businesses under the Na-Duar Anchalik Panchayat as per law. It is their further contentions that in view of the aforesaid facts that market is under the authority of Na-Duar Anchalik Panchayat, the Circle Officer, Na-Duar Revenue Circle shall have no jurisdiction to issue a notice under Rule 18(2) of the Settlement Rule framed under the Assam Land and Revenue Regulation, 1886 and therefore, the learned counsel for the petitioners prays that the impugned notice be set aside and quashed.

5. Per contra, Mr. H Sarma, learned counsel referring to the affidavit-in-opposition filed by the respondent No. 2 i.e. Assistant Commissioner, Tezpur submits that the petitioners are illegal encroacher of Government khas land and the Revenue Circle Officer is within its jurisdiction and competence to evict such encroachers under the provision of Rule 18(2) of the Settlement Rules of the Assam Land and Revenue Regulation, 1886.

6. I have given anxious consideration to the submissions made by the



learned counsel for the parties. From the pleadings of the parties, it is seen that the petitioners claim to be shop owners and running their businesses from a market under Na-Duar Anchalik Panchayat. The President of the Anchalik Panchayat, who is made party respondent has not filed any affidavit affirming such contention of the petitioners. In absence of such affirmation, this court in exercise of its writ jurisdiction cannot conclude that the petitioners are shop owners under Anchalik Panchayat and the said land is under authority of the concerned Anchalik Panchayat. At the same time, the Revenue Circle Officer has taken a stand that the land is a khas land, however, admittedly the notice of eviction issued against the petitioners do not have any description of the purported khas Government land, which the petitioners are allegedly occupied. Therefore, in the aforesaid context, this court also cannot uphold the assertion made by the Circle Officer.

7. 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 having importance and determinative factor in adjudication of an eviction process, the same are curved out in the following manner:

- I. Rule 18(2) of the Settlement Rules clearly shows that Deputy Commissioner or such authority duly empowered under Rule 3 of the Settlement Rule 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, 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, but use of the word 'forthwith' does not necessarily and absolutely exclude the prior application of *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 affect.

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 settlement Rules and extant land policy of the Government of Assam. 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, 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.

V. 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 same will facilitate a just, fair and transparent procedure, which are facets of Article 14,19 and 21 of the Constitution.

8. In the aforesaid settle proposition of law, let this court consider the factum of the present case. In the case in hand, the petitioners have claimed a bona-fide right to continue possession over their shops for the reason that the



shops are being run under Anchalik Panchayat. At the same time, the notice is silent as regards the nature of the land, which is also not permissible under Rule 18 (2) of the Settlement Rules inasmuch as an assertion is required to be made whether the land is khas land, Government khas land or reserved for any grazing ground or for reserved for any roadside land etc. as emphasised under Rule 18 (2) of the Settlement Rule.

9. That being the position, in the considered opinion of this court the impugned notices issued to the petitioners are not even sustainable under the scheme of Rule 18 (2) of the Settlement Rules. Accordingly, same are set aside.

10. However, this order shall not restrain the revenue authorities including the revenue circle officer to issue a notice of eviction under the Settlement Rules, however, the decision to evict the petitioners if any shall be made in terms of the principle laid down in the case of ***Md. Salak Uddin (supra)***. It is further provided that as the petitioners have claimed to be the shop owners under the Anchalik Panchayat, in the event eviction of the petitioners are sought, the Anchalik Panchayat also be heard.

11. Accordingly, the writ petitions stand disposed of in the manner determined hereinabove. Parties to bear their own costs.

**JUDGE**

**Comparing Assistant**