

**IN THE GAUHATI HIGH COURT
(THE HIGH COURT OF ASSAM, NAGALAND, MEGHALAYA, MANIPUR, TRIPURA, MIZORAM
AND ARUNACHAL PRADESH)**

ITANAGAR BENCH

WP(C) NO. 152(AP)2009

1. Sri Bibharan Chakma, S/o Kadhamba Sen Chakma
2. Sri Vijay Dewan, S/o Sri Madan Dhan Chakma,
3. Sri Taruni Sen Chakma, S/o Late Basu Dev Chakma
4. Sri Kalobashi Chakma, S/o Late Ganda Raj Chakma
5. Sri Shantimay Chakma, S/o Late Ganda Raj Chakma
6. Sri Babul Chakma, S/o Sri Punyo Kumar Chakma
7. Sri Gyanatosh Chakma, S/o Late Modusudan Chakma
8. Sri Mangal Chan Chakma, S/o Sri Battosya Chakma
9. Sri Suk Bilash Chakma, S/o Kinaramj Chakma
10. Sri Dharna Jyoti Chakma, S/o Sri pradip Kumar Chakma
11. Sri Surendra Chakma, S/o Sri Nilo Kumar Chakma
12. Sri Indra Joy Chakma, S/o Sri Bires Moni Chakma
13. Sri Ganja Chakma, S/o Sri Gyana Lal Chakma
14. Sri Maheshwar Chakma, S/o Late Lal Chandra Chakma
15. Sri Ganja Chakma, S/o Biro Dhan Chakma
16. Sri Sneha Kumar Chakma, S/o Late Kala Chand Chakma
17. Sri Hagoi Chakma, S/o Sri Gyan Lal Chakma

18. Sri Kala Dhan Chakma, S/o Late Bijuram Chakma
19. Sri Hemanta Chakma, S/o Sri Krishna sen Chakma
20. Sri Sanjib Chakma, S/o Sri Maya Lal Chakma
21. Sri kripa Dhan Chakma, S/o Maya Dhan Chakma
22. Sri Shukko Chakma, S/o Sri Ranjan Chakma
23. Sri Megha Nath Chakma, S/o Sri Mangal Kumar Chakma
24. Sri Prathiba Ranjan Chakma, S/o Sri Shanti Moy Chakma
25. Sri Rajha Sindu Chakma, S/o Sri Bijuram Chakma
26. Sri Subahu Chakma, S/o Sri Bijuram Chakma
27. Sri Ashok Kumar Chakma, S/o Sri Chigonoopti Chakma
28. Sri Bosti Kumar Chakma, S/o Sri Kabiraj Chakma
29. Sri Kubha Laksha Chakma, S/o Late Roshikya Chakma
30. Sri Netai Chakma, S/o Guno Sindu Chakma
31. Smti Deepa Chakma, D/o Sri Guno Sindu Chakma
32. Sri Amar Kanti Chakma, S/o Sri Lal Kumar Chakma
33. Sri Bharat Bikash Chakma, S/o Late Kirod Mohan Chakma
34. Sri Natun Kumar Chakma, S/o Agor Chandra Chakma
35. Sri Jagadishwar Chakma. S/o Sri Prabhat Chandra Chakma.
36. Sri Gyana Kusum Chakma. S/o Sri Motilal Chakma.
37. Sri Subhash Kusem Chakma. S/o Sri Motilal Chakma.
38. Sri Anil Bikash Chakma. S/o Sri Nolen Chandra Chakma.

39. Sri Mohan Bikash Chakma. S/o Sri Nolen Chandra Chakma.
40. Sri Chinton Chakma. S/o Sri Anil Kumar Chakma.
41. Sri Parimol Chakma. S/o Late. Baneshwar Chakma.
42. Sri Dipangkar Chakma. S/o Sri Gyanalal Chakma.
43. Sri Bijoy Chakma. S/o Sri Rukhya Chand Chakma.
44. Sri Rathul Chakma. S/o Sri Sueha Kumar Chakma.
45. Sri Shanti Moy Chakma. S/o Late Allya Chakma.
46. Sri Umesh Kumar Chakma. S/o Sri Kripa Ranjan Chakma.
47. Miss Seema Dewan. D/o Sri Rangalal Dewan.
48. Sri Rathijeet Dewan, S/o Sri Rangalal Dewan.
49. Sri Dipangkar Chakma. S/o Sri Bhubaneswar Chakma.
50. Sri Santi Moni Chakma. S/o Sri Suddho Dhan Chakma.
51. Sri Kanju Chakma. S/o Sri Prabhat Chandra Chakma.
52. Sri Sunil Kumar Chakma, Sri Judha Ram Chakma
53. Sri Bhubaneshwar Chakma, S/o Late Manchand Chakma
54. Sri Mridul Chakma, S/o Sri Bhongha Sudaj Chakma
55. Sri Muroti Mohan Chakma, S/o Late Jayanta Kumar Chakma
56. Sri Tarun Chakma, S/o Sri Punyojoy Chakma
57. Sri Ratna Vijay Chakma, S/o Samrajya Chakma
58. Sri Subhash Chandra Chakma, S/o Late Rangamoa Chakma

59. Sri Sukhamoy Chakma, S/o Sri Ananda Chakma
60. Sri Nagar Chand Chakma, S/o Late Nishi Kumar Chakma
61. Sri Nilo Kumar Chakma, S/o Sri Joy Chandra Chakma
62. Sri Ananda Sur Chakma, S/o Late Subakanata Chakma
63. Sri Brahamalal Chakma, S/o Late Gyanendra Mohan Chakma
64. Sri Prasanjeet Dewan, S/o Rangelal Dewan
65. Sri Ridkamal Chakma, S/o Patharmoni Chakma
66. Sri Bidya Dhar Chakma, S/o Sri Kali Das Chakma
67. Sri Binoy Kusum Chakma, S/o Sri Bishnu Kumar Chakma
68. Sri Asha Chandra Chakma, S/o Sri Buddha Lila Chakma
69. Sri Mritungjoy Chakma, S/o Late Lakhi Kumar Chakma
70. Sri Sukro Kumar Chakma, S/o Sri Madan Dhan Chakma
71. Smti. Mausami Chakma, D/o Sri Purnodhan Chakma
72. Sri Pragya Sadak Chakma, S/o Sri Purno Dhan Chakma
73. Sri Rohini Kumar Chakma, S/o Sri Purno Dhan Chakma
74. Sri Pragyawati Chakma, S/o Sri Purno Dhan Chakma

All are residents of :

Village : Aroinyapur

P.O. and P.S. Diyun

District : Changlang

Arunachal Pradesh.

.....Petitioners

- Versus -

1. The State of Arunachal Pradesh through the Secretary to the Government of Arunachal Pradesh, Department of Forest, Itanagar, Arunachal Pradesh.
2. The Principal Chief Conservator of Forests, Government of Arunachal Pradesh, Itanagar.
3. The Divisional Forest Officer, Nampong Forest Division, Joyrampur, District : Changlang, Arunachal Pradesh.
4. The Range Officer, Diyun Forest Range, P.O. Diyun, District : Changlang, Arunachal Pradesh.
5. The Deputy Commissioner, Changlang, P.O. Changlang, District : Changlang, Arunachal Pradesh.
6. The Circle Officer, Diyun Circle, P.O. Diyun, District : Changlang, Arunachal Pradesh.

.....Respondents

Advocates for the petitioners :- Mr. S. C. Biswas
Mr. D. Choudhury
Ms. S. Devi
Mr. J. Hussain
Mr. Y. R. Singh
Mr. D. Panging
Mr. H. Lampu

Advocates for the respondents :- Addl. Advocate General, A.P.

B E F O R E
HON'BLE JUSTICE DR. (MRS.) I. SHAH

Date of hearing : **13.09.2012**

Date of Judgment & order : **18.09.2012**

JUDGMENT AND ORDER(CAV)

Heard Mr. H. Lampu, learned counsel appearing on behalf of the petitioners. Also heard Mr. Kardak Ete, learned Additional Advocate General, Arunachal Pradesh, assisted by Ms. Anima Mize, learned Government Advocate, for the State Respondents.

2. This writ petition under Article 226 of the Constitution of India has been filed by the petitioners praying to direct the respondent authorities to restrain/prohibit anyone encroaching and settling upon the land under the possession of the petitioners and their families and not to cause any disturbance or harassment of their peaceful possession.

3. The petitioners' case, in brief, is that, they were rehabilitated in the year 1967 by the Government of India under Chakma Settlement Scheme in the area known as Aranyapur from Sukhanala @ Somthang Nala to Diyun Nala @ Somtola Nala, under Diyun Anchal Forest Reserve, under Changlang District in the State of Arunachal Pradesh. Subsequently, by agreement dated 05.12.1984, the family of the petitioners were allowed to permanently settle there by the Forest Department, Government of Arunachal Pradesh, considering their service as Forest Workers for more than 10 years. The petitioners were also allowed to carry out the Jhum cultivation. The petitioners, who were allowed 5 acres of land each family, developed the land, constructed their dwelling houses and have been carrying out the cultivation. The petitioners had claimed that they are Chakma refugees who originally hailed from Chittagong Hill Tracts from then East Pakistan. Many Chakma families including the petitioners took shelter in the State of Assam and Tripura in the early part of 1960. They were allotted with some land in consultation with the local tribals. The Government of India had also sanctioned rehabilitation to the refugees. They have applied for citizenship under Citizenship Act and the Government of India, Ministry of Home, had already declared its intention of granting citizenship to the Chakmas of Arunachal Pradesh.

4. It is averred that during late 1980s, the relation between the citizens of Arunachal Pradesh and Chakma settlers deteriorated and Chakma settlers were subjected to harassment by the State Government. They were served with Eviction Notices dated 16.01.1991 and in response thereto, they submitted their representations to the Secretary to Home, Government of Arunachal Pradesh. Subsequently, the Eviction Notices were not acted upon. It is further alleged that the Circle Officer,-cum-Judicial Magistrate, Diyun, repeatedly pressurized the Chakmas of Aranyapur to vacate and give vacant possession of the land. The said Circle Officer also initiated proceedings under Section 25 (d) & (f) of Assam Forest Regulation and imposed fine on the petitioners. It is alleged that the present Circle Officer is also trying to evict the petitioners who are permanently residing in the Aranyapur Forest area. The Respondents No. 1-4, in their counter affidavit, have averred that no settlement was given to any of the Chakma refugees in the area Sukhanala to Madhukhanala as claimed by the petitioners. The said area falls within the boundary of Diyun

Reserve Forest, notified, vide Notification No. FOR.120/68 dated 28.04.1970. The petitioners are encroachers of the said Reserve Forest land and they deserve eviction as per the law. The engagement of the petitioners or their ancestors as labourers in the plantation activities carried out by the Forest Department of Arunachal Pradesh, does not confer them any legal right to claim the area of Reserve Forest land for their settlement. It is further averred that the Range Manager of then Diyun Forest Range was not empowered to enter into any agreement with the Chakma refugees. The Reserve Forest land which the petitioners have claimed, is required to be de-reserved in the first place and the Government have the power to declare a Reserve Forest or a portion thereof, to be ceased to be the Forest land. The land claimed by the petitioners has not been declared as ceased to be Reserve Forest land by any Notification issued by the Government. The area was never settled for rehabilitation of Chakma refugees.

5. It is submitted by the learned counsel for the petitioners that the Chakma settlers approached the Apex Court by way of a Writ Petition in the case of ***National Human Rights Commission -vs- State of Arunachal Pradesh & Ors.[WP(c) No. 720/1995]***, reported in ***AIR 1996 SC 1234***, the State of Arunachal Pradesh was directed to ensure that the life and property of each and every Chakma residing within the State of Arunachal Pradesh shall be protected and any attempt to forcibly evict or drive them out of the State by organized groups shall be repelled, that the Chakmas shall not be evicted from their homes and shall not be denied domestic life and comfort therein except in accordance with law, pending consideration of any application of any individual Chakma for granting of citizenship, the State of Arunachal Pradesh shall not evict or remove the concerned person from his occupation on the ground that he is not a citizen of India until the competent authority has taken a decision in that behalf. In the case of ***P. K. Chakma & Ors. -vs- State of Arunachal Pradesh & Ors.***, the Division Bench of this Court held that one has to remain alive to the guarantee which Article 21 of the Constitution of India gives to every person, whether he is a citizen or not, of not being deprived of his life or personal liberty except according to the procedure established by law. Even a refugee falls within the ambit of Article 21 of the Constitution of India and he cannot be deprived of his life and personal liberty except according to the procedure established by law. It was observed in Paragraph No. 21, as under :

"21. In the present case, there is no provision other than Regulation 72(c) empowering the State to eject an encroacher from reserve forest. Hence, in the context of the scheme of the Regulations, the power to eject an encroacher from forest reserve cannot be exercised by the State without making rules so that everyone, including the functionaries and officials of the Government, knows when, how and by whom, an encroacher would be evicted from reserve forest."

6. Section 21 of the Assam Forest Regulation, 1891, as adopted in the State of Arunachal Pradesh, is quoted, as under :

"21. No right of any description shall be acquired in or over a reserved forest, except by succession or under grant or contract in writing made by, or with the previous sanction, of the Government or some person in whom such right, or the power to create such right, was vested when the notification under Section 17 was published."

7. From the aforesaid provision, it appears that the State Government has the power to declare a Reserve Forest or a portion thereof, to be ceased to be Reserve Forest. The ejection of the encroachers from the Reserve Forest is to be in accordance with the Arunachal Pradesh Forest (Ejection of unauthorized persons), Rules. Regulation 72(c) and 73 of Assam Forest Regulation, 1891, which has been adopted by the State of Arunachal Pradesh empowers the State Government to make Rules to provide for ejection of any person who has encroached upon the Forest Reserve. All the Rules made by the Government shall be published in the Arunachal Pradesh Gazette. According to Regulation 73, the Rules framed under Regulation 72(c) would have the force of law only when it is published in the official Gazette of Arunachal Pradesh.

8. In view of the above, till any regulation or Rule is framed and published in the Arunachal Pradesh Gazette, the respondent authorities cannot evict or eject the petitioners even though they might be encroachers. However, the respondents are free to take action as may be permissible in law as per the procedure laid down in the Rules and Regulations.

9. With the above directions, this writ petition stands disposed of. There shall be, however, no order as to costs.

JUDGE

Bikash