

DISTRICT:DARRANG

IN THE GAUHATI HIGH COURT

(The High Court of Assam, Nagaland, Mizoram & Arunachal Pradesh.)

(CIVIL EXTRA-ORDINARY JURISDICTION)

W. P. (C) No. _____/2021

Category of Code :

Sub:

To,

The Hon'ble Mr. Justice Sudhanshu Dhulia MA, LL.B, the Hon'ble Chief Justice of the Hon'ble Gauhati High Court and His Lordship's other Companion Justices of the said Hon'ble Court.

IN THE MATTER OF:

An application under Article 226 of the Constitution of India for issue a writ in the nature Mandamus and/or any other appropriate writ, order or direction of the like nature.

AND-

IN THE MATTER OF:

Death of the petitioners' son/brother, Maynal Haque in police firing at Dhalpur No 3 (Gorukhuti) Darrang on 23.09.2021 during the eviction drive by government authorities.

-AND-

IN THE MATTER OF:

Use of excessive force by the police resulting in the death of Maynal Haque, which was not only avoidable but also was a reflection of police brutality and gross violation of the norms and standard of use of force by police.

-AND-

IN THE MATTER OF:

Irreparable loss and injury to the family members of the deceased/petitioners.

-AND-

IN THE MATTER OF:

Gross violations of the fundamental and legal rights of the petitioner.

-AND-

IN THE MATTER OF:

Violation of Article 21 of the Constitution of India.

-AND-

IN THE MATTER OF:

Gross violation of the provisions of Section 129,130 of the Cr.P.C.

-AND-

IN THE MATTER OF:

Gross violation of the provisions of the Assam Police Manual.

-AND-

IN THE MATTER OF:

Indiscriminate and excessive use of force and firearm at unarmed people assembled to peacefully protest against their eviction from their dwelling houses without any prior notice.

-AND-

IN THE MATTER OF:

1. Makbul Ali

Son of Abdul Monnaf

2. Ainuddin, aged about 23 years,

son of Mokbul Ali

.....Petitioner

-Versus-

1. The State of Assam represented by the
Commsiioner of Secretary, Home and
Political Affairs Department, Government of
Assam. Dispur Guwahati-6
2. The Deputy Commissioner, Darrang.
3. The Director General of Police, Assam,
Ulubari, Guwahati.
4. The Superintendent of Police, Darrang.

... Respondents

The petition of the humble Petitioners above named:

MOST RESPECTFULLY SHEWETH

1. That the petitioners are citizen of India and as such entitled to protections and privileges guaranteed under the Constitution of India and the laws and rules framed thereunder.

2. That the petitioner No 1 is the father of late Maynal Haque, who succumbed to Police firing on 23.09.2021 at Village No3 Dhalpur, (Gorukhuti), Darang. The petitioner No 2 is the brother of the deceased.

Voter ID Card of the deceased is annexed as
ANNEXURE-1

3. That the petitioners' family has been residing in the No 3 Dhalpur village since the last four decades and more.

4. That the petitioners' family is a victim of erosion by the mighty Brahmaputra and as result of which they had to settle in the 3 Dhalpur village and were peacefully earning their livelihood.

5. That the petitioners' deceased son/brother was a farmer. The deceased also has left behind his wife Mamataz Begum and three children Viz, Moksedul (Son) 13 years,

Manjura Begum (Daughter) 9year and Mokafas Ali (Son) 3 years.

6. That on the morning of 23.09.21 at about around 7 AM, the petitioners and their family members including the deceased could learn that at about 11.00 PM of the previous night, some of the villagers were served with notice of eviction from the No 3 Dhalpur area where the petitioners were residing since the last more than Four Decades. The petitioners however were not served with any notice.

7. That about 10 AM in the morning people from the District Administration along with a large force of police personnel came to the village/char area where the petitioners have been residing and asked the residents to vacate the area immediately.

8. That at point of time the residents of the area gathered in a peaceful manner and requested the respondent No 2 to grant them some time and also rehabilitate them in some other place before evicting them. The gathering was peaceful in nature.

9. That the residents of the village were all anxious and concerned about their fate as they were about to be rendered homeless unless they were provided some rehabilitation.

10. That the victim after the announcements of the eviction was made was very much disturbed and worried about the fate of the family. Accordingly, he had also gathered with the villagers and in a peaceful manner were lodging protest. Initially there were some assurances to look into the grievances of the villagers at the District Level but since the pre-condition was that the residents should vacate their houses, objections were raised seeking some time to vacate the area so that they could salvage their belongings, but the administration refused such breather and started forceful demolitions of the houses. In the process there was some excitement in the area and the police used Teargas cells and started firing in the air.

11. That as the melee started, the petitioners' son/brother in order to get out of the range of firing apparently in self-defense took up a stick in his hand to defend himself and started running. However, he was shot by a bullet from police personnel, on his chest and leg and he fell down. Even after he had fallen down, he was beaten up by at least a dozen policemen. Thereafter, a photographer, who was covering the incident started stomping over the body of the fallen victim,

as his body lay defenseless and perhaps gasping for the last breath.

12. That the killing of the petitioners' son/brother had gone viral in the social media as someone who had shot the video had posted the same in social media platforms.

13. That the police force which had accompanied the officials and staff from the district administration were armed but there was no arrangement of any other kind in the form water cannons, ambulance which normally are deployed when there is a possibility of resistance/violence. The petitioners' in this context humbly submits that the petitioners are not submitting that such violence was in the offing or for that matter the deceased was a part of any violence but these arrangements which are normally seen to be made were missing, to cope with any such eventuality. Since the matter related to rendering hundreds of the residents homeless, the atmosphere are naturally very tense and most of the people were anxious about their fate.

14. That the video which had gone viral is a testimony of the fact that the victim was seen running with a stick in his hand and there were about a dozen of policemen in the way, all armed. The manner in which the victim was holding the stick made it all evident that it was more of an assurance of self-

defense rather than a weapon of assault and there was no reason why the police personnel who were far more in number could not have overpowered him even assuming but admitting that there was a possibility of a hand-to-hand fight. The police had other means to overpower such a person, much less a bullet on chest of the man/victim.

15. That the manner in which the victim was killed, is not only an instance of excessive use force but in fact is an act of police brutality and cold-blooded murder in broad day light.

16. That the manner in which the entire matter was handled reflects gross violation of the provisions of the Code of Criminal Procedure, Assam Police Manual and the recognised international standards.

17. The Code of Criminal Procedure Chapter X on Maintenance of Public Order and Tranquility, in part A deals with the Unlawful assemblies.

Section 129 dealing with dispersal of assembly by use of civil force provides that the officer in charge of a police station can command an assembly to disperse and if such command is not heeded to, the police officer can disperse the crowd or if necessary, make arrest and confine persons in the assembly.

Section 130 deals with use of force using arms to disperse assembly. Sub-section 3 stipulates that a police officer while seeking to disperse any assembly shall use as little force, and do as little injury to person and property, as may be consistent with dispersing the assembly and arresting and detaining such persons.

18. That Section 99 of the Indian Penal Code provides that if there is no apprehension of death or grievous hurt, the right of private defence is not available to a public servant even if he is acting in good faith. It is further stipulated that the right of private defence in no case extends to the inflicting of more harm than it is necessary to inflict for the purpose of defence.

19. That the Ministry of Home Affairs (MHA) released a Code of Conduct for the Police in India in 1985. Clause 4 of the said Code reads as under:

"In securing the observance of law or in maintaining order, the police should as far as practicable, use the methods of persuasion, advice and warning. When the application of force becomes inevitable, only the irreducible minimum of force required in the circumstances should be used."

20. That the Assam Police manual also provides certain guidelines with regard to management of assemblies and processions:

Rule 47 (Part 1) of the Manual speaks about dispersals of processions.

Rule 49 provides- "when assemblies of the public are not permitted to carry weapons of offence, the police with their batons and lathis will be sufficiently equipped to be able to maintain and enforce order even against large crowds" The armed police should only be kept in reserve and only called out to disperse the crowd or to arrest them.

Rule 50 deals with the use of Firearms by the police on occasion of riots, providing that the Officers-in-charge of armed reserve and their subordinates should thoroughly understand the laws set forth in Chapter IX of the Cr. P C and Part III of the Manual regarding the use of firearms on the occasions of riots and the Superintendent of Police is required to assess and ensure such preparedness.

There is also the requirement of drills to be conducted frequently to ensure that every subordinate commander and constable knows the situations that they may expect and the expectations on them on such situations.

Rule 114 contained in the Part III of the Police manual stipulates that firing may not be commenced unless any overt act of violence has been committed and there is no other means left. The said Rule inter alia provides that the officer in command shall give orders for shooting to the forces under his

command if a member of the mob is aiming a gun at the Magistrate of Police party. It is further clarified that the firing must be aimed at legs, i.e. below the waist, the object being to incapacitate and not to kill.

21. That the UN Code of Conduct for Law Enforcement Officials, adopted in 1979 provides that law enforcement officials may use force only when strictly necessary and to the extent required for the performance of their duty.

22. That the model Rules on the Use of Force by the Police against Unlawful Crowds adopted by the Inspectors General of Police Conference, 1964 states that minimum necessary force should be used to achieve the desired object. Force should be regulated according to the circumstances of each case. The object of such use of force is to disperse the assembly and no punitive or repressive considerations should be operative while such force is being used.

23. The United Nations High Commissioner for Human Rights, in 2004, released a booklet titled "Human Rights Standards and Practice for the Police". The underlying principle laid down is that police officials must respect human rights and must not do any action in derogation of such rights. The topics covered include non-discrimination in law enforcement, abiding by human rights in investigations, arrests, proportionate use of force, and detention. It also speaks of

accountability for use of force and firearms, permissible circumstances for use of force and firearms, and so on.

24. The UN also adopted Basic Principles on the Use of Force and Firearms by Law Enforcement Officials in 1990 which asks governments to include the development of non-lethal incapacitating weapons for use in appropriate situations, with a view to increasingly restraining the application of means capable of causing death or injury to persons. Clause 4 of the said adoption states:

"Law enforcement officials, in carrying out their duty, shall, as far as possible, apply non-violent means before resorting to the use of force and firearms. They may use force and firearms only if other means remain ineffective or without any promise of achieving the intended result."

The other provisions include providing medical relief to the injured and exercising restraint in proportion to the seriousness of the offence and the legitimate objective to be achieved.

On use of firearms, it states that they should be used only in self-defence or defence of others against the imminent threat of death or serious injury. In handling even unlawful assemblies which are non-violent use of force is not considered practicable.

25. That the law is settled that even trespassers cannot be evicted from any land without following the due process of law, which was however violated by use of brute force of the state police machinery in a period when people are beleaguered by the pandemic.

26. That the victim's death was caused by an act of use of force in excess of what was required inasmuch as assuming but not admitting that the stick in the hand of the victim was meant to be used as a weapon, the firing of a bullet at the chest of the victim cannot be justified in any manner.

27. That even assuming but not admitting that some of the protesters turned violent, the killing of the victim in the manner in which it was done is violative of the norms established in law.

28. That the impugned actions resulting in the death of the victim amounts to violation of Article 21 of the Constitution of India. The manner in which the deceased was shot dead is a clear violation of the accepted norms and standard under the various laws and also the norms accepted under the international standards.

29. That settled law mandates that payment of compensation can be directed to be made by the state, public

authorities, in case of violation of the fundamental rights of a person, in a proceeding under Article 226 of the constitution of India. This Hon'ble Court has the jurisdiction to award compensation under the Public law in addition to remedy under private law. The Hon'ble Apex Court and various high courts have reiterated and reinforced the law that the remedy of compensation under Article 226 of the Constitution of India is available in case of violation of fundamental rights.

30. That there are a catena of judgments where the Hon'ble High Courts and the Apex Court have awarded compensation under public law in cases of police atrocities and violence and the state has been made liable to pay compensation to the victims/families of the victim.

A copy of the Judgment and order passed by the Hon'ble Apex Court in Anita Thakur V Govt of J & K & Ors is annexed as ANNEXURE-2

31. That the manner in which the victim was killed amounts to murder. Gross violation of the fundamental rights under Article 21 of the Constitution, violation of the provisions of the Criminal Procedure Code and the police manual and the evidence caught in the camera are incontrovertible.

32. That the petitioners have no other alternative and/ effective remedy and reliefs sought herein are just and adequate.

33. That the petitioners have not filed any other suit or petition in respect of the subject matter in the instant petition except as stated above.

34. That the documents annexed to the writ petition are true to the knowledge of the petitioners. The petitioner craves leave of this Hon'ble Court to produce other documents like the voter ID cards etc. of the petitioners and the video footage that was circulated in the social media, if directed.

35. That the writ petition is filed bonafide and for securing the ends of justice.

In the premise aforesaid Your Lordships may be pleased to admit this petition, call for the records, directing the respondents to show cause as to why the reliefs sought for shall not be granted and on such cause or causes being shown, upon hearing the parties and perusal of records may be pleased to grant the following reliefs:

I Direct the respondent authorities pay compensation to the petitioners/family of the

victim for the death of Maynal Ali, as this Hon'ble Court may deem fit and proper.

II. Pass such further or other order, as Your Lordships may deem fit and proper in the interest of justice and to grant complete relief to the petitioner.

AND

In the interim it may be directed that pendency of the writ petition may not be a bar to pay compensation to the petitioners/family of the victim.

And for this as in duty bound the petitioner shall ever pray.