

GAHC010018342023



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

Case No. : WP(C)/432/2023

SAHIDUL ALAM BARBHUIYA
PROPRIETOR OF M/S MOJO ENTERPRISE S/O NURUL ISLAM BARBHUIYA
R/O VILL. TARAPUR P.O. AND P.S. KALAIN PIN-788815 DIST. CACHAR
ASSAM

VERSUS

THE STATE OF ASSAM AND 8 ORS
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM
FOREST AND ENVIRONMENT DEPTT. DISPUR GUWAHATI-6

2:THE PRINCIPAL CHIEF CONSERVATR OF FOREST
ASSAM
REHABARI GUWAHATI-781008

3:THE CHIEF CONSERVATOR OF FORESTS
SOUTHERN ASSAM CIRCLE SILCHAR 1 CACHAR PIN-788001

4:THE DIVISIONAL FOREST OFFICER
KARIMGANJ DIVISION KARIMGANJ ASSAM PIN-788712

5:THE DEPUTY COMMISSIONER
CACHAR
SILCHAR

6:THE RANGE FOREST OFFICER
KALAIN RANGE CACHAR ASSAM PIN-788815

7:THE UNION OF INDIA
REP. BY THE SECRETARY TO THE GOVT. OF INDIA MINISTRY OF
ENVIRONMENT FOREST AND CLIMATE CHANGE NEW DELHI

8:THE POLLUTION CONTROL BOARD
ASSAM
REP. BY ITS CHAIRMAN HEAD OFFICE BAMUNIMAIDAM GUWAHATI-21

9:THE CHIEF INSPECTOR OF FACTORIES
BETKUCHI LOKHRA GUWAHATI-78104

Advocate for the Petitioner : MR. R P SARMAH

Advocate for the Respondent : SC, FOREST

BEFORE
HONOURABLE MR. JUSTICE MANISH CHOUDHURY

ORDER

Date : 24-02-2023

Heard Mr. R.P. Sarmah, learned Senior Counsel assisted by Mr. D. Doley, learned counsel for the petitioner; Mr. D. Gogoi, learned Standing Counsel, Forest and Environment Department for the respondent nos. 1, 2, 3, 4 & 6; Mr. N. Goswami, learned Junior Government Advocate, Assam for the respondent nos. 5 & 9; Mr. H. Gupta, learned Central Government Counsel for the respondent no. 7; and Mr. S. Baruah, learned Standing Counsel, Pollution Control Board [PCB], Assam for the respondent no. 8.

2. The case of the petitioner is that he is running a Stone Crusher Unit in the name and style of M/s Mojo Enterprise in Village – Kalaincherra Grant, Gumra, under Mahadevpur Gaon Panchayat, Katigorah Sub-Division, District – Cachar after obtaining all the necessary permissions from the concerned authorities. The consent to establish the Stone Crusher Unit was also granted by the respondent Pollution Control Board authorities.

3. The petitioner is aggrieved by a letter bearing no. KJ[T]/Stone

Crusher/Renewal/2023/8826-27 issued by the respondent no. 4 on 23.12.2022. By the said letter dated 23.12.2022, the respondent no. 4 has mentioned that the location of the Stone Crusher Unit, belonging to the petitioner, falls within the Eco-Sensitive Zone of Borail Wildlife Sanctuary and the Permit Committee in a meeting, held on 15.12.2022, did not consider the petitioner's prayer for renewal. By the said letter, the petitioner has been informed that the Permit Committee had asked the petitioner to shift his Stone Crusher Unit from the Eco-Sensitive Zone of Borail Wildlife Sanctuary and to submit a proposal for new permit as per guidelines.

4. The Government of India in the Ministry of Environment, Forest and Climate Change by a Notification dated 25.04.2022, published in the Gazette of India on 25.04.2022, has notified as under :-

“NOW, THEREFORE, in exercise of the powers conferred by sub-section [1], clauses [v] and [xiv] of sub-section [2] and sub-section [3] of section 3 of the Environment [Protection] Act, 1986 [29 of 1986] [hereafter in this notification referred to as the Environment Act] read with sub-rule [3] of rule 5 of the Environment [Protection] Rules, 1986, the Central Government hereby notifies an area to an extent varying from 0 [zero] to 3 kilometres around the boundary of Barail Wildlife Sanctuary, in Cachar District in the State of Assam as the Barail Wildlife Sanctuary Eco-sensitive Zone [hereafter in this notification referred to as the Eco-sensitive Zone] details of which are as under, namely:-

1. Extent and boundaries of the Eco-sensitive Zone. -[1] The Eco-sensitive Zone shall be to an extent of 0 [zero] to 3 kilometres around the boundary of Barail Wildlife Sanctuary and the area of the Eco-sensitive Zone is 596.311 square kilometres. The key justification for limiting the Eco-Sensitive Zone to zero extent from the protected area is due to interstate boundary with the State of Meghalaya in the western side of the protected area. Further, there is presence and prospecting of oil and natural gas in the immediate vicinity of the protected area boundary, in view of which a set of

measures for safe oil and natural gas exploration and drilling have been prescribed at the Annexure V.

[2] The boundary description of Barail Wildlife Sanctuary and its Eco-sensitive Zone is appended in Annexure-I.

[3] The maps of the Barail Wildlife Sanctuary demarcating the Eco-sensitive Zone along with boundary details and latitudes and longitudes are appended as Annexure-IIA and Annexure-IIB.

[4] Lists of geo-coordinates of the boundary of Barail Wildlife Sanctuary and the Eco-sensitive Zone are given in Table A and Table B of Annexure-III.

[5] The list of villages falling in the Eco-sensitive Zone along with their geo co-ordinates at prominent points is appended as Annexure-IV.”

5. Mr. Gogoi, learned Standing Counsel, Forest and Environment Department has referred to the Communication bearing no. KNL/18[N]/Crusher/2023/21 issued by the respondent no. 6 on 11.01.2023 to the petitioner on the subject – Distance from Borail Wildlife Sanctuary, Protected area. Mr. Gogoi has submitted that as per the said Communication, it appears that the actual distance of the Stone Crusher Unit, M/s Mojo Enterprise from the Borail Wildlife Sanctuary is 3.10 Km in GPS Coordinate 25° 0'49.85"N 92° 30'2.38"E. In view of the information so provided by the respondent no. 6 vis-à-vis the extent and boundaries of Eco-Sensitive Zone notified by the Ministry of Environment, Forest and Climate Change, Government of India, it is submitted by him that the authorities in the Forest and Environment Department may be directed to re-visit the matter of location of the Stone Crusher Unit, M/s Mojo Enterprise of the petitioner.

6. In view of the above submission made by Mr. Gogoi, learned Standing Counsel, Forest and Environment Department, this Court is of the considered

view that the authorities in the Forest and Environment Department shall re-visit the matter of location or re-location of the Stone Crusher Unit, M/s Mojo Enterprise, by considering all factors into account including the Gazette Notification dated 25.04.2022 notifying the extent and boundaries of the Eco-Sensitive Zone of Borail Wildlife Sanctuary.

7. Thus, without adverting to the claims or counter claims of the parties on the merits, this writ petition is disposed of with a direction to the respondent no. 3 to re-visit the matter of location or re-location of the Stone Crusher Unit, M/s Mojo Enterprise, belonging to the petitioner, within a period of 15 [fifteen] days from the date of submission of a certified copy of this Court by the petitioner at his office. The observations made by the respondent no. 4 in the Communication dated 23.12.2022 will abide by the decision to be taken by the respondent no. 3.

8. This order disposes of the writ petition.

JUDGE

Comparing Assistant