

GAHC010021482022



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

Case No. : WP(C)/993/2022

ABDUL MALEK TALUKDAR AND 15 ORS.
S/O LATE MEHER UDDIN TALUKDAR,
VILLAGE- DAMRI BHASA,
P.O. KATARIHARA,
DISTRICT- GOALPARA, ASSAM

2: EUSAB ALI TALUKDAR
S/O ABDUL MALEK TALUKDAR
VILLAGE- DAMRI BHASA
P.O. KATARIHARA
DISTRICT- GOALPARA
ASSAM

3: EAQUB ALI TALUKDAR
S/O ABDUL MALEK TALUKDAR
VILLAGE- DAMRI BHASA
P.O. KATARIHARA
DISTRICT- GOALPARA
ASSAM

4: BODRUL ISLAM TALUKDAR
S/O ABDUL MALEK TALUKDAR
VILLAGE- DAMRI BHASA
P.O. KATARIHARA
DISTRICT- GOALPARA
ASSAM

5: AYUB ALI TALUKDAR
S/O ABDUL MALEK TALUKDAR
VILLAGE- DAMRI BHASA
P.O. KATARIHARA
DISTRICT- GOALPARA
ASSAM

6: SAMSUL HOQUE TALUKDAR

S/O LATE MEHER UDDIN TALUKDAR
VILLAGE- BONNYAGURI
P.O. JALESWAR
DISTRICT- GOALPARA
ASSAM

7: SHAHJAMAL TALUKDAR
S/O LATE SAYED ALI TALUKDAR
VILLAGE- BASHMURA
P.O. KATARIHARA
DISTRICT- GOALPARA
ASSAM

8: JOHIR UDDIN TALUKDAR
S/O LATE SAYED ALI TALUKDAR
VILLAGE- BONNYAGURI
P.O. JALESWAR
DISTRICT- GOALPARA
ASSAM

9: MD. SAHAJUL TALUKDAR
S/O LATE SAYED ALI TALUKDAR
VILLAGE- BONNYAGURI
P.O. JALESWAR
DISTRICT- GOALPARA
ASSAM

10: A. SATTAR TALUKDAR
S/O LATE SAYED ALI TALUKDAR
VILLAGE- BONNYAGURI
P.O. JALESWAR
DISTRICT- GOALPARA
ASSAM

11: ABDUL BATEN TALUKDAR
S/O LATE SAYED ALI TALUKDAR
VILLAGE- BONNYAGURI
P.O. JALESWAR
DISTRICT- GOALPARA
ASSAM

12: NURJAMAL TALUKDAR
S/O LATE SAYED ALI TALUKDAR
VILLAGE- BONNYAGURI
P.O. JALESWAR
DISTRICT- GOALPARA
ASSAM

13: ATOWAR RAHMAN TALUKDAR
S/O LATE SAYED ALI TALUKDAR
VILLAGE- BONNYAGURI
P.O. JALESWAR
DISTRICT- GOALPARA
ASSAM

14: ABDUL KUDDUS TALUKDAR
S/O LATE SAYED ALI TALUKDAR
VILLAGE- BONNYAGURI
P.O. JALESWAR
DISTRICT- GOALPARA
ASSAM

15: JUBBAR TALUKDAR
S/O LATE SAYED ALI TALUKDAR
VILLAGE- BONNYAGURI
P.O. JALESWAR
DISTRICT- GOALPARA
ASSAM

16: JAHIDUL ISLAM TALUKDAR
S/O LATE SAYED ALI TALUKDAR
VILLAGE- BONNYAGURI
P.O. JALESWAR
DISTRICT- GOALPARA
ASSAM

VERSUS

THE STATE OF ASSAM AND 7 ORS.
REPRESENTED BY THE PRINCIPAL SECRETARY TO THE GOVT. OF ASSAM,
PANCHAYAT AND RURAL DEVELOPMENT DEPARTMENT, DISPUR,
GUWAHATI- 781006

2: THE CHIEF EXECUTIVE OFFICER
GOALPARA ZILLA PARISHAD
GOALPARA
P.O. AND DISTRICT- GOALPARA
ASSAM.
PIN- 783001

3: THE EXECUTIVE OFFICER
JALESWAR ANCHALIK PANCHAYAT
KATARIHARA
DISTRICT- GOALPARA
ASSAM.
PIN- 783129

4:THE PRESIDENT OF JALESWAR ANCHALIK PANCHAYAT
KATARIHARA
DISTRICT- GOALPARA
ASSAM.
PIN- 783129

5:THE SUPERINTENDENT OF POLICE
GOALPARA
P.O. DURGA MANDIR
DISTRICT- GOALPARA
ASSAM.
PIN- 783101

6:THE OFFICER IN-CHARGE
LAKHIPUR POLICE STATION
LAKHIPUR
DISTRICT- GOALPARA
ASSAM.
PIN- 783129

7:THE OFFICER IN-CHARGE
JALESWAR POLICE OUT POST
P.O. JALESWAR
DISTRICT- GOALPARA
ASSAM.
PIN- 783129

8:THE DEPUTY COMMISSIONER
GOALPARA
P.O AND DISTRICT- GOALPARA
ASSAM
PIN- 783101

Advocate for the Petitioner : MR. D A KAIYUM

Advocate for the Respondent : SC, P AND R.D.

**BEFORE
HONOURABLE MR. JUSTICE MANISH CHOUDHURY**

ORDER

Date : 10-04-2023

Heard Mr. D.A. Kaiyum, learned counsel for the petitioners; Mr. S. Dutta, learned Standing Counsel, Panchayat & Rural Development [P&RD] Department for the respondent nos. 1, 2 & 3; and Ms. M. Barman, learned Junior Government Advocate, Assam for the

respondent nos. 5, 6, 7 & 8.

2. As per the order dated 03.08.2022 of the Lawazima Court, the service of notice upon the respondent no. 4 is deemed to be complete. Despite service of notice, none has appeared for the respondent no. 4 today on call.

3. The projected case of the petitioners, 15 in nos., is that they are Patta holders of a parcel of lands, measuring 10 bighas 10 lessas, at Village – Uttar Satvendi, Lat no. 7, Mauza – Lakhipur under Lakhipur Revenue Circle, District – Goalpara [‘the subject-plot’, for short].

4. According to the petitioners, they have jointly and purportedly after a decision of local public, established a weekly cattle market [‘the Animal Market’, for short] which used to run on every Thursday over the subject-plot, with due information to the authorities through an application submitted on 18.01.2021. The Animal Market started to run on the subject-plot on every Thursday on and from 21.01.2021 with prior intimation to the respondent no. 8. After starting of operation of the Animal Market, the respondent no. 4 lodged a First Information Report [FIR] on 02.02.2021 before the In-Charge, Jaleswar Police Outpost under Lakhipur Police Station alleging *inter alia* that the petitioners had illegally established the Animal Market without obtaining any prior permission from the Competent Authority and the said FIR has been registered as Lakhipur Police Station Case no. 73/2021 under Sections 188/420/406/34, IPC. After registration of Lakhipur Police Station Case no. 73/2021, police personnel from Lakhipur Police Station and Jaleswar Police Outpost came to the subject-plot and restrained the petitioners from running the Animal Market on and from the subject-plot. Being aggrieved by such action of stopping the petitioners from running of the Animal Market, the petitioners have preferred the instant writ petition under Article 226 of the Constitution of India seeking *inter alia* a direction to the respondent authorities not to restrain the petitioners from running the Animal Market on and from the subject-plot, which are their patta lands.

5. Mr. Kaiyum, learned counsel for the petitioners has submitted that after being stopped by the police personnel in the manner above, the petitioners have jointly submitted a

representation before the respondent no. 8 on 30.03.2021 with a prayer to pass an appropriate order for allowing the petitioners to run the private Animal Market on and from their patta lands.

6. The State Legislative Assembly has enacted an Act, the Assam Cattle Preservation Act, 2021 [‘the Act’, for short]. The Act has been notified vide Notification no. PLB.78/2021/266 dated 22.11.2021 and the Act has been published in the Assam Gazette in its issue dated 25.11.2021. As per the Notification dated 22.11.2021, the State Government has appointed 22.11.2021 as the date on which the provisions of the Act shall come into force in the entire State of Assam. As per the Statement of Objects and Reasons, the Act has been enacted to include sufficient legal provisions to regulate the slaughter, consumption and transportation of cattle.

6.1. Section 3[a] of the Act has defined ‘Animal Market’ and ‘Annual Market’ means a market place or sale-yard or any other premises or place to which animals are brought from other places and offered or displayed for sale or auction and includes animal fairs and cattle pounds, as duly licensed or recognized under a State Act or any other law for the time being in force or any rules or regulations made hereunder. As per Section 3[d], ‘Competent Authority’ means the person or persons appointed in this behalf by the State Government by notification in the Official Gazette to exercise the powers and perform the functions of a competent authority under the Act or the rules made hereunder for such area or areas and for such period as may be specified in the notification.

6.2. Section 10 has contained the provision regarding regulation of Animal Market and the same reads as under :-

10.[1] Every Animal Market Committee of recognized animal markets shall issue proof of sale and purchase of animals in the prescribed format to the purchaser and maintain proper record for inspection by the competent authority.

[2] If any animal market fails to comply with the provisions of this section

and rules prescribed in this regard, the license or registration of such animal market shall be cancelled and the person responsible for such non-compliance shall be barred from entering the market and fined, as may be prescribed, after providing the animal market committee or the person, as the case may be, an opportunity of being heard.

6.3. The Act has been further amended by the Assam Cattle Preservation [Amendment] Act, 2021 vide a Notification bearing no. LGL.83/2021/55 dated 28.01.2022 and the same has been published in the Assam Gazette in its issue dated 28.01.2022.

6.4. A set of rules, that is, the Assam Cattle Preservation Rules, 2022 ['the Rules', for short] have also been notified vide a Notification no. PLB.78/2021/406 dated 31.05.2022 and the Rules established in the Assam Gazette on 07.06.2022.

6.5. Rule 7[1] of the Rules has laid down that the Competent Authority as may be appointed by the State Government may issue Registration Certificate to the agency or farm for the purpose of trading of cattle, on receipt of application, for bonafide animal husbandry and agricultural purpose after being satisfied himself about the genuineness of the application as provided under sub-section [4] of Section 7 of the Act in Form as annexed to the Rules.

6.6. By a Notification bearing no. PLB.78/2021/411 dated 25.07.2022 and published in the Assam Gazette on 27.07.2022, the State Government has delegated the powers/functions under Section 10 of the Act to the District Magistrate or his authorized representative as the Designated Competent Authority.

7. From the afore-stated provisions of the Act under Rules r/w Notification dated 25.07.2022, it is noticed that it is the District Magistrate or his authorized representative, who has the authority and jurisdiction to grant permission to operate an Animal Market upon due consideration.

8. Both Mr. Dutta and Ms. Barman, learned counsel for the official respondents have

submitted that since the petitioners have already approached the respondent no. 8 in his capacity as the District Magistrate and the Competent Authority under Act and the Rules, the writ petition can be disposed of with a direction to the said authority to consider the Representation dated 30.03.2021, already filed by the petitioners before him seeking permission to operate the Animal Market in the petitioners' private patta lands, as indicated hereinabove, in accordance with the provisions of the Act and the Rules within a specific time period.

9. Mr. Kaiyum, learned counsel for the petitioners has also submitted in similar lines.

10. Having regard to the provisions of the Act and the Rules r/w Notification dated 25.07.2022 and considering the fact that the petitioners have already approached the respondent no. 8 by way of a Representation dated 30.03.2021, which is stated to be pending, this Court is of the considered view that instead of keeping this writ petition pending, the same can be disposed of with a direction to the respondent no. 8 to take the Representation submitted by the petitioners on 30.03.2021 before him, on board and after consideration of the same in terms of the provisions of the Act and the Rules, dispose of the Representation containing the prayer to allow the petitioners to operate the Animal Market in their private lands in accordance with law by passing a speaking order as expeditiously as possible, preferably within an outer limit of 6 [six] weeks from the date of receipt of a copy of this order. It is accordingly directed. The respondent no. 8 will be at liberty to afford personal hearing to the petitioners and other stakeholders, if found necessary. The order to be passed by the respondent no. 8 shall be communicated to the petitioner no. 1 forthwith thereafter. It is, however, made clear that the respondent no. 8 shall consider the Representation of the petitioners dated 30.03.2021 on its own merits as this Court has not made any observation as regards the merits of the claim of the petitioners.

11. This order disposes of the writ petition.

JUDGE

Comparing Assistant