

GAHC010029892022



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

Case No. : PIL/17/2022

MONOJ HAZARIKA AND ANR.
S/O RAJANI HAZARIKA R/O BAGHJAN GAON, P.O. DIGHALTARANG, P.S
BAGHJAN DIST. TINSUKIA, ASSAM, PIN-786151

2: JADAV SENAPATI
S/O LT. SUDHIR SENAPATI
R/O VILL. GUIZAN BAZAR
P.O. RONGAGARAH
P.S. GUIJAN
DIST. TINSUKIA
ASSA

VERSUS

THE UNION OF INDIA AND 15 ORS.
REP. BY THE SECRETARY GOVT. OF INDIA, MINISTRY OF ENVIRONMENT,
FOREST AND CLIMATE CHANGE, SHASTRI BHAWAN, NEW DELHI-1

2:THE STATE OF ASSAM
REP. BY THE ADDITIONAL CHIEF SECRETARY TO THE GOVT. OF ASSAM
ENVIRONMENT AND FOREST DEPTT. DISPUR GUWAHATI-6

3:THE SECRETARY
TO THE GOVT. OF ASSAM
SECRETARY TO THE GOVT. OF ASSAM
ENVIRONMENT AND FOREST DEPTT. DISPUR GUWAHATI-6

4:THE PRINCIPAL CHIEF CONSERVATOR OF FORESTS AND HEAD OF
FOREST FORCE
ASSAM
PANJABARI
GUWAHATI-6

5:THE PRINCIPAL CHIEF CONSERVATOR OF FORESTS

WILDLIFE ASSAM
PANJABARI
GUWAHATI-6

6:THE CHIEF CONSERVATOR OF FORESTS
WILDLIFE
TINSUKIA
ASSAM

7:THE DIVISIONAL FOREST OFFICER
TINSUKIA WILDLIFE DIVISION TINSUKIA ASSAM

8:THE FOREST RANGE OFFICER
GUIJAN WILDLIFE RANGE
TINSUKIA
ASSAM

9:THE MONITORING COMMITTEE
OF DIBRU SAIKHOWA NATIONAL PARK
REP
BY ITS CHAIRMAN TINSUKIA ASSAM

10:THE MEMBER SECRETARY
STATE ENVIRONMENT IMPACT ASSESSMENT AUTHORITY GOVT. OF
ASSAM
BAMUNIMOIDAM GUWAHATI-4

11:THE MEMBER SECRETARY
POLLUTION CONTROL BOARD
GOVT. OF ASSAM
BAMUNIMOIDAM GUWAHATI-4

12:THE DEPUTY COMMISSIONER
TINSUKIA
DIST TINSUKIA
ASSAM

13:THE DEPUTY COMMISSIONER
DIBRUGARH
DIST DIBRUGARH
ASSAM

14:SWARUP DAS
S/O DHANANJAY DAS
R/O GUIJAN NO. 5
P.O. GUIJAN P.S. TINSUKIA DIST. TINSUKIA
ASAM OWNER /PARTNER OF SKYLAND RESORT ERASUTI GUIJAN
DIST. TINSUKIA

ASSAM

15:SANJAY DAS
S/O DHANANJAY DAS
R/O GUIJAN PRAKASH NAGAR
P.O. GUIJAN P.S. TINSUKIA DIST. TINSUKIA
ASAM OWNER /PARTNER OF SKYLAND RESORT ERASUTI GUIJAN
DIST. TINSUKIA
ASSAM

16:PRASSANA DAS
S/O LT. PARASURAM DAS
R/O GUIJAN SHANTI NAGAR
P.O. GUIJAN
P.S. BAGHJAN
DIST. TINSUKIA
ASSAM OWNER OF OM HOUSE BOAR
ERASUTI
GUIJAN
DIST. TINSUKIA
ASSA

Advocate for the Petitioner : MR J I BARBHUIYA

Advocate for the Respondent : ASSTT.S.G.I.

BEFORE
HONOURABLE MR. JUSTICE SUMAN SHYAM
HONOURABLE MRS. JUSTICE SUSMITA PHUKAN KHAUND

ORDER

Date : 20/01/2023
Suman Shyam, J

Heard Mr. J.I. Barbhuiya, learned counsel appearing for the petitioners. Also heard Ms. L. Devi, learned CGC, appearing for the respondent no. 1 and Ms. M. Bhattacharjee, learned Additional Senior Government Advocate, Assam, appearing for the respondent nos. 12 and 13. Mr. K.P. Pathak, learned Standing Counsel, Forest Department, Assam, is present on behalf of the respondent nos. 2 to 8.

Alleging environmental disturbance being caused in the Eco-Sensitive Zone around the Dibru-Saikhowa National Park falling in the district of Tinsukia and Dibrugarh, Assam due to the commercial

activities carried out therein, the petitioners, who claim to be social workers and environment enthusiasts, have approached this Court by filing the instant PIL, seeking certain orders from this Court.

According to the petitioners, the private respondent nos. 14, 15 and 16 are illegally running a resort in the name and style "Skyland resort" and a Boat House by the name "Om House Boat" within the eco-sensitive zone of the Dibru-Saikhowa National Park and biosphere reserve forest thus causing threat to the flora and fauna of the national park.

Taking note of the grievance expressed in this PIL and the sensitivity of the issue flagged therein, this Court had issued notice upon the respondents. The Deputy Commissioner, Tinsukia has filed an affidavit dated 19/01/2023 responding to the allegations made in the writ petition. The averments made in para 5 of the affidavit would be relevant and, therefore, is reproduced herein below for ready reference :-

"5. That regarding paragraph 7 of the PIL the deponent begs to state that it has been reported by the Divisional Forest Officer, Tinsukia Wildlife Division that in conformity with Para No. 3 Sub-Para (3), Clause (e) Sub-Clause (ii) of the Notification dated 28/01/2020, it is stated that "until the Zonal master Plan is approved, development for tourism and expansion of existing tourism activities shall be permitted by the concerned regulatory authorities based on the actual site specific scrutiny and recommendation of the Monitoring committee and no new hotel, resort or commercial establishment construction shall be permitted within Eco-sensitive Zone area". The respondent nos. 14,15 and 16 have been running the tourism activities prior to enforcement of the said notification dated 28/01/2020 and same comes under the Regulated Activities as detailed in the Notification dated 28/01/2020. No permanent structures are allowed to construct within the protected area of the National Park as well as close proximity of the boundary of the Eco-Sensitive zone. Apart from that, no private person is allowed to enter into the National Park without valid permit and for that the appropriate authority is issuing permit to enter into the National Park under Rule-46, Section 28 of Assam Wildlife (Protection) Rule, 1997. It is also to be mentioned herein that, Governor of Assam vide letter No. TWT72/2021/67 dated 25/08/2021 is pleased to settle the Guijan Erasuti Ferry

Service in favour of the respondent no. 16 under the provisions of Rule 4(1) of Control and Management of Ferries Rules, 1968 (as amended) and the said Guijan-Erasuti Ferry Service comes under the periphery of Eco-Sensitive zone. Therefore, plying of ferry services is also a part of commercial activities and same cannot be restricted in view of aforesaid valid settlement order as mentioned."

Earlier, the respondent no. 7, who is the Divisional Forest Officer of the Tinsukia Wildlife Division, had also filed an affidavit clarifying the stand of the department in the matter. The statements made in paragraph 7 of the said affidavit are reproduced below for ready reference :-

"7. That the "Skyland Resort and Om Boat House" whose establishment and operation are alleged as in violation of the notification dated 28/01/2020 are running prior to the coming into force of the notification and well within the ambit and scope of the regulated activities as per the notification of 2020. It is pertinent to mention herein that the operation of the "Skyland Resort" have been suspended by the District Magistrate, Tinsukia vide order dated 26/01/2022. As regards the aforesaid "Om Boat House" an enquiry was also undertaken by the deponent and wherein it was found that the "Om Boat House" is registered with Guijan Anchalik Panchayat in the name of M/s. M.B. Om renewed on 30/07/2021 and has valid registration under Inland Steam Vessels (Amendment) Act, 1951 issued by the department of Inland Water Transport, Government of Assam on 23/11/2015."

From the affidavit filed by the official respondents, the circumstances under which the "Skyland Resort" and "Om Boat House" was initially allowed to function has become apparent. However, it is not in dispute that operation of the "Skyland Resort" has since been suspended. It also appears that an enquiry had been conducted as to the circumstances under which "Om Boat House" was allowed to operate. From the submission made at the bar, we also find that a Committee has also been constituted on 26/11/2021 for protection of the ecology in the Dibru-Saikhowa National Park and the Committee is looking into all aspects of the matter.

There can be no doubt or dispute of the fact that the eco-sensitive zone in the Dibru-Saikhowa National Park is required to be protected. However, after going through the pleadings

available on record, it appears that the concerned District Administration has already taken cognizance of the matter and necessary measures for protection of the National Park is already in place.

Mr. Barbhuiya submits that in view of the stand taken by the authorities assuring that no commercial activities would be undertaken in the Dibru-Saikhowa National Park threatening the ecology of the area, nothing survives for decision in this PIL.

Therefore, without expressing any further opinion in the matter, we close the PIL by directing the concerned authorities to take every possible step, as may be permissible under the law, for protection of the Eco-Sensitive area of the Dibru-Saikhowa National park.

If the petitioners continue to remain aggrieved even thereafter, they would be at liberty to approach this Court once again by filing appropriate petition.

JUDGE

JUDGE

sukhamay

Comparing Assistant