

GAHC010145282022



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

**Case No. : WP(C)/4917/2022**

BIKASH DEY AND 5 ORS.

S/O BIRESH CH. DEY, OCCUPATION- FARMER,

VILL.- RAJYESWARPUR PART-1, P.S.- LALA, P.O.- BORBOND, DIST.-  
HAILAKANDI (ASSAM), PIN- 788151.

2: SOUMITRA DEY

S/O SUKHENDRA CH. DEY

VILLAGE-

OCCUPATION

FARMER

VILL.- RAJYESWARPUR PART-1

P.S.- LALA

P.O.- BORBOND

DIST.- HAILAKANDI (ASSAM)

PIN- 788151.

3: JAMAL UDDIN LASKAR

S/O SURMAN ALI LASKAR

VILL.- RAJYESWARPUR PART-1

P.S.- LALA

P.O.- BORBOND

DIST.- HAILAKANDI (ASSAM)

PIN- 788151.

4: HUSSAIN ALI LASKAR

S/O LT. MUSSOBBIR ALI

LASKAR

VILL.- RAJYESWARPUR PART-1

P.S.- LALA

P.O.- BORBOND

DIST.- HAILAKANDI (ASSAM)

PIN- 788151.

5: DIDARUL ISLAM LASKAR  
S/O ATABUR RH. LASKAR

VILL.- RAJYESWARPUR PART-1  
P.S.- LALA  
P.O.- BORBOND  
DIST.- HAILAKANDI (ASSAM)  
PIN- 788151.

6: SAHIDUL ALOM BORBHUIYA  
S/O SAFIKUR RH. BORBHUIYA

VILL.- RAJYESWARPUR PART-1  
P.S.- LALA  
P.O.- BORBOND  
DIST.- HAILAKANDI (ASSAM)  
PIN- 788151

VERSUS

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

2:THE COMMISSIONER TO THE GOVT. OF ASSAM  
DEPTT. OF AGRICULTURE  
DISPUR  
GUWAHATI- 6.

3:THE POLLUTION CONTROL BOARD OF ASSAM  
REP. BY ITS CHAIRMAN  
BAMUNIMADAM  
GUWAHATI- 781021.

4:THE DEPUTY COMMISSIONER  
HAILAKANDI  
ASSAM  
PIN- 788151.

5:THE ASSTT. SETTLEMENT OFFICER  
LALA CIRCLE  
HAILAKANDI  
PIN- 788151.

6:THE POLLUTION BOARD SILCHAR  
ASSAM

REP. BY ITS CHAIRMAN  
CACHAR  
SILCHAR  
PIN- 788002.

7:THE SUPERINTENDENT OF POLICE  
HAILAKANDI  
PIN- 788151.

8:THE DISTRICT INDUSTRY OFFICER  
DIC  
CACHAR  
SILCHAR  
PIN- 788002.

9:SUBIR MODAK  
S/O ROMON CH. MODAK  
OCCUPATION- BUSINESS  
VILL.- LALA TOWN  
WARD NO.- 4  
P.S.- LALA  
P.O.- LALA CENTRAL ROAD  
HAILAKANDI  
PIN- 788163

**Advocate for the Petitioner** : MS B DEVI

**Advocate for the Respondent** : GA, ASSAM

Linked Case : WP(C)/2791/2019

ABDUL WAHID LASKAR AND ANR.  
S/O. LT. SIDDEK ALI LASKAR  
VILL. RAJYESWARPUR-1  
P.O. BORBOND  
P.S. LALA  
DIST. HAILAKANDI  
DIST. HAILAKANDI  
ASSAM-788164.

2: ABUL FAZAL LASKAR  
S/O. ABDUL WAHID LASKAR  
VILL. RAJYESWARPUR-1  
P.O. BORBOND  
P.S. LALA  
DIST. HAILAKANDI

ASSAM-788164.  
VERSUS

THE STATE OF ASSAM AND 6 ORS.  
REP. BY THE SECRETARY TO THE GOVT. OF ASSAM.

2:THE COMMISSIONER AND SECY.

REVENUE  
ASSAM  
DISPUR  
GUWAHATI-781022  
3:THE MEMBER SECRETARY-  
POLLUTION CONTROL BOARD ASSAM  
BAMUNIMAIDAN  
GUWAHATI-21.  
4:THE DY. COMMISSIONER

HAILAKANDI  
DIST. HAILAKANDI  
ASSAM-788151.  
5:THE SUPDT. OF POLICE

HAILAKANDI  
DIST. HAILAKANDI  
ASSAM-788151.  
6:THE CIRCLE OFFICER

LALA REVENUE CIRCLE  
HAILAKANDI  
DIST. HAILAKANDI  
ASSAM-788163.  
7:SUBIR MADOK  
S/O. ROMAN CH. MADOK  
LALA TOWN  
WARD NO.4  
P.O. LALA  
DIST. HAILAKANDI  
ASSAM-788163.

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Advocate for : MR. N H MAZARBHUIYAN  
Advocate for : GA  
ASSAM appearing for THE STATE OF ASSAM AND 6 ORS.

**BEFORE**

**THE HON'BLE MR. JUSTICE SUMAN SHYAM**

Date of hearing : 05/08/2023.

Date of judgement : 05/08/2023

**JUDGEMENT AND ORDER (ORAL)**

1. Heard Ms. B. Devi, learned counsel appearing for the writ petitioners in WP(C) 4917/2022 and Mr. N. Islam, learned counsel for the writ petitioners in WP(C) 2791/2019. Mr. C.K.S. Baruah, learned Government Advocate, Assam, has appeared on behalf of the respondent nos. 4, 5, 7 & 8 in WP(C) 4917/2022 and Ms. N. Bordoloi, learned Standing Counsel, Revenue and DM Department, Assam, is present on behalf of the respondent nos. 2 and 4 in WP(C) 2791/2019. Mr. S. Baruah, learned Standing Counsel, Pollution Control Board, Assam, has appeared on behalf of the respondent nos. 3 & 6 in WP(C) 4917/2022 and respondent no. 3 in WP(C) 2791/2019. Mr. S. Ghosh, learned counsel is present on behalf of the private respondent in both the writ petitions.

2. The petitioners in both the writ petitions are basically aggrieved by the "consent to establish" as well as "consent to operate" issued by the Pollution Control Board (PCB), Assam permitting the private respondent to set up a brick klin over his private patta land situated in village Rajyeswerpur Part-I, PS- Lala, Borbond in the district of Hailakandi, *inter-alia* contending that the "brick klin" has been set up over agricultural land, without converting the land and also without obtaining the 'NOC' from the villagers.

3. Ms. B. Devi, learned counsel for the petitioners has argued that the land over which the "brick klin" has been set up is agricultural land. Therefore, under the relevant rules, no "brick klin" could have been established over such agricultural land. It is also the submission of the learned counsel for the petitioners that the district Administration is yet to re-classify the land as "Non Agricultural Land" and, therefore, in view of the provisions contained in sections 3 and 4 of the Assam Agricultural Land (Regulation of Re-classification and Transfer for Non-Agricultural Purpose) Act, 2015, no brick klin could have been established over the said plot of land.

4. Referring to the photographs brought on record by filing IA(C) 171/2023 arising

out of WP(C) 4917/2022, the petitioners' counsel has further argued that the land over which the 'brick klin' has been set up is flanked by agricultural land from all sides and, therefore, it is evident on the face of the record that the 'brick klin' is situated over the agricultural land. Contending that the "brick klin" being a heavily polluted industry, if the same is allowed to operate, it would cause serious health hazards to the petitioners and their family members besides the other residents of the village. The learned counsel for the petitioners has, therefore, prayed for an order from this Court to set aside the "consent to establish" and / or "consent to operate" the brick klin issued by the State PCB with a direction upon the district Administration to revisit the matter and take appropriate decision in respect thereof.

5. Mr. N. Islam, learned counsel for the writ petitioners in WP(C) 2791/2019 has adopted the submissions advanced by Ms. B. Devi and has also made a similar prayer for setting aside the "consent to establish" as well as "consent to operate" granted by the PCB.

6. The learned State counsel has taken the Court through the counter affidavit filed by the respondent no. 4 i.e. the Additional Deputy Commissioner, Hailakandi in WP(C) 2791/2019 to contend that the allegations made in the writ petitions have been found to be factually incorrect. Ms. N. Bordoloi, learned Standing Counsel, Revenue and DM Department, Assam, has also invited the attention of this Court to the "Non-Agricultural Land Certificate" dated 06/08/2018 issued by the Assistant Settlement Officer, Lala Circle, Hailakandi as well the 'NOC' issued by the Secretary of the P.K. Rajyeswerpur Gaon Panchayat, conveying their "No Objection" regarding setting up the 'brick klin' by the private respondent, to contend that necessary formalities, as prescribed by law, have been complied with before issuing the "consent to establish" as well as the "consent to operate" in favour of the private respondent.

7. Mr. S. Baruah, learned Standing Counsel, PCB, has argued that over and above the aforesaid formalities, public hearing was also conducted through the local Gaon Panchayat wherein, the residents of the village have conveyed their un-equivocal consent and support for establishing the brick klin. In support of his above argument, Mr. Baruah has also invited the attention of this Court to the communication dated 16/08/2018 issued by the villagers of P.K. Rajyeswerpur Part-I village, addressed to the Deputy Commissioner, Hailakandi, wherein, they have mentioned that setting up of the brick klin will generate employment in the village and, therefore the said decision was welcomed by the villagers.

8. Referring to the notification dated 20/12/2012 issued by the PCB (Annexure-N) to the writ petition being WP(C) 4917/2022, Mr. Baruah has argued that these are not Rules and have never been notified but are merely in the nature of some guidelines so as to help the officials exercise their discretion properly while issuing "consent to establish" and "consent to operate" a brick klin.

9. Mr. S. Ghosh, learned counsel for the private respondent has forcefully argued that the writ petitioners are not the residents of the locality over which the brick klin has been established but a person having vested interest in the matter. Mr. Ghosh has further argued that since the petitioners are not effected by the brick klin and considering the fact that the present writ petitions are not in the nature of PILs, the same are not maintainable in the eyes of law. To sum up his argument, Mr. Ghosh has referred to the counter affidavit filed by his client in WP(C) 2791/2019 to submit that all formalities, as prescribed by law, have been complied with, before the petitioner was issued the "consent to establish" and / or "consent to operate" the brick klin.

10. I have considered the submissions made at the Bar and have also carefully gone through the materials available on record.

11. The first objection raised by the petitioners' counsel is on account of the fact that the brick klin has been established over agricultural land. There can be no doubt or dispute about the fact that in view of the provisions of section 3 and 4 of the Act of 2015 as well as the Rule 3 of the Assam brick klin Establishment and Regulation Rules, 2013, a brick klin cannot be established over agricultural land. However, the fact remains that in this case, there is a certificate issued by the Assistant Settlement Officer certifying that the land over which the brick klin of the private respondent has been established, can no longer be considered as agricultural land. The exercise of re-notifying the land as non-agricultural land was, however, pending for the reasons mentioned in the said certificate. Therefore, it cannot be said that the brick klin of the petitioner was permitted to be established on a plot of agricultural land. Rather, it appears that the land was no longer treated as agricultural land by the concerned authorities themselves.

12. Coming to the next objection raised by the petitioners' counsel to the effect that

'NOC' from the villagers were not obtained before issuing the "consent to establish", the said allegation is also found to be incorrect from the materials available on record. As has been mentioned above, I find that there is a 'NoC' obtained from the Secretary of the Gaon Panchayat on 06/08/2018 and the said document has been taken into account by the PCB while issuing the "consent to establish" and/or "consent to operate". Moreover, the assertion of the learned Standing Counsel, PCB that the public hearing was duly conducted in this case, also could not be denied by the petitioners' counsel.

13. It would further be pertinent to mention herein that by filing affidavit dated 10/09/2019 in WP(C) 2791/2019, the respondent no. 4 i.e. the Additional Deputy Commissioner, Hailakandi has categorically stated that the allegations made by the petitioners are incorrect. The averments made in paragraphs 4 and 5 of the said affidavit would be relevant and, therefore, are being reproduced herein below for ready reference :-

*"4. That as regards to the statements made in paragraph 3 of the writ petition, the deponent begs to state that it is a fact a plot of land measuring 8 Bigha, 5 Katha, 5 Chatak covered by Dag No. 218 & 517 of 2<sup>nd</sup> RS Patta No. 16 & 136 respectively of Mouza Rajyeswsarpur Pt-I, Porgona Hailakandi in respect of Brick klin under the title 'A-one Brick Industry' us under possession of Sri Subir Modok, S/o. Lt. Raman Chandra Modok which he owned by right of purchase vide Registered Deed.*

*As regards representation dated 20/09/2018 filed by the petitioner the matter has enquired into through the Circle Officer and Assistant Settlement Officer, Lala and it is revealed from the enquiry that the proprietor has obtained a certificate of "Consent to Establish' from the Pollution Control Board and also obtained Non-Agricultural Certificate & Distance Certificate from the Assistant Settlement Officer, Lala.*

*5. That as regards to the statements made in paragraph 4 of the writ petition, the deponent begs to state that it is a fact that Sri Bikash Dey, President of Sri Laxmi Agricultural Service Group stating that the respondent no. 7 i.e. Subir Modok is destroying agricultural land by installing Brick klin industry. But the proprietor of the Brick klin submitted a certificate of 'Consent to Establish" issued by the Pollution Control Board, and Non-Agricultural Certificate and Distance Certificate issued by the*

*Assistant Settlement Officer, Lala, Non Objection Certificate issued by the Secretary, Purbokitterbond Rajyeswarpur G.P. and written consent in support of installation of Brick klin."*

14. The petitioners have not filed any rejoinder affidavit controverting the assertions made in the counter affidavit. As such, the above statements of the respondent no. 4 would have to be taken on their face value by this Court. If that be so, the basic allegation brought against the private respondent clearly stand negated in the face of the record.

15. I also find from the counter affidavit that on being asked to appear before the office of the respondent no. 4 for clarification, he had failed to appear, as a result of which, the clarification on the queries made by one of the petitioner under the RTI petition, cannot be obtained.

16. Be that as it may, the fact remains that 'consent to establish' and "consent to operate" a brick klin can be issued by the PCB only after the applicant fulfills the requirement of the provisions of the Air (Prevention and Control of Pollution) Act, 1981 more particularly, section 21 of the said Act. At any stage, if it is found that the brick klin does not fulfill the requirements of the Act as well as the Rules framed thereunder, the "consent to establish" and "consent to operate" can be withdrawn/suspended by the PCB.

17. Mr. Baruah has also invited the attention of this Court to the notification dated 22/02/2022 issued by the Government of India, in the Ministry of Environment and Forest and Climate Change, laying down guidelines pertaining to "zig-zag technology" or "vertical shaft" or "use of piped natural gas" as fuel in brick making to submit that the aforesaid guidelines would also have relevance in the matter of renewal of "consent to operate" the brick klin.

18. Having regard to the facts and circumstances of the case, as noticed herein above, this Court does not find any valid ground to arrive at a conclusion that the "consent to establish" and "consent to operate" of the brick klin issued in favour of the private respondent was illegal or not in accordance with law. Therefore, the challenge made in the writ petitions is hereby declined.

19. Having held as above, it has been brought to the notice of this Court that the "consent to operate" issued to the private respondent, had expired on 31/03/2023 and since it is lean

season, the application for renewal of "consent to operate" would be considered only in the month of October, 2023. If that be so, there cannot be any doubt about the fact that while renewing the "consent to operate", the authorities in PCB would have to verify and record a satisfaction that the brick klin of the private respondent fulfills all requirement of Pollution Standards, as may be prescribed under the law before granting renewal. As such, State PCB can also consider objection, if any, filed by any affected party, who could have a genuine grievance with regard to operation of the brick klin in question.

20. In view of the observations made above, both these writ petitions are disposed of by providing that the petitioners shall be at liberty to submit objection before the State PCB opposing the renewal of the "consent to operate" in favour of the private respondent, if so advised. If such objection is filed within 10(ten) days from today, along with a certified copy of this order, then upon proper verification of the *bona fide* of the objections and on verification of their *locus* to raise such objection, the State PCB may objectively examine the matter before processing the application for renewal of "consent to operate" of the brick klin of the private respondent.

Parties to bear their own cost.

**JUDGE**

*Sukhamay*

**Comparing Assistant**