

GAHC010085942023



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

Case No. : WP(C)/2223/2023

ABDUS SALAM AHMED AND 3 ORS
SON OF AZIZUL HAQUE,
RESIDENT OF VILLAGE- BAGURIGURI GAON,
PO- CHUKURUNGBARI,
PS- SORBHOG, DISTRICT- BARPETA,
ASSAM, PIN- 781317.

2: MAYNUL HAQUE
SON OF LATE HANIF ALI MANDAL

RESIDENT OF VILLAGE- BHETUMARITUP

PO- CHUKURUNGBARI

PS- SORBHOG
DISTRICT- BARPETA

ASSAM
PIN- 781317.

3: HAIDAR ALI
SON OF TAJIBAR RAHMAN

RESIDENT OF VILLAGE- BAGURIGURI GAON

PO- CHUKURUNGBARI

PS- SORBHOG
DISTRICT- BARPETA

ASSAM
PIN- 781317.

4: JIYAUUR RAHMAN

RESIDENT OF VILLAGE- BAGURIGURI PATHAR

PO- CHUKURUNGBARI

PS- SORBHOG
DISTRICT- BARPETA

ASSAM
PIN- 781317

VERSUS

THE STATE OF ASSAM AND 5 ORS
REPRESENTED BY
THE COMMISSIONER AND SECRETARY TO THE GOVERNMENT OF ASSAM,

HOME AND POLITICAL DEPARTMENT,
DISPUR, GUWAHATI- 781006.

2:THE COMMISSIONER AND SECRETARY TO THE GOVERNMENT OF
ASSAM
PANCHAYAT AND RURAL DEVELOPMENT DEPTT.
DISPUR
GUWAHATI- 781006.

3:THE DEPUTY COMMISSIONER
BARPETA
DISTRICT- BARPETA
ASSAM

PIN- 781301.

4:THE CIRCLE OFFICER
BARNAGAR REVENUE CIRCLE
SORBHOG
DISTRICT- BARPETA

ASSAM
PIN- 781317

5:THE SECRETARY
NO. 95 BAGARIGURI PATHER GP
PO- CHUKURUNGBARI

PS- SORBHOG
DISTRICT- BARPETA

ASSAM

PIN- 781317.

6:THE OFFICER IN CHARGE
SORBHOG POLICE STATION
DISTRICT- BARPETA
ASSAM

PIN- 781317

Advocate for the Petitioner : MR B PATHAK

Advocate for the Respondent : GA, ASSAM

BEFORE
HONOURABLE MR. JUSTICE MANISH CHOUDHURY

ORDER

Date : 12-05-2023

Heard Mr. B. Pathak, learned counsel for the petitioners; Ms. S. Sharma, learned Junior Government Advocate, Assam for the respondent nos. 1, 3, 4 & 6; and Mr. N.K. Deb Nath, learned Standing Counsel, Panchayat and Rural Development Department for the respondent nos. 2 & 5.

2. The petitioners, 4 [four] in nos., have preferred the instant writ petition stating that a decision was taken by them to run a weekly private cattle market [‘the Cattle Market’, for short] at Bagariguri Gaon Santi Bazar over a private plot of land, taken on lease by them from its owner. Thus, after entering into a lease agreement on 10.04.2023 and obtaining a No Objection Certificate [NOC] from No. 95 Baguriguri Pather Gaon Panchayat on 22.12.2022, the petitioner started operating the Cattle Market from the private plot of land from January, 2023. But immediately thereafter, few police personnel from Sarbhog Police Station came to the market area and instructed the petitioner not to operate the Cattle Market any further. It was informed to the petitioners that such instruction was

made after receiving instructions from the office of the Deputy Commissioner, Barpeta. The petitioners have, later on, could lay their hands on a letter dated 02.01.2023 of the Circle Officer, Barnagar Revenue Circle, Sarbhog addressed to the Officer In-Charge, Sarbhog Police Station whereby the said authority was found forwarding a letter dated 20.12.2022 purportedly received from the office of the Deputy Commissioner regarding eviction of the Cattle Market viz. Santi Bazar & Bhola Bazar Gaon Panchayat.

3. With the aforesaid projection, the petitioner approached the instant writ petition seeking *inter alia* a direction to set aside the letter dated 02.01.2023 issued by the Circle Officer, Barnagar Revenue Circle, Sarbhog [the respondent no. 4] and to allow the petitioners to operate the weekly Cattle Market from the private plot of land, taken on lease, located at Bagariguri Gaon Santi Bazar in terms of the provisions of the Assam Cattle Preservation Act, 2021 [‘the Act’, for short] and the Assam Cattle Preservation Rules, 2022 [‘the Rules’, for short].

4. 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.

4.1. 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.

4.2. Section 10 contains 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 noncompliance 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.

4.3. 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.

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

4.5. 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.

4.6. 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.

5. 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.

6. Both Ms. Sharma, learned Junior Government Advocate, Assam and Mr. Deb Nath, learned Standing Counsel, Panchayat and Rural Development Department have submitted that since there is requirement to obtain permission from the District Magistrate, the petitioners should first obtain permission from the jurisdictional District Magistrate, that is, the Competent Authority under the Act and the Rules. If the petitioners submit an application before the District Magistrate and the Competent Authority seeking permission to operate the private Animal Market then the writ petition can be disposed of with a direction to the said authority to consider the application to be filed by the petitioners seeking permission to operate the Animal Market in the petitioners' private patta

land as indicated hereinabove in accordance with the provisions of the Act and the Rules within a specific time frame.

7. Mr. Pathak, learned counsel for the petitioner has submitted that the petitioners are going to file an application before the District Magistrate and the competent authorities under the Act and the Rules within a period of 1 [one] week from today.

8. Having regard to the provisions of the Act and the Rules r/w Notification dated 25.07.2022 and taking note of the submissions of the learned counsel for the parties including that of the petitioners that the petitioners are going to file an application before the District Magistrate and the competent authority within a period of 1 [one] week from today, 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 petitioners to submit a proper application before the respondent no. 3 seeking permission for operating a private Animal Market from the plot of land, to be indicated in such application, along with a certified copy of this order and if such an application is filed by the petitioners, the respondent no. 3 shall take the application of the petitioners on board and after consideration of the same in terms of the provisions of the Act and the Rules, dispose of the application 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 either allowing or disallowing the prayer, as expeditiously as possible, preferably within an outer limit of 4 [four] weeks from the date of receipt of such an application. It is accordingly ordered. The respondent no. 3 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. 3 on the application shall be communicated to the petitioner no. 1 forthwith thereafter. It is, however, made clear that the respondent no. 3 shall consider the application of the petitioners on its own merits as this Court has not made any observation as regards the merits of the claim of the petitioners.

9. This order disposes of the writ petition.

JUDGE

Comparing Assistant