

GAHC010128312014



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

Case No. : WP(C)/6036/2014

RIKIMONI DAS and 5 ORS.
S/O- SRI BADAN DAS, R/O- KHAGESWAR BAZAR, PARBATIA, TINSUKIA,
DIST.- TINSUKIA, ASSAM.

2: RAJ KUMAR DAS
S/O- BUBUL DAS
R/O- KAKORATILI
TINSUKIA
ASSAM.

3: NARIKOL GOHAIN
S/O- LT. DIMBESWAR GOHAIN
R/O- KAKORATOLI
TINSUKIA
ASSAM.

4: RONISHA BORAH
S/O- KAMLESHWAR BORAH
R/O- AHUKHAT
TINSUKIA
ASSAM.

5: PAPU DAS
S/O- KAMAL DAS
R/O- KAKORATOLI
TINSUKIA
ASSAM.

6: ARUN DAS
S/O- DURLOV DAS
R/O- KAKORATLI
TINSUKIA
ASSAM

VERSUS

THE STATE OF ASSAM AND 3 ORS
REP. BY THE COMMISSIONER and SECY., MUNICIPAL ADMINISTRATION
DEPTT., DISPUR, GUWAHATI, ASSAM.

2:THE TINSUKIA MUNICIPAL BOARD
REP. BY ITS EXECUTIVE OFFICER
TINSUKIA
ASSAM.

3:THE DY. COMMISSIONER
DIST.- TINSUKIA
ASSAM.

4:THE SUPERINTENDENT OF POLICE
DIST.- TINSUKIA
ASSAM

Advocate for the Petitioner : MR.N SAIKIA

Advocate for the Respondent : GA, ASSAM

BEFORE
HONOURABLE MR. JUSTICE MANISH CHOUDHURY

ORDER

Date : 23-08-2023

There is no representation on behalf of the petitioners today on call. When the writ petition was listed on the previous occasion, that is, on 25.02.2022, the learned counsel for the petitioners had sought time to submit as to whether any cause of action survived in the writ petition.

2. Mr. M. Chetia, learned Junior Government Advocate, Assam for the respondent nos. 1, 3 & 4; and Mr. S.S. Roy, learned counsel for the respondent no. 2 who are in attendance, are heard.

3. The petitioners, 6 [six] in nos., have preferred the instant writ petition stating that they had a common cause of action. From the projections made in the writ petition, it is noticed that in a Meeting held on 24.03.2014, the respondent Tinsukia Municipal Board took *inter alia*

a resolution to the effect that the petitioners would be permitted to operate New Daily Hawkers' Market [road side] on the basis of their applications. The resolution further mentioned that such allotment would be made to the petitioners @ ₹ 15,000/- for a period of 3 [three] months. The respondent Municipal Board stated to have taken such resolution of giving allotment to the petitioners without undertaking any kind of tender process preceding such resolution. Pursuant to the said resolution, the petitioners were allotted New Daily Hawkers' Market [road side] to collect tolls w.e.f. 01.04.2014 to 30.06.2014 @ ₹ 15,000/- per month by an Order dated 31.03.2014. The period was extended for another 2 [two] months w.e.f. 01.07.2014 to 31.08.2014 by a subsequent Order dated 05.07.2014. By another Order dated 06.09.2014, the petitioners were allowed to operate the New Daily Hawkers' Market [road side] for the period w.e.f. 01.09.2014 to 31.03.2015. Thus, it is clear that the petitioners without participating in any the tender process, were granted permission to operate the New Daily Hawkers' Market [road side] in order to collect tolls for a period of 1 [one] year w.e.f. 01.04.2014 to 31.05.2015. The direction sought by the petitioners in this writ petition, *inter alia*, is a writ in the nature of mandamus to the respondent authorities to allow the petitioners to continue to operate the New Daily Hawkers' Market [road side] without any interference from any quarter till such time as an alternative site/location is provided to them for operating the New Daily Hawkers' Market [road side].

4. From the pleadings in the writ petition, it has clearly emerged that the petitioners were allowed to collect tolls from the New Daily Hawkers' Market [road side] for a period of 1 [one] year w.e.f. 01.04.2014 to 31.05.2015 without any kind of tender process. It has *inter alia* been provided in Rule 1 of the Rules for Procedure for Sale of Pounds and Markets by Municipal Boards and Town Committees in Assam, in exercise of the powers conferred by Sections 147, 148 & 301 of the Assam Municipal Act, 1956 and notified vide Notification no. LML51/58 dated 24.06.1958 that all markets established by, vested in or placed under the control and administration of the Municipal Board shall be farmed out by tender, subject to observance of rules and procedures for inviting tender. It has further provided that the Municipal Board may, in its discretion and for reasons to be recorded, reserve any such market from lease and administer it directly. Rule 2 thereof has prescribed that the period of lease for a market must be for 1 [one] year and if the Board thinks fit, it can extend the

period of lease for a period of 2 [two] years but not exceeding 1 [one] year at a time, only with a previous approval of the Director of Municipal Administration, Assam. The petitioners were allowed to collect tolls from the New Daily Hawkers' Market [road side] for a period of 1 [one] year from 01.04.2014 to 31.03.2015 by the respondent Municipal Board without participating in any kind of tender process. A writ of mandamus can be issued under Article 226 of the Constitution of India only when there exist a legal right in the writ petitioner and corresponding legal obligation in the State or its instrumentalities. With no legal right found existing in favour of the petitioners herein, it is, therefore, clear that any direction of the nature sought for by the petitioners in the instant writ petition would be in violation of the provisions contained in the Rules for Procedure for Sale of Pounds and Markets by Municipal Boards and Town Committees in Assam. As such, this writ petition lacks merit and is liable to be dismissed. It is accordingly dismissed. No cost.

JUDGE

Comparing Assistant