

GAHC010160012023



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

Case No. : WP(C)/4251/2023

SEEMA JAIN
WIFE OF SRI NARENDRA KUMAR JAIN,
PROPRIETOR OF M/S ARIHANT AGENCIES,
HAVING HER RESIDENCE CUM PLACE OF BUSINESS AT DURGA MANDIR,
WARD NO. 15,
GOALPARA,- 783121, IN THE DISTRICT OF GOALPARA, ASSAM.

VERSUS

THE STATE OF ASSAM AND ANR
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE
GOVERNMENT OF ASSAM,
HOME DEPARTMENT, DISPUR, GUWAHATI- 781006.

2:THE DISTRICT MAGISTRATE
GOALPARA
ASSAM

Advocate for the Petitioner : MR SISHIR DUTTA

Advocate for the Respondent : GA, ASSAM

BEFORE
HONOURABLE MR. JUSTICE SUMAN SHYAM

ORDER

Date : 04-08-2023

Heard Mr. S. Dutta, learned Sr. counsel assisted by Mr. B.K. Jain, learned counsel

for the writ petitioner. Also heard Ms. S. Sarma, learned Govt. Advocate, Assam appearing for the respondent Nos. 1 and 2.

The order dated 07-07-2023 issued by the respondent No. 2 restraining the petitioners, *inter-alia*, from allowing movement of heavy loaded vehicles carrying factory/ industrial materials to and from his residential unit through the by lane has been put under challenge in this writ petition, contending that the order dated 07-07-2023 has been passed ex-parte in violation of the principles of natural justice, without giving an opportunity of being heard to the petitioner.

According to Mr. Dutta the petitioner is not running any factory or any iron fabrication unit as has been alleged but is in the business of trading on hardware articles for which goods and materials are frequently required to be transported. Contending that there is no creation of public nuisance and violation of any law in the entry and exit of the vehicles, the learned Sr. counsel for the petitioner submits that the impugned order has been passed merely on the basis of frivolous complaint of two individuals who have a personal vendetta against the petitioner. Assuring this Court that no nuisance will be created at the instance of the petitioner during entry and/ or exit or loading and unloading of the vehicles, the learned Sr. counsel has prayed for setting aside the order dated 07-07-2023.

Ms. S. Sarma, learned Govt. Advocate, Assam, on the other hand, has appeared and produced written instruction obtained in terms of the order dated 31-07-2023 passed by this Court and placed the same for perusal by this Court. She submits that the impugned order has been issued in order to prevent public nuisance due to plying of

heavy vehicles through a narrow by-lane within a residential area.

It may be correct to say that entry/ exit of heavily loaded trucks carrying goods for commercial purpose, inside a narrow by-lane within a residential area, may cause undue harassment to the residents of the locality and to that extent, the district administration may have to look into such matters, if a complaint is received. However, in doing so and while passing an order having civil consequences on the other party, it would be incumbent upon the district administration to hear the version of the affected party before issuing any such order. In the present case, it is the admitted position of fact that the impugned order dated 07-07-2023 was issued *ex-parte*, without giving any opportunity of being heard in the matter to the writ petitioner. If that be so, the order is apparently in violation of the principles of natural justice and deserves to be set aside on such count alone.

The impugned order is accordingly set aside.

The matter is remanded back to the respondent No. 2 to conduct a fresh hearing on the complaint made by Sri Karuna Kanta Nath and two others before passing any fresh order in the matter. In doing so, the respondent No. 2 shall give appropriate opportunity of being heard to the writ petitioner as well as the complainants. In order to maintain public order in the locality, it is provided that until such time a fresh order is passed by the respondent No. 2 after considering the version of both the sides, the petitioner shall ensure that no nuisance or disturbance is caused to the residents of the locality due to entry and exit, loading and unloading of heavy vehicles during the period from 08:00 am to 08:00 pm each day.

This order will remain in force till such time a final order is passed by the respondent No. 2 in terms of this order, after hearing both the sides.

Writ petition stands disposed of.

JUDGE

GS

Comparing Assistant