

GAHC010169012023



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

Case No. : WP(C)/4457/2023

DEBAJIT HAZARIKA
S/O- RATNESEWAR HAZARIKA, R/O- WARD NO. 2, BOKAKHAT, P.O. AND
P.S. BOKAKHAT, DIST. GOLAGHAT, ASSAM, PIN- 785612.

VERSUS

THE SUB DIVISIONAL OFFICER, CIVIL, BOKAKHAT AND 4 ORS
DIST. GOLAGHAT, DIST. GOLAGHAT, PIN- 785612.

2:THE SUB DIVISIONAL MAGISTRATE
BOKAKHAT
DIST. GOLAGHAT
ASSAM
PIN- 785612.

3:THE EXECUTIVE MAGISTRATE
SDO (C)
BOKAKHAT
DIST. GOLAGHAT
PIN- 785612
ASSAM

4:THE SUB REGISTRAR
BOKAKHAT
DIST. GOLAGHAT
PIN- 785612
ASSAM

5:THE OFFICER IN-CHARGE

BOKAKHAT POLICE STATION
BOKAKHAT

DIST. GOLAGHAT
ASSAM
PIN- 785612

Advocate for the Petitioner : MR. B P BORAH

Advocate for the Respondent : GA, ASSAM

BEFORE
HONOURABLE MR. JUSTICE SUMAN SHYAM

ORDER

Date : 11-08-2023

Heard Mr. P.K. Goswami, learned Sr. counsel assisted by Mr. B.P. Borah, learned counsel for the writ petitioner.

The writ petitioner owns a shop located at Bokakhat in the district of Golaghat, wherefrom he is operating a stationary shop alongwith facility for computer printing. Alleging that the petitioner has been printing fake non-encumbrance certificates, by the order dated 28-07-2023, the Sub-Divisional Magistrate, Bokakhat, i.e. respondent No. 2 had directed the Executive Magistrate, i.e. the respondent No. 3 to seal the shop of the petitioner. Accordingly, the shop of the petitioner was sealed on 29-07-2023. Aggrieved by the impugned order dated 28-07-2023 as well as the consequential action of sealing the shop of the petitioner, the instant writ petition has been filed, *inter alia*, contending that the impugned order is de hors the authority of law.

In order to give the official respondents an opportunity to respond to the allegation made in the writ petition, this Court, by order dated 05-08-2023, had directed the learned

Govt. Advocate, Assam to obtain instruction by fixing the matter today for motion hearing. However, today when the writ petition was taken up, Mr. S. Baruah, learned Govt. Advocate, Assam appearing for the respondents submits that although communication has been issued to the concerned authority, no response has been received in the matter till today.

It is apparent from the materials on record that the shop of the petitioner was sealed in terms of the direction issued by the respondent No. 1 by order dated 28-07-2023. However, nowhere has it been indicated as to the provision of law under which, the shop of the petitioner was sealed. The impugned order dated 28-07-2023 had adverse civil consequence on the petitioner, inasmuch as his running enterprise had been brought to a standstill. Notwithstanding the same, the respondents did not serve any prior notice upon the petitioner or heard him before passing such an order. The order dated 28-07-2023 appears to be a final order without there being any scope for the petitioner to show cause as to why, such an order was not called for. Under the circumstances and in view of the failure on the part of the learned Govt. Advocate, Assam to apprise this Court the nature of jurisdiction exercised by the respondent No. 1, this Court is of the opinion that the impugned order dated 28-07-2023 is unsustainable on the face of the record. As such, the same is hereby set aside.

The sealing of the petitioner's shop shall forthwith be revoked by the concerned authorities. However, if the respondents propose to initiate any action against the petitioner, the same will be done, in accordance with law and only after serving prior notice upon the petitioner.

With the above observation, this writ petition stands disposed of.

JUDGE

GS

Comparing Assistant