

GAHC010170492023



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

Case No. : WP(C)/4557/2023

ABU SHAMA AHMED AND ANR
PRESIDENT OF BONDIHANA FANCY BAZAR, S/O- LATE ROMJAN ALI,
VILL.- SALMARA PART-III, P.O. BONDIHANA, P.S. FAKIRGANJ, DIST.
DHUBRI, ASSAM, PIN- 783349.

2: ABUL KALAM AZAD
SECRETARY
BONDIHANA FANCY BAZAR
S/O- FOYZAL HOQUE
VILL.- SALMARA PART-V
P.O. BONDIHANA
P.S. FAKIRGANJ
DIST. DHUBRI
ASSAM
PIN- 783349

VERSUS

THE STATE OF ASSAM AND 6 ORS
REPRESENTED BY THE SECRETARY TO THE GOVERNMENT OF ASSAM,
PANCHAYAT AND RURAL DEVELOPMENT DEPARTMENT, DISPUR,
GUWAHATI-6.

2: THE DISTRICT COMMISSIONER
DHUBRI
P.O.
P.S. AND DIST. DHUBRI
ASSAM
PIN- 783301.

3: THE SUPERINTENDENT OF POLICE
SOUTH SALMARA MANKACHAR
HATSINGIMARI
P.O.

P.S. AND DIST. SOUTH SALMARA- MANKAHAR
ASSAM
PIN- 783135.

4:THE DHUBRI ZILLA PARISHAD
REPRESENTED BY CHIEF EXECUTIVE OFFICER
DHUBRI ZILLA PARISHAD
DHUBRI
ASSAM
PIN- 783301.

5:THE BIRSING JARUA ANCHALIK PANCHAYAT
REPRESENTED BY THE EXECUTIVE OFFICER
BIRSING ANCHALIK PANCHAYAT
P.O. BIRSING
P.S. FAKIRGANJ
DIST. DHUBRI
ASSAM

6:THE CIRCLE OFFICER

ATHANI REVENUE CIRCLE
ATHANI
P.O. BOGRIBARI
P.S. GAURIPUR
DIST. DHUBRI
ASSAM
PIN- 783349.

7:THE OFFICER-IN-CHARGE
BONDIHANA POLICE OUT POST
P.O. BONDIHANA
P.S. FAKIRGANJ
DIST. DHUBRI
ASSAM
PIN- 783349

Advocate for the Petitioner : MR H R A CHOUDHURY

Advocate for the Respondent : GA, ASSAM

**BEFORE
HONOURABLE MR. JUSTICE MANISH CHOUDHURY**

ORDER

Date : 11-08-2023

Heard Mr. A.F.N.U. Mollah, learned counsel for the petitioners; Mr. N.K. Dev Nath, learned Standing Counsel, Panchayat & Rural Development [P&RD] Department for the respondent nos. 1, 4 & 5; and Mr. S.R. Baruah, learned Junior Government Advocate, Assam for the respondent nos. 2, 3, 6 & 7.

2. The projected case of the petitioners is that the petitioners are running a market named 'Bondihana Fancy Bazar' ['the Market', for short] on and from a parcel of land, which are private patta lands, measuring about 7 Bighas 4 Kathas 8 Lessas [07B-04K-08L] and covered by Dag nos. 1164 [old] & 269 [new] and Patta no. 38 [new], located in Village – Salmara Part-III, Athani Revenue Circle, District – Dhubri since 2009. According to the petitioners, the decision to run a private market over the said private patta lands was taken with the consent of the local people. In the Market, groceries as well as cattle are being traded. The private patta lands belong to one Anowar Hussain and Abdul Rashid respectively, who are the legal heirs of one Late Ator Ali Sheikh, the original pattadar of the parcel of land wherefrom the Market was being run. The petitioners are aggrieved by a notice dated 26.10.2021 issued by the In-Charge, Bondihana Out Post, District – Dhubri. By serving the notice purportedly under Section 91, Code of Civil Procedure, 1908, the In-Charge, Bondihaha Out Post had asked for permit/documents from the petitioners in respect of the Market. By the notice, petitioners have instructed to run the cattle market by obtaining permission for approval from the Jurisdictional District Commissioner and the Jurisdictional Superintendent of Police respectively. The petitioners have contended that after service of the notice, the petitioners have been prevented from running of the Market.

3. Mr. Mollah, learned counsel for the petitioners has submitted that on being so prevented, a representation was submitted on behalf of the petitioners by the President, Birsing Jarua Anchalik Panchayat before the Deputy Commissioner, Dhubri on 15.07.2023

requesting to accord approval/permission for sale and purchase of cattle in the Market for the greater interests of the local public.

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.

5.1. 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.

5.2. Section 10 has contained 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 non-compliance 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.

5.3. 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.

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

5.5. 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.

5.6. 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.

6. 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.

7. Both Mr. Dev Nath and Mr. Baruah, learned counsel for the official respondents have submitted that since the petitioners intend to run/operate a cattle Market in private patta

lands, they are required to submit proper application on behalf of the persons seeking to run the Market named Bondihana Fancy Bazar before the District Magistrate and the Competent Authority under the Act and the Rules. They have jointly submitted, in unison, that the writ petition can be disposed of with a direction to the authority to consider the prayer of the petitioners for running/operate a cattle market in the private patta lands in the event a proper application is submitted by the petitioners before him. Mr. Mollah, learned counsel for the petitioners has submitted that an application will be submitted by the petitioners before the District Magistrate and the Competent Authority under the Act and the Rules within the shortest possible time with the request to accord approval/permission in accordance to the provisions of the Acts and the Rules.

8. Having regard to the provisions of the Act and the Rules r/w Notification dated 25.07.2022 and considering the submission that the petitioners will submit a proper application before the District Magistrate and the Competent authority under the Act and the Rules, 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 respondent no. 2 to consider the application, if any, filed by the petitioners seeking approval/permission to run/operate a cattle Market in the private patta lands and after consideration of the same in terms of the provisions of the Act and the Rules, to dispose of the application containing the prayer to allow the petitioners to run/operate the cattle Market in private lands in accordance with law by passing a speaking order as expeditiously as possible, preferably within an outer limit of 4 [four] weeks from the date of submission of an application along with a certified copy of this order. It is accordingly directed. The District Magistrate and the Competent Authority may afford personal hearing to the petitioners and other stakeholders, if found necessary, and may call for report[s] from the Jurisdictional Superintendent of Police and other authorities, in order to arrive at the final decision. The order to be passed by the respondent no. 2 shall be communicated to the petitioners forthwith thereafter. It is, however, made clear that the District Magistrate and the Competent Authority shall consider the application on its own merits as this Court has not made any observation as regards the merit of the claim of the petitioners.

9. This order disposes of the writ petition.

JUDGE

Comparing Assistant