

GAHC010202162019



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

Case No. : WP(C)/6165/2019

ASHOK KUMAR GUPTA AND 14 ORS.
S/O LT. KAPIL GUPTA, R/O NATUN BAZAR, HOJAI, WARD NO. 2, P.S. AND
P.O. HOJAI, DIST. HOJAI, PIN-782435

2: HIRALAL GUPTA
S/O SRI SRIRAM GUPTA
R/O NATUN BAZAR HOJAI
WARD NO. 2
P.S. AND P.O. HOJAI
DIST. HOJAI
PIN-782435

3: SANJEET SEN
S/O GAURANGA SEN
R/O NATUN BAZAR
HOJAI
WARD NO. 3
P.S. AND P.O. HOJAI
DIST. HOJAI
PIN-782435

4: DILWAR ANSARI
S/O MD. SIRAJUL ANSARI
R/O NATUN BAZAR
HOJAI
WARD NO. 3
P.S. AND P.O. HOJAI
DIST. HOJAI
PIN-782435

5: PRADIP GHOSH
S/O LT. SURENDRA GHOSH
R/O NATUN BAZAR HOJAI
WARD NO. 3

P.S. AND P.O. HOJAI
DIST. HOJAI
PIN-782435

6: DIPAK BHOWMIK
S/O LT. RAJENDRA BHOWMIK
R/O GOBINDAPALLY
WARD NO. 6
P.S. AND P.O. HOJAI
DIST. HOJAI
PIN-782435

7: GOBINDA DAS
S/O SRI GANESH DAS
R/O GOAGHATIA BASTI
WARD NO. 9
P.S. AND P.O. HOJAI
DIST. HOJAI
PIN-782435

8: GANESH KUNDU
S/O LT. ABHIRAM KUNDU
R/O RAM PUR BASTI
P.S. AND P.O. HOJAI
DIST. HOJAI
PIN-782435

9: UJAL CH. RAY
S/O LT. SURESH RAY
R/O UTTAR BIDYANAGAR
P.S. AND P.O. HOJAI
DIST. HOJAI
PIN-782435

10: SHYAM KUMAR GUPTA
S/O SRI BHRIGU PRASAD GUPTA
R/O NATUN BAZAR
HOJAI
WARD NO. 2
P.S. AND P.O. HOJAI
DIST. HOJAI
PIN-782435

11: PARTHA SAHA
R/O NAGENDRA NAGAR
WARD NO. 1
P.S. AND P.O. HOJAI
DIST. HOJAI

PIN-782435

12: HARENDRA THAKUR
S/O LT. SUDHAMA THAKUR
R/O AMTOLA
HOJAI
P.S. AND P.O. HOJAI
DIST. HOJAI
PIN-782435

13: DINANATH PRASAD
S/O LT. MONILALA GUPTA
R/O NEW MARKET
HOJAI
P.S. AND P.O. HOJAI
DIST. HOJAI
PIN-782435

14: UTTAM DEB
S/O SRI HIRALAL DEB
R/O NEW MARKET HOJAI
P.S. AND P.O. HOJAI
DIST. HOJAI
PIN-782435

15: RANJU GUPTA
S/O SRI RAM GUPTA
R/O NEW MARKET HOJAI
P.S. AND P.O. HOJAI
DIST. HOJAI
PIN-78243

VERSUS

THE STATE OF ASSAM AND 4 ORS.
REP. BY THE PRINCIPAL SECRETARY TO THE GOVT. OF ASSAM, URBAN
DEVELOPMENT DEPTT. DISPUR, GUWAHATI-6

2: THE DIRECTOR OF MUNICIPAL ADMINISTRATION
ASSAM
DISPUR
GUWAHATI-6
ASSAM

3: HOJAI MUNICIPAL BOARD
HOJAI
REP. BY ITS CHAIRMAN
HOJAI

ASSAM
DIST. HOJAI
PIN-7824535

4:THE CHAIRMAN
HOJAI MUNICIPAL BOARD
HOJAI
DIST. HOJAI
PIN-782435

5:THE DEPUTY COMMISSIONER
DIST. HOJAI
PIN-78243

For the Petitioner (s) : Mr. S. Borthakur, Advocate.

For the Respondent (s) : Mr. H. Sarma, Advocate.

Date of hearing & Judgment : **15.11.2023**

BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH
JUDGMENT AND ORDER(ORAL)

The instant writ petition has been filed by the Petitioners who are 15 in numbers seeking a direction upon the Respondent Nos. 3 and 4 not to evict the Petitioners from their respective place without following the due process and in the alternative direct the Respondents to allot premises in the proposed shopping complex (Bharat Ratna-Atal Bihari Vajpayee Shopping Complex) as per their entitlement. From a perusal of the writ petition, it transpires that the Petitioners herein are small time vendors operating betel nuts shop, vegetables shop etc in and around the sheds constructed by the Hojai Municipal Board and

the Petitioners herein pay certain amounts to the lessee so appointed by the Hojai Municipal Board. In the month of June, 2019 the Petitioners could come to learn that the Respondent No. 3 would be demolishing the two sheds in the Natun Bazar Market and would construct a shopping complex in the name and style of "Bharat Ratna-Atal Bihari Vajpayee Shopping Complex". Fearing that the Petitioners herein would be evicted from their place of business, the Petitioners have approached this Court seeking for the reliefs as above mentioned.

2. This Court vide an order dated 27.08.2019 issued notice and in the interim provided that the status-quo as regards the shop premises of the Petitioners shall be maintained till the next date.

3. This Court further finds it relevant to take note of an enquiry report so submitted by the Additional Deputy Commissioner, Hojai, Sankardev Nagar dated 06.12.2019. From a perusal of the said enquiry report, it reveals that there exists 5 open market sheds of almost similar size in the Natun Market area near Ema Koidel Nairemi Loop where weekly markets on Tuesday and Thursday are held. There also exists an open space including a pond in the vicinity. On weekly market days the area in the bank of pond and other free areas are used by various traders including the shopkeepers in the three open market sheds. The open market sheds are used by some of the shopkeepers including the Petitioners who sell vegetables, dry fish etc throughout the week. It was further mentioned that the Petitioners are vending from the open market shed on purely temporary basis and they leave the sheds late in the evening without keeping any material in the sheds for safety reasons. Further, again in the morning hours they start their business from the sheds. It was further mentioned that some local traders more particularly vegetable vendors are doing their business outside the market area throughout the week. During

weekly market days the business is heavier with increased numbers of vendors in the market sheds coming from different areas. The Petitioners herein are doing business in shed Nos. 3 and 4. The Enquiry Report further reveals that the Petitioners were not allotted any space in the open shed by any authority nor they are paying any revenue to any authority directly. But the Petitioners are paying taxes to the lessee of the market like any other usual vendors who are vending both inside and outside the market sheds and the lessee is appointed by the Hojai Municipal Board. To the said enquiry report, certain snapshots including a site plan have been enclosed which this Court have duly perused.

4. This Court have further taken note of the affidavit filed by the Respondent Nos. 3 and 4, wherein it was mentioned that the Petitioners have no locus standi to file the instant writ petition against the Respondent No. 3 because the Petitioners were neither vendors/licensees/allotment holders of any space under Hojai Municipal Board nor there was any sort of relationship with the Board for running any business or shop in the area. It was further mentioned that 2 Nos. of abandoned sheds, wherein wholesale vegetable market/sabjimandi was running by the Board prior to shifting of the market to Mahatma Gandhi Agricultural Regulatory Market have been proposed to be demolished and a RCC market complex in the name and style of "Bharatratna Atal Bihari Vajpayee Market Complex" to be constructed thereupon. Further to that, it was also mentioned that the receipts which have been enclosed to the writ petition are receipts issued by the settled lessee of Dainik Natun Bazar, Hojai and the area of the lease does not cover the area proposed to be developed by the Board in terms with the resolution dated 27.05.2019.

5. I have heard the learned counsels for the parties and have also perused the materials on record.

6. From the perusal of the materials on record, it transpires that the Hojai Municipal Board had taken a decision to construct one 3 storied RCC Market Complex by demolishing the 2 numbers of open sheds (abandoned) standing on the northern side of Hojai Natun Bazar Ema Koidel Nairembi Loop (Manipuri Mandir) and to allot the shops through lottery to unemployed youths of the locality and to let out the upper floors either to bank or any private company on rent by which the Board can earn revenue and the Natun Bazar area would achieve business development. This Court had also put a specific query upon the learned counsel appearing on behalf of the Petitioners as to on what basis the Petitioners claim any right to the reliefs as have been sought for. The answer to the said query by the learned counsel for the Petitioners is that the Petitioners are petty businessmen and if the abandoned sheds are demolished, their right to livelihood would be taken away. This Court have given an anxious consideration to the said aspect of the matter and is of the opinion that the decision of the Hojai Municipal Board to demolish the two numbers of open sheds (abandoned) standing on the northern side of Hojai Natun Bazar Ema Koidel Nairembi Loop (Manipuri Mandir) and to construct a G+2 RCC Market Complex cannot be interfered with by this Court as the reasons for doing so as could be seen from Annexure- 2 to the affidavit filed by the Respondent Nos. 3 and 4 are reasonable and also is in the interest of the Hojai Municipal Board. Under such circumstances, the reliefs, so sought for in the instant writ petition cannot be granted inasmuch as the reliefs if granted would amount to this Court interfering with the administrative actions of the Respondent Board that too without the said actions being in any manner violative of the provisions of the Constitution. Furthermore, taking into account that the Petitioners herein being neither licensee/allotment holders/vendors appointed by the Respondent Board,

any direction to the Respondent Board to allot the proposed complex in favour of the Petitioners would amount to creating rights in their favour in exclusion of others who may be more deserving that too when the Respondent Board is conferred with the powers to decide whom to allot. Under such circumstances, the instant writ petition is devoid of any merits.

7. Be that as it may, this Court cannot also be unmindful of the facts that the Petitioners carry on some business and are earning their livelihood. Under such circumstances, this Court grants the liberty to the Petitioners to approach the Hojai Municipal Board to seek permission to vend in some other locality so that they can carry on their livelihood. The Hojai Municipal Board upon being approached shall consider the case of the Petitioners, if otherwise permissible under the law.

8. This Court however, clarifies that the Respondent Nos. 3 and 4 shall be at liberty to proceed with the demolition of the open abandoned sheds standing on the northern side of Hojai Natun Bazar Ema Koidel Nairembi Loop (Manipuri Mandir) and go ahead with the construction of the G+2 RCC Market Complex.

9. With the above observations and directions, the instant writ petition stands disposed off.

JUDGE

Comparing Assistant