

GAHC010235902023



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

Case No. : WP(C)/6263/2023

ABDUL KUDDUS ALI
S/O- LATE MOHAMMAD ALI,
VILL.- PADMER ALGA PART-II,
P.O.- PADMER ALGA,
P.S.- FAKIRGANJ, DIST.- DHUBRI,
ASSAM, PIN- 783339.

VERSUS

THE STATE OF ASSAM AND 5 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY,
TO THE GOVT. OF ASSAM,
HOME DEPARTMENT, DISPUR, GUWAHATI-6.

2:THE COMMISSIONER AND SECRETARY TO THE GOVERNMENT OF
ASSAM
PANCHAYAT AND RURAL DEVELOPMENT DEPTT.
DISPUR
GUWAHATI- 781006.

3:THE DEPUTY COMMISSIONER
DHUBRI
DIST.- DHUBRI
ASSAM
783301.

4:THE SUPERINTENDENT OF POLICE
SOUTH SALMARA MANKACHAR DISTRICT
HATSINGIMARI
783131.

5:THE PADMER ALGA GAON PANCHAYAT

REPRESENTED BY THE PRESIDENT

PADMER ALGA
PIN- 783339.

6:THE OFFICER-IN-CHARGE
FAKIRGANJ POLICE STATION
SOUTH SALMARA MANKACHAR DISTRICT
PIN- 783330

Advocate for the Petitioner : MR. A K SARMA

Advocate for the Respondent : GA, ASSAM

BEFORE
HONOURABLE MR. JUSTICE MANISH CHOUDHURY

ORDER

19.10.2023

Heard Mr. A.K. Sarma, learned counsel for the petitioner; Mr. G. Bakalial, learned Junior Government Advocate, Assam for the respondent nos. 1, 3, 4 & 6; and Ms. N. Bora, learned Standing Counsel, Panchayat & Rural Development [P&RD] Department for the respondent no. 2.

2. Having regard to the nature of grievances made by the petitioner in this writ petition, the writ petition is taken up for consideration at the motion stage itself, as agreed to by the learned counsel for the parties and in view of the nature of the order to be passed. In such view of the matter, notice is not issued to the respondent no. 5.

3. It has been projected that the petitioner is a permanent resident within the territorial jurisdiction of Padmer Alga Gaon Panchayat and Barshing Jarua Anchalik Panchayat, District - Dhubri. The petitioner was a former settlement holder of an animal market named 'Katlamari Go-Hat', which used to be settled by the respondent Panchayat authorities by initiating tender process annually. Since the Panchayat Financial Year : 2022 – 2023, the respondent Panchayat authorities have kept the animal market named Katlamari Go-Hat out of the

purview of any annual tender process. It is in the above backdrop, the petitioner who has claimed himself to be owner and possessor of a parcel of land measuring 9 Bighas, covered by Dag nos. 184, 186, 49, 50 & Patta no. 26, situate at Village – Siber Alga, Mouza - Rangamati, Athani Revenue Circle [‘the subject-plot’, for short], has contemplated to set up and operate a private cattle market on and from the said subject-plot. Accordingly, the petitioner has submitted a Representation before the Deputy Commissioner, Dhubri [the respondent no. 3] on 24.08.2023 seeking permission from to operate an animal market on and from the subject-plot. As the said Representation is found to have not received due consideration till date, the petitioner has approached this Court by the instant writ petition.

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.

4.1. Section 3[a] of the Act has defined ‘Animal Market’ and ‘Animal 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.

4.2. 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 noncompliance 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.

4.3. 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.

4.4. 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.

4.5. 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.

4.6. 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.

5. 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.

6. Both Mr. Bakalial and Ms. Bora, learned counsel representing the State respondents have submitted that the since the petitioner has already approached the respondent no. 3 in his capacity as the District Magistrate and the Competent Authority under the Act and the Rules seeking permission to operate an animal market on and from his private patta lands i.e. the subject-plot, as indicated hereinabove, in accordance with the provisions of the Act and the Rules, this writ petition can be disposed of, at this stage, with a direction to the respondent no. 3 in his capacity as the District Magistrate and the Competent Authority under the Act and the Rules to take the Representation dated 24.08.2023, already submitted by the petitioner before him, on board, and after consideration, to pass appropriate order thereafter as regards permission or otherwise to operate the animal market on and from the subject-plot.

7. Having regard to the provisions of the Act and the Rules r/w Notification dated 25.07.2022 and the submissions made by the learned counsel for the parties, 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. 3 in his capacity as the District Magistrate and the Competent Authority under the Act and the Rules to take the Representation dated 24.08.2023, already submitted by the petitioner before him, on board, and after consideration, to pass appropriate order thereon as regards permission or otherwise to operate the animal market on and from the subject-plot on its own merits and in the context of the provisions contained in the Act and the Rules, as expeditiously as possible, preferably within an outer limit of 4 [four] weeks from the date of receipt of a certified copy of this order from the petitioner. It is accordingly directed. The respondent no. 3 as the District Magistrate and the Competent Authority under the Act and the Rules will be at liberty to afford personal hearing to the petitioner and other stakeholders, if found necessary. The decision to be passed by the respondent no. 3 on the Representation of the petitioner, shall be communicated to the petitioner forthwith thereafter. It is, however, made clear that the

respondent no. 3 shall consider the Representation of the petitioner on its own merits as this Court has not made any observation as regards the merits of the claim of the petitioner.

8. This order disposes of the writ petition.

JUDGE

Comparing Assistant