

GAHC010242152022



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

Case No. : WP(C)/7616/2022

NAZRUL ISLAM
S/O- HAZARAT ALI, VILL- SHILOCHI PATHER, P.O. BALAJAN, P.S.
BAGHBOR, DIST.- BARPETA, PIN- 781308, LEASEE OF SHOWRAR BITHA
JANPRIYA ANCHALIK GORUR BAZAR

VERSUS

THE STATE OF ASSAM AND 8 ORS
REP. BY THE SECY. TO THE GOVT. OF ASSAM, DEPTT. OF PANCHAYAT AND
RURAL DEVELOPMENT, DISPUR, GHY-06

2:THE DIRECTOR
PANCHAYAT AND RURAL DEV. ASSAM
GHY-06

3:THE DY. COMMISSIONER
BARPETA
PIN- 781301

4:THE BARPETA ZILLA PARISHAD
REP. BY THE CHIEF EXECUTIVE OFFICER
BARPETA
PIN- 781301

5:THE CHIEF EXECUTIVE OFFICER
BARPETA ZILLA PARISHAD
PIN- 781301

6:THE EXECUTIVE OFFICER
MANDIA ANCHALIK PANCHAYAT
P.O. MANDIA, DIST.- BARPETA
PIN- 781308

7:THE ANCHALIK PANCHAYAT
MANDIA, P.O. MANDIA
DIST.- BARPETA
PIN- 781308

8:THE SECRETARY/PRESIDENT
BAGHBOR BAZAR MANAGING COMMITTEE
P.O. BAGHBOR
P.S. BAGHBOR
DIST.- BARPETA, PIN- 781308

9:THE BAGHBOR BAZAR MANAGING COMMITTEE
REP. BY ITS SECY./PRESIDENT
P.O. BAGHBOR
DIST.- BARPETA
PIN- 78130

Advocate for the Petitioner : MR. A ROSHID
Advocate for the Respondent : SC, P AND R.D.

BEFORE
HONOURABLE MR. JUSTICE SANJAY KUMAR MEDHI

ORDER

04-04-2023

Heard Shri A. Roshid, learned counsel for the petitioner. Also heard Shri S. Dutta, learned Standing Counsel, P&RD Department whereas the respondent Nos. 8 & 9 are represented by Shri H. Ali, learned counsel.

Shri N. Goswami, learned State Counsel is present for the Deputy Commissioner, Barpeta.

Considering the subject matter in question and as agreed to by the parties, this writ petition is taken up for disposal at the admission stage.

Pursuant to a tender process, the petitioner was the successful bidder for the Showrar Bitha Janpriya Anchalik Gorur Bazar and was accordingly settled with the same for a period of 1 year with effect from 01.09.2022. The said market is a bi-weekly market, which is operative on every Wednesday and Sunday. The grievance of the petitioner is that the respondent Nos. 8 & 9 are operating another market, namely,

the Baghbor Bazar, mainly for cattle. The further allegation is that the dates of the said Baghbor Bazar is also on Wednesday and Sunday and the distance between the two Bazar is about 1.5 KM to 2 KM.

The petitioner's case is that because of the activities of the Market of the respondent Nos. 8 & 9, the petitioner is suffering loss and accordingly, the present writ petition has been filed with the following prayer.

Shri A. Roshid, the learned counsel for the petitioner has been submitted that while he is a lessee of the Showrar Bitha Janpriya Anchalik Gorur Bazar which is duly settled by the Gaon Panchayat under the Mandia Anchalik Bazar, the Market of the respondent Nos. 8 and 9 is a private Market. He also submits that the business of the private respondents is adversely affecting the business of the petitioner, which was duly settled with him by the appropriate authorities. He, therefore, submits that a direction be issued to change the dates of operation of the Market of the respondent Nos. 8 & 9.

In support of his submission, Shri Roshid, learned counsel for the petitioner has relied upon an order of this Court dated 03.06.2011 passed in WP(C) No.3779/2010 in which an NIT floated for settlement of a private Market was set aside. However, a close perusal of the said order would show that the petitioner in that case are the present respondent Nos. 8 & 9 and the challenge was against the NIT floated by the Panchayat authorities again for initiating a tender process for settlement of the Market which is on the private land of the petitioner in that place.

Per contra, Shri S. Dutta, the learned Standing Counsel, P&RD Department has submitted that the Notice Inviting Tender (NIT) did not stipulate any such Clause and the offer was made under the existing conditions. He submits that the petitioner was fully aware of the existence of the Market of the respondent Nos. 8 & 9 and therefore he cannot have any legally enforceable right to seek the change of dates of a Market, that too in a private land. The learned Standing Counsel has also drawn the attention of this Court to an order dated 22.07.2022 passed by this Court in WP(C) No.

4440/2022 which was instituted by the present private respondents against certain interference in running of the private Market by them. This Court while allowing the writ petition has directed that there should not be any interference with the Market of the respondent Nos. 8 & 9 which was run over a private land unless and until they are found to be violating any of the provisions of law.

For ready reference, the operative part of the judgment is extracted herein below:-

After the striking down of Section 107 of the Assam Panchayat Act, 1994, which had empowered the panchayat authorities to settle markets established within a private land, there is no authority of the Anchalik Panchayat to interfere with any market set up over private patta land. A perusal of the order dated 03.06.2011 passed by the learned Single Judge in WP(C) No.3779/2010 leaves no manner of doubt that the land claimed by the petitioners is a private patta land and the cattle market is also undisputedly operating on the said land. If that be so, the respondents would not have any authority to interfere with the operation of the market set up on a private patta land unless the operators are found to be violating any of the provision of law, which is not the projected case of the departmental authorities, in this case.

Situated thus, I have no hesitation in holding that interference of the respondent No.8 in operation of the cattle market run by the petitioners is unauthorized. I, therefore, dispose of this writ petition with a direction upon the respondents not to interfere with the operation of the Baghbar Cattle Market run over the private patta land owned by the writ petitioners until and unless they are found to be violating any of the provisions of the law.

Shri H. Ali, learned counsel for the respondent Nos. 8 & 9 submits that no legal right, whatsoever of the petitioner has been infringed giving him any right to approach this Court. He submits that apart from the fact that there is an existing order of this Court directing non-interference in running of the private Market, the present petitioner is only a lessee whose term is going to be over very soon and had submitted his bid knowing fully well about the existence of the Market of the

respondent Nos. 8 & 9. He further submits that the Panchayat authorities are not aggrieved by existence of such Markets and the lessee as such cannot have any right to make such challenge.

After hearing the learned counsel for the parties, this Court is of the opinion that the petitioner had participated in the tender process initiated vide the NIT dated 27.06.2022 at a time when the Market of the respondent Nos. 8 & 9 was existing. In fact going by the version of the said respondent Nos. 8 & 9, their Market on the private land is existing for last about 40 years. When the bid was submitted by the petitioner for the Showrar Bitha Janpriya Anchalik Gorur Bazar, it is presumed that he was fully aware of the situation and thereafter had submitted his bid. Further, this Court finds force in the contention made on behalf of the respondents that the Panchayat authorities as such are not aggrieved by the operation of the Market of the respondent Nos. 8 & 9.

This Court is also of the opinion that in view of the order passed by this Court on 22.07.2022 in WP(C) No. 4440/2022 which was instituted on behalf of the present respondent Nos. 8 & 9, there is hardly any scope to entertain or pass any orders in this writ petition.

The order dated 03.06.2011 passed by this Court in WP(C) No. 3779/2010 is not at all applicable in this case and would rather come to the aid of the respondent Nos. 8 & 9 as in that case, an NIT floated by the Panchayat Authorities for settling a Market on the land of the petitioner (the present respondent Nos. 8 & 9) was interfered with on the issue of lack of jurisdiction.

After considering all the aforesaid facts and circumstances, this Court is of the opinion that the instant petition is without merits and accordingly the same is dismissed.

JUDGE

Comparing Assistant