

GAHC010184012020



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

Case No.: WP(C)/9217/2019

M/S. MANORAM BIVAH BHAWAN
SITUATED AT PALLA ROAD
WARD NO. 11
NALBARI
DIST.- NALBARI
PIN- 781335
REP. BY ITS PROPRIETORS- 1) SMT. NIVA TALUKDAR
W/O- SRI KUMUD TALUKDAR
2) SHRI RAMEN BARMAN
S/O- MADHAB CHANDRA BARMAN

VERSUS

THE STATE OF ASSAM AND 4 ORS.
REP. BY THE COMM. AND SECY. TO THE GOVT. OF ASSAM
URBAN DEVELOPMENT DEPTT.
DISPUR
GHY-06

2:THE DIRECTORATE
MUNICIPAL ADMINISTRATION
ASSAM
DISPUR
GHY-06

3:THE DY. COMMISSIONER
NALBARI DIST.
NALBARI
ASSAM
PIN- 781335

4:THE NALBARI MUNICIPAL BOARD
NALBARI
REP. BY THE CHAIRMAN CUM EXECUTIVE OFFICER
DIST.- NALBARI

ASSAM
PIN- 781335
5:THE EXECUTIVE OFFICER
NALBARI MUNICIPAL BOARD
NALBARI
ASSAM
PIN- 781335
6:THE LICENCE OFFICER
NALBARI MUNICIPAL BOARD
NALBARI
ASSAM
PIN- 781335
7:DHIRENDRA NATH BARMAN
SON OF LATE BAHU RAM BARMAN
RESIDENT OF GOPAL BAZAR
NALBARI TOWN
WARD NO. 11
P.O. AND P.S.NALBARI
IN THE DISTRICT OF NALBARI
ASSAM
PIN-781335
8:SARALA TALUKDAR
WIFE OF DHIRENDRA NATH BARMAN

WIFE OF DHIRENDRA NATH BARMAN
RESIDENT OF GOPAL BAZAR
NALBARI TOWN
WARD NO. 11
P.O. AND P.S.NALBARI
IN THE DISTRICT OF NALBARI
ASSAM
PIN-781335
9:GITA DAS
WIFE OF DILIP DAS
RESIDENT OF GOPAL BAZAR
NALBARI TOWN
WARD NO. 11
P.O. AND P.S.NALBARI
IN THE DISTRICT OF NALBARI
ASSAM
PIN-781335
10:KABITA DAS
WIFE OF PRABHAT DAS
RESIDENT OF GOPAL BAZAR
NALBARI TOWN
WARD NO. 11
P.O. AND P.S.NALBARI
IN THE DISTRICT OF NALBARI

ASSAM
PIN-781335
11:MINA DAS
WIFE OF LATE RATNESWAR DAS
RESIDENT OF GOPAL BAZAR
NALBARI TOWN
WARD NO. 11
P.O. AND P.S.NALBARI
IN THE DISTRICT OF NALBARI
ASSAM
PIN-781335
12:BABITA DAS

WIFE OF JITEN DAS
RESIDENT OF GOPAL BAZAR
NALBARI TOWN
WARD NO. 11
P.O. AND P.S.NALBARI
IN THE DISTRICT OF NALBARI
ASSAM
PIN-781335

Advocate for the Petitioners : Mr. P. K. Das, Advocate

Advocate for the Respondents : Mr. S. K. Goswami, Advocate
Ms. U. Das, Addl. Sr. Govt. Advocate

BEFORE

HONOURABLE MR. JUSTICE DEVASHIS BARUAH

Date of Hearing : 20.09.2023

Date of Judgment : 20.09.2023

JUDGMENT AND ORDER (ORAL)

The instant writ petition has been filed by the petitioners being aggrieved with the order dated 03.12.2019 whereby the Executive Officer, Nalbari Municipal Board had directed the petitioners to close the Marriage Hall until further order.

2. It reveals from the records that the petitioners claim that they had

applied for a licence to operate the Marriage Hall in the name of M/S Manoram Bivah Bhawan in the first floor of the building of the petitioners. The Nalbari Municipal Board, however, had kept the application seeking licence pending. It is an admitted fact that till date, no trade licence has also been issued to the petitioners. But the Nalbari Municipal Board has been realizing trade licence tax from the petitioners from time to time. This aspect of the matter is evident from Annexure Nos.2, 2A, 3, 3A, 4, 4A, 5 & 5A to the writ petition.

3. It is the further case of the petitioners that on 06.11.2019, a show cause notice was issued to the petitioners by the Executive Officer, Nalbari Municipal Board informing the petitioners that the said Bivah Bhawan/Marriage Hall was being run by the petitioners without a licence issued from the said Office. Under such circumstances, the petitioners were asked to show cause within 48 hours on receipt of the said notice as to why the Marriage Hall should not be sealed for running illegally without any Departmental licence.

4. The petitioners upon receipt of the said show cause notice, replied to the Executive Officer, Nalbari Municipal Board vide the communication dated 07.11.2019 intimating that the petitioners have duly applied for the licence for operating the Marriage Hall but the said licence has not yet been issued although the Nalbari Municipal Board had been realizing the Municipal taxes for trade licence on 30.06.2017 for the year 2017-18; on 26.06.2018 for the year 2018-19 and on 04.04.2019 for the year 2019-20. It is not known as to what steps were taken to the said show cause notice dated 06.11.2019 and the reply submitted by the petitioners on 07.11.2019. But on 03.12.2019, the Executive Officer, Nalbari Municipal

Board vide the impugned order, directed the petitioners to close down the Marriage Hall on the ground of public complaint. It is under such circumstance, the petitioners have approached this Court by filing the instant writ petition.

5. The record reveals that this Court vide the order dated 09.12.2019 issued notice and in the interim, stayed the impugned communication dated 03.12.2019. The said interim order thereupon has been extended from time to time. This Court further finds it relevant to take note of that the respondent Nos.7 to 12 filed an application before this Court seeking impleadment to the instant proceedings on the ground that the impugned order dated 03.12.2019 was passed on the basis of their complaint. This Court vide the order dated 08.10.2020 in I.A.(C) No.95/2020 impleaded the respondent No.7 to 12 to the instant writ proceedings. This Court further finds it relevant to note that an application was filed by the respondent Nos.7 to 12 as applicants which was registered and numbered as I.A.(C) No.2249/2020 seeking vacation of the interim order by which the impugned order dated 03.12.2019 was stayed. The record further shows that the newly impleaded respondent Nos.7 to 12 have filed an affidavit-in-opposition stating their stand in the instant proceedings and defending the impugned order dated 03.12.2019. The respondent No.5 had also filed an affidavit-in-opposition stating inter-alia that the instant writ petition so filed by the petitioners was baseless and due process was followed while passing the impugned order dated 03.12.2019.

6. This Court has also heard the learned counsels for the parties. Mr. P. K. Das, the learned counsel for the petitioners submits that initially on the basis of certain public complaints, a notice was issued to the petitioners

on 17.12.2018 and the petitioners were asked to comply with by the Executive Officer, Nalbari Municipal Board. Pursuant thereto, the matter stood closed upon the petitioners complying. The learned counsel for the petitioners further submits that on 06.11.2019, a notice was issued to the petitioners only alleging that the petitioners were not running the Marriage Hall without a Departmental licence to which the petitioners duly replied on 07.11.2019. The learned counsel for the petitioners further drawing the attention of this Court to the impugned order dated 03.12.2019 submits that the reason for which the show cause notice was issued is completely different for which the impugned order was passed and as such, the action of the Executive Officer, Nalbari Municipal Board in passing the impugned order violates the principles of natural justice.

7. Ms. U. Das, the learned counsel appearing on behalf of the Nalbari Municipal Board fairly admits to the fact that the reason for issuance of the show cause notice and the reason for passing of the impugned order are different. Ms. U. Das, the learned counsel however submits that liberty may be given to the Nalbari Municipal Board to bring the said show cause proceedings to a logical conclusion on the basis of the provisions of the Assam Municipal Act, 1956 and the Rules framed thereunder.

8. Mr. S. K. Goswami, the learned counsel appearing on behalf of the private respondent Nos.7 to 12 submits that on account of the Marriage Hall, it has become difficult on the part of the respondent Nos.7 to 12 as well as the other people in the locality to reside and in view of the nuisance so created on account of the functions held in the Marriage Hall. Mr. S. K. Goswami, the learned counsel appearing on behalf of the private respondent Nos.7 to 12 further submitted that various complaints have

been filed by the respondent Nos.7 to 12. In fact on 07.11.2019 itself, a complaint was filed. However, the Nalbari Municipal Board had not taken any action on the basis of such nuisance being created. Mr. S. K. Goswami, the learned counsel appearing on behalf of the private respondent Nos.7 to 12 further submitted that in a PIL being registered before the Division Bench of this Court being PIL No.73/2013, the aspect of the nuisance being created by the Marriage Halls being allowed to function in residential areas has been duly taken note of and there has been certain directions passed by the Division Bench of this Court. Under such circumstances, the learned counsel appearing on behalf of the respondent Nos.7 to 12, therefore, submits that the Executive Officer, Nalbari Municipal Board was within his authority to pass the said order.

9. Upon hearing the learned counsels for the parties and perusal of the materials on record, it is seen that the show cause notice was issued on 06.11.2019 for the reasons that the petitioners are running without a Departmental licence. On the other hand, the petitioners had duly replied on 07.11.2019 stating inter-alia that the petitioners had applied for the licence in question. The respondent Nalbari Municipal Board had kept the application seeking licence pending, but on the other hand were realizing the trade licence fees for the year 2017-18 till date. It is also seen that although the show cause notice was issued for not having a licence but the reason for passing the impugned order is on the basis of certain public complaints. The said public complaint, however, admittedly have not been served upon the petitioners.

10. Under such circumstances, in the opinion of this Court, the impugned order dated 03.12.2019 is in violation of the principles of

natural justice and accordingly violates the mandates of the Article 14 of the Constitution. Consequently, the impugned order dated 03.12.2009, therefore, stands set aside and quashed.

11. It is also seen from the writ petition that the petitioners have sought for a relief for direction to the respondent Nalbari Municipal Board to issue a licence to the petitioner for running the Marriage Hall. Taking into account that the said application had been pending as alleged by the petitioners, it is the opinion of this Court that the Nalbari Municipal Board has to take a decision to the said application. Under such circumstances, this Court therefore directs the Nalbari Municipal Board to take a decision on the said application filed by the petitioners within a period of 4 (four) weeks from the date a certified copy of the instant order is served upon the Executive Officer, Nalbari Municipal Board. It is however observed that the Nalbari Municipal Board while taking a decision in respect to the licence to be issued to the petitioners, shall take into consideration the extant provisions of law as well as the inconvenience of the people residing in the locality due to the functioning of the Marriage Hall in question.

12. Before concluding, this Court further finds it relevant to take note of that in view of setting aside and quashing of the impugned order, the show cause proceedings so initiated on 06.11.2019 stands revived and the Nalbari Municipal Board is given the liberty to bring the said show cause proceedings to a logical conclusion.

13. Apart from the above, this Court cannot be unmindful of the grievances of the private respondent Nos.7 to 12 who on account of the alleged nuisance being created in view of the functions being held in the

Marriage Hall of the petitioners, have lodged various complaints. The Nalbari Municipal Board is directed to take appropriate action on the basis of such public complaints being submitted by the respondent Nos.7 to 12. It is however made clear that the petitioners would be put to notice as regards the public complaints before resorting to such action.

14. With the above observations and directions, the instant petition stands disposed of.

JUDGE

Comparing Assistant