

GAHC010187562024



2024:GAU-AS:9889

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

Case No.: WP(C)/1942/2024

BHARAT SAIKIA AND 9 ORS.
S/O- TARANIKANTA SAIKIA
R/O- VILL.- HILLOIKHUNDA
P.O. RAJAMAYONG
DIST. MORIGAON
ASSAM
PIN- 782411.

2: RATUL SAIKIA
S/O- MAHENDRA SAIKIA
R/O- VILL.- SATIVETI
P.O. RAJAMAYONG
P.S. MAYONG
DIST. MORIGAON
ASSAM
PIN- 782411.

3: RANJIT SAIKIA
S/O- MUKUT SAIKIA
R/O- VILL.- SATIVETI
P.O. RAJAMAYONG
P.S. MAYONG
DIST. MORIGAON
ASSAM
PIN- 782411.

4: GIRIDHAR SAIKIA
S/O- LATE HANKHA RAM SAIKIA
R/O- VILL.- SATIVETI
P.O. RAJAMAYONG
P.S. MAYONG
DIST. MORIGAON
ASSAM
PIN- 782411.

5: ATUL SAIKIA
S/O- MINAI SAIKIA
R/O- VILL.- SATIVETI
P.O. RAJAMAYONG
P.S. MAYONG
DIST. MORIGAON
ASSAM
PIN- 782411.

6: JIBAN SAIKIA
S/O- LATE PIPARU SAIKIA
R/O- VILL.- SATIVETI
P.O. RAJAMAYONG
P.S. MAYONG
DIST. MORIGAON
ASSAM
PIN- 782411.

7: NIPUL SAIKIA
S/O- LATE NABIN SAIKIA
R/O- VILL.- SATIVETI
P.O. RAJAMAYONG
P.S. MAYONG
DIST. MORIGAON
ASSAM
PIN- 782411.

8: NABA KANTA SAIKIA
S/O- LATE BANIKANTA SAIKIA
R/O- VILL.- SATIVETI
P.O. RAJAMAYONG
P.S. MAYONG
DIST. MORIGAON
ASSAM
PIN- 782411.

9: CHABIRAM SAIKIA
S/O- LATE BANESWAR SAIKIA
R/O- VILL.- JHARGAON
P.O. RAJAMAYONG
P.S. MAYONG
DIST. MORIGAON
ASSAM
PIN- 782411.

10: BIKASH SAIKIA
S/O- LATE TAJU UJA SAIKIA

R/O- VILL.- OUGURI
P.O. RAJAMAYONG
P.S. MAYONG
DIST. MORIGAON
ASSAM

PIN- 782411. ALL THE WRIT PETITIONERS ARE MEMBER OF THE MADHYA
MAYONG UNNAYAN SAMITTEE
MAYONG
MORIGAON.
VERSUS

THE STATE OF ASSAM AND 11 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY
DEPARTMENT OF ENVIRONMENT AND FOREST
GOVT. OF ASSAM
DISPUR
GUWAHATI-6.

2:THE COMMISSIONER AND SECRETARY
DEPARTMENT OF ENVIRONMENT AND FOREST
GOVT. OF ASSAM
DISPUR
GUWAHATI-6.

3:THE DISTRICT COMMISSIONER
DIST. MORIGAON
ASSAM

4:THE CIRCLE OFFICER
MAYONG REVENUE CIRCLE
DIST. MORIGAON
ASSAM

5:THE DISTRICT AGRICULTURE OFFICER
DIST. MORIGAON
ASSAM

6:THE DIVISIONAL FOREST OFFICER
GUWAHATI WILDLIFE DIVISION
SANTIPUR
GHY-9
DIST. KAMRUP(M)
ASSAM

7:THE DIVISIONAL FOREST OFFICER
NAGAON DIVISION
NAGAON
ASSAM

8:THE POLLUTION CONTROL BOARD

ASSAM
REP. BY THE CHAIRMAN
BAMUNIMAIDAM
GHY-21
ASSAM

9:THE MEMBER SECRETARY
POLLUTION CONTROL BOARD

ASSAM
BAMUNIMAIDAM
GHY-21
ASSAM

10:THE REGIONAL EXECUTIVE ENGINEER
POLLUTION CONTROL BOARD

NAGAON
ASSAM

11:THE UNION OF INDIA
MINISTRY OF ENVIRONMENT AND FOREST
PARYAVARAM BHAWAN CGO COMPLEX
LODHI ROAD
NEW DELHI-110003.

12:DILIP CHETRY
S/O- BHOPAL SING CHETRY
PROPRIETOR OF M/S BHAWANI BRICK (BBA BRICK) BONDA
CHANDRAPUR
HAJOBARI
DIST. KAMRUP
ASSAM

Advocate for the Petitioners : Mr. R. Baruah, Advocate

Advocate for the Respondents : Mr. D. Gogoi, SC, Forest
Mr. S. Baruah, Advocate
Ms. C. Barah, Advocate
Ms. S. Baruah, Govt. Advocate
Mr. P. K. Goswami, Sr., Advocate
Mr. B. P. Borha, Advocate

BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH

Date of Hearing : 27.09.2024

Date of Judgment : 27.09.2024

JUDGMENT AND ORDER (ORAL)

Heard Mr. Mr. R. Baruah, the learned counsel appearing on behalf of the petitioners. Mr. D. Gogoi, the learned counsel appears on behalf of the respondent Nos.1, 2, 6 & 7; Ms. S. Baruah, the learned counsel appears on behalf of the respondent Nos.3 & 4; Ms. C. Borah, the learned counsel appears on behalf of the respondent No.5; Mr. S. Baruah, the learned counsel appears on behalf of the respondent Nos.8, 9. & 10 and Mr. P. K. Goswami, the learned senior counsel assisted by Mr. B. P. Borah, the learned counsel appears on behalf of the respondent No.12.

2. The instant writ petition has been filed challenging the order dated 19.02.2024 passed by the Deputy Commissioner, Morigaon whereby the Deputy Commissioner, Morigaon reinstated the No Objection Certificate issued vide No.MRK.21/2011/13 dated 02.09.2011 for establishment of the BBA Brick Kiln. The petitioners have challenged the said order dated 19.02.2024 on the ground that the said order was passed in complete violation to the order passed by the learned Division Bench of this Court in WA No.241/2017 as well as the directions passed by this Court in its order dated 30.08.2023 in WP(C) No.4604/2019.

3. Mr. R. Baruah, the learned counsel appearing on behalf of the petitioners submitted that in the consent order which was passed by the

learned Division Bench on 23.11.2017 in WA No.241/2017, it was agreed to that the District Commissioner, Morigaon shall take into consideration the scientific basis of the report of the Pollution Control Board of Assam, Agricultural Officers and Forest Officials which were to be placed before the said District Commissioner prior to passing of the said order. The learned counsel for the petitioners submitted that a perusal of the impugned order dated 19.02.2024 would show that these aspects were not at all taken into consideration and the District Commissioner, Morigaon had based its order on the basis of the report of the Pollution Control Board of Assam dated 25.10.2011 as well as the report of the Agricultural Development Officer issued prior to the consent order passed by the learned Division Bench. The learned counsel for the petitioners further submitted that a perusal of the impugned order would only show that only the report of the Circle Officer as well as the Divisional Forest Officer, Nagaon Division was taken into consideration.

4. Mr. S. Baruah, the learned counsel appearing on behalf of the Pollution Control Board of Assam submitted that as per the brick kiln norms set out by the Ministry of Environment and Forest and Climate Change of the Government of India, certain new technologies have been mandated to be installed.

5. Ms. C. Borah, the learned counsel appearing on behalf of the Agricultural Development Officer submitted that there is a report dated 10.11.2023 wherein the District Agricultural Officer had given scientific basis for its earlier report and stated that the land in question would not be suitable for major agricultural practice and perhaps may be reclassified.

6. Mr. P. K. Goswami, the learned senior counsel appearing on behalf of

the respondent No.12 submitted that the respondent No.12 pursuant to the consent to establish has already setup its brick kiln industry as per revised norms formulated by the Ministry of Environment and Forest and Climate Change of the Government of India in respect to brick kiln industries. In support of the submission, the learned senior counsel for the respondent No.12 has also placed before this Court the relevant documents evidencing the new technology used to establish brick kiln industry.

7. I have heard the learned counsel appearing on behalf of the parties and also perused the materials on record. From the materials on record, it transpires that the learned Division bench of this Court in its order dated 23.11.2017 had recorded the consensus arrived at by the parties in the said proceedings. The relevant paragraphs of the order dated 23.11.2014 regarding the consensus arrived at amongst the parties are reproduced herein under:-

“1. That the Applicants respectfully submit that the Deputy Commissioner, Morigaon may be directed to decide as to whether the Brick Kiln in the name of M/s Bhawani Brick (BBA Brick, Proprietor Shri Dilip Chetri) should be allowed to run and whether the same will affect the Appellants’ surrounding land or the environment. The Deputy Commissioner, Morigaon while deciding the issue shall take into consideration the reports of the Pollution Control Board, Agricultural Officer and the Forest official afresh.

2. That the Applicants respectfully submit that all the concerned officials of Pollution Control Board, Agricultural Officer and Forest Officer should give their respective reports disclosing the scientific basis of such reports.

3. That the Applicants respectfully submit that the Deputy Commissioner, Morigaon may be directed to decide the issue after hearing the Appellant and

the Private Respondent No.1, Sri Dilip Chetri.

4. That the Applicants respectfully submit that the Deputy Commissioner, Morigaon may be directed to decide the matter within a period of 4(four) weeks."

8. It is seen from the above quoted consensus arrived at amongst the parties that the Deputy Commissioner, Morigaon presently the District Commissioner, Morigaon was directed to decide as to whether the brick kiln to be setup by the respondent No.12 should be allowed to run and was also to consider as to whether the same would affect the writ petitioners herein in respect to their land or the environment. It was further recorded that the Deputy Commissioner, Morigaon while deciding the issue shall take into consideration the report of the Pollution Control Board of Assam, Agricultural Officer as well as the Forest Officials afresh. In addition to that, it was also recorded that the concerned officials of the Pollution Control Board of Assam, Agricultural Officer and the Forest Officer should submit their respective report disclosing the scientific basis of their reports.

9. This Court finds it apposite to take note of that pursuant to the said directions issued by the learned Division Bench dated 23.11.2017, an order was passed by the Deputy Commissioner, Morigaon on 02.03.2019 whereby the No Objection Certificate which was issued in favour of the respondent No.12 was rejected. It is under such circumstances, a writ petition was filed being WP(C) No.4604/2019. This Court vide the judgment and order dated 30.08.2023 had disposed of the said writ petition by issuing certain directions. The said directions are mentioned in paragraph No.12 of the said judgment and order and for the sake of

convenience, the same are reproduced herein under:-

12. Accordingly, the instant writ petition, therefore, stands disposed of with the following observations and directions:-

(i) The order dated 02.03.2019 passed by the Deputy Commissioner, Morigaon by which the No Objection Certificate issued to the petitioner dated 02.09.2011 was revoked, is set aside and quashed;

(ii) The Deputy Commissioner, Morigaon is directed to decide afresh within a period of 8 (eight) weeks from today as regards the No Objection Certificate so issued in favour of the petitioner after considering the reports of the stake holders and giving opportunity of hearing to the petitioner as well as the private respondents herein and also taking into account the order dated 23.11.2017 passed by the Division Bench of this Court in WA No.241/2017. The Department of Forest and Environment, Government of Assam as well as the private respondents are permitted to bring to the notice of the Deputy Commissioner, Morigaon any further development in respect to the Pobitora Wildlife Sanctuary and more particularly to the order dated 26.04.2023 passed by the Supreme Court in T.N. Godavarman Thirumulpad , reported in (2023) SC OnLine SC 504.

(iii) This Court further directs that till the decision is rendered by the Deputy Commissioner, Morigaon which this Court directs to do so within the period of 8 (eight) weeks from the date a certified copy of the instant order is served, status-quo be maintained by the parties.

10. In the backdrop of the above, this Court had perused the impugned order dated 19.02.2024. It would be seen that the District Commissioner, Morigaon had taken into account the report of the Circle Officer, Morigaon revenue Circle as well as the report of the Divisional Forest Officer, Nagaon Division. However, in the said impugned order, there are no

references to any scientific reports submitted afresh by the Pollution Control Board of Assam as well as the Agricultural Development Officer. Under such circumstances, in the opinion of this Court, the impugned order dated 19.02.2024 is contrary to the specific directions passed by the learned Division Bench of this Court vide the order dated 23.11.2017 in WA 241/2017 as well as the directions passed by this Court at paragraph No.12 (ii) of the judgment and order dated 30.08.2023 passed in WP(C) No.4604/2019.

11. Accordingly, this Court interferes with the impugned order dated 19.02.2024 and the same is set aside and quashed.

12. Mr. P. K. Goswami, the learned senior counsel appearing on behalf of the respondent No.12 submitted that for the last 12 to 13 years, the respondent No.12 has not been able to establish its brick kiln industry inspite of setting it up with conformity with the new guidelines issued by the Ministry of Environment and Forest pursuant to the Consent issued by the Pollution Control Board of Assam. The learned senior counsel for the respondent No.12 further submitted that after issuance of the Consent to Operate, the respondent No.12 has also operated its brick kiln industry and any delay in consideration by the District Commissioner, Morigaon in respect to the No Objection Certificate would seriously affect the respondent No.12.

13. Taking into account the above, this Court disposes of the instant writ petition with the following observations and directions:-

(i) The Pollution Control Board of Assam is directed to submit a fresh report as regards the respondent No.12 Brick Kiln within a period of

4 (four) weeks from today and not later than 23.10.2024 before the District Commissioner, Morigaon.

(ii) The District Agricultural Officer is also directed to submit a fresh report to the District Commissioner, Morigaon in respect to the land wherein the respondent No.12's Brick Kiln is established within 23.10.2024.

(iii) It is also seen from the impugned order dated 19.02.2024 that the reports of the Circle Officer, Morigaon Revenue Circle as well as the Divisional Forest Officer, Nagaon Division have already been submitted, and as such, there would be no further necessity of submission of any further report(s).

(iv) This Court directs that upon receipt of the said reports as above mentioned the District Commissioner, Morigaon shall fix a date for hearing the petitioners and the respondent No.12. This Court directs that the petitioners and the respondent No.12 be heard before issuing any order. The District Commissioner, Morigaon, if deems necessary may call the concerned officials for arriving at a decision. The entire exercise be completed within 4 (four) weeks from 23.10.2024.

JUDGE

Comparing Assistant