

GAHC010094212023



2024:GAU-AS:12342

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

**Case No. : WP(C)/7117/2023**

HAFIZA KHANAM  
W/O LATE KHAIRUL ISLAM, R/O VILL-LELAIBORI, P.S.-LAHORIGHAT,  
DIST-MORIGAON, ASSAM

VERSUS

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

2:THE UNION OF INDIA  
REPRESENTED BY THE SECRETARY  
MINISTRY OF ENVIRONMENT AND FOREST (WILDLIFE DIVISION)  
PARYAVARAN BHAWAN  
CGO COMPLEX LODHI ROAD  
NEW DELHI-10003

3:THE PRINCIPAL CHIEF CONSERVATOR OF FOREST AND HEAD OF  
FOREST FORCE ASSAM ARANYA BHAWAN  
PANJABARI GUWAHATI-37

4:THE DIVISIONAL FOREST OFFICER  
NAGAON DIVISION NOWGAON ASSAM

5:THE RANGE FOREST OFFICER  
MORIGAON RANGE DIST- MORIGAON ASSAM

6:THE FOREST RANGE OFFICER  
POBITORA WILD LIFE RANGE  
MAYONG DIST-MORIGAON ASSAM

7:THE CIRCLE OFFICER  
MAYONG REVENUE CIRCLE MORIGAON PIN-782105 MORIGAON ASSA

**Advocate for the Petitioner** : MR. J I BORBHUIYA, MR. L MOHAN, MS F BEGUM, MRS. K H CHOUDHURY

**Advocate for the Respondent** : SC, FOREST, DY.S.G.I.

**BEFORE  
HONOURABLE MR. JUSTICE MICHAEL ZOTHANKHUMA  
ORDER**

**Date : 06.12.2024**

Heard Mr. J. I. Borbhuiya, learned counsel for the petitioner, who prays that the impugned order dated 13.04.2017 passed by the respondent No. 3, rescinding the Letter of Intent dated 11.05.2016 issued to her husband, Md. Khairul Islam, which granted mining permit area in respect of Boha sand permit area, should be set aside.

**2.** The petitioner's case is that the petitioner's husband Md. Khairul Islam had submitted his bid, pursuant to Tender Notice dated 04.02.2016, for collection of sand in Boha sand area for the period of 2016-2018. The bid submitted by Md. Khairul Islam was accepted and he was issued a provisional Letter of Intent dated 11.05.2016, in respect of the mining area of Boha sand permit area of 2016-2018 (Rev Portion), for a period of two years for the total quantity of 2160 cum of sand. However, vide letter dated 13.04.2017, the provisional Letter of Intent issued to Md. Khairul Islam, vide letter dated 11.05.2016, was rescinded with immediate effect, on the ground of gross irregularity in determination of the Government value, as well as the fact that the eco-sensitive zone of the nearest protected area, i.e. Pobitora Wild Life Sanctuary was yet to be notified by the Government of India. It was also stated in the said letter that the Boha sand mining permit area under the Nagaon District would not be put to sale under the provisions of AMMC Rules, 2013 until further orders.

**3.** Being aggrieved with the letter dated 13.04.2017, Md. Khairul Islam filed WP(C) 3285/2017 and during the pendency of the case, Md. Khairul Islam expired and his wife, the present petitioner, substituted Md. Khairul Islam.

**4.** WP(C) 3285/2017 was closed as not being pressed, with liberty being given to approach again, if so advised, vide order dated 02.09.2022.

**5.** The order dated 02.09.2022 states as follows:-

*“Mr. J. I. Borbhuiya, learned counsel for the petitioner seeks not to press with this writ petition with a liberty to file afresh.*

*Both the prayers are allowed.*

*Writ petition stands closed on being not pressed.*

*Liberty is granted to approach again, if so advised.*

*Mr. K P Pathak, learned counsel appears for the Forest Department”*

**6.** The present petitioner, who is the wife of Md. Khairul Islam, approached this Court by filing WP(C) 6393/2022. However, the same was withdrawn with liberty to file afresh, vide order dated 01.02.2022, which is reproduced herein below as follows:-

*“Shri J.I. Borbhuiya, learned counsel for the petitioner submits that due to certain developments, he would like to withdraw this writ petition with a liberty to file afresh.*

*Shri R.R. Gogoi, learned Standing Counsel, Forest Department and Shri K.K. Medhi, learned counsel on behalf of Shri S.K. Medhi, learned C.G.C. are present.*

*Writ petition accordingly stands dismissed on withdrawal with liberty as prayed for."*

**7.** The petitioner's counsel submits that the Supreme Court in various Interlocutory Applications, arising out of WP(C) 202/1995, held that mining within the National Parks and Wildlife Sanctuaries shall not be permissible, within 1 km from the boundary of such National Park and Wildlife Sanctuary. As the Boha sand area was outside the 1 km distance from the Pobitora Wildlife Sanctuary, mining could be done on Boha mining area.

**8.** As the Letter of Intent dated 04.02.2016 had initially been issued to the petitioner's husband for collection of sand in Boha sand area for two years from 2016-2018, the petitioner has filed the present writ petition praying that she should be allowed to do the said mining work on the basis of the Letter of Intent dated 11.05.2016, by setting aside the impugned order dated 13.04.2017, which rescinded the Letter of Intent dated 11.05.2016 issued to the petitioner's husband.

**9.** On considering the prayer made by the petitioner and the fact that the petitioner was not the successful tenderer, pursuant to the Tender Notice dated 04.02.2016, this Court finds that there is no cause of action for the petitioner to file the present writ petition. Further, the mining was to be done for a period of two years, i.e., 2016-2018 and due to efflux of time, the said period is over.

**10.** The petitioner's husband was the successful tenderer, as he had the eligibility criteria to be awarded the Letter of Intent, which was however rescinded. No right flows to the petitioner, to be given mining permission on the

basis of the Tender Notice dated 04.02.2016. The very fact that the Letter of Intent has been rescinded by the State Government, due to it's proximity to eco-sensitive zone and which was clarified by the Supreme Court, vide orders dated 03.06.2022 and 26.04.2023, does not enclothe the petitioner with any right, to take up cudgels on behalf of her deceased husband. As the right of the petitioner's husband died with his death, the petitioner does not have any cause of action and as such, cannot be said to be an aggrieved person.

**11.** This Court is of the view that the manner in which the writ petition has been filed is only an attempt to waste public money and public time. No fundamental or legal right of the petitioner has been violated by the respondents. Accordingly, this Court finds that the writ petition is not maintainable, as the petitioner cannot be said to be an aggrieved person. The writ petition is accordingly dismissed. As the petitioner has filed a frivolous petition, cost of Rs. 5,000/- is imposed upon the petitioner, which should be deposited in the Registry of this Court, within one week from today. The Registry shall thereafter transfer the above-said amount to the State Legal Service Authority.

**JUDGE**

**Comparing Assistant**