

GAHC010103682024



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

Case No. : WP(C)/2782/2024

PARBIN SULTANA
PROPRIETOR , M/S JPIS ENTERPRISE,
W/O- MD. JIYAU PASA,
NALBARI TOWN, WARD NO-8,
P.S AND P.O- NALBARI, DIST- NALBARI, ASSAM, PIN-781335

VERSUS

THE STATE OF ASSAM AND 3 ORS
REP. BY THE COMMISSIONER SECRETARY TO THE GOVT OF ASSAM,
REVENUE AND DISASTER MANAGEMENT DEPARTMENT
, DISPUR, GUWAHATI-781006

2:THE DISTRICT COMMISSIONER
NALBARI
ASSAM
PIN-781335

3:THE CIRCLE OFFICER
NALBARI REVENUE CIRCLE
NALBARI
ASSAM
PIN-781335

4:THE POLLUTION CONTROL BOARD
ASSAM
REP. BY ITS CHAIRMAN
BAMUNIMAIDAM
GUWAHATI-21

5:THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM
FOREST DEPARTMENT

DISPUR
GUWAHATI-

For the petitioner (s) : Mr. S. Hoque, Advocate

For the respondent (s) : Mr. D. Gogoi, Advocate
Ms. G. Hazarika, Advocate
Mr. B. J. Talukdar, Advocate

BEFORE
HON'BLE MR. JUSTICE DEVASHIS BARUAH
ORDER

16.08.2024

Heard Mr. S. Hoque, the learned counsel appearing on behalf of the petitioner. Ms. G. Hazarika, the learned counsel appears on behalf of the Revenue Department; Mr. B. J. Talukdar, the learned counsel appears on behalf of the respondent Nos.2 & 3 and Mr. D. Gogoi, the learned counsel appears on behalf of the respondent No.5.

2. The petitioner in the instant proceedings has challenged the communication dated 02.03.2024 issued by the Additional District Magistrate, Nalbari whereby the said official had directed the Circle Officer, Nalbari Revenue Circle to seal the premises of the petitioner as well as to take necessary steps for lodging of an FIR of criminal nature of acts and to take necessary action for compliance on the provisions of the prohibitory order under Section 144 Cr.P.C. promulgated vide the office order dated 29.02.2024. In pursuant thereto, the petitioner was informed by the Circle Officer, Nalbari that the premises of its brick kiln establishment would be sealed for violation of the Assam Brick Kilns Establishment and Regulation Rules, 2013. Thereupon, the petitioner

submitted the representation to the respondent authorities, more particularly to the respondent No.2, however did not receive any favourable result and consequently the petitioner was constrained to approach this Court by filing the instant writ petition.

3. It is seen from the record that notice was issued on 31.05.2024 and the respondents were directed to apprise this Court as to whether the Assam Brick Kilns Establishment Regulation Rules, 2013 have been published and have been given due effect. It is further seen that on various occasions, this Court had granted opportunities to the respondent authorities to place as to whether the Assam Brick Kilns Establishment Rules, 2013 have been notified or not by way of an Official Gazette. Nothing has been placed before this Court inspite of various opportunities. It is however relevant to take note of at this stage that on 14.08.2024, when the matter was listed, this Court adjourned the matter to be taken up today, in view of the Standing Counsel of the Pollution Control Board having not appeared on 14.08.2024. Today also none has appeared on behalf of the Pollution Control Board of Assam.

4. This Court has duly heard the learned counsels appearing on behalf of the parties. The impugned order is based upon certain enquiry report regarding violation of the norms of the Assam Brick Kilns Establishment and Regulation Rules, 2013. As the respondents have failed to show that the said Assam Brick Kilns Establishment and Regulation Rules, 2013 had come into force inspite of various opportunities, the impugned order dated 02.03.2024 which is based upon the Assam Brick Kilns Establishment and Regulation Rules, 2013 cannot stand the scrutiny of law.

5. Accordingly, the impugned order dated 02.03.2024 is therefore set

aside and quashed.

6. All consequential actions taken on the basis of the said impugned order dated 02.03.2024 is also set aside and quashed. The respondent No.3 is further directed to remove the sealing of the premises of the petitioner which was done on the basis of the impugned order dated 02.03.2024. The same has to be done forthwith and not later than 15 days from the date of service of the certified copy of the instant order to the Respondent No.2.

7. Before parting with the record, this Court however observes and directs that the order so passed herein shall not preclude the Pollution Control Board, Assam to take such action as envisaged under the extant laws.

JUDGE

Comparing Assistant