

GAHC010124152024



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

Case No. : WP(C)/3300/2024

DWARKA PRASAD AND 24 ORS
SON OF LATE BISWANATH PRASAD,
R/O- VILLAGE- KRISHNAGAR,
P.O. AND P.S AND DIST.- HOJAI, ASSAM.

2: SUSHIL DAS
SON OF GOPAL CH. DAS

R/O- VILLAGE- KRISHNAGAR

P.O. AND P.S AND DIST.- HOJAI
ASSAM.

3: RAJ KUMAR DEY
SON OF LATE RABINDRA DEY

R/O- VILLAGE- KRISHNAGAR

P.O. AND P.S AND DIST.- HOJAI
ASSAM.

4: KAJAL KANTA DAS
SON OF LATE J.C. DAS

R/O- VILLAGE- KRISHNAGAR

P.O. AND P.S AND DIST.- HOJAI
ASSAM.

5: KAMALESH GUPTA
SON OF LATE HARI CHARAN

R/O- VILLAGE- KRISHNAGAR

P.O. AND P.S AND DIST.- HOJAI
ASSAM.

6: BABBAN PRASAD GUPTA
SON OF LATE HARI CHARAN

R/O- VILLAGE- KRISHNAGAR

P.O. AND P.S AND DIST.- HOJAI
ASSAM.

7: ADITYA BIKRAM PRASAD
SON OF LATE DINANATH PRASAD

R/O- VILLAGE- KRISHNAGAR

P.O. AND P.S AND DIST.- HOJAI
ASSAM.

8: UTTAM KAR
SON OF NIHAR KAR

R/O- VILLAGE- KRISHNAGAR

P.O. AND P.S AND DIST.- HOJAI
ASSAM.

9: BIKRAM SAHU
SON OF LT. BANGSHI DHANU SAHU

R/O- VILLAGE- KRISHNAGAR

P.O. AND P.S AND DIST.- HOJAI
ASSAM.

10: RAJ DAS
SON OF SHANTI DAS

R/O- VILLAGE- KRISHNAGAR

P.O. AND P.S AND DIST.- HOJAI
ASSAM.

11: SHILADITYA DAS
SON OF DULAL CH. DAS

R/O- VILLAGE- KRISHNAGAR

P.O. AND P.S AND DIST.- HOJAI
ASSAM.

12: ASHOK KAR
SON OF HARI DAS KAR

R/O- VILLAGE- KRISHNAGAR

P.O. AND P.S AND DIST.- HOJAI
ASSAM.

13: SUBHAM KAR
SON OF SUKHAMAY KAR

R/O- VILLAGE- KRISHNAGAR

P.O. AND P.S AND DIST.- HOJAI
ASSAM.

14: DEEP KAR
SON OF BIKRAMJIT KAR

R/O- VILLAGE- KRISHNAGAR

P.O. AND P.S AND DIST.- HOJAI
ASSAM.

15: DULAL CH. DAS
SON OF LATE SURENDRA CH. DAS

R/O- VILLAGE- KRISHNAGAR

P.O. AND P.S AND DIST.- HOJAI
ASSAM.

16: MANAJIT MALAKAR
SON OF LATE RABINDRA MALAKAR
R/O- VILLAGE- KRISHNAGAR

P.O. AND P.S AND DIST.- HOJAI
ASSAM.

17: SURAJ PAUL
SON OF LATE SISIM PAUL

R/O- VILLAGE- KRISHNAGAR

P.O. AND P.S AND DIST.- HOJAI

ASSAM.

18: GAUTAM DAS
SON OF LATE PARESH DAS

R/O- VILLAGE- KRISHNAGAR

P.O. AND P.S AND DIST.- HOJAI
ASSAM.

19: JOYDEB DAS
SON OF LATE PARESH DAS

R/O- VILLAGE- KRISHNAGAR

P.O. AND P.S AND DIST.- HOJAI
ASSAM.

20: RAM DAS
SON OF SUBAL DAS

R/O- VILLAGE- KRISHNAGAR

P.O. AND P.S AND DIST.- HOJAI
ASSAM.

21: SWAPAN DAS
SON OF UPANDO DAS

R/O- VILLAGE- KRISHNAGAR

P.O. AND P.S AND DIST.- HOJAI
ASSAM.

22: PINKU ROY
SON OF JAHARELAL RAY

R/O- VILLAGE- KRISHNAGAR

P.O. AND P.S AND DIST.- HOJAI
ASSAM.

23: DHRUBA MALLICK
SON OF RANJAN MALLICK

R/O- VILLAGE- KRISHNAGAR

P.O. AND P.S AND DIST.- HOJAI

ASSAM.

24: ABHISHEK SHILL
SON OF KARTIK CH. SHILL

R/O- VILLAGE- KRISHNAGAR

P.O. AND P.S AND DIST.- HOJAI
ASSAM.

25: ASHISH DAS
SON OF KAMAKHYA DAS

R/O- VILLAGE- KRISHNAGAR

P.O. AND P.S AND DIST.- HOJAI
ASSAM

VERSUS

THE STATE OF ASSAM AND 6 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE
GOVERNMENT OF ASSAM,
EXCISE DEPARTMENT, DISPUR, GUWAHATI- 781006.

2:COMMISSIONER OF EXCISE
ASSAM
HOUSEFED COMPLEX

GUWAHATI- 781006.

3:THE DISTRICT COLLECTOR CUM DISTRICT COMMISSIONER
HOJAI DISTRICT
P.O. AND DISTRICT- HOJAI
ASSAM.

4:THE ADDITIONAL DISTRICT COMMISSIONER (REVENUE)
HOJAI DISTRICT
P.O. AND DISTRICT- HOJAI
ASSAM.

5:JOY SHANKAR SARMA
THE ADDITIONAL DISTRICT COMMISSIONER (REVENUE)

HOJAI DISTRICT

P.O. AND DISTRICT- HOJAI
ASSAM.

6:HOJAI MUNICIPAL BOARD
HOJAI
REPRESENTED BY ITS EXECUTIVE OFFICER AT P.O. AND DISTRICT-
HOJAI
ASSAM.

7:SUBRAT SARMA
SON OF LATE BIJOY SHANKAR SARMA

RESIDENT OF BIRUBARI
NIZARAPAR

P.O.- GOPINATH NAGAR
HOUSE NO. 24

GUWAHATI- 781016
DISTRICT- KAMRUP(M)

ASSAM

Advocate for the Petitioner : MR. D P BORAH

Advocate for the Respondent : SC, EXCISE DEPTT.

BEFORE
HONOURABLE MR. JUSTICE KAUSHIK GOSWAMI

ORDER

Date : 26.06.2024

Heard Mr. D. P. Borah, learned counsel of the petitioners. Also heard Mr. R. R. Gogoi, learned Standing counsel, Excise Department and Ms. S. Baruah, learned Government Advocate for the State respondents.

By filing the instant petition under Article 226 of the Constitution of India, the petitioners are seeking directions inter-alia to the respondent authorities to consider the objection representation

submitted by the petitioner praying for not allowing the respondent No. 7 to set up his "IMFL OFF" Shop at N.S.C.B Road, Krishna Nagar, Municipal Holding No. 36, Ward No. 9, Hojai Town.

The brief facts of the case is that the petitioners who are residence of the locality, wherein the "IMFL OFF" Shop of the respondent No. 7, is proposed to be set up.

It is the specific case of the petitioners that the said "IMFL OFF" Shop is being set up in the proposed location in violation of the provisions of the Assam Excise Rules.

Paragraph 5 of the petition is reproduced hereunder for ready reference:

"5. That your Petitioners state that the "IMFL 'OFF'" Shop of the Petitioner is set up in the aforesaid location in violations of the provisions of the Assam Excise Rules which may be summarized below:-

(i) Firstly, the "IMFL 'OFF'" Shop of the Respondent No.7 has been set up in a location which is at a distance of exactly 71 Meters from a Durga Mandir/ Kali Mandir.

In this regard, the Petitioners beg to refer to the provisions of Rule 289(2) of the Assam Excise Rules, 2016 which provides that -

"289(2) No IMFL and Beer Retail 'OFF' license or retail 'ON' shall be established in Municipal corporation areas within a distance of 50(fifty) meters, in Municipality and Town Committee area within a distance of 100 (one hundred) meters

"Public place of worship" for the purpose of this rule means, a place of public worship having a pucca structure with a covered area of more than 200 square feet which is managed or owned by a registered public trust or a well established and recognized management committee."

In the instant case, the "IMFL 'OFF'" Shop of the Respondent No. 7 is located under the Hojai Municipal Board and as such the distance of 100 Meters will be applicable. The "IMFL 'OFF'" of the Respondent No. 7 has been set up at a location which is exactly 71 Meters from a Durga Mandir/ Kali Mandir. The pucca structure of the said Durga Mandir/ Kali Mandir is about 880 Square Feet and which is run by a duly constituted Managing Committee wherein some of the Petitioners are also members.

(ii) Secondly the Respondent No. 7 has been allowed to set up his "IMFL 'OFF'" in violation of the provisions of Rule 289(1) and 295 of the Assam Excise Rules.

Rule 289(1) provides that

"289.(1) The liquor shops of any description should not be located at sites to which the neighbours object on ground which upon enquiry appear to be reasonable and free from malice or ulterior motive."

Rule 295 provides that

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"295. Objection from local bodies and from following persons will be considered-

(i) In case of Corporation, Municipality or Town Committee areas the Corporation, Municipality or Town Committee concerned to which the proposal relates and the neighbours, occupiers and residents of the neighbourhood of the premises involved.

(ii).....

(iii) For the purpose of Rule 289(1), 295(1) and 295(ii), objections from the owners or occupiers and residents of the neighbourhood located within a radius of 75(seventy five) meters of the premises involved shall be considered.

In the instant case, although the Petitioners have been residing within 75 Meters from the location of the "IMFL 'OFF" of the Respondent No. 7, however the objections raised by the Petitioners have not considered by the Respondent authorities till date.

On the other hand, the Petitioners have reliably come to know that the Respondent No. 7 has obtained the "IMFL 'OFF'" License by submitting manufactured and forged No Objection Certificates on behalf of the local residents of the locality wherein the "IMFL 'OFF" Shop has been set up."

It appears that the petitioners have filed a representation to the respondent authorities for reconsidering the issuance of "IMFL OFF" to the respondent No. 7, however no response whatsoever has been received till date.

Mr. R. R. Gogoi, learned Standing counsel submits that an

enquiry has been conducted by the Inspector, Excise, Hojai, Excise Circle whereby it is seen that the grant of "IMFL OFF" license to the respondent No. 7 is justified.

Be that as it may, this Court is of the considered view that since the residence of the locality has certain grievances as regards the setting up of the "IMFL OFF" Shop in the proposed location, to which representation has also been filed which has not been considered till date, the writ petition can be disposed of at the motion stage itself, by directing the respondent No. 3 to dispose of the representation filed by the petitioners in accordance with law within a period of 2(two) weeks from the date of receipt of the certified copy of this order.

Needless to clarify that till the respondent No. 3 disposes of the application filed by the petitioners in this regard, the proposed "IMFL OFF" Shop shall not be started.

It is further made clear that all the parties involved in this writ petition shall be duly heard before considering the representation filed by the petitioners.

Let a copy of the writ petition along with the certified copy of this order be furnished to the respondent No. 3 for doing the needful.

Disposed of.

JUDGE