

GAHC010126322023



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

Case No. : WP(C)/3322/2023

SAHIDUL ALOM BARBHUIYA
PROPRIETOR OF M/S MOJO ENTERPRISES,
S/- NURUL ISLAM BARBHUIYAN, R/O- VILLAGE - TARAPUR,
P.O AND P.S- KALAIN, PIN-788815,
DIST- CACHAR, ASSAM

VERSUS

THE STATE OF ASSAM AND 6 ORS
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM,
ENVIRONMENT AND FOREST DEPARTMENT
DISPUR, GUWAHATI, ASSAM-06.

2:THE PRINCIPAL CHIEF CONSERVATOR OF FOREST ASSAM
REHABARI
GUWAHATI-08

3:THE CHIEF CONSERVATOR OF FOREST
SOUTHERN ASSAM CIRCLE
SILCHAL CACHAR
PIN-788001
ASSAM

4:THE DIVISIONAL FOREST OFFICER

KARIMGANJ DIVISION
KARIMGANJ
ASSAM
PIN-788712

5:THE DEPUTY COMMISSIONER
CACHAR

SILCHAR
DIST- CACHAR
ASSAM
PIN-788001

6:THE RANGE FOREST OFFICER
KALAIN RANGE
CACHAR
ASSAM
PIN-788815

7:THE UNION OF INDIA
REP. BY THE SECRETARY TO THE GOVERNMENT OF INDIA
MINISTRY OF ENVIRONMENT
FOREST AND CLIMATE CHANGE
PARYAVARAN BHAWAN
JORBAGH ROAD
NEW DELHI-0

Advocate for the Petitioner : MR. R P SARMAH

Advocate for the Respondent : SC, FOREST

BEFORE
HONOURABLE MR. JUSTICE MICHAEL ZOTHANKHUMA

ORDER

30.01.2024

1. Heard Mr. R.P. Sarmah, learned Senior assisted by Mr. D. Doley, learned counsel for the petitioner. Also heard Mr. R. Borthakur, learned Standing Counsel, Forest Department.

2. The petitioner has prayed for setting aside the impugned orders dated 23.12.2022 and 17.03.2023, by which the petitioner has been asked to relocate his Crusher Unit from the Eco-Sensitive Zone of Barail Wildlife Sanctuary by

submitting a proposal for a new permit.

3. The learned Senior Counsel for the petitioner submits that the petitioner established a Stone Crusher Unit in the year 2019, after being given all the approvals by the concerned authorities and complying with all formalities. The petitioner also incurred huge expenditure in establishing his Stone Crushing Unit. However, the Ministry of Environment Forest and Climate Change issued a Notification dated 25.04.2022 in the Official Gazette of India, wherein an area of 0 to 3 kms around the boundary of the Barail Wildlife Sanctuary, Cachar District, Assam was notified as a Eco-Sensitive Zone. Clause 4 of the Notification dated 25.04.2022 provided that all activities in the Eco-Sensitive Zone of the Barail Wildlife Sanctuary would be prohibited or regulated, in terms of the Table appended in Clause 4 of the said Notification. Some of the activities that were prohibited in the Eco-Sensitive Zone was commercial mining, stone quarrying, soil excavation and crushing units.

4. The learned Senior Counsel for the petitioner submits that the petitioner's business does not involve mining, as he purchases stones from outside the Eco-Sensitive Zone of Barail Wildlife Sanctuary and crushes them in his Stone Crushing Unit, which is within the Eco-Sensitive Zone of Barail Wildlife Sanctuary. As such, the prohibited activities provided in the Table in relation to Clause 4 of the Notification dated 25.04.2022 does not cover the activity of stone crushing being conducted by the petitioner.

5. The learned Senior Counsel for the petitioner further submits that as per

Clause 3(16) of the Notification dated 25.04.2022, no new polluting industries were permitted to be set-up within the Eco-Sensitive Zone on or after the publication of the said Notification. Only non-polluting industries would be allowed as per the classification of industries given in the guidelines issued by the Central Pollution Control Board in February, 2016 and as amended from time to time. He accordingly submits that the impugned order dated 23.12.2022 issued by the Divisional Forest Officer, Karimganj, Division, Karimganj and the order dated 17.03.2023 issued by the Chief Conservator of Forests, Southern Assam, Circle, Silchar, instructing the petitioner to shift his Stone Crushing Unit from the present location to a location outside the Eco-Sensitive Zone should be set aside.

6. Mr. R. Borthakur, learned Standing Counsel for the Forest Department submits that the petitioner's Stone Crushing Unit is within the Eco-Sensitive Zone of Barail Wildlife Sanctuary and the Table appended to Clause 4 of the Notification clearly prohibits the activity of Stone Crushing units within the Eco-Sensitive Zone. As such, the petitioner has no alternative but to relocate from the area in which he had set-up the Stone Crushing Unit.

7. I have heard the learned counsels for the parties.

8. The Table appended to Clause 4 of the Notification dated 25.04.2022 shows that the running of a Stone Crushing Unit is a prohibited activity within the Eco-Sensitive Zone of Barail Wildlife Sanctuary, in terms of the Notification dated 25.04.2022. As there is no challenge to the Table appended to Clause 4 of

the Notification dated 25.04.2022, wherein the running of the Stone Crushing Unit in the Eco-Sensitive Zone of Barail Wildlife Sanctuary is a prohibited activity, this Court does not find any infirmity with the impugned orders dated 23.12.2022 and 17.03.2023 issued by the respondent authorities.

9. Accordingly, this Court does not find any grounds to interfere with the impugned orders dated 23.12.2022 and 17.03.2023 issued by the respondent authorities.

10. The writ petition is accordingly dismissed.

JUDGE

Comparing Assistant