

GAHC010152902022



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

Case : WP(C)/5176/2022

MD. IKBAL AHMED KHAN AND 14 ORS.
S/O LATE JAMLUDDIN AHMED KHAN

2: AZIZUR RAHMAN KHAN
S/O MD. ABDUL SATTAR

3: ABDUL REZZAK KHAN
S/O HASIM ALI KHAN

4: AKMAL HUSSAIN KHAN
S/O LATE ABDUL BARI KHAN

5: AMIR KHUSRU KHAN
S/O LATE ABDUL BARI KHAN

6: BADAR UDDIN KHAN
S/O LATE ABDUL BARI KHAN

7: NIZAM UDDIN KHAN
S/O- LATE ABDUL HOQUE KHAN

8: JUBAIR AHMED KHAN
S/O- JAMALUDDIN AHMED KHAN

9: ABDUL SATTAR KHAN
S/O- LATE AMIR ALI KHAN

10: LUTFUR RAHMAN
S/O ABDUL REJAK

11: BADRUL ISLAM
S/O LATE AJMAL HUSSAIN

12: RAIS UDDIN
S/O LATE EUSUF ALI

13: FAKRUL ISLAM
S/O- LATE AJMAL HUSSAIN

14: SAIDUR RAHMAN
S/O ABDUL REJAK

15: KAPIL UDDIN
S/O LATE EUSUF ALI

ALL ARE VILLAGE PUB-JARUNI AND PACCHIM-JARUNI RESPECTIVELY
UNDER P.O. KARAIGURI
DISTRICT HOJAI
ASSAM.
VERSUS

THE STATE OF ASSAM AND 4 ORS.
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE
GOVERNMENT OF ASSAM
PANCHAYAT AND RURAL DEPARTMENT PANJABARI
GUWAHATI-37.

2:THE DEPUTY COMMISSIONER
HOJAI
SANKARDEV NAGAR
DISTRICT HOJAI
ASSAM. PIN- 782442.

3:THE CHIEF EXECUTIVE OFFICER
HOJAI ZILLA PARISHAD
SANKARDEV NAGAR
DISTRICT- HOJAI
ASSAM

PIN- 782442.

4:THE EXECUTIVE OFFICER/ B.D.O.
BINNAKANDI ANCHALIK PANCHAYAT
P.O. DOBOKA
DISTRICT- HOJAI
ASSAM
PIN- 782440.

5:THE PRESIDENT
NAMATI GAON PANCHAYAT
P.O.- MATIN BAZAR
DISTRICT- HOJAI
ASSAM. PIN NO. 782440.

Advocate for : MD. A J ATIA
Advocate for : SC
P AND R.D. appearing for THE STATE OF ASSAM AND 4 ORS.

**BEFORE
HONOURABLE MR. JUSTICE SOUMITRA SAIKIA**

ORDER

08.08.2024

Heard Mr. A.J. Atia, learned counsel for the petitioners. Also heard Mr. P Handique, learned Standing counsel for the P&RD as well as Mr. B.K. Das for the respondent No. 5 as well as Mr. S.K Roy for the respondent No. 2

2. This writ petition has been filed by the petitioners who claimed to be petty businessmen who have been carrying out their businesses on certain plots (vitas) who are situated at Pub-Jarani-Matinbazar under Binnakandi Anchalik Panchayat of Nagaon District by paying revenue for their respective vitas. It is

submitted that the predecessors of the writ petitioners have been in possession since 30-50 years.

3. The learned counsel for the petitioners submits that pursuant to the allotment of these vitas, the petitioners and other similarly situated persons made temporary arrangements by erecting certain shades or temporary construction for carrying out their business and earning their livelihood. It is submitted that they paid licence fee and the present licence is subsisting till 30.06.2025. The petitioners are aggrieved that inspite of the vitas being allotted to them and inspite of the necessary licence fee being paid by the respective licencees, they are prevented from carrying of their businesses because the the Anchalik Panchayat and Gaon Panchayat authorities have prevented them from erecting any temporary shed on the pretext that the permanent structure will be constructed in that area for allotment of shops to traders like the petitioners. This dispute has arisen between the writ petitioners and the Panchayat authorities since sometime past and being aggrieved they had approached this Court earlier by filing writ petition being W.P.(C) No. 5483/2014 which was disposed of by Co-ordinate Bench vide order dated 26.08.2019. The said order is extracted below:

“Heard Mr. AJ Atia, learned counsel for the petitioners. Also heard Mr. M Nath, learned standing counsel for the Panchayat & Rural Development Department.

The petitioners were allotted vitas in the Pub-Jarani-Matinbazar by the Hojai Mahkuma Parishad way back in the year 1991. The said market area wherein the petitioners are carrying their business for the livelihood was taken over by the Binnakandi Anchalik Panchayat whereafter they were issued eviction notice on 3.7.2009. Later on,

the Panchayat without going for the eviction of the petitioner issued fresh licences extending the terms to the year 2009-10 and licence fee was collected by Namati Gaon Panchayat. In this manner, the licences of the petitioners were extended by the Binnakandi Anchalik Panchayat and Mr. Atia produced the licence which was issued for the period 01.07.2018 to 30.06.2019 and the licence fees were accordingly accepted @ 200/- each from the petitioners. It is apprehended by Mr. Atia that the petitioners initially were the victim of the members of political parties and as such apprehending that they would be evicted. This writ petition was filed for their protection from being evicted. Notices were duly served on the respondent No. 3 as directed by the court. However, no affidavit-in-opposition is filed by the said respondent No. 3 nor any other respondents.

Mr. Nath, learned standing counsel for the Panchayat and Rural Development Department submits that as the licence/ licences were issued to the petitioners and the process being continued in respect of possession of petitioners subject to the terms and condition of the licence, failure on the part of the petitioners to abide by the terms and condition of the licence will necessary entail eviction.

I have given due consideration to the submissions of the learned counsel. There is no dispute that the petitioners are carrying on the business for their livelihood since 1991 from the licensed premises. Admittedly, there is an eviction noticed but subsequently concerned Panchayat allowed the petitioners to continue with the possession by granting fresh licence after collecting required licence fee. So the petitioners are permissive possessors. Under such

circumstance, it is clear that the petitioners are maintaining their possession abiding by the terms and condition of the licence. Accordingly, such being the position in my opinion this writ petition can be disposed of which I accordingly do with a direction to the petitioners to continue their possession but without violating the terms and conditions of the licence. However, in the event the Panchayat undertakes to carry out construction of the market complex in the near future over the said land under the possession of the petitioners, necessary preference must be given for allotment of the shop premises to the petitioners subject to fulfilment of other terms and conditions which may require acceptance at that relevant time imposed by the Anchalik Panchayat."

4. The learned counsel for the petitioners submits that notwithstanding this order by the Co-ordinate Bench, the petitioners have not been effectively permitted to carry out their businesses because the Panchayat authorities have prevented them from erection of temporary sheds. In the absence of any shades, these petty businessmen who carried their businesses of trading in vegetables and fruits and other necessary items from those vitas, are unable to operate their businesses properly. It is submitted that unless they are permitted to erect temporary sheds, it is impossible to carry out their business and notwithstanding the licence fee deposited by the writ petitioners and the vitas being allotted to the writ petitioners, the action of the respondents have prevented them from carrying out their business and which is also contrary to the earlier order dated 26.08.2019 passed in W.P(C) No. 5483/2014.

5. Mr. Handique, learned Standing counsel for the P&RD as well as Mr. B.K Das for the respondent No. 5 as well as Mr. Roy for the respondent No. 2 submit

that they would like to complete their instructions and file necessary affidavits in the matter.

6. This matter was filed in the year 2022 and notices in the matter were issued as far back as 10.08.2022. Thereafter several orders were passed by the Court granting sufficient time to the respondents to file their counter affidavit.

7. Today also when the matter is called up, the respective counsel appearing for the respondents have renewed their submissions for grant of further time to file the necessary affidavit.

8. The pleadings available before the Court have been carefully perused. Submissions of the counsel have been duly considered.

9. In the present writ petition, the petitioners are before this Court with a limited prayer that the respondents be permitted to allow the petitioners to construct their shop/ houses in their respective vitas and to allow them to continue their businesses.

10. The petitioners are aggrieved that while the writ petitioners have been prevented by the respondents to the writ petitioners, there are other similarly situated businessmen who although have not been allotted in the vitas but they have been permitted to erect permanent constructions with the knowledge and sanction of the respondents. The petitioners' limited prayer is that since they are paying the licence fee and have been allotted the vitas, they should be permitted to carry on their businesses by erecting the shades in order to facilitate them to carry on their businesses.

11. Upon hearing the learned counsel for the parties and upon perusal of the writ petition, this Court is of the view that since several opportunities were granted to the respondents earlier and also considering the limited prayer made

in the writ petition together with the order dated 26.08.2019 passed by the Co-ordinate Bench in W.P(C) No. 5483/2014, the matter need not be kept pending for want of instructions from the respondents. The Court proposes to dispose of this writ petition in terms of directions as hereunder.

12. In view of the order dated 26.08.2019 passed in W.P(C) No. 5483/2014, it is evident that the petitioners were allotted the vitas and they were permitted to carry on their businesses subject to the terms and conditions of the licence. It was also directed that in the event, the Panchayat undertakes to carry out the constructions of the market complex in the near future over the said land under possession of the petitioners, necessary preference must be given for allotment of the shop premises to the petitioners subject to fulfillment of other terms and conditions which may require acceptance and that relevant point in time imposed by the Anchalik Panchayat. This direction has attained finality as no appeal had been preferred by the respondents.

13. In view of such categorical finding by the Co-ordinate Bench, it is clear that the writ petitioners have been found to be in possession of the land and they ought to be allowed to carry on their businesses subject to terms and conditions of the licence which the petitioners claim is still subsisting till 30.06.2025. In support of the contention that the licence fee has been paid and that the licence is still subsisting, the learned counsel for the petitioners has placed a photocopy of the receipt issued by the Secretary, Binnakandi Anchalik Panchayat, Doboka showing an amount of Rs. 1200/- (Rupees One Thousand Two Hundred Only) for the period 2024 to 2025 June, which the learned counsel for the petitioners submits is the receipt of the licence fee recovered from the writ petitioners. What is also noticed from the order passed by the co-ordinate Bench is that in the event the Panchayat desires to undertake permanent

construction then preference should be given to the writ petitioners.

14. The learned Standing counsel for the Gaon Panchayat, respondent No. 5, on instructions submits that at present there is no permanent construction undertaken by the Panchayat.

15. Under such circumstances, there is no discernable reasons as to why the writ petitioners are prevented from carrying on their businesses contrary to the directions of this Court earlier. They are required to be permitted to carry on their businesses in terms of their licence. Since the earlier order dated 26.08.2019 has already attained finality, this Court disposes of the writ petition with a direction to the respondent authorities more particularly, the respondent No. 1, the Secretary to the Government of Assam, Panchayat and Rural Development Department to examine the matter in the light of the earlier order dated 26.08.2019 Passed in W.P(C) No. 5483/2014 taking into account the claims of the writ petitioners as well as the licences stated to have been issued by the Secretary , Binnakandi Anchalik Panchayat, Doboka which is stated to be still subsisting. If upon due verification it is found that they are still in possession of the vitas in terms of the licence issued, they shall not only be permitted to carry out their business from the said vitas allotted but will also be permitted to erect such temporary shades to the minimum as would be necessary for them to carry out the business effectively. Needless to say in the event, any of the respondents desire to erect permanent constructions over those plot of land, the claims of the writ petitioners should be given preference as had already been directed in the order dated 29.08.2019 passed in W.P.(C) No. 5483/2014.

16. This direction be carried out by the respondent No. 1 within a period of thirty (30) days from the date of receipt of certified copy of this order to be

furnished by the writ petitioners.

17. The writ petition accordingly stands disposed of. Interim order if any stands merged.

JUDGE

Comparing Assistant