

GAHC010159852024



2024:GAU-AS:7765

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

**Case No. : Cont.Cas.(Crl.)/1/2024**

MAZAHARUL SULATAN  
S/O LATE RUSTAM ALI, R/O VILL- BHITORSUTI, GOTLONG, P.O.-  
KALIABHOMORA, MOUZA-BHAIRABPAD, TEZPUR, DIST-SONITPUR,  
ASSAM

VERSUS

BIRAJ NATH AND 2 ORS  
CHAIRMAN, TEZPUR DEVELOPMENT AUTHORITY, TEZPUR, SONITPUR,  
ASSAM, PIN-784001

2:DEBA KUMAR MISHRA  
DISTRICT COMMISSIONER  
SONITPUR  
P.O.-TEZPUR  
SONITPUR  
ASSAM  
PIN-784001

3:MADHURJYA BURHAGAOHAIN  
CIRCLE OFFICER  
TEZPUR REVENUE CIRCLE  
TEZPUR  
DIST- SONITPUR  
ASSAM  
PIN-78400

**Advocate for the Petitioner** : MR. P MAHANTA, V KHAKHALARY,C SARMA

**Advocate for the Respondent** : ,

**BEFORE**  
**HONOURABLE MR. JUSTICE MANASH RANJAN PATHAK**  
**HONOURABLE MR. JUSTICE KALYAN RAI SURANA**

**ORDER**

**09-08-2024**

*(M.R.Pathak, J)*

- 1)** Heard Mr. P. Mahanta, learned counsel for the petitioner.
- 2)** The petitioner contended that the respondents have lowered the authority of this court and caused great prejudice by interfering with the judicial proceeding in interlocutory application being I.A. (Civil) No. 1848/2024 that he filed praying to condone the delay of fourteen days in preferring a writ appeal, filed vide Filing Number WA 5113 of 2024, challenging the common order dated 19.03.2024 passed by learned single Judge in W.P.(C) No. 1788/2018 (*Mazaharul Sultan -Vs- The State of Assam & 6 Others*) and W.P.(C) No. 521/2023 (*Mazaharul Sultan -Vs- The State of Assam & 6 Others*) that are presently pending before the Court for consideration.
- 3)** The petitioner stated that by their own actions the respondents caused obstruction in Administration of Justice pertaining to the said order dated 19.06.2024 passed in I.A. (Civil) No. 1848/2024 (*Mazaharul Sultan -Vs- The State of Assam & 10 Others*) relating to condonation of delay.
- 4)** It is stated by the petitioner that by order dated 19.06.2024 the Court in said I.A. (C) No. 1848/2024 issued notice upon the respondents therein as to why the delay in preferring the connected writ appeal should not be condoned.
- 5)** From the said order dated 19.06.2024 passed in I.A. (C) No. 1848/2024 (Annexure-2 to this petition) Mr. Mahanta learned counsel for the petitioner stated that it clearly reflects that the learned counsels have appeared on behalf of the present respondents and as such they are aware with regard to the said matter pending before the Court for adjudication.
- 6)** From the common order dated 19.03.2024 passed by the learned Single Judge (Annexure-1 to this petition) it can be seen that the petitioner without obtaining prior permission from the authority concerned including the Tezpur Development Authority (TDA, in short) constructed an ice factory in the year 2016 over his land measuring 7 Bighas, 1 Katha and 10 Lechas under Dag

No. 145(New) of Period Patta No. 45(New) in the revenue Village -Vitarsuti, District- Sonitpur that he purchased in the year 2015.

**7)** According to the petitioner though at the time of purchase of said land its classification was "*Baotali*", i.e., low agricultural land but no agricultural activity took place over the said land since 1966. It is also submitted by the petitioner that before constructing the said ice factory over his said land, he obtained trade licence, industrial licence and food safety licence in the year 2016 from the authorities concerned.

**8)** The Tezpur Development Authority (TDA) on 13.03.2018 issued notice to the petitioner stating that he had made illegal construction within Tezpur Master Plan Area that was brought under the Tezpur Master Plan, vide Government Notification dated 25.10.1977 and since he had started construction work without obtaining prior permission from the TDA in violation of Section 13(1) of the Assam Town and Country Planning (Amendment) Act, 1959, the petitioner was asked to stop the construction work and he was asked to give reply as to why appropriate action should not be taken against him as per the provisions of Sections 30 (B) (1), 31, 51 and 52 of the said 1959 Act. On 16.03.2018 the petitioner submitted his reply along with the documents that he had including land document, etc.

**9)** Following the provisions of the Revised Master Plan and Zoning Regulation for Greater Tezpur – 2031 the TDA on 19.03.2018 issued notice to the petitioner asking him to demolish all the illegal constructions made by him for commercial purpose over *Baotali* land where *Baotali* land are used purely for cultivation purpose and that construction of building over cultivable land are not permissible without obtaining prior approval/permission from the Development Authority concerned.

**10)** The petitioner filed writ petition W.P.(C) No.1788/2018 praying for setting aside the Notice dated 19.03.2018 issued by the Tezpur Development Authority whereby he was directed to demolish his said illegal commercial construction made over agricultural (*Baotali*) land, without any authority and without taking due approval.

**11)** Thereafter the petitioner filed his second writ petition W.P.(C) No.521/2023 praying for direction to the State respondents not to implement the Gazette notification relating to said Revised Master Plan and Zoning Regulation for Greater Tezpur – 2031 Notification dated 24.08.2010.

**12)** After hearing the parties and considering the provisions of (i) the Assam Town and Country Planning Act, 1959 read with (ii) the Assam Town and Country Planning (Publication of Master Plan and Zoning Regulations) Rules, 1962; (iii) the subsequent amendments of said 1959 Act; (iv) The Assam Agricultural Land (Regulation of Re-Classification and Transfer for Non-Agricultural Purpose) Act, 2015 and (iv) the Revised Master Plan and Zoning Regulation for Greater Tezpur – 2031 Notification dated 24.08.2010 the Hon'ble single judge by its common Order dated 19.03.2024 came to the finding that the land of said revenue Village-Vitarsuti of District- Sonitpur, Assam, wherein petitioner's land involved in the case is located, is included in the Revised Master Plan and Zoning Regulation for Greater Tezpur – 2031 and in that view of the matter the petitioner was required to obtain necessary approval and permission for construction over his said land for commercial purpose from the Tezpur Development Authority, in terms of the Assam Town and Country Planning Act, 1959 and its subsequent amendments read with the Assam Town and Country Planning (Publication of Master Plan and Zoning Regulations) Rules, 1962.

**13)** Considering the decisions of the Hon'ble Supreme Court in the cases of *Union of India -Vs- Tulsiram Patel*, reported in (1985) 3 SCC 398 and *CCE -Vs- Pradyumna Steel Ltd, SLP(C) No. 18531 of 1995* by the said common Order dated 19.03.2024 the Hon'ble single Judge also came to the finding that the Assam Government Notification dated 24.08.2010 covers the area of petitioner's constructions and the policy decision of the State Government in notifying the area incorporated in the Revised Master Plan and Zoning Regulation for Greater Tezpur – 2031 is not in violation of Article 14 of the Constitution.

**14)** By the said common order dated 19.03.2024 the Hon'ble single Judge observed that though the earlier notice dated 13.03.2018 had referred to the State Government Notification dated 25.10.1977 no infirmity was found relating to the exercise of its power by the State Government in terms of the Notification dated 24.08.2010 that was notified in the Assam Gazette on 31.12.2010 and by which the Assam Town and Country Planning Act, 1959 read with the Assam Town and Country Planning (Publication of Master Plan and Zoning Regulations) Rules, 1962 and its subsequent amendments came into play, holding further that in view of the provisions of the Assam Agricultural Land (Regulation of Re-Classification and Transfer for Non-Agricultural Purpose) Act, 2015 the petitioner could not have made constructions on his agricultural land for commercial purposes, without getting approval from the competent authority and without re-classification of his land. As such the Hon'ble Single Judge did not find any reason

to interfere with impugned Notice dated 19.03.2018 issued by the Tezpur Development Authority to the petitioner asking him to demolish all the illegal constructions made by him for commercial purpose over his cultivable (*Baotali*) land without any authority and necessary approval from the authority concerned.

**15)** For the reasons above by the said common order dated 19.03.2024 the Hon'ble single Judge dismissed both the writ petitions W.P.(C) No.1788/2018 and W.P.(C) No. 521/2023 preferred by the petitioner.

**16)** However, by the said common order dated 19.03.2024, the Hon'ble single Judge granted liberty to the petitioner that if he within a period of one week from the date of the said order approaches the Chairman of Tezpur Development Authority for re-classification of his land in question for the purpose of allowing him to use his constructions for commercial purposes, the authority concerned would take a decision on the same immediately as per its discretion and till then the notice dated 19.03.2018 (issued by the Tezpur Development Authority to the petitioner asking him to demolish all the illegal constructions made by him for commercial purpose over his cultivable land involved in the case) shall not be acted upon till a decision is taken on the petitioner's said representation.

**17)** From the minutes of the District Level Committee, District-Sonitpur, Tezpur, presided by the District Commissioner & Chairman, District Level Committee (DLC), Sonitpur, Tezpur, regarding re-classification of land held on 10.07.2024 (Annexure-3 to the petition) it is seen that after considering all the facts and gravity of the matter, perusing and discussing the relevant reports, joint verification report etc., the said District Level Committee decided not to recommend Re-classification proposal of land as applied by the petitioner from *Baotali* to commercial/industrial class of land.

**18)** It is seen from the said common order dated 19.03.2024 passed by the Hon'ble single Judge in W.P.(C) No.1788/2018 and W.P.(C) No. 521/2023 as well as the order dated 19.06.2024 passed in I.A. (Civil) No. 1848/2024, all preferred by the petitioner (Annexures – 1 and 2 respectively to this petition) that the District Commissioner & Chairman, District Level Committee (DLC), Sonitpur, Tezpur was not a party respondent in those two writ petitions nor is a party respondent in the I.A. (Civil) No. 1848/2024.

**19)** From the petition it is seen that the petitioner did not submit any representation(s) before

the respondent Nos. 1 and 3, individually to bring it to their notice regarding pendency of his appeal filed against the common order dated 19.03.2024 passed by the Hon'ble single Judge in his W.P.(C) No.1788/2018 and W.P.(C) No. 521/2023 and also about the order dated 19.06.2024 passed in his said I.A. (Civil) No. 1848/2024 filed by him for condonation of delay in preferring the said appeal, though notice of the said interlocutory application might have been served on the government counsel and standing counsel. Moreover, the alleged representation filed by petitioner before the District Commissioner, Sonitpur, Tezpur on 11.07.2024, annexed by him as Annexure - 4 to this petition does not contain any official seal and number regarding receipt of the same by the said authority.

**20)** Further it is not the case of the petitioner that he had filed an application before the Court to stay and/or suspend the said common order dated 19.03.2024 passed by the Hon'ble single Judge in W.P.(C) No.1788/2018 and W.P.(C) No. 521/2023 wherein the Court issued notice to the respondents and such matter of stay is pending for adjudication. It is also not the case of the petitioner that the Court have interfered with the said common order dated 19.03.2024 passed by the Hon'ble single Judge.

**21)** As per the direction passed by the Hon'ble single Judge in said common order dated 19.03.2024 passed in W.P.(C) Nos.1788/2018 and 521/2023, as noted above, in the event of filing any application by the petitioner within a period of one week from the date of the said order before the Chairman of Tezpur Development Authority for re-classification of his land in question for the purpose of allowing him to use his constructions for commercial purposes, the authority concerned would take a decision on the same immediately as per its discretion and till then the notice dated 19.03.2018 that was issued by the Tezpur Development Authority to the petitioner asking him to demolish all the illegal constructions made by him for commercial purpose over his cultivable land involved in the case, shall not be acted upon till a decision is taken on the petitioner's said representation.

**22)** In the case in hand, the petitioner approached the Chairman of Tezpur Development Authority after the said common order dated 19.03.2024 passed by the Hon'ble single Judge in W.P.(C) No.1788/2018 and W.P.(C) No. 521/2023 and thereafter, in its meeting held on 10.07.2024 the District Level Committee (DLC), Sonitpur, Tezpur, regarding re-classification of land, after considering all the facts and gravity of the matter, on perusing and discussing the relevant reports, joint verification report etc., the said Committee on 10.07.2024 decided not to

recommend re-classification proposal of land as applied by the petitioner from *Baotali* to commercial/industrial class of land at revenue Village - Bhitarsuti, Mouza - Bhairabpad, under Dag No. 145 of Period Patta No. 45 under Tezpur Revenue Circle, District - Sonitpur. Subsequently, the Tezpur Development Authority on 12.07.2024, after the said decision of the District Level Committee (DLC), Sonitpur, Tezpur dated 10.07.2024, demolished the illegal construction made by the petitioner on his said agricultural land.

**23)** Considering the entire aspect of the matter and for the reasons above, we did not find the respondents committing any criminal contempt of Court and the order dated 19.06.2024 passed by the Court in I.A. (Civil) No. 1848/2024, noted above.

**24)** Accordingly, this criminal contempt petition against the respondents, being devoid of merit, stands dismissed.

**JUDGE**

**JUDGE**

**Comparing Assistant**