

GAHC010165882024



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

Case No. : WP(C)/4139/2024

ABDUL MOZID AND ANR
S/O- LATE ROSTOM ALI,
R/O- VILLAGE DAMRIBHASA,
P.O- KATARIHARA,
P.S- LAKHIPUR,
DIST- GOALPARA, ASSAM, PIN-783132

2: ODUT MOLLAH @ ABDUL WADUD MOLLAH
S/O- LATE ROMZAN MOLLAH
R/O- VILLAGE DAMRIBHASA
P.O- KATARIHARA
P.S- LAKHIPUR
DIST- GOALPARA
ASSAM
PIN-78313

VERSUS

THE STATE OF ASSAM AND 7 ORS
REP. BY THE PRINCIPAL SECRETARY TO THE GOVT. OF ASSAM,
PANCHAYAT AND RURAL DEVELOPMENT DEPARTMENT, ASSAM, DISPUR,
GUWAHATI- 781006.

2:THE DIRECTOR
OF PANCHAYAT AND RURAL DEVELOPMENT DEPARTMENT
ASSAM KHANAPARA
GUWAHATI- 781022

3:THE DISTRICT COMMISSIONER
GOALPARA ASSAM PIN-783101

4:THE GOALPARA ZILLA PARISHAD
REPRESENTED BY THE CHIEF EXECUTIVE OFFICER GOALPARA ZILLA
PARISHAD DIST.- GOALPARA

ASSAM. PIN-783121

5:THE JALESWAR ANCHALIK PANCHAYAT
REP. BY THE EXECUTIVE OFFICER
JALESWAR ANCHALIK PANCHAYAT
P.O- JALESWAR
P.S- LAKHIPUR
DIST- GOALPARA
ASSAM PIN-783132

6:THE CIRCLE OFFICER
OF LAKHIPUR REVENUE CIRCLE
P.O. AND P.S. LAKHIPUR
DIST.- GOALPARA
ASSAM
PIN- 783129

7:THE OFFICER IN CHARGE
LAKHIPUR POLICE STATION
DIST- GOALPARA
ASSAM
PIN-783129

8:THE KATARIHARA GAON PANCHAYAT
REP. BY ITS SECRETARY
P.O-KATARIHARA
P.S- LAKHIPUR
DIST- GOALPARA
ASSAM
PIN-78313

Advocate for the Petitioner : MR. A F N U MOLLAH, K ZAMAN,MD H R AHMED,MR H R A CHOUDHURY

Advocate for the Respondent : SC, P AND R.D., GA, ASSAM

BEFORE
HONOURABLE MR. JUSTICE MICHAEL ZOTHANKHUMA

ORDER

Date : 21.08.2024

Heard Mr. H. R. A. Choudhury, learned Senior counsel, assisted by Mr. A. F. N. U. Mollah, learned counsel for the petitioners. Also heard Mr. P. Handique,

learned Standing Counsel for the P&RD Department and Mr. S. S. Roy, learned counsel for the State respondents.

2. The petitioners are aggrieved with the speaking order dated 07.08.2024 passed by the District Commissioner, Goalpara, by which the market run by the petitioners on their lands, i.e., Gauranagar Damribhasa Bridge Tiniali Pashu Hat, on their lands, should be run on every Monday or Wednesday or as per their choice, except Friday.

3. The case of the petitioners is that they have been running the said private market on their own lands since 2013 and as such, the respondent authority cannot decide on which dates they should run their private market.

4. Mr. P. Handique, learned Standing Counsel, P&RD Department, on the other hand, submits that in terms of Section 107 of the amended Assam Panchayat Act, 1994, the prior approval of the concerned Gaon Panchayat Authority and the Government is required, to run a private market within the area/jurisdiction of the Gaon Panchayat.

5. Mr. H. R. A. Choudhury, learned Senior counsel for the petitioners submits that the Gaon Panchayat has given a licence to the petitioner under Sections 71 and 72 of the Assam Panchayati Raj Act, 1986, for the period from 01.07.2024 to 30.06.2025, for running the private market by the petitioners and as such, the only requirement is to obtain the approval of the Government and till the approval is given by the Government, the petitioners should be allowed to run their market as per past practise.

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

7. Section 107 of the amended Assam Panchayat Act, 1994 requires prior approval of the Gaon Panchayat Authority and the Government for running a private market. Apparently, the approval of the Gaon Panchayat Authority has been obtained, in view of the licence dated 08.07.2024 issued by the Gaon Panchayat Authority, allowing the running of the private market by the petitioners from 01.07.2024 to 30.06.2025. However, the petitioners have not taken the approval of the Government, in terms of Section 107 of the amended Assam Panchayat Act, 1994. As such, this Court is of the view that the petitioners would have to obtain the approval of the Government for running the private market.

8. Keeping in view Section 107 of the amended Assam Panchayat Act, 1994, the petitioners are given the liberty to submit an application before the Principal Secretary to the Government of Assam, P&RD Department, seeking approval to run the private market. The petitioners should file their application within a period of two days. Thereafter, the Principal Secretary to the Government of Assam, P&RD Department should take a decision on the same, within a further period of ten days, from the date of receipt of the petitioners' application. The decision taken should be communicated immediately to the petitioners.

9. The writ petition is accordingly disposed of.

JUDGE

Comparing Assistant