

GAHC010192292024



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

Case No. : I.A.(Civil)/2929/2024

KAPIL UDDIN
S/O LATE EUSUF ALI,
VILLAGE PUB-JARONI, P.O. KARAIGURI, DISTRICT HOJAI, ASSAM.

VERSUS

THE COMMISSIONER, PANCHAYAT ANR RURAL DEPTT AND 4 ORS
GOVT. OF ASSAM, PANJABARI, GUWAHATI-37

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

3:THE CHIEF EXECUTIVE OFFICER
HOJAI ZILLA PARISHAD
SANKARDEV NAGAR
DIST- HOJAI
ASSAM
PIN-782442

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

5:THE PRESIDENT
NAMATI GAON PANCHAYAT

P.O.-MATIN BAZAR
DIST- HOJAI
ASSAM
PIN-78244

Advocate for the Petitioner : MD. A J ATIA, MS A H ATIA

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

Linked 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

03.10.2024

Heard Mr. A.J. Atia, learned counsel for the applicant. Also heard Ms. N. Bora, learned Standing Counsel, Panchayat & Rural Department.

2. This interlocutory application has been filed praying for correction of the order passed by this Court vide order dated 08.08.2024 passed in W.P.(C) No. 5176/2022. By the said order, the writ petition was disposed of with the following directions:

*“**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."*

3. The learned counsel for the applicant submits that while disposing of the writ petition, this Court had directed the respondent No. 1 to examine the order in the light of the earlier dated 26.08.2019 passed in 5483/2014 taking into account the claim of the petitioner as well as the licences stated to have been issued by the Secretary, Binnakandi Anchalik Panchayat, Doboka which is stated to be still subsisting.

4. The learned counsel for the applicant submits that the respondent No. 1 in the writ petition ought to have been Commissioner, Department of Panchayat & Rural Development, however, the respondent No. 1 was arrayed as Commissioner & Secretary, Panchayat & Rural Development Department, Government of Assam. The learned counsel for the applicant submits that the same was wrongly arrayed. The respondent No. 1 ought to have been Commissioner, Department of Panchayat & Rural Development, Government of Assam or Commissioner to the Government of Assam, Department of

Panchayat & Rural Development. He further submits that in paragraph-15 of the said order while directing the respondent No. 1, the direction was issued to the Secretary to the Government of Assam, Panchayat & Rural Development Department wherein the direction ought to have been issued to the Commissioner, Panchayat & Rural Development Department. He therefore submits that this interlocutory application has been filed for making the necessary correction in the order dated 08.08.2024 passed in W.P.(C) No. 5176/2022.

5. It is also pointed out that the date of the order 26.08.2019 passed in W.P.(C) No. 5483/2014 has been wrongly mentioned as 29.08.2019 passed in W.P.(C) No. 5483/2014, the same also required to be corrected.

6. Ms. N Bora, learned Standing Counsel, Panchayat & Rural Development Department does not object to the prayer made.

7. Accordingly, this interlocutory application stands allowed by making correction in the order dated 08.08.2024 passed in W.P.(C) No. 5176/2022. Accordingly, the direction to the respondent No. 1 should be read as Commissioner, Panchayat & Rural Development Department, Government of Assam instead of Secretary to the Government of Assam, Panchayat & Rural Development Department as quoted in paragraph-15 of the said order.

8. Further wherever the order dated 29.08.2019 passed in W.P.(C) No. 5483/2014 appears, the should be read as 26.08.2019 passed in W.P.(C) No. 5483/2014.

9. This order be read together with the order dated 08.08.2024 passed in W.P.(C) No. 5176/2022.

10. The interlocutory application is accordingly allowed and disposed of.

JUDGE

Comparing Assistant