

GAHC010195392024



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

Case No. : WP(C)/4919/2024

ANJU BORA AND ANR
WIFE OF LATE TANU RAM BORA,
RESIDENT OF HOUSE NO. 05, RAJGARH BIHUTOLI,
GUWAHATI, DIST.- KAMRUP(M), GUWAHATI-781007,
ASSAM.

2: PARTHANA BORA
DAUGHTER OF TANU RAM BORA

RESIDENT OF HOUSE NO. 05
RAJGARH BIHUTOLI

GUWAHATI
DIST.- KAMRUP(M)
GUWAHATI- 781007

ASSAM

VERSUS

THE STATE OF ASSAM AND 5 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE
GOVERNMENT OF ASSAM,
FOREST AND ENVIRONMENT DEPARTMENT,
DISPUR, GUWAHATI-6.

2:THE COMMISSIONER AND SECRETARY TO THE GOVERNMENT OF
ASSAM
HOUSING AND URBAN AFFAIRS DEPARTMENT
DISPUR
GUWAHATI- 781006.

3:THE JOINT SECRETARY TO THE GOVERNMENT OF ASSAM
DEPARTMENT OF HOUSING AND URBAN AFFAIRS

DISPUR
GUWAHATI-6.

4:THE PRINCIPAL SECRETARY TO THE GOVERNMENT OF ASSAM
MINES AND MINERALS DEPARTMENT
DISPUR
GUWAHATI-781006.

5:THE JOINT SECRETARY TO THE GOVERNMENT OF ASSAM
MINES AND MINERALS DEPARTMENT
DISPUR
GUWAHATI- 781006.

6:THE COMMISSIONER
GUWAHATI MUNICIPAL CORPORATION
BHANGAGARH
GUWAHATI

Advocate for the petitioner(s): Mr. AK Hannan

Advocate for the respondent(s): Mr. D Gogoi

For respondent No.1

Mr. P Nayak

For respondent Nos.2, 3 and 6

Mr. S Baruah

Junior Government Advocate, Assam

B E F O R E

HON'BLE MR. JUSTICE DEVASHIS BARUAH

ORDER

25.09.2024

Heard Mr. AK Hannan, the learned counsel appearing on behalf of the petitioners. Mr. D Gogoi, the learned counsel appears on behalf of the respondent No.1, Mr. P Nayak, the learned counsel appears on behalf of the respondent Nos.2, 3 and 6 and Mr. S Baruah, the learned Junior Government Advocate, appears on behalf of the respondent Nos.4 and 5.

2. The instant writ petition is taken up for disposal at the motion stage itself, taking into account that similar issues have already been decided by this Court.

3. It is the case of the petitioners herein that the petitioners are patta holders of a plot of land covered by Dag No.593 of KP Patta No.671 under Revenue Village No.2, Japorigog, Dispur under Mouza Beltola in the district of Kamrup(M) Guwahati. The petitioners intend to build a residential apartment over the said plot of land by availing loan from the financial institutions and by investing their own savings for the residential purpose. Under such circumstances, the petitioners, in order to construct the residential apartment have sought for permission before the Guwahati Metropolitan Development Authority (for short, the GMDA) and had paid the requisite application processing fee. In that regard, the petitioners have also been provided a file being No.GMC/W37/0305/26102022 in the Office of the Commissioner, Guwahati Municipal Corporation.

4. Subsequent, thereto, the petitioners were verbally instructed to pay an amount @ 2% of the total project cost of the building as 'Forest Royalty' and, as such, the petitioners being aggrieved has approached this Court.

5. It is the further case of the petitioners that the respondent authorities could not have demanded payment of any forest royalty from the petitioners. On enquiry being made it could be found that the direction so verbally made for payment of the forest royalty is on the basis of a communication issued by the Joint Secretary to the Government of Assam, Mines and Minerals Department dated 02.03.2023, whereby it was mentioned that the Notification dated 07.10.2021 which was issued thereby to bring into effect the Assam Minor Mineral Concession (Amendment) Rules 2021 (for short, 'the Rules of 2021') would also be applicable against the private agencies. The learned counsel appearing on behalf of the petitioners submitted that vide the order dated 24.09.2024, this Court had already set aside the communication dated 02.03.2023 which is the basis, upon which the verbal demand is being made by the GMC authorities.

6. This Court has also perused the judgment and order dated 24.09.2024 passed in WP(C)No.4085/2024, wherein this Court had set aside the communication dated 02.03.2023 and further directed the GMC authorities to proceed with the consideration of the building application filed by the petitioners without insisting upon the forest royalty. Taking into account that the petitioners herein are similarly situated, it is the opinion of this Court that the petitioners are also entitled to the similar reliefs as provided to the petitioners in WP(C)No.4085/2024. Accordingly, this Court observes and directs as follows:

(i). The Urban Local Bodies cannot impose royalty upon the private person/entity in respect to private constructions carried out and

consequently cannot also insist on payment of royalty as a condition for issuance of permission to construct and to carry out construction on the basis of the permission so granted.

(ii). This Court issues a writ in the nature of mandamus directing the GMC/GMDA not to insist upon payment of royalty upon the petitioner as a condition for granting permission to construct or carrying out construction pursuant to the permission so granted.

7. With the above observation(s) and direction(s), the instant writ petition stands disposed of. No costs.

JUDGE

Comparing Assistant