

GAHC010219702018



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

Case No. : WP(C)/6944/2018

PRAGJYOTISHNAGAR DEVELOPMENT COMMITTEE AND ANR.
REP. BY ITS WORKING SECRETARY SRI BHAITI CHOUDHURY, R/O.
PRAGJYOTISH NAGAR PATH, PRAGJYOTISH NAGAR, NEAR B.G. COLONY,
MALIGAON, GUWAHATI- 781011, DIST. KAMRUP (M), ASSAM.

2: ABHILASHI MAHILA SAMITY

REP. BY ITS SECRETARY SMT. USHARANI DEKA
R/O. PRAGJYOTISH NAGAR
NEAR B.G.COLONY
MALIGAON
GUWAHATI-781011
DIST. KAMRUP (M)
ASSAM

VERSUS

THE STATE OF ASSAM AND 4 ORS.
REP. BY THE COMM. AND SECY. TO THE GOVT. OF ASSAM, EXCISE
DEPTT., DISPUR, GUWAHATI-781006, DIST. KAMRUP (M), ASSAM.

2:THE COMMISSIONER OF EXCISE

ASSAM
HOUSEFED COMPLEX
DISPUR
GUWAHATI-781006.

3:THE SUPERINTENDENT OF EXCISE

KAMRUP (M)
OFFICE OF THE DY. COMMISSIONER (EXCISE BRANCH)
GUWAHATI-781001.

4:THE GUWAHATI MUNICIPAL CORPORATION

PANBAZAR
GUWAHATI-781001
REP. BY ITS COMMISSIONER.

5:PRADIP KUMAR NANDI

S/O. LT. GOPAL KRISHNA NANDI
R/O. SATIJOYMATI NAGAR
B. G. COLONY
MALIGAON
HOUSE NO. 22(A)
P.O. GOTANAGAR
P.S. JALUKBARI
GUWAHATI
DIST. KAMRUP (M)
ASSAM-781011

For the Petitioner(s) : Mr. B. Kaushik, Advocate

For the Respondent(s) : Mr. B. D. Konwar, Sr. Advocate
: Mr. R. R. Gogoi, SC, Excise
: Mr. R. Saloi, Advocate

BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH

ORDER

Date : 09.01.2024

Heard Mr. B. Kaushik, the learned counsel appearing on behalf of the Petitioners and Mr. R. R. Gogoi, the learned Standing counsel appearing on behalf of the Respondent Nos. 1, 2 and 3. I have also heard Mr. B. D. Konwar, the learned Senior Advocate appearing on behalf of the Respondent No.5. None appears on behalf of the Guwahati Municipal Corporation.

2. The instant writ petition has been filed challenging the order dated 14.05.2018 passed by the Deputy Commissioner, Kamrup Metropolitan District

whereby the Respondent No.5 was allowed to shift his IMFL "OFF" licensed shop from Sarusajai, Goralia, Lokhra, Guwahati 781034 to Pragjyotish Nagar, Gotanagar, Ward No.1 at the rented premises of Shri Dipen Das and Shri Dhiraj Das.

3. The Petitioners herein claims to be the residents of Pragjyotish Nagar, Gotanagar Ward No.1 and as such are aggrieved by the order passed by the Deputy Commissioner, Kamrup (M) to permit the Respondent No.5 to shift his IMFL "OFF" licensed shop to their locality. It is the grievances of the Petitioners that the enquiry which was conducted by the Respondent Authorities has been done in a perfunctory manner. The learned counsel for the Petitioners further submitted that the basis of the enquiry which was a No Objection Certificate being submitted by 17 persons is a fraudulently obtained document inasmuch as most of the persons have later on stated that they were deceived by the Respondent No.5 for which they signed the No Objection Certificate.

4. This Court has also taken note of the submission of Mr. B. D. Konwar, the learned Senior counsel appearing on behalf of the Respondent No.5 who submitted that the filing of the instant writ petition by the Petitioners is not at all bonafide and has been done with vested interest. He submitted that all these papers which have now been placed before this Court as well as before the authorities are the papers which have been manufactured by way of threatening and coercion and as such these papers have no meaning in the eyes of law.

5. Mr. R. R. Gogoi, the learned Standing counsel appearing on behalf of the Excise Department submitted that the Respondent Authorities have taken note of the submissions which have been made by the Petitioners as well as the submissions made by various persons who have signed the NOC and upon making certain enquiries have submitted a report before the Commissioner of

Excise, Government of Assam who is presently dealing with the said aspect. He further submitted that in view of the pendency of the instant writ petition, no further steps have been taken by the Commissioner of Excise to decide the said dispute.

6. This Court upon hearing the parties is of the opinion that as the disputes which are involved in the instant proceedings is presently pending disposal before the Commissioner of Excise, Assam, it would not be in the interest of justice for this Court to decide as regards the legality and validity of the order dated 14.05.2018 at this stage. Accordingly, this Court is not inclined to interfere with the order dated 14.05.2018. However, this Court makes it clear that the Commissioner of Excise by taking into consideration the respective contentions of the parties shall decide as regards the validity of the order dated 14.05.2018 as per the provisions of law.

7. Mr. B. D. Konwar, the learned Senior counsel has further submitted that there is an apprehension of breach of peace by the members of the Petitioner society taking into account that almost 50-60 persons comes to the Office of the Commissioner of Excise in order to influence the said official. This Court is not inclined to pass any order in that regard but leaves it to the discretion of the Commissioner of Excise to take appropriate steps so that the hearing can be conducted in a more cordial manner.

8. It is also made clear that both the parties would be at liberty to file their written submissions before the Commissioner of Excise within 15 days from today and the Commissioner of Excise shall duly take note of the same and pass a Speaking Order.

9. With above observations and directions, the instant writ petition stands

disposed of. It is however made clear that if any party is aggrieved by the order passed by the Commissioner of Excise, they would be at liberty to approach this Court.

10. Before parting with the records, this Court however finds it relevant to observe that as the matter is no longer pending before this Court, the Commissioner of Excise would be at liberty to take appropriate decision in respect to the impugned order dated 14.05.2018 and as the dispute is pending since 2018, it would be in the interest of the justice that the Commissioner of Excise disposes of the said proceedings at the earliest and preferably within a period of 3 (three) months.

JUDGE

Comparing Assistant