

GAHC010223612024



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

Case No. : WA/371/2024

1. ABDUL HANNAN LASKAR AND 13 ORS
S/O- LATE USMAN GANI LASKAR, R/O- VILL- DUDPATIL VI, DUDPATIL GP,
P.O- HATICHARA-7, DIST- CACHAR, ASSAM, PIN- 788002

2: SADIK AHMED CHOUDHURY
S/O- LATE ABDUL OWAHID CHOUDHURY
R/O- VILL- DUDPATIL VI
DUDPATIL GP
P.O- HATICHARA-7
DIST- CACHAR
ASSAM
PIN- 788002

3: JABED JAMAL CHOUDHURY
S/O- MUFIDUL ISLAM CHUODHURY
R/O- VILL- DUDPATIL VI
DUDPATIL GP
P.O- HATICHARA-7
DIST- CACHAR
ASSAM
PIN- 788002

4: TINKUL HAQUE CHOUDHURY
S/O- LATE JALAL UDDIN CHOUDHURY
R/O- VILL- DUDPATIL VI
DUDPATIL GP
P.O- HATICHARA-7
DIST- CACHAR
ASSAM
PIN- 788002

5: KUTUB UDDIN BARBHUIYA
S/O- LATE ABDUL HAMID BARBHUIYA
R/O- VILL- DUDPATIL VI

DUDPATIL GP
P.O- HATICHARA-7
DIST- CACHAR
ASSAM
PIN- 788002

6: IMAIL ALI MIR
S/O- LATE MOJOMIL ALI MIR
R/O- VILL- DUDPATIL VI
DUDPATIL GP
P.O- HATICHARA-7
DIST- CACHAR
ASSAM
PIN- 788002

7: ALAMARA BEGUM LASKAR
W/O- MIZAZUR RAHMAN LASKAR
R/O- VILL- DUDPATIL VI
DUDPATIL GP
P.O- HATICHARA-7
DIST- CACHAR
ASSAM
PIN- 788002

8: ABDULLA TALUKDAR
S/O- AMIR UDDIN TALUKDAR
R/O- VILL- DUDPATIL VI
DUDPATIL GP
P.O- HATICHARA-7
DIST- CACHAR
ASSAM
PIN- 788002

9: SUJIT DUTTA
S/O- DHIRENDRA CHANDRA DUTTA
R/O- VILL- DUDPATIL VI
DUDPATIL GP
P.O- HATICHARA-7
DIST- CACHAR
ASSAM
PIN- 788002

10: NAZIM UDDIN LASKAR
S/O- LATE TAZAMUL ALI LASKAR
R/O- VILL- DUDPATIL VI
DUDPATIL GP
P.O- HATICHARA-7
DIST- CACHAR

ASSAM
PIN- 788002

11: JAKIR HUSSAIN TALUKDAR
S/O- JALAL UDDIN TALUKDAR
R/O- VILL- DUDPATIL VI
DUDPATIL GP
P.O- HATICHARA-7
DIST- CACHAR
ASSAM
PIN- 788002

12: AKTAR HUSSAIN LASKAR
S/O- LATE BASIR UDDIN LASKAR
R/O- VILL- DUDPATIL VI
DUDPATIL GP
P.O- HATICHARA-7
DIST- CACHAR
ASSAM
PIN- 788002

13: REJEN SINGHA
S/O- LATE RADHAMOHAN SINGHA
R/O- VILL- DUDPATIL VI
DUDPATIL GP
P.O- HATICHARA-7
DIST- CACHAR
ASSAM
PIN- 788002

14: MAHBUB AHMED BARBHUIYA
S/O- LATE SAKAT ALI BARBHUIYA
R/O- VILL- DUDPATIL VI
DUDPATIL GP
P.O- HATICHARA-7
DIST- CACHAR
ASSAM
PIN- 78800

VERSUS

THE STATE OF ASSAM AND 6 ORS
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT OF ASSAM,
DEPTT OF HOUSING AND URBAN AFFAIRS, DISPUR, GUWAHATI- 06

2: THE DIRECTOR
MUNICIPAL ADMN
DISPUR

GHY- 06

3:THE DEPUTY COMMISSIONER
CACHAR
SILCHAR- 788001

4:THE DISTRICT DEVELOPMENT COMMISSIONER
CACHAR
SILCHAR

5:THE ADDITIONAL DEPUTY COMMISSIONER AND EXECUTIVE OFFICER
SILCHAR MUNICIPAL BOARD
SILCHAR
DIST- CACHAR
ASSAM
PIN- 788001

6:THE CEO
CACHAR ZILLA PARISHAD
SILCHAR

7:THE BLOCK DEVELOPMENT OFFICER
BORKHOLA DEVELOPMENT BLOCK
CACHA

Advocate for the Petitioner : MR H R A CHOUDHURY, MR. M A CHOUDHURY,MR F U BARBHUIYA,MS S DAS

Advocate for the Respondent : Mr. D. Saikia, Advocate General of Assam, Ms. R. Borah, Government Advocate, Assam.

BEFORE
HONOURABLE THE CHIEF JUSTICE
HONOURABLE MR. JUSTICE N. UNNI KRISHNAN NAIR

Date of Hearing: 04-11-2024
Date of Judgment: 04-11-2024

JUDGMENT & ORDER (Oral)

(N. Unni Krishnan Nair. J)

Heard Mr. H. R. A. Choudhury, learned Senior Counsel assisted by Mr. F. U. Barbhuiya, learned counsel appearing for the appellants. Also heard Mr. D. Saikia,

learned Advocate General, Assam assisted by Ms. R. Borah, learned Government Advocate, Assam appearing for the State respondents.

2. The present Intra Court Appeal has been instituted assailing the Judgment & Order dated 24.09.2024, passed by the learned Single Judge in WP(C)595/2023. The appellants, herein, as petitioners, had instituted WP(C)595/2023 presenting a challenge to a notification dated 28.11.2022, issued by the Commissioner and Secretary to the Government of Assam, Department of Housing and Urban Affairs, constituting the Silchar Municipal Corporation with wards having boundary marks as per Annexure-A to the said notification.

3. The grievance of the petitioners pertains to the inclusion of villages Dudpatil Part-VI and Part-VII in the newly constituted Silchar Municipal Corporation vide the said notification dated 28.11.2022. The learned Single Judge, upon consideration of the issues arising in the writ petition was pleased vide Judgment & Order dated 24.09.2024 to reject the contentions advanced by the appellants herein and proceeded to dismiss the writ petition.

4. Mr. H. R. A. Choudhury, learned Senior Counsel appearing for the appellants has at the outset submitted that the grievance of the appellants pertains to the non-consideration of the objections raised by them vide representation dated 21.10.2022 in the matter by the Government while proceeding to issue the said notification dated 28.11.2022, towards constitution of the Silchar Municipal Corporation by incorporating within its area the villages of Dudpatil Part-VI and Part-VII. Mr. Choudhury has submitted that the notification dated 28.11.2022 was so issued in clear violation of the provisions of Sub Article (2) of Article 243Q of the Constitution of India, as well as the provisions of Sub-Section (4) of Section 3 of the "Assam Municipal Corporation Act, 2022. Mr. Choudhury has submitted that the Government having not granted a independent consideration to the objections raised by the petitioners and others with regard to inclusion of villages Dudpatil Part-VI and Part-VII within the newly

constituted Silchar Municipal Corporation, a violation of the provisions of Sub-Section (4) of Section 3 of the said Act of 2022 had occasioned and accordingly, the notification dated 28.11.2022, issued under the provisions of Sub-Section (5) of Section 3 of the said Act of 2022; insofar as, it concerns inclusion of villages Dudpatil Part-VI and Part-VII within the newly constituted Silchar Municipal Corporation would not be maintainable and accordingly, submits that the notification dated 28.11.2022, to the above extent, is required to be interfered with.

5. Mr. H. R. A. Choudhury, learned Senior Counsel by referring to the Judgment and Order dated 24.09.2024, passed by the learned Single Judge in WP(C)/595/2023 has contended that the learned Single Judge after having noticed the provisions of Section 3 of the said Act of 2022, had failed to consider the contention raised by the appellants to the effect that the representations submitted by the petitioners not having been granted an independent consideration by the Government and the said objections having been disposed of basing on the observations made in the matter by the Deputy Commissioner, a violation of the provisions of Sub-Section (4) of Section 3 of the said Act of 2022 having occasioned, the impugned Judgment & Order dated 24.09.2024 requires an interference by this Court.

6. Mr. D. Saikia, learned Advocate General appearing for the State respondents has submitted that on a decision for constitution of the Silchar Municipal Corporation having been arrived at, upon a due consideration of the criterias as mandated in this connection, under the provisions of Sub-Section (1) of Section 3 of the said Act of 2022, a notification in this connection, in terms of the provisions of Sub-Section (1) of Section 3 of the said Act of 2022 was published in the Assam Gazette in its issue dated 07.10.2022. The said notification further invited objection in the matter from any inhabitant of the city/town or Panchayat area in respect of which the notification was being published within 15 days from publication of the notification, which was to be submitted to the Department of Housing and Urban Affairs through the Deputy Commissioner, Cachar. It was further contended by the learned Advocate General that

in pursuance to the said notification dated 28.11.2022 being published in the Assam Gazette, the Deputy Commissioner, Cachar had issued an order, wherein it was stipulated that the Gazette notification dated 07.10.2022 was brought into public domain and made available at the Notice Boards of the Deputy Commissioner and other concerned offices and also published in the Government Website of the district. Further, claims and objections, if any, were directed to be received by the nominated officer in his office within 15 days from publication of the said notification in the said Assam Gazette.

7. Mr. Saikia, learned Advocate General has further submitted that the objections as received including the objections as received from the appellants, herein, pertaining to the inclusion of villages Dudpatil Part-VI and Part-VII in the proposed Silchar Municipal Corporation area were forwarded by the jurisdictional Deputy Commissioner along with his observations vide communication dated 04.11.2022 to the Government of Assam in the Department of Housing and Urban Affairs. Mr. Saikia has further submitted that on receipt of the said communication dated 04.11.2022; the Government had required the Deputy Commissioner, Silchar to submit detailed observations against each of the 46 nos. of claims and objections received in pursuance to the notification dated 28.09.2022, including the objections received from the appellants, herein. It is contended that pursuant thereto, the Deputy Commissioner, Cachar had vide his communication dated 14.11.2022, provided detailed observation against each of the 46 nos. of claims and objections. Mr. Saikia submits that thereafter, the matter was duly considered by the Government of Assam in the Department of Housing and Urban Affairs on 17.11.2022 and a decision was arrived at to reject the objections as they were found to be without merit.

8. On disposal of the objections as submitted in the matter including the objections so raised by the petitioner, therein, in the manner noted herein above, it is submitted that the notification dated 28.11.2022 was so published constituting the Silchar Municipal Corporation and including within its fold the villages Dudpatil Part-VI and

Part-VII. Accordingly, in the above premises, Mr. Saikia, learned Advocate General, Assam has submitted that the provisions of Section 3 of the said Act of 2022 was duly complied with and accordingly, the decision of the learned Single Judge, assailed in the present appeal would not call for any interference by this Court

9. We have heard the learned counsels appearing for the parties and also perused the materials available on record.

10. As noticed herein above, in pursuance to the issuance of the notification dated 28.09.2022, declaring constitution of the Municipal Corporation at Silchar, objections were called for from any inhabitant of the city/town or Panchayat area in respect of which the notification was being published and such objection(s) was mandated to be submitted in writing within 15 days from publication of the notification to the State Government in the Department of Housing and Urban Affairs through the Deputy Commissioner, Cachar, in terms of the provisions of Sub-Section (4) of Section 3 of the "Assam Municipal Corporation Act, 2022"

11. The appellants, herein, in terms of the provisions in the said notification dated 28.11.2022, submitted their objections pertaining to the inclusion of villages Dudpatil Part-VI and Part-VII in the proposed Silchar Municipal Corporation area. The said objections as raised by the appellants were received by the Deputy Commissioner, Cachar and the same along with other similar objections received from other entities were forwarded to the Government, along with observations of the Deputy Commissioner, Cachar, with regard to the objections so raised, vide communication dated 04.11.2022.

12. It is revealed from the records that the Government, on receipt of the said communication dated 04.11.2022, required the Deputy Commissioner, Cachar to submit his detailed observations against each of the 46 nos. of claims and objections, including that of the appellants, herein. The Deputy Commissioner, Cachar, had thereafter, vide communication dated 14.11.2022 proceeded to provide detailed

observations against each of the 46 nos. of claims and objections received, including those received from the appellants herein.

13. The provisions of Section 3 of the said Act of 2022, being relevant for considering the issues arising in the present proceeding, the same is extracted herein below:-

“3. (1) The Governor may, after making such inquiry as he may deem fit, and having regard to the population of any urban area, the density of population therein, the revenue generated for the local administration of such area, the percentage of employment in non-agricultural activities in such area, the economic importance of such area, and such other factors as may be prescribed, by notification, declare such area to be a Municipal Corporation.

(2) The Notification about the constitution of a Corporation shall be published in the Official Gazette and in at least two leading newspapers, at least one of which shall be in vernacular language intelligible to the inhabitants of the local area concerned.

(3) A copy of the notification shall also be pasted in a conspicuous place in the office of the Deputy Commissioner of the district and, where there is a Municipal Board, also in the office of the Municipal Board, and such other public places as the State Government may direct.

(4) Any inhabitant of the city, town or Panchayat area in respect of which a notification has been published under sub-section (2) of Section 3 of the Act may, if he objects to anything contained in the notification, submit his objection in writing within fifteen days of the publication of notification to the State Government, through the Deputy Commissioner of the District and the State Government shall take such objection into consideration.

(5) On the expiry of one month from the date of publication of the notification and after consideration of all or any of the objection which may be submitted, the Governor, may by notification constitute such city, town or any specified part thereof as a Municipal Corporation.”

14. As noticed herein above, on receipt of the communication dated 14.11.2022 from the Deputy Commissioner, Cachar, the Government of Assam in the Department of Housing & Urban Affairs had duly considered the remarks so made by the Deputy Commissioner, Cachar with regard to the objections as brought on record pertaining to inclusion of various areas within the proposed Silchar Municipal Corporation including the observations so made with regard to the objections submitted, pertaining to the inclusion of villages Dudpatil Part-VI and Part-VII in the proposed Silchar Municipal Corporation area and on consideration of the same, a decision was taken to reject the objections as they were found to be without merit.

15. Provisions of Sub-Section (2) & (3) of Section 3 of the said Act of 2022, mandate that, a notification issued under Sub-Section (1) of Section (3) of the said Act of 2022, would be required to be published in the manner so specified therein. Sub-Section (4) of Section 3 of the said Act of 2022 mandates that on the notification issued under Sub-Section (1) of Section 3 being published in the manner as required, objections was permissible to be submitted by any inhabitant of the city/town or Panchayat area in respect of which the notification was being published and such objection was mandated to be submitted in writing within 15 days from publication of the notification to the State Government in the Department of Housing and Urban Affairs through the jurisdictional Deputy Commissioner, and it further mandates that the State Government shall take such objection into consideration. Sub-Section (5) of Section 3 stipulates that on expiry of one month of the date of publication of the notification under Sub-Section (1) in the manner as provided in Sub-Section (2) & (3) of Section 3 of the said Act, 2022 and after consideration of all or any objections which may be submitted, the Governor, may, by notification constitute such city, town or specified part thereof as a Municipal Corporation.

16. In the case on hand, it is seen that the Government had duly considered the objections so raised in the matter by the appellants and on a consideration of the same, a decision was so arrived at to reject the objections as they were found to be

without merit. Accordingly, it is seen that it is only after the rejection of the objections in the manner as mandated under the provisions of Section 3 of the said Act of 2022; a decision was arrived at for issuing final notification for constitution of the Silchar Municipal Corporation in terms of the provisions of Sub-Section (5) of Section 3 of the said Act of 2022.

17. The learned Single Judge, on considering the materials brought on record during the proceedings in the writ petition, had drawn the following conclusions:-

“16. This Court has also taken note of that pursuant to the communication dated 04.11.2022 being submitted before the Commissioner and Secretary to the Government of Assam, Housing and Urban Affairs Department, the State Government upon perusal of the claims and objections as well as the letter dated 04.11.2022 requested the Deputy Commissioner, Cachar to submit detailed specific observations against each of the 46 numbers of claims and objections. Pursuant thereto, the Deputy Commissioner, Cachar had submitted a communication on 14.11.2022 providing detailed observations against each of the 46 numbers of claims and objections.

17. For the purpose of the instant batch writ petitions, it may be relevant to incorporate the specific observations of the Deputy Commissioner, Cachar insofar as the objection which touches on the instant writ petitions and the same are incorporated herein under:-

Sl. No.	Name of the petitioner	Subject of Petition	Specific Observation of DC., Cachar
3	Nazim Uddin Laskar & 19 Others.	Objection against inclusion of Dudhpatil Part VI & VII in the proposed SMC.	The Petitioner were present. Their objection was to exclude Dudhpatil Pt. VI and part of Dudhpatil, Pt-VII from the proposed SMC area. The said areas of Dudhpatil are already included under Draft Silchar Development Authority Master plan 2045. The population density of these areas is also increasing. Construction work of two numbers of bridges have been completed in these areas and the work of approach is going for these two bridges which will connect these areas to Annapurna Ghat ward No.24 and Karatigram Ward No.5. Thus, their objection to exclude Dudhpatil Part-VI & part of Dudhpatil, Pt-VIII from proposed SMC area is not justified.

21	Mustafa Ahmed Choudhury & 816 Others	Objection against inclusion of Kanakpur Part-I in the proposed GMC.	The petitioners were present. Their objection is against inclusion of Kanakpur Part-I area in the proposed SMC area. The said area Kanakpur PartI is included under Draft Silchar Development Authority Master plan 2045 and is just adjacent to the Ward No.14 and 15 of present day SMB. The population density of Kanakpur Part-I is increasing and that area is mostly dependent on non-agricultural activities. Thus, the objection of the petitioner is not justified.
24	Pranojit Das & 41 Others, Aforbasti & Masughat, Dudhpatil Prt-VII Cachar	Claim for exclusion of Dudhpati Part-IV (Aforebasti & Masughat) from the proposed SMC.	The petitioners were present. They claimed for exclusion of Dudhpatil PartIV (Aforbasti & Masughat) from proposed SMC area. The said areas of Dudhpatil are already included under Draft Silchar Development Authority Master plan 2045. The population density of the area is also increasing and construction work of two bridges have been completed and the work of approach road is going on. These two brides will connect Anapurna Ghat Ward No.24 and Karatigram Ward No.5. Thus, their claim to exclude Dudhpatil Pt IV is not justified.
25	Mia Khan & 4 Others.	Claim for exclusion of Tupkhaa GP from the proposed SMC area.	The petitioners were present. The petitioner requested for exclusion of Tupkhana GP from proposed SMC area. Since there is a Census Town and major portion of Tupkhana, Pt-I and entire Tupkhan, pt-II are adjacent to the railway line having increasing population density and non-agricultural activities for which the area has been included in the draft SMC area. Thus, their claim is not justified.
26	The President No. 6 Uttarkrishnapur GP, Cachar	Claim for exclusion of Uttarkrishnapur Part-I from proposed SMC.	The petitioners were present. The Petitioner requested for exclusion of Uttarkrishnapur, Pt-I from the proposed SMC area. As Uttarkrishnapur, Pt-I is a Census Town and also in view of the population density, proposed revenue generation, commercial activities, nonagricultural activities of the area, it has been included in the proposed SMC area. Thus, the claim is not justified.

18. The records further reveal that the said observations were duly considered by the Commissioner and Secretary to the Government of Assam, Housing and Urban Affairs Department on 17.11.2022 and a decision was taken to reject the objections as they were found to be without merit and accordingly directions were issued that the final notification of the Silchar Municipal Corporation be approved subject to vetting of the Legislative Department. It would also be seen that thereupon the matter was placed

before the concerned Minister In-charge who had also approved the same on 26.11.2022. It is on the basis thereof, the notification dated 28.11.2022 have been issued.

19. In view of the above materials as well as the records being perused, the question therefore arises as to whether the State Government had duly considered the objections or not. The answer has to be in the affirmative taking into account the materials on record and what have been observed herein above. Apart from that the observations so made by the Deputy Commissioner which was duly considered in the opinion of this Court is in consonance with the provisions of Section 3(1) with Sub-Article (2) of Article 243Q of the Constitution.

20. Accordingly, this Court finds no grounds to interfere with the impugned notification dated 28.11.2022 for which the instant batch of writ petitions stands dismissed.”

18. We have carefully perused the conclusions drawn by the learned Single Judge in the Judgment under appeal and we find that the same are in consonance with the materials available on record and accordingly, no illegality can be attributed to the conclusions so arrived at in the matter by the learned Single Judge.

19. As noticed herein above, the notification dated 28.11.2022, constituting the Silchar Municipal Corporation by including within its area of villages Dudpatil Part-VI and Part-VII having been so arrived at in compliance with the provisions of Section 3 of the Assam Municipal Corporation Act, 2022, we are of the considered view that the conclusions of the learned Single Judge in the Judgment and Order dated 24.09.2024 in WP(C)/595/2023 would not call for any interference.

20. In view of the above conclusions reached herein above, the writ appeal is held to be devoid of any merit and the same stands dismissed. However, there would no order as to costs.

JUDGE

CHIEF JUSTICE

Comparing Assistant