

GAHC010232432024



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

Case No. : WP(C)/5727/2024

ANOWAR HUSSAIN
S/O LATE KUTUB ALI
R/O HOUSE NO. 03, PRAGATI NAGAR,
NOTBOMA, P.O. AND P.S. HATIGAON,
DIST. KAMRUP (M), ASSAM
PIN-781038

VERSUS

THE STATE OF ASSAM AND 4 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE
GOVERNMENT OF ASSAM, FOREST AND ENVIRONMENT DEPARTMENT,
DISPUR, GUWAHATI-06.

2:THE COMMISSIONER AND SECRETARY TO THE GOVERNMENT OF
ASSAM

FOREST AND ENVIRONMENT DEPARTMENT
DISPUR
GUWAHATI-06.

3:THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM

MINES AND MINERALS DEPARTMENT
DISPUR
GUWAHATI-6.

4:GUWAHATI MUNICIPAL CORPORATION

REPRESENTED BY ITS COMMISSIONER
BHANGAGARH
ASSAM

GUWAHATI-05.

5:GUWAHATI METROPOLITAN DEVELOPMENT AUTHORITY

REPRESENTED BY THE CHIEF EXECUTIVE OFFICER
BHANGAGARH
ASSAM
GUWAHATI-05

Advocate for the Petitioner : MR H A AHMED, MR. MUSTAFA HUSSAIN,MR. R ALI

Advocate for the Respondent : GA, ASSAM, SC, G M D A,SC, GMC,SC, FOREST

BEFORE
HONOURABLE MR. JUSTICE MANISH CHOUDHURY

ORDER

Date : 08-11-2024

Heard Mr. R. Ali, learned counsel for the petitioner; Mr. R.R. Gogoi, learned Standing Counsel, Environment and Forest Department for the respondent nos. 1 & 2; Ms. S. Baruah, learned Junior Government Advocate, Assam for the respondent no. 3; and Ms. H. Baruah, learned counsel representing Mr. P. Nayak, learned Standing Counsel, GMC and GMDA for the respondent nos. 4 & 5.

2. The petitioner has stated that he is the owner of a plot of land measuring 1 Katha, covered by Dag no. 1318 & Patta no. 1095 [New], situate at Village – Notboma, Mouza – Beltola, Revenue Circle – Dispur, District – Kamrup [M] [‘the subject-plot’, for short]. The petitioner has further stated that he made an online application for building permission under the Mukhya Mantri Sohoj Griha Nirman Achan by submitting all the required documents including building estimate before the respondent no. 4 and the respondent no. 5. The respondent no. 4 and the respondent no. 5 while according approval and have demanded deposit

of 2% forest royalty, on the basis of an impugned Letter dated 02.03.2023 issued by the Joint Secretary to the Government of Assam, Mines and Minerals Department [Annexure-5].

3. The challenge in this writ petition under Article 226 of the Constitution of India is with regard to the Letter dated 02.03.2023 issued by the Mines and Minerals Department, Government of Assam by which the scope of the Assam Minor Mineral Concession [Amendment] Rules, 2021 had been sought to be enlarged.

4. It is the specific case of the petitioner that while the amended Rules were only applicable to Government and Government users, by the impugned Letter dated 02.03.2023, even the private individuals who are to construct individual building were sought to be brought within its ambit. It is the contention of the petitioner that the amendment, including the Schedule appended thereto would be applicable only to the Government agencies. Mr. Ali has further submitted that this Court in a number of other writ petitions, including in W.P [C] no. 2040/2023, involving similar issues, interim reliefs have been extended to the petitioners who have approached with the plea that they are constructing their dwelling houses on their own plots of land.

5. Mr. Gogoi, learned Standing Counsel, Environment and Forest Department has drawn attention to a Judgment and Order dated 24.09.2024 passed in the writ petition, W.P.[C] no. 4085/2024 to submit that the impugned Letter dated 02.03.2023 has already been set aside by holding that the Urban Local Bodies [ULB] cannot impose royalty upon the private person/entity carrying private constructions and consequently, such ULBs 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.

6. In view of the fact that the impugned Letter dated 02.03.2023 is not in force, this writ petition stands disposed of with a direction to the respondent no. 4 and the respondent no. 5 not to insist upon payment of royalty upon the petitioner as a condition for granting permission to construction or for carrying out construction pursuant to approval granted already, as the petitioner is making construction in his own plot of land.

7. With the observation made and direction given above, this writ petition stands disposed of. No cost.

JUDGE

Comparing Assistant