

GAHC010256942023



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

Case No. : WP(C)/6634/2023

ABDUL MANNAN
S/O ABDUL MALEK, R/O VILL-SHILOCHI PATHAR, P.O.-BALAJAN, P.S.-
BAGHBAR, DIST-BARPETA (ASSAM), PIN-781308

VERSUS

THE STATE OF ASSAM AND 7 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE
GOVERNMENT OF ASSAM, HOME DEPARTMENT, DISPUR, GUWAHATI-
781006

2:THE DISTRICT COMMISSIONER
BARPETA
P.O. AND P.S.-BARPETA
DIST-BARPETA
ASSAM
PIN-781301

3:THE SUPERINTENDENT OF POLICE
BARPETA
P.O. AND P.S.-BARPETA
DIST-BARPETA
ASSAM
PIN-781301

4:BARPETA ZILLA PARISHAD
BARPETA
PIN-781301
REPRESENTED BY ITS CHIEF EXECUTIVE OFFICER

5:THE CHIEF EXECUTIVE OFFICER
BARPETA ZILA PARISHAD
BARPETA
PIN-781301

6:MANDIA ANCHALIK PANCHAYAT
REPRESENTED BY ITS EXECUTIVE OFFICER
MANDIA
DIST- BARPETA
PIN-781308

7:THE OFFICER-IN-CHARGE
BAGHBAR POLICE STATION
BAGHBAR
P.O. AND P.S.-BAGHBAR
DIST-BARPETA
ASSAM
PIN-781308

8:BAGHBAR BAZAR MANAGING COMMITTEE
P.O. AND P.S.-BAGHBAR
DIST- BARPETA
ASSAM
PIN-78130

Advocate for the Petitioner : MR. M NATH

Advocate for the Respondent : GA, ASSAM

BEFORE
HONOURABLE MR. JUSTICE MICHAEL ZOTHANKHUMA

ORDER

07.03.2024

1. Heard Mr. M. Nath, learned Sr. Counsel assisted by Mr. D.P. Borah, learned counsel for the petitioner. Also heard Mr. H.R.A. Choudhury, learned Sr. Counsel assisted by Mr. H. Ali, learned counsel for the respondent No. 8. Mr. P. Handique, learned counsel appears for the P&RD Department, while Ms. U. Das learned counsel appears for the respondent Nos. 1, 2, 3 & 7.
2. The case of the Petitioner herein is that the Petitioner is a lessee of a market namely "Shewrar Bhita Janapriyo Anchalik Gorur Bazar" for the period

from 01.07.2023 to 30.06.2024. It is the case of the Petitioner that although the Petitioner herein is the lessee, but his business has been affected by the Respondent No. 8, who is running a private cattle market that too in violation of the provisions of the Assam Cattle Preservation Act, 2021 and the Rules framed thereunder. It is the further case of the Petitioner that the Private Respondent has not taken the permission from the authorities under the provisions of the Assam Panchayat Act, 1994 (hereinafter referred to as the '1994 Act') read with the Rules framed thereunder, but have also mentioned in their receipts about orders passed by this Court which have no relevance and thereby the people and the authorities in general have been deceived. It is therefore the submission of the learned Senior Counsel appearing on behalf of the Petitioner, Mr. M. Nath that the further trading activities carried out by the Respondent No. 8 without any permission and that too by deceiving the people and the authorities, ought to be restrained till the disposal of the writ petition.

3. The petitioner's counsel has also taken this Court to the receipts issued by the respondent No.8 for selling of cattle, which states as follows-

“As Per Hon'ble Gauhati High Court Order No. WP(C) 3626/02 & WP(C) No. 2999/14 and WP(C) No.4440/2022”

4. The petitioner's counsel submits that the respondent No. 8 should not be allowed to run the Baghbar Cattle Market without approval being given by the Gaon Panchayat and the Government in terms of Section 107 of the 1994 Act as amended on 19.10.2023.

5. Mr. H.R.A. Choudhury, learned Senior Counsel for the respondent No. 8

submits that while no objection certificate has been issued by the Secretary of the concerned Gaon Panchayat, the respondent No. 8 has not taken the approval of the government till date, in terms of Section 107 of the 1994 Act. He accordingly prays for time to enable the respondent No.8 to make an application to the concerned authority seeking approval to run the private market.

6. Mr. P. Handique, learned counsel for the P&RD Department submits that the respondent No. 8 will have to submit an application to the Principal Secretary to the Government of Assam, P&RD Department seeking approval for running a private market. Thereafter, a decision will be taken on the application.

7. Ms. U. Das learned counsel for the respondent Nos. 1, 2, 3 & 7 submits that the respondent No.8 has applied for registration and issue of cattle licence for Baghbar Cattle Market under the Assam Cattle Preservation Act, 2021 and in this regard, the office of the District Commissioner, Barpeta has sent a letter No. BD/VET/2023-24/BCM/1483 dated 23.08.2023 to the Secretary to the Government of Assam, Home & Political Department. However, no instruction has been received from the government regarding issuance of the licence/registration in favour of the Baghbar Cattle Market till date.

8. I have heard the learned counsels for the parties.

9. As can be seen from the submissions made by the counsels for the parties and the pleadings, the respondent No.8 has been running a private market. With the amendment of the Assam Panchayat Act, 1994 on 19.10.2023, the

running of a private market requires the approval of the concerned Gaon Panchayat and the government in terms of Section 107 of the 1994 Act.

10. The Secretary of the Baghbar Gaon Panchayat has issued a no objection certificate to the respondent No.8 to run the market. However, the respondent No. 8 has not made any application to the government seeking approval for running the private market.

11. Accordingly, this Court is of the view that unless and until the respondent No.8 gets the approval for running the private market under Section 107 of the 1994 Act from the government, the petitioner would be ineligible to run the market. However, keeping in view the fact that the respondent No. 8 has been running the private market for a long time, some time should be provided to the respondent No.8 to seek approval for running the market. Accordingly, the respondent No. 8 shall submit an application seeking approval of the government for running the Baghbar private market under Section 107 of the 1994 Act, on or before 12.03.2024, addressed to the Principal Secretary to the Government of Assam, P&RD Department, who shall take a decision on the respondent 8's application, within a period of 3(three) weeks from the date of receipt of the representation.

12. As Ms. U. Das learned counsel for the respondent Nos. 1, 2, 3 & 7 has stated that the application of the respondent No.8 to run the cattle market has been forwarded by the District Commissioner, Barpeta to the Secretary to the Government of Assam, Home & Political Department on 23.08.2023, the said authority should decide the said application within a period of 3(three) weeks from today. Till a decision is taken by the authorities concerned with regard to

the application submitted/to be submitted, the private market being run by the respondent No.8 should not be disturbed. However, the above is subject to the condition that the respondent No.8 submits his application to the Principal Secretary to the Government of Assam, P&RD Department for seeking approval under Section 107 of the 1994 Act on or before 12.03.2024.

13. With regard to the issue of writ petition numbers being displayed in the receipts of the private market being run by the respondent No.8, this Court has perused the orders passed in the writ petition numbers reflected therein. The orders passed by this Court in W.P.(C) No. 3626/2002, W.P.(C) No. 2999/2014 and W.P.(C) No. 4440/2022 do not reflect that there is any direction passed by this Court permitting the Respondent No. 8 to carry out their trade in the cattle market. The orders in the said writ petitions reveal that the Respondent/Panchayat and Rural Development Department and its functionaries have no say in the Regulation of the private cattle market in terms of the 1994 Act, prior to the amendment made in the year 2023.

14. As Section 107 of the 1994 Act has been amended, which requires the approval of the Gaon Panchayat and the government for running a private market, the respondent No.8 is directed not to use the writ petition numbers in their market receipts in the future, if allowed to run the market by the authorities.

15. The writ petition is accordingly disposed of.

JUDGE

Comparing Assistant