

GAHC010251292024



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

Case : WP(C)/6531/2024

USHA SARKAR AND ANR
W/O- NAGAR BASHI DAS

RESIDENT OF MADAN MOHAN LANE

AMBIKAPUR PART-XI

P.O.- MEHERPUR
P.S.- SILCHAR

DIST.- CACHAR
ASSAM.

2: SALMA BEGUM
W/O- ABDUL RAHIM

RESIDENT OF S.T. ROAD
BADARPUR

KHADIMAN
WARD NO. 1

P.O. BADARPUR

PS.- BADARPUR

DIST.- SRI BHUMI
ASSAM.

PRESENT ADDRESS-
RESIDENT OF MADRAJI COLONY
P.S.- JALUKBARI
DIST.- KAMRUP(M)
ASSAM.
VERSUS

THE STATE OF ASSAM AND 4 ORS
REPRESENTED BY THE PRINCIPAL SECRETARY TO THE GOVT. OF ASSAM

REVENUE AND DISASTER MANAGEMENT DEPARTMENT

DISPUR
GUWAHATI- 06.

2:THE DISTRICT COMMISSIONER
SRI BHUMI
ASSAM
PIN- 788710.

3:THE CIRCLE OFFICER
BADARPUR REVENUE CIRCLE
P.O.- BADARPUR

DIST.- SRI BHUMI
ASSAM

PIN- 788802.

4:THE DISTRICT REGISTRAR
SRI BHUMI
ASSAM
PIN- 788710.

5:THE SUB-REGISTRAR
BHANGA BAZAR
DIST.- SRI BHUMI
ASSAM
PIN- 788701.

Advocate for : MR H R A CHOUDHURY
Advocate for : SC
REVENUE appearing for THE STATE OF ASSAM AND 4 ORS

BEFORE
HONOURABLE MR. JUSTICE SOUMITRA SAIKIA

ORDER

20.12.2024

Heard Mr. JM Sulaiman, learned counsel for the petitioners. Also heard Mr.

H. Sarma, learned Additional Senior Government Advocate, Assam and Ms. G. Hazarika, learned Standing Counsel, Revenue Department.

2] This writ petition is filed by the petitioners being aggrieved that the permission for transfer of sale in respect of a plot of land which the petitioner no.1 intended to sell in exchange for due consideration was not issued by the competent authority, namely, the respondent no.2. It is submitted that no official reasons are furnished for non issuance of the "No Objection Certificate" (hereinafter referred to as NOC) as prayed for. However, the counsel for the petitioner refers to a notification dated 07.03.2024 issued by the Principal Secretary, Government of Assam, Revenue and Disaster Management (Registration) Department by which the grant of NOC for sale of land under Section 21A of the Registration Act, 1908 where the buyer and the seller belong to different religion shall be kept in abeyance for the period of 3 (three) months. It is submitted that this notification on the face of it was issued on 07.03.2024 and therefore, was operative till 07.06.2024 and thereafter, the same has lost its force. It is submitted that no subsequent notification or extension was issued by the Government of Assam. Therefore, there is no justified reason for denying the NOC in respect of the same affected by the petitioner.

3] The matter came up before this Court on 09.12.2024 permitting the respondents to complete their instructions as to whether the notification dated 07.03.2024 enclosed at Annexure-5 of the writ petition is still in force or any subsequent notification thereto has been issued.

4] The matter was subsequently listed on 17.12.2024 and thereafter, on 20.12.2024.

5] Although notice in the matter has not been issued in view of the fact since

opportunity was granted to the respondents to complete their instructions in respect of the notification dated 07.03.2024 enclosed at Annexure-5 of the writ petition, and also since this notification dated 07.03.2024 was valid for only 3 (three) months. No subsequent notification extending the embargo was placed before the Court, considering the requirement of Section 21A of the Registration (Assam Amendment) Act, 2019. It is also seen that a appeal dated 13.11.2024 has been preferred before the respondent No. 2 which according to the petitioner has remained pending, this Court proposes to take up this matter and pass appropriate orders without issuance of Notice in the presence of counsel for both the parties.

6] In respect of registration pursuant to transfer of properties under Section 21 A was inserted by way of amendment dated 30.12.2009. The said Section 21 A of the Registration (Assam Amendment) Act, 2009 reads as under:

“21A. Notwithstanding anything contained in any other provision of this Act, no non-testamentary instrument relating to immovable property shall be accepted for registration, unless the Deputy Commissioner of the concerned district issues a No Objection Certificate containing the description of such immovable property to be transferred and also such other No Objection Certificates, which are required to be issued by the Deputy Commissioner or any other Authority under any law for the time being in force or under any Executive Instruction, Order etc. issued by the State Government from time to time.

Provided that all such No Objection Certificates shall be issued within a period of thirty days from the date of the receipt of application and in case No Objection Certificate is not issued within the stipulated period of thirty days, a speaking order with reasons thereof shall be issued to the applicant within the said stipulated period.”

7] A perusal of the provision of Section 21 A of the Registration (Assam Amendment) Act, 2009 reveals that Section 21A prescribes for issuance a No Objection Certificate containing a description of the immovable property to be transferred. Such NOC is to be issued by the Deputy Commissioner and such other authority under the law for the time being in force. The said NOC has to be issued within the period of thirty days from the date of receipt of the

application and in case No Objection Certificate (NOC) is not issued within the stipulated period of thirty days, a speaking order with reasons therefor shall be issued to the applicant within the stipulated period.

8] The prescription under Section 21A of the Registration Act is very clear. The NOC is to be issued by the concerned Deputy Commissioner, Sri Bhumi within a period of thirty days from the date of the application and in the event such an NOC is not issued within the prescribed period, a speaking order with reasons is to be issued to the applicant within the said stipulated period.

9] Coming to the facts of the present case, it is seen that the petitioner had already applied to the Deputy Commissioner for issuance of the NOC and no such NOC was issued to the petitioner in terms of the application nor was any speaking order as required under Section 21A of the Registration Act, 1908 (amendment Act, 2009) was passed by the Deputy Commissioner, Sri Bhumi.

10] Having heard the learned counsel for the parties and perusal of the writ petition along with enclosures and also having perused the Section 21A of the Registration (Assam Amendment) Act, 2009, this Court is of the view that since an application has already been filed before the District Commissioner, Sri Bhumi seeking NOC and which was duly received, it would be apposite for the District Commissioner, Sri Bhumi to consider the claim of the writ petitioner and pass appropriate order as required under Section 21A of the Act of 1908. Accordingly, without commenting anything on the merit of the case, this writ petition stands disposed of directing District Commissioner, Sri Bhumi to pass a speaking order on the application dated 13.11.2024 filed by the writ petitioner no.1. Any such order that is passed by the Deputy Commissioner, Sri Bhumi, a copy thereof shall be served on the petitioner no.1. While disposing of the said representation the provision of Section 21A of the Act of 1908 shall be duly

taken note of.

The direction contained above shall be carried out by the Deputy Commissioner, Sri Bhumi within a period of 60 (sixty) days from the date of receipt of a certified copy of this order.

11] With the above observations the writ petition stands disposed of.

JUDGE

Comparing Assistant