

GAHC010260672024



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

Case No. : WP(C)/6688/2024

BISHU DEBNATH AND 12 ORS.

S/O- LATE MONORANJAN DEBNATH, R/O- VILL.- KANAINAGAR, P.O.
KANAIBAZAR, P.S. PATHARKANDI, DIST. SRIBHUMI, ASSAM

2: TAPASH DEBNATH @ TAPAS DEBNATH

S/O- LATE MONORANJAN DEBNATH
R/O- VILL.- KANAINAGAR
P.O. KANAIBAZAR
P.S. PATHARKANDI
DIST. SRIBHUMI
ASSAM

3: SABITA RANI DEBNATH

D/O- LATE MONORANJAN DEBNATH
R/O- VILL.- KANAINAGAR
P.O. KANAIBAZAR
P.S. PATHARKANDI
DIST. SRIBHUMI
ASSAM

4: DHIRENDRA DEBNATH

S/O- LATE MONORANJAN DEBNATH
R/O- VILL.- KANAINAGAR
P.O. KANAIBAZAR
P.S. PATHARKANDI
DIST. SRIBHUMI
ASSAM

5: LAKSHMI DEBNATH

D/O- KISHOR DEBNATH
R/O- VILL.- KANAINAGAR
P.O. KANAIBAZAR
P.S. PATHARKANDI
DIST. SRIBHUMI

ASSAM

6: JYOTSNA BALA DEBNATH
D/O- LATE MONORANJAN DEBNATH
R/O- VILL.- KANAINAGAR
P.O. KANAIBAZAR
P.S. PATHARKANDI
DIST. SRIBHUMI
ASSAM

7: BASANTI RANI DEBI
D/O- LATE KISHOR DEBNATH
R/O- VILL.- KANAINAGAR
P.O. KANAIBAZAR
P.S. PATHARKANDI
DIST. SRIBHUMI
ASSAM

8: HIMANGSHU DEBNATH
S/O- LATE KISHOR DEBNATH
R/O- VILL.- KANAINAGAR
P.O. KANAIBAZAR
P.S. PATHARKANDI
DIST. SRIBHUMI
ASSAM

9: JAYANTA DEBNATH
S/O- LATE KISHOR DEBNATH
R/O- VILL.- KANAINAGAR
P.O. KANAIBAZAR
P.S. PATHARKANDI
DIST. SRIBHUMI
ASSAM

10: KAMALA BALA DEBI
W/O- LATE BIMAL DEBNATH
R/O- VILL.- KANAINAGAR
P.O. KANAIBAZAR
P.S. PATHARKANDI
DIST. SRIBHUMI
ASSAM

11: BIDHAN DEBNATH
S/O- LATE BIMAL DEBNATH
R/O- VILL.- KANAINAGAR
P.O. KANAIBAZAR
P.S. PATHARKANDI
DIST. SRIBHUMI

ASSAM

12: BAPPA DEBNATH
S/O- LATE BIMAL DEBNATH
R/O- VILL.- KANAINAGAR
P.O. KANAIBAZAR
P.S. PATHARKANDI
DIST. SRIBHUMI
ASSA

VERSUS

THE STATE OF ASSAM AND 4 ORS
TO BE REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE
GOVT. OF ASSAM, REVENUE AND DISASTER MANAGEMENT.

2:THE DISTRICT COMMISSIONER
SRIBHUMI
DIST. SRIBHUMI
ASSAM
PIN- 788710.

3:THE DISTRICT REGISTRAR
SRIBHUMI
P.O.
P.S. AND DIST. KARIMGANJ
ASSAM

4:THE CIRCLE OFFICER
PATHARKANDI REVENUE CIRCLE
P.O. AND P.S. PATHARKANDI
DIST. SRIBHUMI
ASSAM
PIN- 788724.

5:THE SUB-REGISTRAR
PATHARKANDI
P.O. AND P.S. PATHARKANDI
DIST. SRIBHUMI
ASSAM
PIN- 788724

Advocate for the Petitioner : MR H R CHOUDHURY, S. TALUKDAR,A S PRODHANI

Advocate for the Respondent : GA, ASSAM, SC, REVENUE

**BEFORE
HONOURABLE MR. JUSTICE SOUMITRA SAIKIA**

ORDER

20.12.2024

Heard Mr. HR Choudhury, 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 petitioners intended to sell in exchange for due consideration was not issued by the competent authority, namely, the respondent no.4. It is submitted that no official reasons are furnished for non issuance of the No Objection Certificate (NOC) as prayed for. However, the counsel for the petitioners 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 petitioners.

3] The matter came up before this Court on 12.12.2024 and thereafter, again on 17.12.2024, on which date matters on similar issue were fixed and today.

5] Notice in the matter has not been issued in view of the fact that in other

matters the opportunity was granted to the respondents to complete their instructions in respect of the notification dated 07.03.2024. It is also seen that the petitioner no.2 again applied for NOC on 25.11.2024 which according to the petitioners has remained pending.

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 provisions of Section 21 A of the Registration (Assam Amendment) Act, 2009 reveals that Section 21A prescribes for issuance of a No Objection Certificate containing a description of the immovable property to be transferred. Such NOC is to be issued by the Deputy Commissioner of the concerned district 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 therefore 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 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 petitioners had already applied to the Deputy Commissioner for issuance of the NOC and no such NOC was issued to the petitioners 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 upon 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 petitioners and pass appropriate order as required under Section 21A of the Act of 1908. Accordingly without commenting anything on the merits of the case, this writ petition stands disposed of directing District Commissioner, Sri Bhumi to pass a speaking order on the application dated 25.11.2024 filed by the writ petitioners. Any such order that is passed by the Deputy Commissioner, Sri Bhumi, a copy thereof shall be served on the petitioner(s). While disposing of the said application 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