

Subhash Gupta vs The State Of Assam And 6 Ors on 12 October, 2023

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Bench: Devashis Baruah

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GAHC010125002021

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

Case No. : WP(C)/4116/2021

SUBHASH GUPTA
S/O LATE BHARAT LAL GUPTA
RESIDENT OF WARD NO. 11, AMCO ROAD, DHUBRI TOWN, DIST DHUBRI,
ASSAM 783301

VERSUS

THE STATE OF ASSAM AND 6 ORS.
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE GOVT.
OF ASSAM MUNICIPAL ADMINISTRATION DEPARTMENT, DISPUR
GUWAHATI 781006

2:THE DEPUTY COMMISSIONER

DHUBRI DISTRICT (P.G CELL)
WARD NO 1 BORO BAZAR
DHUBRI
ASSAM
783301

3:THE ADDITIONAL DEPUTY COMMISSIONER

DHUBRI DISTRICT (P.G CELL)
WARD NO 1 BORO BAZAR
DHUBRI
ASSAM
783301

4:THE CIRCLE OFFICER

DHUBRI REVENUE CIRCLE
DHUBRI ASSAM 783301

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5:DHUBRI MUNICIPAL BOARD
DHUBRI

REPRESENTED BY THE EXECUTIVE OFFICER

WARD NO 1 BORO BAZAR
DHUBRI
ASSAM
783301

6:THE EXECUTIVE ENGINEER
PWD
DHUBRI BUILDING DIVISION
DHUBRI BORO BAZAR
DHUBRI
ASSAM
783301

7:SRI ASHOK GUPTA
S/O LATE BANSHILAL GUPTA
RESIDENT OF WARD NO. 5
DHUBRI TOWN
DHUBRI
ASSAM
78330

For the Petitioner(s) : Mr. A. Dhar, Advocate.
Ms. S. Roy, Advocate.

For the Respondent(s) : Mr. H. Sarma, GA.

Mr. S.K. Goswami, Advocate.

Mr. B. Gogoi, SC, PWD.

Mr. P.S. Bhattacharjee, Advocate.

Date of hearing & Judgment : 12.10.2023 Page No.# 3/13 BEFORE HONOURABLE MR. JUSTICE DEVASHIS BARUAH JUDGMENT AND ORDER(ORAL) The instant writ petition has been filed by the Petitioner seeking the reliefs as reproduced hereinunder :-

(a) A writ in the nature of Mandamus should not be issued directing the Respondent Authorities, more specifically the Respondent No. 5 to renew the trade licence in the name of the Petitioner;

(b) A writ in the nature of Mandamus directing the Respondent Authorities to remove the seal put by the Respondent No. 4 and 5 in the shop premises of the Petitioner on 02.05.219 and return the

seized furniture & utensils ;

(c) A writ in the nature of Certiorari should not be issued to set aside and/or quash the notice/order dated 14.03.2019 issued by the Respondent No. 5 pursuant to the letter dated 13.03.2019 issued by the Respondent No. 3.

2. From a perusal of the materials on record, it reveals that the Petitioner claims to be the owner of a Sweet Shop being "M/S Sarada Sweet Shop" on the ground floor of the building covered by Dhubri Municipal Holding No. 05/267(old) under Ward No. 5 of Dhubri Municipality situated at U.N.C. Road, Dhubri Town. It has been claimed by the Petitioner that he has been running the shop since the year 1981 with a valid trade license till the same was sealed Page No.# 4/13 by the Respondent Nos. 4 and 5 on 02.05.2019 and seized the furniture and utensils of the Petitioner. It is also the case of the Petitioner that the Petitioner had a valid trade license issued by the Dhubri Municipal Board as well as also a license under the Prevention of Food Adulteration Act, 1954. However, it is also an admitted fact that the Petitioner did not have the license to operate the shop in terms with the provisions of the Food Safety and Standards Act, 2006 (in short 'the Act of 2006'). A further perusal of the pleadings in the writ petition show that there has been certain disputes which are civil in nature between the Petitioner and the Private Respondent No. 7 whom Mr. S.K. Goswami, the learned counsel represents.

3. The records further reveals that there has been various complaints made by the Private Respondents before the authorities concerned and there has been certain orders passed by the Respondent Authorities on the basis thereof. Be that as it may, this Court would limit itself to the adjudication as regards the challenge which has been made in the instant proceedings.

4. On 14/3/2019, the Executive Officer of the Dhubri Municipal Board had issued an order to the Petitioner stating interalia that the Petitioner was running a sweet shop in the name of Late Banshilal Gupta bearing Municipal Holding No. 05/267(new)/old Holding No.5/20 without valid trade license from the Dhubri Municipal Board as required under the Assam Municipal Act, 1956 and also the food license as required under the Prevention of Food Adulteration Act, 1954. It was also mentioned that the building in which the shop was located is unsafe as informed by the Executive Engineer, PWD(Building), Dhubri. It was further mentioned that the Gauripur Development Authority had instructed demolition of the said building by the letter dated 01.07.2010. Under such circumstances, Page No.# 5/13 the Petitioner was directed to stop commercial operation in the said building and communicate the same to the Office. It is also relevant to mention that the said Communication dated 14.03.2019 was issued on the basis of a Communication issued by the Additional Deputy Commissioner on 13.03.2019 whereby the Additional Deputy Commissioner, Dhubri had on the basis of a complaint filed by the private respondent directed the Executive Officer, Municipal Board, Dhubri to take immediate stringent action against the shop of the Petitioner as per the Assam Panchayat Act, 1956.

5. The Petitioner being aggrieved by the Communication dated 14.03.2019 issued by the Executive Officer, Dhubri Municipal Board preferred an Appeal before the Deputy Commissioner, Dhubri on 26.03.2019 stating interalia that the Executive Officer, Dhubri Municipal Board had wrongly

mentioned that the shop belonged to Banshilal Gupta whereas civil disputes were pending before the Court of the Munsiff No. 1, Dhubri regarding the ownership of the said building in Title Suit No. 46/2014. It was also mentioned that in the said suit there was also an injunction operating dated 14.9.2017 whereby the private respondent No. 7 was restrained from transferring the land and also dispossessing the petitioner from the land and the building till the disposal of the suit. Apart from the above, it was also mentioned that the Petitioner has a valid trade license but upon its expiry, application had been duly filed for renewal of the said trade license but on account of the civil disputes, the said trade license have not been renewed by the Dhubri Municipal Board. It is the further case of the Petitioner that although the said appeal was filed but no steps was taken by the Respondent No. 2, although the said Respondent was under the statutory obligation to do so.

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6. It has been further mentioned that the Petitioner had also submitted a Communication on 01.04.2019 to the Executive Officer, Dhubri Municipal Board stating his stand on the issue. The Petitioner has also enclosed a feasibility report issued by a firm in the name and style of "Brahmaputra Concrete Design"

stating interalia that the building on which the Petitioner's Sweet Shop was located had a longevity of a minimum 30 years, if no natural calamities occur.

7. Be that as it may, inspite of such steps being taken, the Additional Deputy Commissioner, Dhubri issued a Communication to the Executive Officer, Municipal Board, Dhubri as well as the Circle Officer, Dhubri on 17.04.2019 stating interalia that a Communication was received from the Respondent No.7 alongwith the letter of the Food Safety Officer, Dhubri, wherein it was clearly stated that the Sweet Shop situated at U.N.C. Road, Ward No. 5, Dhubri did not possess any valid food license as approved under the Act of 2006. It was also mentioned that the running of a Sweet Shop without a valid food license may endanger human lives and thereby cause serious ill health issue. Under such circumstances, the Additional Deputy Commissioner directed the said officials i.e. the Respondent Nos. 4 and 5 herein to take stringent actions regarding the sealing of the unauthorized Sweet Shop for the better welfare of the society. Pursuant thereto, on 02.05.2019, the Respondent Nos. 4 and 5 sealed the sweet shop of the Petitioner and further seized the utensils as well as the various articles lying within the Sweet Shop of the Petitioner. The Petitioner therefore being aggrieved have approached this Court under Article 226 of the Constitution seeking the reliefs as already above quoted.

8. This Court vide an order dated 23.08.2021 issued notice and further directed that the status-quo would be maintained in respect to the structures Page No.# 7/13 which is the subject matter of the writ petition. However, pursuant thereto, when the matter was next listed on 31.05.2023, the said interim order however was not extended.

9. The Respondent No. 7 had filed an affidavit-in-opposition denying the contents of the writ petition and also supporting the actions of the Respondent Authorities in sealing the building as well as seizing the various articles lying inside the said building. It is further relevant to take note of that

on 01.07.2010, the father of the Respondent No. 7, one Banshilal Gupta (since deceased) was directed by the Chairman, Gauripur Development Authority to demolish the building within 7 days from the date of receipt of the said letter and a copy of the same was forwarded to the Deputy Commissioner-cum-Chairman (Disaster Management Cell), Dhubri. It is not known what happened thereafter inasmuch as the building was not demolished. It is also seen from the affidavit of the Respondent No. 7 that on 03.01.2012 a permission was granted by the Gauripur Development Authority to Late Banshilal Gupta for construction of a ground plus two storied building on the said plot of land, wherein the shop of the Petitioner was situated. However, inspite of the building permission so granted to Late Banshilal Gupta as well as the direction to Late Banshilal Gupta to demolish the existing building, the Petitioner continued to occupy the building. The only conceivable reason must have been the suit filed by the Petitioner alongwith others against the father of the Respondent No. 7 and his sons including the Respondent No. 7, wherein amongst various other properties, the property which is the Petitioner's Sweet Shop was also the subject matter of the suit and there was an injunction operating by virtue of the order dated 14.09.2017 in Misc. Appeal No. 9/2015. It is also seen from the records that the Petitioner had also filed an additional affidavit in pursuance to the order passed by this Court Page No.# 8/13 on 26.06.2023. To the said affidavit, certain photographs of the building belonging to the Private Respondent No. 7 as well as the Petitioner were enclosed as Annexure-25 Colly.

10. In the backdrop of the pleadings, let this Court consider the contentions so made by the learned counsels for the parties.

11. Mr. A. Dhar, the learned counsel appearing on behalf of the Petitioner submits that from the materials on record, it would be seen that the building wherein the Sweet Shop of the Petitioner is located had been certified to be a building having longevity of a minimum 30 years, if no natural calamities occur. The learned counsel submitted that the Respondent Authorities have taken all these steps which have been impugned in the instant writ petition in order to dispossess the Petitioner and to frustrate the suit wherein the Petitioner had obtained an injunction to the effect that the Petitioner cannot be evicted by the Private Respondent or his predecessor till the disposal of the said suit. The learned counsel further submits that though it is true that the Petitioner does not have a license under the Act of 2006 but the Petitioner had a license under the Prevention of Food Adulteration Act, 1954. The learned counsel further submits that the trade license also which ought to have been renewed have not been also renewed on account of civil disputes between the Petitioner and the Respondent No. 7. The learned counsel further submits that the Act of 2006 is a Special Act which categorically stipulates in Section 29 that the Food Authority and the State Food Safety Authorities shall only be responsible for enforcement of the Act. The learned counsel submits that the Additional Deputy Commissioner, therefore could not have directed to the Respondent Nos.4 & 5 vide the Communication dated 17.04.2019 to seal the shop of the Petitioner for not having a license under the Act of 2006. He further submitted that the further action on the part of the Respondent Nos. 4 and Page No.# 9/13 5 on 02.05.2019 was also unauthorized as they are also not Authorities as per Section 29 of the said Act of 2006.

12. Mr. S.K. Goswami, the learned counsel appearing on behalf of the Respondent No. 7 submitted that the land as well as the building wherein the business of Sweet Shop was carried out by the

Petitioner belongs to the father of the Respondent No. 7 and after his death it had devolved upon the legal heirs of Late Bansilal Gupta. There was a direction issued by the Chairman, Gauripur Development Authority to demolish the said building vide the Communication dated 01.07.2010, however, on account of the Petitioner not vacating the Sweet Shop, the said directions could not be complied with. Further to that, the learned counsel submitted that as the Petitioner did not have the license as required under the Act of 2006, the Respondent Authorities were within their jurisdiction to seal the said Sweet Shop and seize the materials from inside. Further to that, the learned counsel also submitted that as far back as on 03.01.2012 permission was also given to the father of the Respondent No. 7 for construction of the building on the plot of land, wherein the sweet shop is located but on account of the Petitioner, the Private Respondents are not in a position to construct.

13. Mr. H. Sarma, the learned counsel appearing on behalf of the Respondent Nos. 1, 2, 3 and 4 submitted that as the Petitioner was running the sweet shop without a license as mandated under the Act of 2006, the Respondent Authorities by taking into account the safety of the people were justified in taking the action on 02.05.2019 for sealing the said building as well as seizing the utensils and furnitures inside the said Sweet Shop. Mr. H. Sarma, the learned counsel further submitted that from the Communication dated 13.03.2019 issued by the Respondent Nos. 3 to the Respondent No. 5, it would also show that the said building was not safe and accordingly directions were also issued to the Page No.# 10/13 Respondent No. 5 to take appropriate action in the matter. Mr. Sarma, the learned counsel submitted that although action was taken on 14.03.2019 by directing the Petitioner to stop his business, but the Petitioner still continued to do his business and under such circumstances, the Respondent Authorities were justified in resorting to the actions as was done on 02.05.2019.

14. Mr. P.S. Bhattacharya the learned counsel appearing on behalf of the Respondent No. 5 submits that the actions resorted to by the Executive Officer, Dhubri Municipal Board was on the basis of the directions of the Additional Deputy Commissioner, Dhubri on 13.03.2019 as well as on 17.04.2019.

15. I have heard the learned counsel for the parties and perused the materials on record.

16. The first question which arises for consideration is as to whether the Respondent Nos. 3, 4 and 5 had the authority to take steps under the Act of 2006 for adjudicating the said question, this Court finds it relevant to take note of Section 29 of the Act of 2006 inasmuch as on account of not having the licences under the Act of 2006, the impugned actions were resorted to by the Respondent Nos. 3, 4 & 5. which stipulates who are the authorities responsible for enforcement of the Act of 2006. A perusal of the said Section 29 of the Act of 2006, reveal that it is only the Food Authority and the State Food Safety Authorities who shall only be responsible for enforcement of the Act of 2006. At this stage, this Court finds it relevant to take note of that a specific query was made to the learned counsel appearing on behalf of the Respondent Nos. 3, 4 & 5 as to whether any authority have been conferred upon them to take actions in terms with the Act of 2006.

17. Mr. H. Sarma and P.S. Bhattacharya, the learned counsels with due fairness submitted that for the purpose of enforcement of the Act of 2006, it is the Food Authority and the State Food Safety Authorities who are responsible for the enforcement of the Act of 2006. They further submitted that it is the Food Safety Officer, Dhubri who would be authorized to take such actions in terms with the Act of 2006. The submissions of the counsels for the Respondent Nos. 3, 4 & 5 as well as a perusal of Section 29 of the Act of 2006 makes it clear that the Respondent Nos. 3, 4 & 5 had no authority to take any actions for violation of the provisions of the Act of 2006. It would only be the Food Safety Officer, Dhubri who is an officer authorized by the Health and Family Welfare Department of the Government of Assam who would be authorized to take such actions in terms with the Act of 2006.

18. In that view of the matter, the impugned actions on the part of the Respondent Authorities more particularly the Respondent Nos. 3, 4 and 5 in issuing the Communication dated 17.04.2019 and the subsequent sealing of the Sweet Shop as well as seizing the utensils and furniture lying within it are completely unauthorized for which the same are set aside and quashed. Accordingly, this Court therefore directs the Respondent Nos. 3, 4 & 5 to take appropriate steps for desealing the building of the Petitioner as well as returning the utensils and furnitures which were sealed on 02.05.2019 to the Petitioner forthwith upon service of a certified copy of the instant order upon the Respondent No. 3. Be that as it may, this Court cannot be unmindful of the fact that the Petitioner does not possess a food license as is required under Section 31 of the Act of 2006. It is therefore, observed and directed that till the Petitioner does not obtain a food license in terms with Section 31 of the Act of 2006, the Petitioner shall not commence any food business in the said Sweet Shop.

19. This Court further finds it relevant to take note of the submissions of the Page No.# 12/13 learned counsel appearing on behalf of the Petitioner to the effect that the Petitioner had a trade license which had expired and a renewal application has been filed, but the Respondent Authorities on account of the civil disputes inter se between the Petitioner and the Respondent No. 7 had not renewed the trade license. This Court is of the view that the trade license being a license issued for the purpose of carrying on the business cannot be withheld by the authorities merely on the ground that there is a civil dispute pending between the parties. The issuance and renewal of a trade license is based upon the provisions of the Assam Municipal Act, 1956 and nothing could be shown by the official Respondents that renewal of a trade licence is barred on account of a civil dispute. Non-renewal of the trade licence results in taking away the livelihood to carry on the business. Under such circumstances, if the official Respondents have not renewed the trade licence on the ground of a civil dispute pending between the two private parties, the said actions are required to be interfered with. It is also the opinion of this Court that non-interference by this Court would result in violation of Articles 19 and 21 of the Constitution. This Court therefore directs the Respondent Authorities more particularly the Respondent No. 5 to consider the application for renewal of the trade license of the Petitioner, if the Petitioner is otherwise entitled to as per the provisions of the Assam Municipal Act, 1956.

20. This Court further finds it relevant to take note of the submissions of Mr. A.Dhar, the learned counsel for the Petitioner that the directions passed herein as regards the renewal of the trade license should not prejudice the Petitioner to apply for a trade license in respect to other business. It is made clear that the instant judgment so passed shall not affect the rights of the Petitioner to apply

for a trade license in respect to any other business.

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21. Before parting with the record, this Court finds it is relevant to clarify that the instant judgment shall not preclude the rights of the Respondent Nos. 5 and 6 to take an independent decision as to whether the building is safe for human habitation or running any business. However, if any action is proposed to be taken, the Petitioner should be afforded a reasonable opportunity of hearing.

22. With above observations and directions, the instant writ petition stands disposed of.

JUDGE Comparing Assistant