

GAHC010076642024



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

Case No. : WP(C)/2268/2024

SABUR UDDIN AHMED AND 58 ORS.
SON OF LATE MONSER ALI, RESIDENT OF VILLAGE TOPAR PATHER, PO-
TOPAR PATHER,
P.S. CHHAYGAON,
DIST. KAMRUP, ASSAM.
PIN-781137.

2: CHAHAB ALI AHMED
SON OF ELAHI BAKSH
RESIDENT OF VILLAGE TOPAR PATHER
PO- TOPAR PATHER

P.S. CHHAYGAON

DIST. KAMRUP
ASSAM.
PIN-781137.

3: SHAHIDUL ISLAM
S/O- ABDUL HAMID
RESIDENT OF VILLAGE TOPAR PATHER
PO- TOPAR PATHER

P.S. CHHAYGAON

DIST. KAMRUP
ASSAM.
PIN-781137.

4: ROFIQUL ISLAM
S/O- LATE NAYAN UDDIN

5: ROFIQUL ISLAM
S/O- KURPAN ALI

- 6: ISAR UDDIN
S/O- JOYNUDDIN
- 7: SHAHAB UDDIN
S/O- MOHAR ALI
- 8: SHAMSUL HOQUE
S/O- MOHAR ALI
- 9: ABDUL MATIN
S/O- MUHUR UDDIN
- 10: AJMAL HOQUE
S/O- HABIBUR RAHMAN
- 11: MOYNAL HOQUE
S/O- SAYED ALI
- 12: SHUKUR ALI
S/O- SAID ALI
- 13: BAHADUR ALI
S/O- KURPAN ALI
- 14: SHOMEJ UDDIN
S/O- BASER UDDIN
- 15: SADEK ALI
S/O- KHOBIR UDDIN
- 16: AKBAR ALI
S/O- ALAUDDIN
- 17: TARIK UDDIN
S/O- YEAD ALI
- 18: BUDDUSH ALI
S/O- KOBIR UDDIN
- 19: WAZ UDDIN AHMED
S/O- HAZRAT ALI
- 20: AKKAS ALI
S/O- BASER ALI
- 21: ABDUL MANNAN

S/O- ABDUL MALEK

22: FAKAR UDDIN
S/O- NIYAMAT ALI

23: MAHIR UDDIN
S/O- REKAT ALI

24: MAHAR ALI
S/O- MAHABBAT ALI

25: IBRAHIM KHALIL
S/O- HUSSAIN ALI

26: DELUWAR HUSSAIN
S/O- ABDUL HAMID

27: JAHANGIR ALOM
S/O- ABDUS SALAM

28: ABDUL MAJID
S/O- RAHMAT ALI

29: SARBAT ALI
S/O- KHOBIRUDDIN

30: MOYNAL HOQUE
S/O- ISMAIL ALI

31: MOHIDUL HOQUE
S/O- MOHAR ALI

32: ROFIQUL ISLAM
S/O- ABDUR RAHIM MULLA

33: NAZRUL ISLAM
S/O- ASRAF ALI

34: CHAND MAHMUD
S/O- NORIMUDDIN

35: FAZAL HOQUE
S/O- USUP ALI

36: LATIP KHAN
S/O- CHOYED ALI

37: NASIRUDDIN
S/O- CHOYED ALI

38: KASHEM ALI
S/O- KHODA BOX

39: NURUL ISLAM
S/O- CHOYED ALI

40: ZAKIR HUSSAIN
S/O- KORIM ALI MULLAH

41: ASRAB ALI
S/O- KHUDA BOX

42: ROBIUL HUSSAIN
S/O- SHUKUR ALI

43: NURUJ JAMAN AHMED
S/O- ABDUL WAHAB

ALL ARE RESIDENT OF VILLAGE TOPAR PATHER
PO- TOPAR PATHER

P.S. CHHAYGAON

DIST. KAMRUP
ASSAM.
PIN-781137.

44: ALI AKBAR
S/O- ABDUL ADID

R/O- VILLAGE BAGHMARA

PO- TOPAR PATHER

P.S. CHHAYGAON

DIST. KAMRUP
ASSAM.
PIN- 781137.

45: REFAZ ALI
SON OF LATE MOHAMMAD ALI

46: MOHAMMAD ALI
S/O- WAZED ALI

47: AKKES KHAN
S/O- FAZIL KHAN

ALL ARE THE RESIDENT OF VILLAGE BAR ARIKATI
PS- BOKO
DIST- KAMRUP
ASSAM. PIN-781136.

48: SADDAM HUSSAIN
SON OF ABUL WAHAB

49: MOYNUL HOQUE
SON OF KOLIM UDDIN

50: NURRUL HOQUE CHOUDHURY
SON OF AMZAD ALI

51: AMZAD ALI
SON OF MONURUDDIN

52: WAHED ALI
SON OF MUNNAF ALI

53: SHORBAT ALI
SON OF HAZARAT ALI

54: BUDDUS ALI
SON OF AKBAR ALI

55: SHEIKH SADULLAH
SON OF SORHAB ALI

56: MAYJUDDIN AHMED
SON OF FOYJUDDIN AHMED

ALL ARE RESIDENT OF VILLAGE KACHIA
DIYA PATHER
PO- TOPAR PATHER

P.S. CHHAYGAON

DIST. KAMRUP
ASSAM.
PIN-781137.

57: JAHIDUL ISLAM
SON OF MD. SAKET ALI

58: MD. BURHAN ALI
SON OF LATE AMSER ALI

59: MD. FARMAN ALI
SON OF LATE AMSER ALI
ALL ARE PRESENTLY RESIDING AT VILLAGE BARDIA NAYAPARA

PO- MAHTOLI
PS- BOKO

DIST- KAMRUP
ASSAM

VERSUS

THE STATE OF ASSAM AND 12 ORS.
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE
GOVERNMENT OF ASSAM, GEOLOGY, MINES AND MINERALS
DEPARTMENT, KAHILIPARA, GUWAHATI-19.

2:THE DIRECTOR
DIRECTORATE OF GEOLOGY AND MINING DEPARTMENT
ASSAM
KAHILIPARA
GUWAHATI-19.

3:THE DIVISIONAL FOREST OFFICER
KAMRUP WEST DIVISION
BAMUNIGAON.
PS- CHHAYGAON.
DIST. KAMRUP
ASSAM.
PIN-781123.

4:THE DEPUTY COMMISSIONER
KAMRUP AT AMINGAON

PO AND PS- AMINGAON

DIST- KAMRUP
ASSAM.
PIN-781031.

5:THE EXECUTIVE ENGINEER

WATER RESOURCE DEPARTMENT (WEST DIV.) BHARALUMUKH
GUWAHATI-09.

6:THE CIRCLE OFFICER
GOROIMARI REVENUE CIRCLE
P.O- TUKRAPARA

PS- CHHAYGAON

DIST- KAMRUP
ASSAM.
PIN- 781137.

7:THE CIRCLE OFFICER
CHAMARIA REVENUE CIRCLE
PS- BOKO

DIST- KAMRUP
ASSAM.
PIN-781136.

8:THE SUPERINTENDENT OF POLICE
KAMRUP AT AMINGAON
GUWAHATI-31.

9:M/S B. N. ENTERPRISE
REPRESENTED BY ITS PROPRIETOR NAMELY SRI BRAJA KISHORE
SARMA
R/O- WARD NO. 25
ARUNODOI PATH
PO- HENGRABARI
PS- DISPUR
DIST- KAMRUP (M)
ASSAM.PIN-781036.

10:SULEIMAN ALI @ SOLEMAN
SON OF ALAM CHAND

11:ABUL KALAM AZAD

SON OF LATE HAMED ALI

BOTH ARE RESIDENT OF TOPAR PATHER. PO- TOPAR PATHER
PS- CHHAYGAON

DIST- KAMRUP
ASSAM.
PIN- 781137.

12:AKABBAR ALI

SON OF LATE INNUS ALI

RESIDENT OF SARALAR SUTI

PO- TOPAR PATHER PS- CHHAYGAON
DIST- KAMRUP
ASSAM.PIN-781137.

13:SABED ALI

SON OF MAHIRUDDIN

VILL- LATARIA BILORJAN (BARGHUL)

PO- MAHTOLI
PS- BOKO

DIST- KAMRUP
ASSAM
PIN-781136

Advocate for the Petitioner : MR. P J SAIKIA, SR. ADV

Advocate for the Respondent : GA, ASSAM

BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA

ORDER

Date : 01.05.2024

Heard Mr. P.J. Saikia, learned senior counsel, assisted by Mr. A. Ali, learned counsel for the petitioners. Also heard Mrs. S. Sarma, learned Govt. Advocate appearing for respondent nos.1, 2, 4, 6, 7, and 8; Mr. R.R. Gogoi,

learned standing counsel for the Forest Department, respondent no.3; and Ms. D. Jain, learned standing counsel for the Water Resource Department, respondent no.5.

2. By filing this writ petition under Article 226 of the Constitution of India, the petitioners have assailed the letter dated 28.12.2023 (Annexure-7); letter dated 14.02.2024 (Annexure-12); and Transit Challan dated 16.04.2024 (Annexure-15), issued by the Directorate of Geology and Mining, Assam (respondent no.2), allowing the respondent no.9 to remove/extract mining clay/silt from river Brahmaputra at Village- Kachair Diya Pathar. The said communications are in favour of the respondent no.9.

3. It is projected that the extractions permitted by the Director of Geology and Mining, Assam are on the basis of mining plan, which was approved by the competent authority on 15.12.2023. However, the initial approval granted for mining on 28.12.2023, was kept in abeyance by the Additional District Commissioner, Kamrup by order dated 02.01.2024. Thereafter, the Director of Geology and Mining, Assam, by another communication dated 14.02.2023, had only altered the name of the village from Jorshimli to Kachair Diya Pathar without any alteration in the mining plan and without obtaining a fresh and/or revised mining plan.

4. The learned senior counsel for the petitioners has submitted that the two villages are contiguous. It is further submitted that the Executive Engineer, Kamrup (Rural) Water Resource Division had written to the Divisional Forest Officer, Kamrup West Division, expressing an apprehension that as the collection area is only 626 meter away from the river bank where ADB Tr-II protection measures is existing, extraction works could cause erosion resulting in deterioration of the existing work.

5. It is projected that thereafter, the Director of Geology and Mining, Assam has started issuing transit challan favouring the respondent no.9. Accordingly, it is submitted that without any approved mining plan for a lease or contract, the respondent no.9 is being permitted to extract river silt/clay and to transport them on the basis of transit pass despite objection by the District Administration vide letter dated 02.01.2024 and by the Executive Engineer, Kamrup (Rural) Water Resource Division vide letter dated 19.02.2024.
6. Issue notice including notice on the prayer for interim relief returnable on 03.06.2024.
7. As the learned State and Departmental counsel have accepted notice for all the respondent nos.1 to 8, requisite extra copies of the writ petition be furnished to them in course of the day.
8. The petitioners shall take steps within 2 (two) days for service of notice on the respondent nos.9 to 13 by registered post with A/D as well as by usual process.
9. Liberty is granted to the learned counsel for the petitioners to collect the postal receipt number from the Registry and track service through the postal website and the track report may be filed before the Registry prior to the next date fixed.
10. In view of communication dated 19.02.2024 by the Executive Engineer, Kamrup (Rural) Water Resource Division (Annexure-13), and communication by the Additional District Commissioner vide letter dated 02.01.2024, the Court is inclined to direct the Director of Geology and Mining Department, Assam to forthwith stop the ongoing extraction and collection of ordinary clay/silt from the silt/clay Mining Permit area covered by (i) $26^{\circ} 8' 11.795''$ N $91^{\circ} 11' 57.412''$

E; (ii) $26^{\circ} 8' 13.391''$ N $91^{\circ} 11' 46.099''$ E; (iii) $26^{\circ} 8' 8.884''$ N $91^{\circ} 11' 45.237''$ E; and (iv) $26^{\circ} 8' 7.226''$ N $91^{\circ} 11' 56.469''$ E in any form whatsoever.

11. The petitioners shall produce a certified copy of the order before the respondent no.2 to bring the order to the notice of the said authority.

12. Liberty is granted to the respondents to pray for modification of the order, if so advised.

13. List on 03.06.2024.

JUDGE

Comparing Assistant