



GAHC010152922019

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

**Case No. : WP(C)/4604/2019**

DILIP CHETRI

S/O- SHRI BHOPALSING CHETRI, R/O BONDA, CHANDRAPUR, HAJOBARI,  
DIST. KAMRUP, ASSAM.

VERSUS

THE UNION OF INDIA AND 4 ORS.  
REP. BY THE SECRETARY TO THE MINISTRY OF ENVIRONMENT AND  
FOREST, NEW DELHI, PIN- 110003.

2:THE STATE OF ASSAM  
REP. BY THE SECRETARY TO THE GOVT. OF ASSAM  
ENVIRONMENT AND FOREST DEPTT.  
DISPUR  
GUWAHATI-6.

3:THE DIVISIONAL FOREST OFFICER  
GUWAHATI WILDLIFE DIVISION  
GUWAHATI-1.

4:THE DEPUTY COMMISSIONER  
MORIGAON  
DISTRICT- MORIGAON  
ASSAM- 782104.

5:THE CIRCLE OFFICER  
MAYONG REVENUE CIRCLE  
DIST.- MORIGAON  
ASSAM- 782121.

6:BHARAT SAIKIA  
MEMBER OF MADHYA MAYONG UNNAYAN SAMITTEE



S/O- TARANIKANTA SAIKIA  
R/O VILL.- HILLOIKHUNDA  
P.O.- RAJAMAYONG  
DIST.- MORIGAON  
ASSAM  
PIN- 782411.

7:RANJIT SAIKIA  
MEMBER OF MADHYA MAYONG UNNAYAN SAMITTEE  
S/O- MUKUT SAIKIA  
R/O VILL.- SATIVETI  
P.O.- RAJAMAYONG  
P.S.- MAYONG  
DIST.- MORIGAON  
ASSAM  
PIN- 782411.

8:GIRIDHAR SAIKIA  
MEMBER OF MADHYA MAYONG UNNAYAN SAMITTEE  
S/O- LT. HANKHA RAM SAIKIA  
R/O VILL.- SATIVETI  
P.O.- RAJAMAYONG  
P.S.- RAJAMAYONG  
P.S.- MAYONG  
DIST.- MORIGAON  
ASSAM PIN- 782411.

9:DEBESWAR SAIKIA  
MEMBER OF MADHYA MAYONG UNNAYAN SAMITTEE  
S/O- LT. PRANA NATH SAIKIA  
R/O VILL.- SATIVETI  
P.O. - RAJAMAYONG  
P.S.- RAJAMAYONG  
DIST.- MORIGAON  
ASSAM PIN- 782411.

10:THE DIVISIONAL FOREST OFFICER  
NAGAON TERRITORIAL DIVISION NAGAON  
ASSAM-78200

Advocate for the Petitioner : Mr. P. K. Goswami, Sr. Advocate  
Mr. B. P. Borah, Advocate

Advocate for the Respondents : Mr. R. K. D. Choudhury, DSGI  
Mr. D. Gogoi, SC, Forest  
Mr. R. Baruah, Advocate

**BEFORE****HONOURABLE MR. JUSTICE DEVASHIS BARUAH**

Date of Hearing : 30.08.2023

Date of Judgment : 30.08.2023

**JUDGMENT AND ORDER (ORAL)**

The instant writ petition has been filed by the petitioner challenging the order dated 02.03.2019 passed by the Deputy Commissioner, Morigaon; seeking for a direction upon the respondent No.4 to allow the petitioner to run his Brick Kiln; for a further direction upon the respondent Nos.1 & 2 not to submit the proposal for declaring Eco Sensitive Zone around Pobitora Wildlife Sanctuary at the earliest and move the Supreme Court as per the liberty given in its order dated 11.12.2018.

2. The facts involved in the instant writ petition is that the petitioner herein had purchased a Brick Industry vide two registered Deeds of Sale dated 23.08.2010. The petitioner, thereupon, applied for No Objection Certificate before the Respondent No. 4, i.e. the Deputy Commissioner, Morigaon for opening of the Brick Kiln in his name. The Respondent No. 4, by an order dated 02.09.2011, granted permission to operate the Brick Kiln on the said land thereby imposing certain conditions including procurement of required certificate from the Pollution Control Board, Assam. The Circle Office as well as the Mayong Gaon Panchayat gave No Objection. The land of the petitioner was subsequently reclassified as industrial land pursuant to an order dated 10.04.2013 passed by the Deputy Commissioner, Morigaon. It further reveals that the Member Secretary, Pollution Control Board, Assam issued 'Consent to Establish' on 28.10.2011 for setting up the Brick Industry. The petitioner, thereupon, spent huge amount of money as stated in the writ petition and after the establishment of the chimney etc., the petitioner applied for consent to operate from the respondent No.2 enabling him to run the brick industry. It reveals thereafter that there were various litigations between the petitioner and the private respondents before this Court. However, vide an order dated 23.11.2017 passed



in WA No.241/2017, there were certain directions passed by the Division Bench of this Court on the basis of a joint affidavit filed by the petitioner and the private respondents. In terms with the joint affidavit, the relevant portion of which is quoted herein below, certain terms and conditions were agreed upon by and between the petitioner as well as the private respondents. The said relevant paragraphs are quoted herein under:-

*“1. That the Applicants respectfully submit that the Deputy Commissioner, Morigaon may be directed to decide as to whether the Brick Kiln in the name of M/s Bhawani Brick (BBA Brick, Proprietor Shri Dilip Chetri) should be allowed to run and whether the same will affect the Appellants’ surrounding land or the environment. The Deputy Commissioner, Morigaon while deciding the issue shall take into consideration the reports of the Pollution Control Board, Agricultural Officer and the Forest official afresh.*

*2. That the Applicants respectfully submit that all the concerned officials of Pollution Control Board, Agricultural Officer and Forest Officer should give their respective reports disclosing the scientific basis of such reports.*

3. That the Applicants respectfully submit that the Deputy Commissioner, Morigaon may be directed to decide the issue after hearing the Appellant and the Private Respondent No.1, Sri Dilip Chetri.

4. That the Applicants respectfully submit that the Deputy Commissioner, Morigaon may be directed to decide the matter within a period of 4(four) weeks.”

3. The Division Bench of this Court, on the basis of the above quoted paragraphs vide the order dated 23.11.2017, set aside the judgment passed by the Coordinate Bench of this Court dated 13.06.2017 in WP(C) No.7048/2016 and directed the Deputy Commissioner, Morigaon to reach a decision on the matter with regard to the fate of the Brick Kiln after considering the reports of the stake holders mentioned in the joint affidavit and after affording opportunity of hearing the petitioner as well as the private respondents herein. The Division Bench of this Court further directed that until disposal of the matter by the Deputy Commissioner, Morigaon, the status-quo as on 23.11.2017 shall be maintained by the parties. The Deputy Commissioner, Morigaon was directed to

complete the exercise within the outer limit of four weeks. Subsequent thereto, the Deputy Commissioner, Morigaon passed the order dated 02.03.2019 whereby the No Objection Certificate issued dated 02.09.2011 was revoked on the ground of the greater interest of conservation and preservation of exclusive nature of Eco Sensitive Zone of the Pobitora Wildlife Sanctuary in pursuance to the Supreme Court's order dated 11.12.2018 passed in WP(C) No.202/1995 (in *TN. Godavarman Thirumulpad vs. the Union of India*). The said order dated 02.03.2019 has been put to challenge before this Court by way of the instant writ petition.

4. It reveals from the records that this Court had issued notice vide an order dated 28.09.2019 and further directed the respondents in the interim not to take any further follow up steps pursuant to the impugned order dated 02.03.2019 passed by the Deputy Commissioner, Morigaon. It reveals from the records that the respondent Nos.4, 6, 7, 8, 9 & 10 filed separate affidavit-in-opposition. The petitioner has also filed an affidavit-in-reply to the affidavit-in-opposition filed by the respondent No.4.

4. I have heard the learned counsels for the parties and perused the materials on record. From a perusal of the impugned order dated 02.03.2019 it transpires that the Deputy Commissioner, Morigaon, i.e. the respondent No.4 had revoked the NOC dated 02.09.2011 for establishment of the Brick Kiln on the ground that the Brick Kiln owned by the petitioner is located in the Eco Sensitive Zone around Pobitora Wildlife Sanctuary. This Court further finds it relevant to take note of the affidavit-in-opposition filed by the respondent No.4 to which the communication issued by the Divisional Forest Officer, Guwahati Wild Life Division to the Deputy commissioner, Morigaon District dated 18.02.2019 is enclosed as Annexure-I. This document is relevant taking into account that in the impugned order dated 02.03.2019, there is no reference to which order of the Supreme Court, the Deputy Commissioner, Morigaon had referred to. But in the said order, there is a reference to the communication issued on 18.02.2019 by the Divisional Forest Officer, Guwahati Wild Life Division whereto the order of the Supreme Court dated 11.12.2018 in



I.A. No.1000 in WP(C) No.202/1995 and WP(C) No.460/2004 were enclosed. Therefore, from the said communication dated 18.02.2019, it can be discerned that the Deputy Commissioner, Morigaon while passing the impugned order dated 02.03.2019 took into consideration the order of the Supreme Court dated 11.12.2018. The said order of the Supreme Court dated 11.12.2018 has been enclosed as Annexure-23 to the writ petition. Taking into account the relevance of the said order, the same is quoted herein under:-

*“UPON hearing the counsel the Court made the following*

*ORDER*

*The learned ASG has informed us that there are 104 National parks and 558 Wildlife Sanctuaries making a, total of 662 National parks and Wildlife Sanctuaries in the country.*

*The proposals for declaring areas around these National Parks and Wildlife Sanctuaries as Eco Sensitive Zone have been received from State Governments/UT Administrations for 641 National Parks and Wildlife Sanctuaries. No proposals have been received in respect of 21 National Parks and Wildlife Sanctuaries.*

*The proposals have been accepted and Notification has been issued in respect of 289 National Parks and Wildlife Sanctuaries as on 26.11.2018 and draft Notification has been prepared in respect of 206 National Parks and Wildlife Sanctuaries.*

*The declaration with regard to Eco Sensitive Zone is under Process with the Ministry of Environment, Forests and Climate Change (MoEF) as well as with the State Governments in respect of 146 National Parks and Wildlife Sanctuaries.*

*We expect the Ministry of Environment, Forests and Climate change to actively pursue the preparation of the draft Notification and to issue a final Notification at the earliest.*

*The proposals for 21 National Parks and Wildlife Sanctuaries in respect of which proposals have not yet been received by the MOEF are as follows:*

*ASSAM*

*1. Pobitora Sanctuary*

*JAMMU AND KASHMIR*

*2. Hemis High Altitude National Park*

*3. Kishtewar National Park*



### 5. *Hokersar Sanctuary*

## 6. Trikuta Sanctuary

KARNATAKA

### 7. Jogimatti Sanctuary

### 8. Thimlapura Sanctuary

### 9. Yadahalli Chinkara Sanctuary

*MAHARASHTRA*

### 10. Deolgaon Rehekuri Sanctuary

### 11. Thane Creek Flamingo Sanctuary

## 12. Malvan Marine Sanctuary

*MANIPUR*

### 13. Siroi National Park

#### 14. Khongjaingamba Ching Sanctuary

MEGHALAYA

### 15. Baghmara Pitcher Plant Sanctuary NAGALAND

## 16. Fakim Sanctuary

### 17. Puliebadze Sanctuary

### 18. Rangapahar Sanctuary

*UTTAR PRADESH*

### 19. Dr. Bhimrao Ambedkar Bird Sanctuary

## 20. *Pilibhit Sanctuary*

WEST BENGAL

## 21. Jorepokhri Sanctuary

*It is submitted by the learned Amicus that this issue has been pending since sometime in December, 2006. 12 years have gone-by but no effective steps have been taken by the State Governments in respect of the National Parks and Wildlife Sanctuaries mentioned above.*

Under the circumstances, we direct that an area of 10 Kms around these 21 National Parks and Wildlife Sanctuaries be declared as Eco Sensitive Zone by the MoEF. The declaration be made by the MoEF at the earliest.

*Liberty is granted to the State Governments to move an application for modification of this order along with proposal only two weeks after submission of the proposals to the MoEF.*

*List the matters at the end of February, 2019.*

*In the meanwhile, interim order to continue.”*

*I.A. NO. 176-177 IN WRIT PETITION C No. 460/2004*

*[APPLICATIONS FOR IMPEADMENT AND DIRECTIONS]*

*No one is present on behalf of the applicant.*

*The applications are dismissed.”*

5. A perusal of the above quoted order would show that proposal for 21 National Parks and Wildlife Sanctuaries were yet to be received by the Ministry of Environment and Forest which amongst others included the Pobitora Wildlife Sanctuary. The Supreme Court categorically directed in the said order that an area of 10 Kms around the 21 National Parks and Wildlife Sanctuaries includes the Pobitora Wildlife Sanctuary be declared as Eco Sensitive Zone by the Ministry of Environment and Forest. The said declaration was to be made by the Ministry of Environment and Forest at the earliest. Therefore, from the said order dated 11.12.2018, the Supreme Court did not declare an area of 10 Kms around Pobitora Wildlife Sanctuary as Eco Sensitive Zone, rather direction was issued to the Ministry of Environment and Forest to make the declaration at the earliest. On the other hand, if this Court takes into account the impugned order dated 02.03.2019, the Deputy Commissioner, Morigaon had revoked the No Objection Certificate dated 02.09.2011 on an assumption that the land wherein the petitioner's Brick Kiln Industry was located is in the Eco Sensitive Zone of Pobitora Wildlife Sanctuary. This aspect in the opinion of this Court was based upon an incorrect reading of the order passed by the Supreme Court on 11.12.2018 in the case of *TN. Godavarman Thirumulpad* (supra).

6. Be that as it may, when the matter was listed before this Court on 21.08.2023, this Court enquired as to whether the Ministry of Environment and Forest, Government of India had complied with the direction passed by the Supreme Court dated 11.12.2018 in *TN. Godavarman Thirumulpad* (supra). However, as the said query remained unanswered, this Court fixed the matter today for further consideration. When the matter was taken up today, Mr. D. Gogoi, the learned Standing Counsel Forest and Environment Department has placed an instruction issued by the Divisional Forest Officer, Guwahati Wildlife Division. The said instruction is kept on record and marked with the letter “X”. From a



perusal of the said instructions, it reveals that no draft proposal for notifying Eco Sensitive Zone of Pobitora Wildlife Sanctuary had been sent to the Central Government from the Office of the Principal Chief Conservator of Forest and Head of Forest Force, Assam. It was further mentioned that out of the total notified area of Pobitora Wildlife Sanctuary of 38.81 sq. krs., 10.98 sq. km. of Khas land has not been handed over to the Forest Department, the boundary of the Pobitora Wildlife Sanctuary, as per the Government notification dated 17.03.1998 had not been demarcated till date. To the said communication there are various enclosures. Amongst the various enclosures, it reveals that there is a communication issued by the Additional Principal Chief Conservator of Forest (SIO) of the Government of Assam who vide the communication dated 11.03.2020 had informed that the Ministry of Environment and Forest and Climate Change, Government of India had not issued any notification declaring the Eco Sensitive Zone of Pobitora Wildlife Sanctuary, in terms with the order dated 11.12.2018 passed by the Supreme Court in *TN. Godavarman Thirumulpad* (supra).

7. Today, when the matter was taken up, the Union of India represented by the Secretary to the Ministry of Environment and Forest was represented by Mr. R. K. D. Choudhury, the learned Deputy Solicitor General of India who upon a specific query being made also appraised this Court that till date, no notification has been issued by the Ministry of Environment and Forest, New Delhi as per the direction dated 11.12.2018 passed by the Supreme Court in the case of *TN. Godavarman Thirumulpad* (supra).

8. This Court, therefore, after considering the order dated 11.12.2018 passed by the Supreme Court in *TN. Godavarman Thirumulpad* (supra) where only a direction was issued to the Ministry of Environment and Forest, Government of India to make a declaration and the assumption of the Deputy Commissioner, Morigaon on the basis of the said order that the Pobitora Wildlife Sanctuary has been declared to be an Eco Sensitive Zone for which the impugned order was passed in the opinion of this Court suffers from perversity and is accordingly not sustainable in law, for which the said order dated 02.03.2019 is set aside and quashed.

9. This Court before concluding also finds it relevant to observe that various submissions have been made by Mr. R. Baruah, the learned counsel representing the private respondents as well as also by Mr. D. Gogoi, the learned Standing Counsel appearing on behalf of the Forest Department, Government of Assam that the Brick Kiln ought not be permitted despite the fact that there is no direction by the Ministry of Environment and Forest, Government of India as was otherwise required to do so in view of the order dated 11.12.2018 passed by the Supreme Court in *TN. Godavarman Thirumulpad* (supra).

10. It is observed by this Court that as the order dated 02.03.2019 was passed only on the consideration that the Brick Kiln of the petitioner is situated in a Eco Sensitive Zone which was on the face of it perverse, this Court had set aside the same. Under such circumstances, the Deputy Commissioner, Morigaon would therefore, be required to carry out the exercise in terms of the order passed by the Division Bench of this Court dated 12.11.2017 passed in WA No.241/2017 afresh thereby considering the report of the stake holders and after giving due opportunity of hearing to the petitioner as well as the private respondents herein.

11. The various contentions so raised by Mr. R. Baruah, the learned counsel appearing on behalf of the private respondents and Mr. D. Gogoi, the learned Standing Counsel, Forest Department can be raised before the Deputy Commissioner, Morigaon as it is also the mandate of the order passed by the Division Bench of this Court.

12. Accordingly, the instant writ petition, therefore, stands disposed of with the following observations and directions:-

- (i) The order dated 02.03.2019 passed by the Deputy Commissioner, Morigaon by which the No Objection Certificate issued to the petitioner dated 02.09.2011 was revoked, is set aside and quashed;
- (ii) The Deputy Commissioner, Morigaon is directed to decide afresh within a period of 8 (eight) weeks from today as regards the No Objection Certificate so issued in favour of the petitioner after considering the reports of the stake holders



and giving opportunity of hearing to the petitioner as well as the private respondents herein and also taking into account the order dated 23.11.2017 passed by the Division Bench of this Court in WA No.241/2017. The Department of Forest and Environment, Government of Assam as well as the private respondents are permitted to bring to the notice of the Deputy Commissioner, Morigaon any further development in respect to the Pobitora Wildlife Sanctuary and more particularly to the order dated 26.04.2023 passed by the Supreme Court in *T.N. Godavarman Thirumulpad* , reported in (2023) SC OnLine SC 504.

(iii) This Court further directs that till the decision is rendered by the Deputy Commissioner, Morigaon which this Court directs to do so within the period of 8 (eight) weeks from the date a certified copy of the instant order is served, status-quo be maintained by the parties.

**JUDGE**

**Comparing Assistant**