



GAHC010188612020

Page No.# 1/30



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

Case No. : WP(C)/5623/2020

IMRAD ALI AND 103 ORS
R/O VILL. SANOWATARI, GK ROAD, HOUSE NO. 79, DIST. DARRANG,
ASSAM 784145

2: SAHIRUDDIN
R/O VILL. SANOWATARI G.K. ROAD
HOUSE NO. P 56
DIST. DARRANG
PIN 784145
ASSAM.

3: KUSUM AHMED
R/O VILL. SANOWATARI
G.K. ROAD
HOUSE NO. 56
DIST. DARRANG
PIN 784145
ASSAM.

4: HASSAN ALI
R/O VILL. SANOWATARI
GK. ROAD
HOUSE NO 77
DIST. DARRANG
PIN 784145
ASSAM.

5: MAINEE AHMED
R/O VILL. SANOWATARI
G.K. ROAD
HOUSE NO 56
DIST. DARRANG
PIN 784145
ASSAM.



6: MD. JUAL AHMED
R/O VILL. SANOWATARI G.K. ROAD
HOUSE NO. P 56
DIST. DARRANG
ASSAM.

7: SAFIQUL ISLAM
R/O VILL. SAOWATARI
G.K. ROAD
HOUSE NO. 79
DIST. DARRANG
ASSAM.

8: KHARSID ALI
R/O VILL. SANOWATARI
G.K. ROAD
HOUSE NO. 77
DIST. DARRANG
ASSAM.

9: SAIDUL ISLAM
R/O VILL. SANOWATARI
G.K. ROAD
HOUSE NO. 79
DIST. DARRANG
PIN 784145
ASSAM.

10: NAZIMUDDIN AHMED
R/O VILL. SANOWATARI G.K. ROAD
HOUSE NO. 48
DIST. DARRANG
PIN 784145
ASSAM.

11: HASNA BEGUM
R/O VILL. SANOWATARI
G.K. ROAD
HOUSE NO. 77
DIST. DARRANG
PIN 784145
ASSAM.

12: ARIFA
R/O VILL. SANOWATARI
G.K. ROAD
HOUSE NO. 77



DIST. DARRANG
PIN 784145
ASSAM.

13: KHAKUJ ZAMAN
R/O VILL. SANOWATARI
G.K. ROAD HOUSE NO. 77
DIST. DARRANG
PIN 784145
ASSAM.

14: SAMIRUDDIN AHMED
R/O VILL. SANOWATARI
P.O. SANOWA
HOUSE NO. 27(K)
DIST. DARRANG
PIN 784145
ASSAM.

15: RIKIMUDDIN AHMED
R/O VILL. SANOWATARI
P.O. SANOWA
HOUSE NO. 27(K)
DIST. DARRANG
PIN 784145
ASSAM.

16: SARMIN SULTANA
R/O VILL. SANOWATARI
P.O. SANOWA
HOUSE NO. 27(...)
DIST. DARRANG
PIN 784145
ASSAM.

17: MITUSE MAINA
R/O VILL. SANOWATARI
P.O. SANOWA
HOUSE NO. 27(K)
DIST. DARRANG
PIN 784145
ASSAM.

18: RIJUL HOQUE
R/O VILL. SANOWATARI
P.O. SANOWA
HOUSE NO. 22(KHA)
DIST. DARRANG



PIN 784145
ASSAM.

19: HATIM ALI
R/O VILL. SANOWATARI
P.O. SANOWA
HOUSE NO. 22(KHA)
DIST. DARRANG
PIN 784145
ASSAM.

20: AALIMA
R/O VILL. SANOWATARI
P.O. SANOWA
HOUSE NO. 56
DIST. DARRANG
PIN 784145
ASSAM.

21: HARMUR ALI
R/O VILL. SANOWATARI
P.O. SANOWA
HOUSE NO. 22(KHA)
DIST. DARRANG
PIN 784145
ASSAM.

22: HANIF HAZARIKA
R/O VILL. SANOWATARI
P.O. SANOWA
HOUSE NO. 134(KHA)
DIST. DARRANG
PIN 784145
ASSAM.

23: ALIN SULTANA
R/O VILL. SANOWATARI
P.O. SANOWA
HOUSE NO 134(KHA)
DIST. DARRANG
PIN 784145
ASSAM.

24: ATIKUR RAHMAN
R/O VILL. SANOWATARI
P.O. SANOWA
HOUSE NO. 78
DIST. DARRANG



PIN 784145
ASSAM.

25: JIBUL NESSA
R/O VILL. SANOWATARI
P.O. SANOWA
HOUSE NO. 78
DIST. DARRANG
PIN 784145
ASSAM.

26: MD. AMNI ALI
R/O VILL. SANOWATARI
P.O. SANOWA
HOUSE NO. 39
DIST. DARRANG
PIN 784145
ASSAM.

27: MISS NURNESSA BEGUM
R/O VILL. SAOWATARI
P.O. SANOWA
HOUSE NO. 39
DIST. DARRANG
PIN 784145
ASSAM

28: MD. NEKIBUR RAHMAN
R/O VILL. SANOWATARI
P.O. SANOWA
HOUSE NO. 39
DIST. DARRANG
PIN 784145
ASSAM.

29: MD. MANIRUL ZAMAN
R/O VILL. SANOWATARI
P.O. SANOWA
HOUSE NO. 39
DIST. DARRANG
PIN 784145
ASSAM.

30: RIZIDUL HOQUE
R/O VILL. SANOWATARI
P.O. SANOWA
HOUSE NO. 39
DIST. DARRANG



PIN 784145
ASSAM.

31: RIYAZUDDIN AHMED
R/O VILL. SANOWATARI
P.O. SANOWA
HOUSE NO. 39
DIST. DARRANG
PIN 784145
ASSAM.

32: RANUWARA BEGUM
R/O VILL. SANOWATARI
P.O. SANOWA
HOUSE NO. 39
DIST. DARRANG
PIN 784145
ASSAM.

33: RUHUL AMIN
R/O VILL. SANOWATARI
P.O. SANOWA
HOUSE NO. 39
DIST. DARRANG
PIN 784145
ASSAM.

34: MAMINA BEGUM
R/O VILL. SANOWATARI
P.O. SANOWA
HOUSE NO. 39
DIST. DARRANG
PIN 784145
ASSAM.

35: MD. GUL
R/O VILL. SANOWATARI
P.O. SANOWA
HOUSE NO. 22(K)
DIST. DARRANG
PIN 784145
ASSAM.

36: MISS ARJUMA
R/O VILL. SANOWATARI
P.O. SANOWA
HOUSE NO. 22(K)
DIST. DARRANG



PIN 784145
ASSAM.

37: ARLIN BEGUM
R/O VILL. SANOWATARI
P.O. SANOWA
HOUSE NO. 22(K)
DIST. DARRANG
PIN 784145
ASSAM.

38: RASIDA BEGUM
R/O VILL. SANOWATARI
P.O. SANOWA
HOUSE NO. 22(K)
DIST. DARRANG
PIN 784145
ASSAM.

39: ASAS ALI
R/O VILL. SANOWATARI
P.O. SANOWA
HOUSE NO. 22(KHA)
DIST. DARRANG
PIN 784145
ASSAM.

40: NIKUMONI BEGUM
R/O VILL. SANOWATARI
P.O. SANOWA
HOUSE NO. 22(KHA)
DIST. DARRANG
PIN 784145
ASSAM.

41: FIRUJA BEGUM
R/O VILL. SANOWATARI
P.O. SANOWA
HOUSE NO. 22(KHA)
DIST. DARRANG
PIN 784145
ASSAM.

42: AASIBIN
R/O VILL. SANOWATARI
P.O. SANOWA
HOUSE NO. 22(KHA)
DIST. DARRANG



PIN 784145
ASSAM.

43: MIRAZUL HOQUE
R/O VILL. SANOWATARI
P.O. SANOWA
HOUSE NO. 22(KHA)
DIST. DARRANG
PIN 784145
ASSAM.

44: MUZAKIR HOQUE
R/O VILL. SANOWATARI
P.O. SANOWA
HOUSE NO. 22(KHA)
DIST. DARRANG
PIN 784145
ASSAM.

45: SAHIDULLA
R/O VILL. SANOWATARI
P.O. SANOWA
HOUSE NO. 27(K)
DIST. DARRANG
PIN 784145
ASSAM.

46: MOJABBIR ALAM
R/O VILL. SANOWATARI
P.O. SANOWA
HOUSE NO. 35
DIST. DARRANG
PIN 784145
ASSAM.

47: NAIMENARA SIDDIKA
R/O VILL. SANOWATARI
P.O. SANOWA HOUSE NO. 35
DIST. DARRANG
PIN 784145
ASSAM.

48: MAIJUDDIN AHMED
R/O VILL. SANOWATARI
P.O. SANOWA
HOUSE NO. 35
DIST. DARRANG
PIN 784145



ASSAM.

49: FARIZUN NESSA
R/O VILL. SANOWATARI
P.O. SANOWA
HOUSE NO 35
DIST. DARRANG
PIN 784145
ASSAM.

50: DAHIRA
R/O VILL. SANOWATARI
P.O. SAOWA
HOUSE NO. 35(K)
DIST. DARRANG
PIN 784145
ASSAM.

51: AMLLUL
R/O VILL. SANOWATARI
P.O. SANOWA
HOUSE NO. 35(K)
DIST. DARRANG
PIN 784145
ASSAM.

52: MD. REZAUL ALI
R/O VILL. SANOWATARI
P.O. SANOWA
HOUSE NO. 34(...)
DIST. DARRANG
PIN 784145
ASSAM.

53: SELIMA BEGUM
R/O VILL. SANOWATARI
P.O. SANOWA
HOUSE NO. 35(GA)
DIST. DARRANG
PIN 784145
ASSAM.

54: AFIBULLA HOQUE
R/O VILL. SANOWATARI
P.O. SANOWA
HOUSE NO. 35(GA)
DIST. DARRANG
PIN 784145



ASSAM.

55: AHSAN
R/O VILL. SANOWATARI
P.O. SANOWA
HOUSE NO. 39(KHA)
DIST. DARRANG
PIN 784145
ASSAM.

56: NAFISA KHATUN
R/O VILL. SANOWATARI
P.O. SANOWA
HOUSE NO. 39(KHA)
DIST. DARRANG
PIN 784145
ASSAM.

57: RAMJANUL HOQUE
R/O VILL. SANOWATARI
P.O. SANOWA
HOUSE NO. 39(KHA)
DIST. DARRANG
PIN 784145
ASSAM.

58: ARALUN NESSA
R/O VILL. SANOWATARI
G.K. ROAD
HOUSE NO. 48
DIST. DARRANG
PIN 784145
ASSAM.

59: MARUFUZ ZAMAN
R/O VILL. SANOWATARI
G.K. ROAD
HOUSE NO. 48
DIST. DARRANG
PIN 784145
ASSAM.

60: ASROFA ZEHRIN
R/O VILL. SANOWATARI
GK ROAD
HOUSE NO. 48
DIST. DARRANG
PIN 784145



ASSAM.

61: ABDUR RAHMAN
R/O VILL. SALMARA
P.O. GANESH
KUWORI
DIST. DARRANG
ASSAM.

62: TAMJID ALI

R/O VILL. KHALIHOI
P.O. GANESH KUWORI
DIST. DARRANG
PIN 784145
ASSAM.

63: KAMARUL ISLAM
R/O VILL. KHALIHOI
P.O. GANESH KUWORI
HOUSE NO. 2(C)
DIST. DARRAG
PIN 784145
ASSAM.

64: MD. NAZIRUDDIN AHMED
R/O VILL. KHALIHOI
P.O. GANESH KUWORI
HOUSE NO. 16
DIST. DARRANG
PIN 784145
ASSAM.

65: MAFIZUR RAHMAN
R/O VILL. KHALIHOI
P.O. GANESH KUWORI
HOUSE NO. 2(V)
DIST. DARRANG
PIN 784145
ASSAM.

66: RUMIZA KHATUN
R/O VILL. KHALIHOI
P.O. GANESH KUWORI
HOUSE NO. 2
DIST. DARRANG
PIN 784145
ASSAM.



67: SAYOJAN BEGUM
R/O VILL. KHALIHOI
P.O. GANESH KUWORI
HOUSE NO. 2(V)
DIST. DARRANG
PIN 784145
ASSAM.

68: MANOWARA BEGUM
R/O VILL. KHALIHOI
P.O. GANESH KUWORI
HOUSE NO. 2(C)
DIST. DARRANG
PIN 784145
ASSAM.

69: JUWARIYAS TABJUM
R/O VILL. KHALIHOI
P.O. GANESH KUWORI
HOUSE NO. 2(C)
DIST. DARRANG
PIN 784145
ASSAM.

70: RASMINA TEASMIN
R/O VILL. KHALIHOI
P.O. GANESH KUWORI HOUSE NO. 2 (GA)
DIST. DARRANG
PIN 784145
ASSAM.

71: TASADDUR YUSUF
R/O VILL. KHALIHOI
P.O GANESH KUWORI
HOUSE NO. 2(GA)
DIST. DARRANG
ASSAM.

72: SAMSUL HOQUE
R/O VILL. KHALIHOI
P.O. GANESH KUWRI
HOUSE NO.
DIST. DARRANG
ASSAM.

73: KHADIZA BEGUM
R/O VILL. KHALIHOI



P.O. GANESH KUWORI
HOUSE O. 7
DIST. DARRANG
ASSAM

74: ALIKON NESSA
R/O VILL. KHALIHOI
P.O. GANESH KUWORI
HOUSE NO. 7
DIST. DARRANG
ASSAM.

75: TARIBON NESSA
R/O VILL. KHALIHOI
P.O. GANESH KUWORI
HOUSE NO. 4
DIST. DARRANG
ASSAM.

76: JARIK AZIZ
R/O VILL. KHALIHOI
P.O. GANESH KUWORI
HOUSE NO. 4
DIST. DARRANG
ASSAM.

77: AHMOD ALI
R/O VILL. KHALIHOI
P.O. GANESH KUWORI
HOUSE NO. 4
DIST. DARRANG
ASSAM.

78: AZIDULLAH HOQUE
R/O VILL. KHALIHOI
P.O. GANESH KUWORI
HOUSE NO. 18
DARRANG
ASSAM.

79: SAMIDUL HOQUE
R/O VILL. KHALIHOI
P.O. GANESH KUWORI
HOUSE NO. 13
DIST. DARRANG
ASSAM.

80: FAJMUL ISLAM



R/O VILL. KHALIHOI
P.O. GANESH KUWORI
HOUSE NO.....DIST. DARRANG
ASSAM

81: MOKHLESUR HONNAN
R/O VILL. KHALIHOI
P.O. GANESH KUWORI
HOUSE NO. 18(KHA)
DIST. DARRANG
ASSAM.

82: NASIRUDDIN AHMED
R/O VILL. KHALIHOI
P.O. GANESH KUWORI
HOUSE NO. 18(KHA)
DIST. DARRANG
ASSAM.

83: ABDUL AZIZ
R/O VILL. KHALIHOI
P.O. GANESH KUWORI
HOUSE NO. 108
DIST. DARRANG
ASSAM.

84: INAMUL ALI
R/O VILL. KHALIHOI
P.O. GANESH KUWORI
HOUSE NO. 26
DIST. DARRANG
ASSAM.

85: MAHIDUL ISLAM
R/O VILL. KHALIHOI
P.O. GANESH KUWORI
HOUSE NO. 16(A)
DIST. DARRANG
ASSAM.

86: MOSADDIK ISLAM
R/O VILL. KHALIHOI
P.O. GANESH KUWORI
HOUSE NO. 18
DIST. DARRANG
ASSAM.

87: PUTUL ALI



R/O VILL. KHALIHOI
P.O. GANESH KUWORI
HOUSE NO. 17
DIST. DARRANG
ASSAM.

88: TAMJID ALI
R/O VILL. KHALIHOI
P.O. GANESH KUWORI
HOUSE NO. 13
DIST. DARRANG
ASSAM.

89: JALIMA BEGUM
R/O VILL. KHALIHOI
P.O. GANESH KUWORI
HOUSE NO. 17
DIST. DARRANG
ASSAM.

90: RITUL ALI
R/O VILL. KHALIHOI
P.O. GANESH KUWORI
HOUSE NO. 17
DIST. DARRANG
ASSAM.

91: AFRUJA AHMED
R/O VILL. KHALIHOI
P.O. GANESH KUWORI HOUSE NO. 16(A)
DIST. DARRANG
ASSAM.

92: MOINUL HOQUE
R/O VILL. KHALIHOI
P.O. GANESH KUWORI
HOUSE NO. 16(A)
DIST. DARRANG
ASSAM.

93: SAHAMUDDIN AHMED
R/O VILL. KHALIHOI
P.O. GANESH KUWORI
HOUSE NO. 15
DIST. DARRANG
ASSAM.

94: RASIA AHMED



R/O VILL. KHALIHOI
P.O. GANESH KUWORI
HOUSE NO. 15
DIST. DARRANG
ASSAM.

95: ABDUL ALI
R/O VILL. KHALIHOI
P.O. GANESH KUWORI
HOUSE NO. 14
DIST. DARRANG
ASSAM.

96: AZNUR ALI
R/O VILL. KHALIHOI
P.O. GANESH KUWORI
HOUSE NO. 14
DIST. DARRANG
ASSAM.

97: MANUWARA BEGUM
R/O VILL. KHALIHOI
P.O. GANESH KUWORI
HOUSE NO. 14
DIST. DARRANG
ASSAM.

98: MOSADDIK AHMED
R/O VILL. KHALIHOI
P.O. GANESH KUWORI
HOUSE NO. 18(KHA)
DIST. DARRANG
ASSAM.

99: ANUJA BEGUM
R/O VILL. KHALIHOI
P.O. GANESH
KUWORI
HOUSE NO. 18(KHA)
DIST. DARRANG
ASSAM.

100: MARAJUL HOQUE
R/O VILL. SALMARA
P.O. GANESH KUWORI
DIST. DARRANG
ASSAM.



101: AFOZA BEGUM
R/O VILL. KHALIHOI
P.O. GANESH KUWORI
HOUSE NO. 18(KHA)
DIST. DARRANG
ASSAM.

102: MONIRUDDIN AHMED
R/O VILL. KHAIHOI
P.O. GANESH KUWORI
HOUSE NO. 18
DIST DARRAG
ASSAM.

103: MOSTAK ALAM
R/O VILL. KHALIHOI
P.O. GANESH KUWORI
DIST. DARRANG
ASSAM

104: JASMINE AHMED
R/O VILL. SANOWATARI
GK ROAD
HOUSE NO. P-56
DIST. DARRAG
PIN 784145
ASSAM

VERSUS

THE STATE OF ASSAM AND 7 ORS
REPRESENTED BY THE CHIEF SECY. TO THE GOVT. OF ASSAM, DISPUR,
GUWAHATI 781006

2:THE COMMISSIONER AND SECY. TO THE GOVT. OF ASSAM
REVENUE DEPTT.
DISPUR
GUWAHATI 781006

3:THE POLLUTION CONTROL BOARD
ASSAM
MILANPUR
WEST JYOTINAGAR
BAMUNIMAIDAM
GUWAHATI 781021 BEING REPRESENTED BY THE MEMBER SECY.

4:THE DEPUTY COMMISSIONER
DARRANG



MANGALDOI
PIN 784125

5:DIST. AGRICULTURE OFFICER
DARRANG
MANGALDOI
PIN 784125

6:ADDL. DEPUTY COMMISSIONER (REVENUE)
DARRANG
MANGALDOI
ASSAM
PIN CODE 784125

7:CIRCLE OFFICER
SIPAJHAR REVENUE CIRCLE
SIPAJHAR
DARRANG
PIN 784145

8:MD. LUTFUR RAHMAN
S/O AZIZUR RAHMAN
VILL. DUMUNI CHOWKI
MOUZA LOKRAI
SIPAJHAR REVENUE CIRCLE
DARRANG
ASSAM
PIN 78112

Advocate for the Petitioner : MR. D DAS SR. ADV

Advocate for the Respondent : GA, ASSAM

BEFORE
HONOURABLE MR. JUSTICE ACHINTYA MALLA BUJOR BARUA

Date : 20-09-2022

JUDGMENT & ORDER (ORAL)

Heard Mr. D. Das, learned senior counsel for the petitioners, Ms. M Barman, learned junior Government Advocate for the respondents No. 1, 4, 6 and 7 being the Chief Secretary to the Government of Assam, Deputy Commissioner, Darrang, Additional Deputy Commissioner (Revenue), Darrang and Circle Officer,



Sipajhar, Mr. A Bhattacharyya, learned counsel for the respondent No. 2 being the authorities in the Revenue Department of the Government of Assam, Mr. S Barua, learned counsel for the respondent No. 3 being the Pollution Control Board, Assam and Mr. A Upadhyay, learned counsel for the respondent No. 8 Md. Lutfor Rahman.

2. The 104 petitioners herein are all residents of village Sanowatari and Khalihoi under mouza Sipajhar in the Darrang district and most of them are farmers who earn their livelihood by cultivating their respective agricultural land. The petitioners are aggrieved to the extent that a brick kiln operated by the respondent No. 8 Md. Lutfor Rahman was established in violation of the Assam Brick Kiln Establishment and Regulation Rules, 2013 (in short Rules of 2013) and also it is having an adverse impact on the environment of the neighbouring agricultural land where the petitioners are continuing with the agricultural activities. The petitioners have raised two legal issues to the extent that no consent to operate the brick kiln had been issued by the Pollution Control Board (PCB) in favour of the respondent No. 8 and further the brick kiln which was established over an agricultural land, could not have been reclassified and converted for the purpose of non-agricultural use and thereafter establish and operate a brick kiln in view of the provisions of Section 4(1) of the Assam Agricultural Land (Regulation of Reclassification and Transfer for non-Agricultural purpose) Act, 2015 (hereinafter referred as Re-classification Act of 2015).

3. Mr. A Upadhyay, learned counsel for the respondent No. 8 raises a counter contention that the respondent No. 8 established and operated the brick kiln after obtaining the '*consent to establish*' from the PCB, Assam for setting up the manufacturing unit for which a certificate of consent to establish had been issued on 20.10.2020 and such certificate had been issued pursuant to the

consent to establish given by the PCB, Assam as per their order dated 15.10.2020.

4. We have heard the learned counsel for the parties.

5. As regards the contention of the petitioners that although the respondent No. 8 have been issued the '*consent to establish*' by the PCB, but no consent to operate had been issued, which is a subsequent requirement for making the brick kiln operational, Mr. D Das, learned senior counsel for the petitioners refers to clause 7 of the order dated 15.07.2020 providing for the consent to establish, which inter-alia provides that a consent to operate as per Act and Cess Returns as per Cess Act, 1977 would have to be obtained. Clause 7 of the order dated 15.10.2020 is extracted below:-

“To regularise the subsequent ‘Consent to Operate’ the legal provisions of ‘Consent to Operate’ as per Act and Cess Returns as per Cess Act, 1977 shall have to be timely adhered to.”

6. To appreciate the submission of the learned senior counsel, we tried to understand the meaning and purport of clause 7 of the order dated 15.10.2020, which refers to the Air (Prevention and Control of Pollution) Act, 1981 (in short Act of 1981). It has been pointed out that the relevant provisions related to clause 7 of the order dated 15.10.2020 is Section 21 of the Act of 1981. Section 21 of the Act of 1981 provides that subject to the provisions of the Section, no person shall without the previous consent of the State Board establish or operate any industrial plant in an air pollution control area. Section 21 of the Act of 1981 is extracted below:-

“21. Restrictions on use of certain industrial plants.—1[(1) Subject to the provisions of this section, no person shall, without the previous consent of the State Board, establish or operate any industrial plant in an air pollution control area:

Provided that a person operating any industrial plant in any air pollution control area immediately before the commencement of section 9 of the Air (Prevention and Control of Pollution) Amendment Act,1987, for which no consent was necessary prior to such commencement, may continue to do so for a period of three months from such commencement or, if he has made an application for such consent within the said period of three months, till the disposal of such application.]

(2) An application for consent of the State Board under sub-section (1) shall be accompanied by such fees as may be prescribed and shall be made in the prescribed form and shall contain the particulars of the industrial plant and such other particulars as may be prescribed:

*Provided that where any person, immediately before the declaration of any area as an air pollution control area, operates in such area any industrial plant, 2***such person shall make the application under this sub-section within such period (being not less than three months from the date of such declaration) as may be prescribed and where such person makes such application, he shall be deemed to be operating such industrial plant with the consent of the State Board until the consent applied for has been refused.*

(3) The State Board may make such inquiry as it may deem fit in respect of the application for consent referred to in sub-section (1) and in making any such inquiry, shall follow such procedure as may be prescribed.

(4) Within a period of four months after the receipt of the application for consent referred to in sub-section (1), the State Board shall, by order in writing, 1[and for reasons to be recorded in the order, grant the consent applied for subject to such conditions and for such period as may be specified in the order, or refuse such consent]:

2[Provided that it shall be open to the State Board to cancel such consent before the expiry of the period for which it is granted or refuse further consent after such expiry if the conditions subject to which such consent has been granted are not fulfilled: Provided further that before cancelling a consent or refusing a further consent under the first provision, a reasonable opportunity of being heard shall be given to the person concerned.]

(5) Every person to whom consent has been granted by the State Board under sub-section (4), shall comply with the following conditions, namely:—

(i) the control equipment of such specifications as the State Board may approve in this behalf shall be installed and operated in the premises where the industry is carried on or proposed to be carried on;

(ii) the existing control equipment, if any, shall be altered or replaced in accordance with the directions of the State Board;

(iii) the control equipment referred to in clause (i) or clause (ii) shall be kept at all times in good running condition;

(iv) chimney, wherever necessary, of such specifications as the State Board may approve in this behalf shall be erected or re-erected in such premises; and
(v) such other conditions as the State Board, may specify in this behalf; and

(vi) the conditions referred to in clauses (i), (ii) and (iv) shall be complied with within such period as the State Board may specify in this behalf:

*Provided that in the case of a person operating any industrial plant 3*** in an air pollution control area immediately before the date of declaration of such area as an air pollution control area, the period so specified shall not be less than six months:*

Provided further that—

(a) after the installation of any control equipment in accordance with the specifications under clause (i), or
(b) after the alteration or replacement of any control equipment in accordance with the directions of the State Board under clause (ii), or

(c) after the erection or re-erection of any chimney under clause (iv), no control equipment or chimney shall be altered or replaced or, as the case may be, erected or re-erected except with the previous approval of the State Board.

(6) If due to any technological improvement or otherwise the State Board is of opinion that all or any of the conditions referred to in sub-section (5) require or requires variation (including the change of any control equipment, either in whole or in part), the State Board shall, after giving the person to whom consent has been granted an opportunity of being heard, vary all or any of such conditions and thereupon such person shall be bound to comply with the conditions as so varied.

(7) Where a person to whom consent has been granted by the State Board under sub-section (4) transfers his interest in the industry to any other person, such consent shall be deemed to have been granted to such other person and he shall be bound to comply with all the conditions subject to which it was granted as if the consent was granted to him originally.

7. A reading of Section 21 makes it discernible that in order to enable any person to establish or operate any industrial plant in an air pollution control

area, there would be a requirement of a previous consent of the State Board.

8. Section 21(1) of the Act of 1981 provides that no person shall without the previous consent of the State Board establish or operate any industrial plant in and around pollution control area. Section 21(1) itself provides that the previous consent of the State Board would be in respect of either to establish or to operate any industrial plant.

9. Mr. A Upadhyay, learned counsel for the respondent No. 8 seeks to give an interpretation to Section 21(1) of the Act of 1981 that in view of the expression 'or', Section 21(1) has to be interpreted that the consent would be in respect of either to establish or to operate and not both inasmuch as the expression 'or' indicates that it is disjunctive.

10. The said submission of Mr. A Upadhyay, learned counsel assumes relevance inasmuch as the respondent No. 8 prior to establishing the brick kiln had obtained the consent to establish and upon obtaining the consent had established the brick kiln and are presently operating it. If the submission of the learned counsel is accepted that it being a disjunctive provision in Section 21(1) that either there be a consent to establish or a consent to operate, the respondent No. 8 having obtained the consent to establish fulfils the requirement of Section 21(1) of the Act of 1981.

11. In paragraph 11 of its proposition in *Ishwar Singh Bindra and others –vs- State of Uttar Pradesh*, reported in AIR 1968 SC 1450, the Hon'ble Supreme Court provided as extracted:-

“.... In Stroud's Judicial dictionary, 3rd Edn. It is stated at p. 135 that "and" has generally a cumulative sense, requiring the fulfilment of all the conditions that it joins together, and herein it is the antithesis of or. Sometimes, however, even in such a connection, it is, by force of a contexts, read as "or". Similarly in

Maxwell on Interpretation of Statutes, 11th Edn., it has been accepted that "to carry out the intention of the legislature it is occasionally found necessary to read the conjunctions 'or' and 'and' one for the other."

In principles of statutory interpretation by Justice GP Singh in the 48th edition at page 531, provided as extracted:-

"However, if the literal reading of the words produces an unintelligible or absurd result 'and' may be read for 'or' and 'or' for 'and' even though the result of so modifying the words is less favourable to the subject provided that the intention of the Legislature is otherwise quite clear."

12. A reading of the aforesaid propositions on the aspect as to when the expression 'or' can be read as 'and' or 'and' as 'or', it is discernible that one such circumstance would be if reading the expression 'or' as 'or' would either give an indication that it was not the intention of the legislature or that such reading would lead to an absurdity.

13. Going by the aforesaid proposition, we examine as to whether the expression 'or' in section 21(1) of the Act of 1981 in the facts and circumstance of the present case as well as implication thereof would have to be read be read as 'or' itself or it is required to be read as 'and'.

14. We have perused the communication from the respondent Assam State Pollution Control Board which provides that to establish an industry with the potential of water pollution or air pollution, prior consent under the Water Act or the Air Act is to be obtained, respectively, which needs to be in two phases. It further provides that the consent to establish is to be obtained prior to establishing any industry or process or plant. Once the industry or process or plant is established along with the required pollution control system, the entrepreneur is required to obtain consent to operate the unit. The consent to operate the unit is given for a particular period where-after it would be



mandatory to renew the consent to operate on a periodic basis. The consequence of not subsequently renewing the consent to operate as per the communication would invite a process under the Act of 1981, in case matter related to air pollution. The further provisions by the Assam State Pollution Control Board in their communication is clear enough to understand that the consent referred under section 21(1) of the Act of 1981 would have to be in two phases. In the first phase, there would be a requirement to obtain consent to establish by providing the relevant materials regarding the site etc where the intended industrial plant would be set up. After the industrial plant is set up by incorporating the required pollution control systems, there would be a further examination by the Assam Pollution Control Board as to whether the pollution that may be emitted upon operation of such industrial plant would be within the permissible limit under the Act of 1981. It is only upon such examination and satisfaction of the Assam State Pollution Control Board the consent to operate would be provided.

15. The aforesaid provisions of the communication in the view of the Court are absolutely reasonable and also in furtherance of the requirement of the Act of 1981 and also to satisfy the requirement of having control over the pollution that may be emitted by an industrial plant which would be set up. As already held, as there is a requirement to obtain the consent in two phases i.e. firstly to obtain the consent to establish and in the second phase to obtain the consent to operate, which is a reasonable requirement is in furtherance of the Act of 1981, we are of the view that as a corollary, if the procedure of obtaining the consent in two phases is not adopted i.e. only a consent to establish would be sufficient and once the consent to establish is obtained, there would be no further requirement of a consent to operate, it would have to be accepted that such a



situation would be arbitrary and absurd inasmuch as the basic purpose of the Act of 1981 would be frustrated.

16. In this respect, we also take note of the Air (Prevention and Control of Pollution) Assam Rules, 1981, wherein there are provisions of specific forms relating to consent to operate and therefore, we have to understand that there is also a requirement on the part of the Assam State Pollution Control Board to provide the consent to operate.

17. As we have arrived at a conclusion that if the expression 'or' appearing in section 21(1) of the Act of 1981 is read as 'or' itself, it would lead to an absurdity or it would lead to a situation contrary to the purpose of the Act of 1981, we are of the view that in the instant case, the expression 'or' in section 21(1) of the Act of 1981 would have to be read as 'and'. Having arrived at the conclusion that the expression 'or' in section 21(1) of the Act of 1981 would have to be read as 'and', we are in agreement with the view of the Assam State Pollution Control Board that for establishing and operating the respondent No. 8 brick kiln, there would be a requirement of law to obtain a consent to establish as well as upon establishing the plant, the consent to operate would also have to be obtained.

18. Admittedly, as in the instant case, the respondent No. 8 had not obtained the consent to operate, the respondent No. 8 may make appropriate application before the Assam Pollution Control Board and upon such application being made, the Assam State Pollution Control Board may give a due consideration and pass a reasoned order thereon strictly in terms of the Act of 1981 and the other requirements. The consequence thereof would be that if the Assam State Pollution Control Board grants the consent to operate, the respondent No. 8 may continue with the brick kiln and on the other hand, if the consent to

operate is refused by the Assam State Pollution Control Board, the said brick kiln be effectively closed down by the Board by following the due procedure of law.

19. As regards the second contention of the petitioners that the land over which the brick kiln had been established by the respondent No. 8 is an agricultural land and the consent for transfer of the use of the land had been granted without waiting for a period of ten years for the land to be declared unfit for agricultural purpose, we examine the provisions of Section 4(1) of the Re-Classification Act of 2015, which provisions are relied upon by the petitioners to substantiate the said contention. Section 4(1) of the Re-Classification Act of 2015 inter-alia provides that such land which is recorded as agricultural land but has already become unfit for agricultural purpose or where there has been no agricultural activity for at least ten years preceding date of the application, shall only be reclassified or reclassified cum transferred for intended non agricultural purpose with prior approval of the Deputy Commissioner. Section 4(1) of the Re-Classification Act of 2015 is extracted below:-

“(4) (1) Such land which is recorded as agricultural land but has already become unfit for agricultural purposes or where there has been no agricultural activity for at least ten years preceding the date of application for permission, shall only be reclassified-cum-transferred for intended non-agricultural purposes with the prior approval of the Deputy Commissioner.”

20. A reading of the provisions of Section 4(1) of the Re-Classification Act of 2015 makes it discernible that on an application for permission, a given land can be reclassified or reclassified cum transferred for intended non agricultural purpose, if the land has become unfit for agricultural purpose or where there has been no agricultural activity over the land for at least ten years preceding the date of the application.

21. The two provisions are again related in a disjunctive manner by the word

'or' meaning thereby that either the land has become unfit for agricultural purpose or where the land may not have become unfit for agricultural purpose, but remained unused for agricultural purpose for ten years preceding the date of the application. No time period is noticed for such re-classification or reclassification cum transfer in the event a land has become unfit for agricultural purpose meaning thereby the requirement of ten years for granting permission for conversion or transfer is applicable only in case of a land which remained unused for agriculture. A reading of the Section 4(1) of the Re-Classification Act of 2015 makes it discernible that the requirement of ten years is not in existence in respect of such land which had become unfit for agriculture and the period of ten years is applicable only in respect of such land which may have remained fit for agricultural purpose, but was not used for agricultural purpose for a period of ten years.

22. In the instant case, when the order of the Deputy Commissioner allowing for such conversion is examined, in second paragraph of the said order it is provided that as per the report of the Circle Officer, Sipajhar Revenue Circle, the land over which the respondent No. 8 had sought permission for reclassification or reclassification cum transfer had already become unfit for agricultural purpose. The said provision in the order dated 17.02.2020 of the Deputy Commissioner nor the report of the Circle Officer have been assailed so as to require the Court to examine as to whether the conclusion as regards the agricultural land becoming unfit for agricultural purpose had been correctly depicted.

23. Accordingly, we have to understand that the reclassification or reclassification cum transfer of the land of the respondent No. 8 was allowed on the premises that it had become unfit for agricultural purpose and not because

it was unused for agricultural purpose over a period of time.

24. Accordingly, we find no requirement of any period of ten years for the reclassification or reclassification cum transfer of the land of the respondent No. 8 inasmuch as, the same was allowed on the premises that it had become unfit for agriculture and not because it was not used for agricultural purpose. From such point of view, the second contention of the petitioners is found to be unacceptable.

25. Mr. D Das, learned senior counsel for the petitioners also raises a contention that as per the Assam Brick Kiln (Establishment and Regulation) Rules, 2013 (in short Rules of 2013), in clause 2(ii) thereof, there is a requirement of an aerial distance of brick kilns to be at least 500 meters from the areas like registered hospital, school, public building, religious place or a place where flammable substances are stored. A contention is raised that there is a Masjid within 500 meters of the brick kiln of the respondent No. 8 and therefore, under the clause 2(ii) of Rules of 2013, the brick kiln of the respondent No. 8 could not have been established and if established, it would require its removal. Further reference is also made to clause 2(v) of the Rules of 2013 which provides that the brick kiln ought to be constructed at least 500 meters away from the part of any natural water flow as well as from any river bank, beels, lakes etc. According to the learned senior counsel for the petitioners, there is a natural water flow about 180 meters from one of the boundaries of the brick kiln of the respondent No. 8 and therefore, the brick kiln in view of the provisions of clause 2(ii) of the Rules of 2013 cannot be allowed to exist in its present location.

26. As the said contention involve the questions of fact, we are of the view that the interest of justice would be met on the petitioners making an



application before the Deputy Commissioner, Darrang raising the aforesaid issues that the brick kiln of the respondent No. 8 is located within a distance of 500 meters from the Masjid which is a religious place and secondly around 180 meters from a natural water flow and therefore, the requirements of clauses 2(ii) and 2(v) of the Rules of 2013, had been violated and appropriate action is required to be taken against the brick kiln of the respondent No. 8.

27. Upon such application being filed by the petitioners, the Deputy Commissioner shall cause an enquiry as to the distance of the religious place as well as the natural water flow from the nearest boundary of the brick kiln and upon such enquiry if it is arrived at a conclusion that the brick kiln is located within 500 meters from the religious place or the natural water flow, appropriate action be taken against the respondent No. 8 by following the due procedure of law i.e. by giving the respondent No. 8 an opportunity of hearing.

28. The requirement be done by the Deputy Commissioner within a period of three months from the date of receipt of the representation from the petitioners. In the event, no representation is filed, there would be no requirement of the Deputy Commissioner to undertake any enquiry.

The writ petition is disposed of in the above manner.

JUDGE

Comparing Assistant