



GAHC010106802023



2025:GAU-AS:9535

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

Case No. : WP(C)/2839/2023

AMERANDRA KUMAR SARMA
S/O - SRI SURENDRA NATH SARMA R/O- VILL- KHARGHULI, HOUSE NO-
35 DR. BHUPEN HAZARIKA PATH P.O- KHARGHULI P.S- LATASIL,
GUWAHATI-04 DIST- KAMRUP(M), ASSAM.

VERSUS

THE STATE OF ASSAM AND 2 ORS
REPRESENTED BY THE PRINCIPAL SECRETARY GUWAHATI
DEVELOPMENT DEPTT. 2ND FLOOR, BLOCK D, GOVT. OF ASSAM, ASSAM
SECRETARY (CIVIL), DISPUR, PIN- 781006

2:THE COMMISSIONER GUWAHATI MUNICIPAL CORPORATION (GMC)
PANBAZAR
KAMRUP (M)
GUWAHATI- 01.

3:THE DEPUTY COMMISSIONER
KAMRUP (M)
GUWAHATI -01.

4:SMTI KALPANA MAHANTA
W/O SRI DILIP KUMAR MAHANTA
HOUSE NO 18
KHARGHULI
1ST LEFT BY LANE
DR. BHUPEN HAZARIKA PATH
GUWAHATI
THE PROPRIETOR OF M/S KALPANA STORE
KHARGHULI
GUWAHATI
ASSAM



PIN-781004

Advocate for the Petitioner : MR. S J SARMAH, MR R DAS,MR. P BOIRAGI

Advocate for the Respondent : GA, ASSAM, MR. R BORPUJARI,MR N PATIRI (R-4),MR. K KAKOTI (R-4),MR H K NATH (R-4),MR J BORAH (R-4),SC, GMC

BEFORE

THE HON'BLE MR JUSTICE ARUN DEV CHOUDHURY

For the Petitioners : Mr. SJ Sarmah, Advocate.

For the respondents : Mr. P Nayak, SC, GMC
Mr. H Sarmah, GA
Ms. G Goswami, Advocate

Date of hearing : 27.06.2025

Date of Judgment : 24.07.2025

JUDGMENT & ORDER (CAV)

1. Heard Mr. SJ Sarma, learned counsel for the petitioner. Also heard Mr. P Nayak, learned standing counsel for the GMC, Mr. H Sarma, learned State counsel and Ms. G Goswami, learned counsel for the respondent No. 4.
2. By filing this writ petition under Article 226 of the Constitution of India, the petitioner has expressed his grievance that the respondent No. 4 has constructed a shop illegally on the road at the triangle of 1st bye lane of Dr. Bhupen Hazarika Path opposite to the residence of the



petitioner, which is causing great inconvenience. According to him, despite several representations since 2019, the respondent authorities have done nothing to redress his grievances.

3. An affidavit has been filed by the Deputy Commissioner, Kamrup (M), wherein it has been stated that the respondent No.4 is running her shop over a road under Dag No. 357, FS grant Patta No. 7 of revenue village Sahar Guwahati part-VI and though said land is a Patta land, a road had already been constructed over the said plot of land. The Deputy Commissioner has also annexed a report from the Circle Officer, Guwahati Revenue Circle, to the aforesaid fact.
4. It is the stand of the respondent No. 4 that the respondent No. 4 does not dispute running the shop on the road and that she is not the owner the land. It is the contention of the respondent No. 4 that such a shop is being run by the respondent No. 4 with a due trade license from the Guwahati Municipal Corporation. It is the further case of the respondent No. 4 that the respondent No.4's trade license No. 169801 dated 09.02.2015 was cancelled by an order dated 16.02.2019 by the Deputy Commissioner, South Zone, Guwahati Municipal Corporation, however, such cancellation was interfered by this court in WP(C) 1432/2019, preferred by the respondent No. 4, under order dated 06.03.2019, for the reason that such cancellation was without issuing any show cause notice. However, liberty was granted to the respondent GMC to proceed with the matter in accordance with the law. Subsequently, such a license was renewed on 01.12.2023, and therefore, according to the learned counsel for the respondent No.4, the shop cannot be termed as illegal.
5. The learned counsel for the respondent No. 4 while not disputing that



the shop is constructed over the road, however, placing reliance on the decision of the Hon'ble Apex Court in the case of ***Sodan Singh & Ors. vs New Delhi Municipal Corporation & Ors.*** reported in ***1989 (4) SCC 155*** contends that street vending is a fundamental right available to all citizens, subject only to Article 19 (6) of the Constitution of India. According to the learned counsel for the respondent No. 4, while a citizen has no right to choose a particular place or any street for trading, however, nobody can insist on keeping every inch of the street available for actual uses. According to the learned counsel, the Hon'ble Apex Court held that if properly regulated, according to the exigencies of the circumstances, the small traders on sidewalks can considerably add to the comfort and convenience of the general public, by making available ordinary articles of everyday use for a comparatively lesser price. While concluding her argument, she submits that if the public is not prevented from 'freely, safely and conveniently passing" the public road, a small trader can have a shop on the public road. Therefore, according to her, the respondent No. 4 has a fundamental right to continue with the shop on the public road, as there is nothing on record to suggest that it has created any inconvenience to any person. Accordingly, she seeks dismissal of this writ petition.

6. Let this court first look into the national policy on Urban Street Vendor, 2009 and the resultant legislation enacted in this regard. The National Policy on Urban Street Vendor, 2009 recognises street vendors as a very important segment of the unorganised sector in the country. It also recognises the need for regulation of street vending by way of designated "restriction-free vending", "restricted vending", and "no vending zone"



based on certain objective principles. Such a policy balances the right of the street vendor as well as ensures free flow of traffic, smooth movement of pedestrians and maintenance of cleanliness and public hygiene.

7. Subsequently, the Parliament in its wisdom enacted the Street Vendors (Protection of Livelihood and Regulation of Street Vending) Act, 2014, which regulates street vending as well as well as right of fellow citizens to use of road, footpath and free flow of traffic etc.
8. The State of Assam, in exercise of powers conferred under Sub-Section 1 and 2 of Section 36 of the Act, 2014 made Assam Street Vendors (Protection of Livelihood and Regulation of Street Vending) Rules, 2016.
9. In the aforesaid backdrop, and in the backdrop of argument of the learned counsel for the parties, this court under its order dated 21.03.2025 directed the Guwahati Municipal Corporation to bring on record in the shape of an instruction as to the areas which has been declared as vending zone in Guwahati, more particularly, in the locality from Uzanbazar to Lal Singh Academy (Dr. Bhupen Hazarika Path). The Guwahati Municipal Corporation has accordingly produced an instruction.
10. This court has also asked for instructions whether there is any encroachment of public land/ road in this stretch of the road. A joint survey report was produced before the court. A copy of which was also shared with the learned counsel for the parties. The relevant portion of the report is quoted below:

““i. The alleged establishment of the shop is situated on the road at the triangle of 1st Byelane of Dr. Bhupen Hazarika Path, opp. to the residence of petitioner Sri Amarendra Kumar Sarma.

ii. The areas which are declared as Vending Zones in Guwahati, more particularly, in the locality from



Uzan Bazar to Lal Singh Academy (Dr. Bhupen Hazarika Path) are given below:

- a. *In front of MGC Office, Uzan Bazar of area of 36.50 mtr length and 4 mtr breadth under ward No. 32 with a capacity of 50 numbers of vendors.*
- b. *KharghuliBelortol for area of 120 mtr length and 3 mtr breadth under ward No. 34 with a capacity of 37 numbers vendors.*
- c. *Joypur near Don Bosco Institute for area of 200 mtr length and 43 mtr breadth under ward No. 34 with capacity of 70 numbers of vendors.*

11. Thus from the aforesaid, it is seen that the area where the petitioner is running the shop is not within the vending zone.

12. To ascertain further, this court under its order dated 27.05.2025, appointed Mr. H Sarmah, learned State counsel, as Commissioner to visit the site and file a report, more particularly, as regards the position of the shop and whether it is constructed over a public road or not. Accordingly, Mr. Sarmah has submitted a report along with certain photographs. The relevant portion of the report is quoted below:

“.....The shop is situated over the road at Kharghuli at a Triangle of the 1st Bye lane of Dr. Bhupen Hazarika Path. The entry of the said Bye Lane is 36 feet wide and the shop is situated about 10 feet from the entry point. The size of the shop is 5 feet 2 inch wide in Southern side and 6 feet 4 inch on the northern side and the length of the shop is about 14 feet 5 inch. The shop is constructed in one side of the road and the width of the road is found at the point where the shop is situated is 18 feet 3 inch thereby causing the road at that stretch narrow. Beyond that the road is 23 feet wide. The shop is constructed in front of the house of the petitioner. It is seen that one portion of the house of the writ petitioner is fitted with shutter and entry to the said portion of the house of the petitioner is restricted by the construction of the shop.....”

13. The photographs and the report are kept on record.

14. Now, from the aforesaid, it is clear that the shop of the respondent No. 4 is constructed over a public road. Such factum is not disputed by the learned counsel for the petitioner and therefore, what remains to be decided is as to whether the respondent No. 4 has any right to continue



with the shop and carry on her business over a public road. As recorded hereinabove, whole contention of the respondent No. 4 is based on the principle laid down by the Hon'ble Apex Court in **Sodan Singh (supra)** and that there cannot be any inconveniences to the petitioner and therefore the respondent No. 4 is having a fundamental right to continue with the business subject to only Article 19 (6) of the Constitution of India.

15. Article 19(1)(g) guarantees all citizens of India to practise any profession, or to carry on any occupation, trade or any business, however, notwithstanding such provision, Article 19(6) of the Constitution of India permits the State to make any law imposing, in the interest of the general public, a reasonable restriction on the exercise of the right conferred under Article 19(1)(g) of the Constitution of India.
16. If we look into the Act, 2014, more particularly, Chapter II deals with regulation of street vending, which includes the rights of the street vendors. Chapter III elaborately deals with the rights and obligations of the street vendors. There are also provisions of relocation and eviction of street vendors under Chapter IV. Chapter VI prescribes plan for street vending. Thus, in the considered opinion of this court, the right under Article 19(1)(g) so far same relates to street vending shall always be subject to the provision of Act, 2014.
17. Section 36 of the Act, 2014 empowers the appropriate Government, which in the present case is the State of Assam to make rules for carrying out the provisions of the Act, 2014. The State has already made rules under the aforesaid provision in the shape of Rules, 2016 and therefore, the right of street vendors shall also be subject to procedure laid in such



Rules. There is no dispute on record that Town Vending Committees have already been constituted and the areas of street vending have also been notified.

18. The Hon'ble Apex court in ***Sodan Singh (supra)*** ascertained that the right as urged by the learned Counsel for the respondent No.4 is subject to reasonable restriction under Article 19(6) of the Constitution of India. The enactment of the Act' 2014 and prescription made therein, in the considered opinion of this Court, are the reasonable restriction on street vending. Therefore, the right of the respondent No. 4 to continue with the shop, if the respondent No. 4 is a street vendor shall be subject to the provisions of the Act, 2014 and the Rules, 2016.
19. There is no dispute that the area or the place from where the petitioner is running the shop is a road, and that such area/road is not notified as a "vending zone" or "restricted vending zone". Therefore, the respondent No. 4's right as held by the Hon'ble Apex Court in ***Sodan Sing (supra)*** shall be subject to restrictions imposed under the aforesaid Act, 2014 and Rules, 2016.
20. This court cannot be unmindful of the essentials for being treated as a street vendor inasmuch as the premises from where vending is carried out should either be temporarily built up structure or such vendor is vending by moving from place to place. In the case in hand, the respondent No. 4 claims that a shop has been constructed on the street.
21. Even otherwise, if the respondent No. 4 is not a street vendor such business of the respondent No. 4 from the shop constructed over a public road shall be subject to the permissibility of such action under the Gauhati



Municipal Corporation Act, 1971 and the Bye-laws and Rules framed thereunder. The learned counsel for the respondent No. 4 though claimed that the respondent No. 4 has a right to continue with her business from the shop in question, however, failed to show any provision under any law including the Gauhati Municipal Corporation Act, 1971, which permits such course of action.

22. Now coming to the inconvenience of the petitioner, this court cannot be unmindful of long line of decisions rendered by the Hon'ble Apex Court that public street by their ready nomenclature and definition is for the use of general public and public road is not laid to facilitate carrying on private trade or business (***Bombay Hawkers Union vs Bombay Municipal Corporation AIR 1985 SC 1205***). In ***Olga Tellis & Ors vs Bombay Municipal Corporation & Ors. Etc.*** reported in ***AIR 1986 SC 180***, the Hon'ble Apex Court in no un-ambiguity held that a foot path or pavement is public property, which is intended to serve the convenience of the general public. They are not led for private use and indeed their use for a private purpose frustrates the very object for which such pavements are curved out from a portion of the public street. In the considered opinion of this Court same principle shall be applicable in case of a street also.
23. In ***Delhi Municipal Corporation vs Gurnam Kaur*** reported in ***AIR 1989 SC 38***, the Hon'ble Apex Court laid down that to remove an encroacher of a public road is the obligation of Municipality.
24. Thus, in the given fact of the present case when it is admitted that the respondent No.4 is carrying out her business by constructing her shop over a public road and therefore, whether the petitioner's entry and exit is disturbed or not shall not be an vital issue for the Municipal Corporation,



rather as held by the Hon'ble Apex Court, the nomenclature "public road" itself says that it is for the use of public.

25. Therefore, without the aforesaid street being declared as a vending zone and without the respondent No.4 being recognized as a vendor in respect of any vending zone, the respondent No.4 shall not have any right to construct a shop over a public road and continue her business. The fact also remains that the respondent doesn't claim to be a street vendor but claims a right to continue carrying out her trade from the shop in question, constructed over a public road for the reason that there is no material that such shop creates inconvenience to the petitioner. But as held hereinabove, public road is meant for public, which includes the petitioner and no shop can be allowed to be run from a public road, unless permitted under Law, i.e. GMC Act & Bylaws framed thereunder and under the Act, 2014 and Rules, 2016.
26. In view of the aforesaid determination, it is provided that Guwahati Municipal Authority shall consider the representation of the petitioner and proceed against the respondent no. 4 in accordance with law giving due regard to the determination made herein above inasmuch as the trade license already granted, can only be cancelled by giving a reasonable opportunity of hearing to the respondent No.4.
27. Accordingly, it is directed that the Gawahati Municipal Corporation shall complete the entire exercise within a period of six weeks from the furnishing of a certified copy of this order before the Commissioner, Guwahati Municipal Corporation, by the petitioner by taking note of the observations and determinations made by this court in the present order. Parties to bear their own costs.



28. While parting with the record, this court appreciates the assistance rendered by Mr. H Sarmah, learned State counsel.

JUDGE

Comparing Assistant