

GAHC010006992023



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

Case No. : WP(C)/201/2023

AZIZUL HOQUE

S/O- LT. KALU SEIKH, R/O- VILL- KURIHAMARI, P.O. BHANGNAMARI,
DIST.- NALBARI, ASSAM, PIN- 781126

VERSUS

THE STATE OF ASSAM AND 6 ORS
REP. BY THE SECY. TO THE GOVT. OF ASSAM, TRANSPORT DEPTT.,
DISPUR, GHY-06

2:THE DY. SECRETARY TO THE GOVT. OF ASSAM
TRANSPORT DEPTT.
DISPUR
GHY-06

3:THE DIRECTOR OF INLAND WATER TRANSPORT
ASSAM
ULUBARI
GHY-07

4:THE EXECUTIVE ENGINEER
INLAND WATER TRANSPORT DIVISION GUWAHATI
ULUBARI
GHY-07

5:THE ADDL. DY. COMMISSIONER
KAMRUP (M)
ASSAM

6:THE SECTIONAL OFFICER
OF BAMUNDI-SIALMARI-GULMARI FERRY SERVICE
C/O EXECUTIVE ENGINEER

IWT DIVISION
GUWAHATI
ULUBARI
GHY-07

7:ABDUL BAREK
S/O- LT. CHUJAB ALI
R/O- VILL- TAPABARI
P.O. TAPABARI
DIST.- KAMRUP (R)
ASSAM
PIN- 78110

Advocate for the Petitioner : MR. B RAHMAN

Advocate for the Respondent : GA, ASSAM

BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA

ORDER

Date : 17.01.2023

Heard Mr. B. Rahman, learned counsel for the petitioner. Also heard Ms. M.D. Borah, learned standing counsel for the Transport Department, respondent nos.1 to 4 and 6, and Mr. N. Goswami, learned Govt. Advocate appearing for the respondent no.5.

2. The case of the petitioner, in brief, is that he had submitted his bid for settlement of Bamundi-Sialmari-Guimari Ferry service for the period 2022-24. It is projected that while the bid submitted by the petitioner was for a value of Rs.10,05,000/- per year, the respondent no.7 had submitted his bid for a sum of Rs.16,50,000/- per year. After due process of valuation of the tenders of 6 (six) bidders, by order under Ecf No. 232768/216 dated 26.10.2022, the said ferry service was settled with respondent no.7 for the remaining period of 2022-

24 for a sum of Rs.16,50,000/-.

3. The case of the petitioner is that in support of land which was offered as security by the successful bidder, he had submitted a land valuation certificate in respect of 5 bigha 2 katha 1 lessa land covered by dag no. 90 of K.P. patta no.95 of village- Hardia Pam under Pachim Bongshar Mouza of Hajo Revenue Circle for a sum of Rs.21,64,000/-. The petitioner had procured a copy of the valuation certificate wherein the value of land was assessed @ Rs.90,000/- per bigha as per Zonal Valuation and accordingly, it is submitted that if the Zonal Valuation of the land is calculated @ Rs.90,000/- per bigha, the value of the land measuring 5 bigha 2 katha 1 lessa would not be Rs.21,64,000/-. Accordingly, the settlement of the concerned ferry service had been assailed by the petitioner by filing WP(C) 7020/2022 and this Court by order dated 04.11.2022 passed an order to the following effect:

“3. But, Mr. TJ Mahanta, learned senior counsel for the petitioner points out that in the same certificate, the Deputy Commissioner had also assessed that the value of the land is Rs. 90, 000/- per bigha as per the zonal valuation. According to the learned senior counsel, if the zonal valuation is Rs. 90, 000/- per bigha for a plot of land measuring 5B-2K-1L, it would be in the vicinity of Rs.4,50,000/- and not Rs.21,64,000/- as assessed.

4. Mr. N Borah, learned counsel for the respondent No. 6 on the other hand urges that the valuation is on the commercial value of the land, which is according to the learned counsel is Rs. 4,00,000/- per bigha.

5. Considering the rival contentions being made and also considering it a matter of being factual dispute, we direct the Additional Deputy Commissioner, Kamrup to re-assess the valuation of the land of the respondent No. 6 and arrive at a more correct and appropriate valuation, so that such valuation can be acted upon by the respondents for the purpose of the tender process. The requirement of revisiting the assessment by the Additional Deputy Commissioner be done within a period of seven days from the date of receipt of a certified copy of this order.

6. Till such revisit is done by the Additional Deputy Commissioner, the tender process shall not proceed further. The Additional Deputy Commissioner shall make a proper valuation of the land of the respondent No. 6 and issue a certificate thereof and the fresh certificate that may be issued would be taken into consideration by the

respondents in the IWT for further processing the tender notice. But, however, as we are staying a tender process, we also direct the Additional Deputy Commissioner to positively do the needful within a period of seven days. If the certified copy is not provided within five days, the interim order shall not hold good any further.

The writ petition is disposed of as indicated above.”

4. Pursuant to the aforesaid order of this Court, the learned Additional Deputy Commissioner, Kamrup (Amingaon) had issued a land valuation certificate under memo no. KRS 52/2020/Pt/1680 dated 19.11.2022, certifying that the valuation of land measuring 5 bigha 2 katha 1 lessa, morefully referred above has been assessed at Rs.27,05,000/- @ Rs.5,00,000/- per bigha as per Zonal Valuation for the year 2021-22. Consequent orders dated 02.11.2022 and 03.12.2022 were passed by the respondent authorities with further direction to the private respondent to deposit the kist money and to enter into an agreement for the ferry service in question, which is inclusive of direction to make payment of 3rd kist money w.e.f. 05.12.2022 to 31.12.2022 for a sum of Rs.1,22,067/- and cash security of Rs.4,12,067/-. Accordingly, the settlement order dated 26.10.2022 and subsequent orders dated 02.11.2022 and 03.12.2022 passed by the respondent authorities is assailed by the petitioner by filing this writ petition under Article 226 of the Constitution of India.

5. The learned standing counsel for the Transport Department has opposed the prayer made in this writ petition and in support of her contention, she has referred to the provisions of Rule 16(h) of the Control and Management of Ferries Rules 1968 as amended by the Control and Management of Ferries (Amendment) Rules, 1976. Clause (h) of Rule 16 is as follows:

“(h) Certificate in support of periodic patta land of value not less than the bid/tender money, in his own name within the District or the Subdivision from the Deputy Commissioner/ Additional Deputy Commissioner/Sadar Subdivisional Officer of the

District or Subdivisional Officer of the Subdivision concerned should be enclosed."

6. It is submitted that similar clause is contained in the NIT for which reference is made to clause 7 of the tender conditions. Accordingly, it is submitted that the rules do not prescribe any condition insofar as the method of valuation is concerned.

7. In the present case in hand, by order dated 04.11.2022 passed by this Court in WP(C) 7020/2022, as already extracted hereinbefore, this Court had directed the Additional Deputy Commissioner to make a proper valuation of the land in respect of respondent no.6 and to issue a certificate thereof, further directing that the fresh certificate that may be issued would be taken into consideration by the respondents in the IWT for further processing the tender notice.

8. It is seen that this Court had not issued any direction regarding the cut-off date on which the valuation of the land should be made. The learned Additional Deputy Commissioner, Kamrup (Amingaon) by certificate dated 19.11.2022 had assessed the land measuring 5 bigha 2 katha 1 lessa at Rs.27,05,000/- @ Rs.5,00,000/- per bigha as per Zonal Valuation for the year 2021-22. The settlement period of the tender in question is for the period of 2022-24 and as per the certificate, the Zonal Valuation is for the year 2021-22. The contention of the learned counsel for the petitioner is that as the tender was issued on 28.06.2022, the valuation which was done in 19.11.2022 would not be sustainable and according to him, the land valuation ought to be of a date which precedes the issuance of tender notice dated 28.06.2022. In the said context of the submissions made by the learned counsel for the petitioner, it is noted that in the present writ petition, the petitioner has not assailed the land

valuation certificate dated 19.11.2022. Therefore, the Court finds that it is undisputed that the Zonal Valuation of the land for the year 2021-22 was assessed as Rs.5,00,000/- per bigha, for which assessment of the valuation of the 5 bigha 2 katha lessa land was made at Rs.27,05,000/-. Therefore, in respect of the bid submitted by the respondent no.7 for a sum of Rs.16,50,000/-, the Court finds that the valuation of the land exceeds the bid amount.

9. Insofar as the further submission of the learned counsel for the petitioner is concerned, the Court finds that while passing the order dated 04.11.2022 in WP(C) 7020/2022, this Court did not give any cut-off date for the valuation of land. Therefore, the Court is unable to accept that the learned Additional Deputy Commissioner, while making fresh certificate for valuation of land has committed any error apparent on the face of record to have the assessment of the valuation of land made as per Zonal Valuation for the year 2021-22. It may also be noted that as the assessment was done as per the Zonal Valuation of the year 2021-22, the Court presumes that the Additional Deputy Commissioner is referring to financial year 2021-22, which had ended on an about 31.03.2022. Therefore, the Court is unable to accept that the valuation of land was done as on 19.11.2022, but the valuation of the land is found to be referable to the year 2021-22, which in the considered opinion of the Court, would precede the tender notice issued on 28.06.2022.

10. Under such circumstances, when the valuation certificate itself is not under challenge, it would be travesty of justice to question the valuation done by the Additional Deputy Commissioner and to give an interpretation which would run counter to the order dated 04.11.2022 passed by this Court in WP(C)

7020/2022, wherein this Court did not give any cut-off date to make fresh assessment of the valuation of land. Therefore, if the Court, in connection with the present writ petition provides cut-off date, it would amount to judicial indiscipline to add certain words into the order passed by a Coordinate Bench of this Court.

11. In view of discussions above, the Court does not find any merit in the present writ petition and therefore, this writ petition stands dismissed at the motion stage without issuance of notice on the respondents.

JUDGE

Comparing Assistant