

GAHC010008232023



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

Case No. : WP(C)/1419/2023

TAIBUR RAHMAN LASKAR
S/O- LATE SAUKAT ALI LASKAR,
RESIDENT OF- SOULMARI,
P.O.- BARAPUTIA, P.S. HAJO,
DISTRICT- NAGAON (ASSAM),
PIN- 782428.

VERSUS

THE STATE OF ASSAM AND 4 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE
GOVERNMENT OF ASSAM,
SECRETARIAT ADMINISTRATION DEPARTMENT,
DISPUR, GUWAHATI- 781006.

2:THE ASSAM STATE WAREHOUSING CORPORATION
HAVING ITS OFFICE AT CHRISTIANBASTI
AMARABATI PATH
DISPUR
GUWAHATI- 781005.
REPRESENTED BY ITS MANAGING DIRECTOR.

3:THE WAREHOUSE MANAGER
THE ASSAM STATE WARE HOUSING CORPORATION
HOJAI CENTRE
P.O. AND P.S.- HOJAI
PIN- 782435.

4:M/S NEW INDIA ASSURANCE CO. LTD.
REGISTERED OFFICE SITUATED AT- 87
M.G. ROAD
FORT
MUMBAI- 400001.

5:M/S NEW INDIA ASSURANCE CO. LTD.
GUWAHATI REGIONAL OFFICE
SITUATED AT BHANGAGARH
G.S. ROAD
GUWAHATI- 781005

Advocate for the Petitioner : MR. D P BORAH

Advocate for the Respondent : GA, ASSAM

BEFORE
HONOURABLE MR. JUSTICE MANISH CHOUDHURY

ORDER

Date : 15-03-2023

Heard Mr. D.P. Borah, learned counsel for the petitioner; Mr. B. Gogoi, learned Standing Counsel, Secretariat Administration Department for the respondent no. 1; and Ms. M. Barman, Junior Government Advocate, Assam for the respondent nos. 2 & 3.

2. The petitioner has claimed that he is a businessman and carries on the business of stock and supply of various seasonal products including jute. For that purpose, the petitioner holds a trade license issued by Jamunamukh Gaon Panchayat. It is the case of the petitioner that the petitioner has been storing loose jute in the Hojai Warehouse of the respondent no. 2 i.e. the Assam State Warehousing Corporation by insuring the jute stored in the warehouse by taking insurance coverage from the respondent no. 5, M/s New India Assurance Co. Ltd., Guwahati Regional Office, Guwahati.

3. As regards the cause of action to institute the writ petition under Article 226 of the Constitution of India, the petitioner has projected that he stored 224.40 quintals of loose jute at the Hojai Warehouse of the respondent no. 2 on

01.11.2016 and in respect of such storage, the Hojai Warehouse of the respondent no. 2 had issued a receipt bearing no. 47450 dated 01.11.2016. On 09.11.2016, the petitioner stored another quantity of 191.06 quintals of loose jute at the same warehouse and against such storage, a receipt bearing no. 47457 dated 09.11.2016 was issued to the petitioner. Against the storage of the aforementioned loose jutes, the petitioner paid insurance premium to the respondent no. 3 i.e. the Warehouse Manager, Assam State Ware Housing Corporation, Hojai Center. According to the petitioner, the total value of the loose jutes, which he stored at the Hojai Warehouse was of ₹ 12,46,380/- and against such storage, he paid insurance premium @ ₹4.91/- per quintal amounting to a total amount of ₹ 2,040/-.

4. On 14.04.2017, a fire broke out at the Hojai Warehouse premises of the respondent Assam State Ware Housing Corporation, Hojai Centre due to which the loose jute stored by the petitioner in the said warehouse were burnt. The petitioner has further mentioned that prior to breaking out of fire on 14.04.2017, he had withdrawn 29.15 quintals of loose jute from the Hojai Warehouse. The surveyor of the insurance company made an inspection of the warehouse premises on 18.04.2017 and suggested remedial measures. In course of time, the petitioner was able to receive damaged jute of 342.29 quintals back after weighment from the Hojai Warehouse of Assam State Warehousing Corporation during the period between 18.04.2017 to 29.04.2017. According to the petitioner, the surveyor after segregation, could recover 5252.65 Kilograms of cut jute and 366.2 Kilograms of full length of jute and the same were weighed in presence of the respondent no. 3. According to the petitioner, the loss to him was assessed @ ₹ 12,68,052/-.

5. Seeking to invoke the extra-ordinary jurisdiction of this Court under Article 226 of the Constitution of India, the petitioner has instituted the writ petition seeking a direction to the respondent authorities to disburse the sum of ₹ 12,68,052/- which sum, according to the petitioner, was the assessed loss.

6. It is a settled proposition of law that contract of a purely private nature would not be subject to writ jurisdiction. Disputes or alleged breaches arising out of the terms of such contracts have to be settled by the ordinary principles of law of contract. The disputes about the meaning of a covenant or its enforceability have to be determined according to the usual principles of the Contract Act. The disputes relating to interpretation of the terms and conditions of a non-statutory contract or private contract cannot be agitated in a writ petition under Article 226 of the Constitution of India. Such kind of matter is to be adjudicated by a civil court or in arbitration, if provided in the contract or if it is a contract of service, under the consumer law. It is no longer **res integra** that after two parties enter into the field of ordinary contract, the relations are not governed by the Constitutional provisions but by the legally valid contract which determines the rights, obligations and liabilities of the parties **inter se**. They can only claim rights conferred upon them by contract and are bound by the terms of the contract only. Where the contract entered into between two parties is a purely private contract then the rights, liabilities and obligations of the parties are governed by the terms of the contract and if one of the two parties complains about breaches of such contract by the other party no writ or order can be issued under Article 226 of the Constitution of India in such cases to compel the other party to remedy a breach of contract pure and simple.

7. A submission is made that the respondent Assam State Ware Housing

Corporation is a Government of Assam Undertaking and, as such, is an instrumentality of the State within the ambit and purview of Article 12 of the Constitution of India. The Hon'ble Supreme Court of India in **Kerala State Electricity Board and another vs. Kurien E. Kalathil and others**, reported in **[2000] 6 SCC 293**, has held that the fact that one of the parties to the agreement is a statutory or public body will not by itself affect the principles to be applied. Every act of a statutory body or a public body need not necessarily involve an exercise of statutory power or any public element. A statutory body or a public body, like private parties, have power to contract or deal with property and such activities may not involve any issue of public law. It has been further held that whether any amount is due and if so, how much and refusal by the instrumentality of the State to pay it is justified or not, are not matters which can be agitated and decided in a writ petition.

8. Since this Court is of the considered view that the contractual arrangement between the petitioner and the respondent Assam State Ware Housing Corporation is in the realm of private law having no element of public law, the instant writ petition is not to be entertained. It is accordingly not entertained. It is observed that the petitioner is, however, not precluded from availing any remedy available to him as regards his claim as may be permitted under the law.

JUDGE

Comparing Assistant