

GAHC010081852023



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

Case No. : WP(C)/1480/2023

GHOKA ARU SINGARAJAN MEEN SAMABAI SAMITI LTD
REGISTRATION NO. S-240 DATED 31.05.96

P.O.- CHORGUA
P.S.- DEMOW

DIST.- SIVASAGAR
ASSAM

REPRESENTED BY ITS SECRETARY
SRI PRAHLAD DAS.

VERSUS

THE STATE OF ASSAM AND 3 ORS
REPRESENTED BY THE ADDITIONAL CHIEF SECRETARY TO THE
GOVERNMENT OF ASSAM

FISHERY DEPARTMENT
DISPUR

GUWAHATI- 781006.

2:THE ADDITIONAL SECRETARY TO THE GOVERNMENT OF ASSAM
FISHERY DEPARTMENT
DISPUR

GUWAHATI- 781006.

3:THE DEPUTY COMMISSIONER

SIVASAGAR.

4:M/S DEMOW MEEN SAMABAI SAMITTEE
NO. 2

CHAULHORA VILLAGE

PO- AKHOI PHUTIA

SIVASAGAR- 785697
ASSAM.

Advocate for : MR. I CHOWDHURY SR ADV

Advocate for : GA

ASSAM appearing for THE STATE OF ASSAM AND 3 ORS

**BEFORE
HONOURABLE MR. JUSTICE MICHAEL ZOTHANKHUMA**

ORDER

15.05.2023

1. Heard Mr. S. Biswakarma, learned counsel for the petitioner. Also heard Mr. D.K. Sharma, learned Additional Senior Government Advocate for the respondent nos.1, 2 & 3 and Mr. B.D. Das, learned Senior Counsel assisted by Mr. D. Kalita, learned counsel for the respondent no.4.

2. The petitioner has put to challenge the order dated 29.12.2012 issued by the Fishery Department, by which the settlement of the Demow Meen Mahal with the respondent no.4 has been extended by 2 (two) years. The brief facts of the case is that pursuant to a tender, wherein the respondent no.4 was selected, the said fishery was settled with the respondent no.4 for a period of 7 (seven) years. The respondent no.4 was given settlement of the fishery on 07.10.2011 and the respondent no.4 took possession of the same on 18.12.2011. The settlement period of the fishery expired in the year 2018. However, on the request for extension made by the respondent no.4, the State respondents extended the settlement of the fishery for a further period of 1

(one) year, vide letter dated 27.07.2018 and for a further period of 3 (three) months, vide letter dated 06.09.2019. For the year 2020 and 2021, no regular settlement of the fishery was made to anybody.

3. The State respondents issued a NIT dated 27.10.2020 for settling the said fishery. However, the respondent no.4 instituted Title Suit No.28/2020 along with Misc.(J) Case No.23/2020 for an injunction in the Court of the Munsiff No.1, Sivasagar. The Court of the Munsiff No.1, vide order dated 12.11.2020 issued an order of *status quo*, based upon which the respondent no.4 continued to operate the fishery on daily basis. However, the fishery has now been settled with respondent no.4 by giving an extension, vide impugned order dated 29.12.2022 for a period of two years.

4. The petitioner being aggrieved filed the present writ petition, praying for a direction to be issued, to set aside the impugned order dated 29.12.2022 extending the fishery lease to the respondent no.4 for a further period of two years. This Court, vide order dated 17.03.2023, suspended the operation of the impugned order dated 29.12.2022 and made it clear that the respondent no.4 would not be allowed to operate the said fishery till the next returnable date.

5. The respondent no.4 has now approached this Court by way of I.A.(C) No.1000/2023, praying for vacating the interim order dated 17.03.2023 and to allow the respondent no.4 to continue operating the fishery, in terms of the impugned order dated 29.12.2022.

6. I have heard the learned counsels for the parties, perused the contents of

the writ petition and the application filed by the respondent no.4 in I.A.(C) No.1000/2023. I have also perused the official records brought by the learned counsel for the respondent no.1, 2 & 3.

7. As per Rule 8(b) of the Assam Fishery Rules, 1953 (hereinafter referred to as "1953 Rules"), the Government may extend the period of a lease of a fishery supported by official reports in exceptionally special cases for a reasonable period, so as to enable such lessees to make good the loss.

8. Rule 8(b) of the "1953 Rules" is reproduced below as follows :

"8(b) Extension of the term of lease. -

(i) Where..... the period of lease of registered fisheries being ordinarily not less than three years is interfered with, due to any natural cause or for any unavoidable reasons beyond the control of the lessees, Government may extend the period of such lease supported in exceptionally special cases for a reasonable period so as to enable such lessees to make good the loss;

(ii) The State Government may also on the recommendation of the Director of fisheries extend the period of lease of the fishery with an intending pisciculturist who should invariably be the sitting lessee and who agrees to accept such an extension at a revenue and for such other additional terms and conditions may be specified by Government:

Provided that one of the conditions of extension of lease against piscicultural plan shall invariably be the implementation of approved Scheme or Schemes of Development and improvement of such a fishery at the lease's own cost within a target period to be fixed by Government.

The orders of extension of lease on the aforesaid grounds, passed by the State Government shall be final and no appeal shall lie against such orders of extension."

9. As can be seen from the above, the Government can extend the lease period in exceptional special cases to make good the loss of the settlement holder, on the basis of official reports to be made by the State respondents. In the present case, the respondent no.4 had been settled with the fishery for a period of seven years and thereafter two extensions had been given for a period of one year three months. No extension of the fishery had been given to the respondent no.4 in the year 2020 or 2021. Further, no person had also been allowed to operate the fishery in the year 2020 or 2021 except for the respondent no.4, who operated the same on a daily basis.

10. On perusing the official records, it is seen that the extension of the lease period for the fishery has been granted after 2 (two) years 11 (eleven) months to the respondent no.4, on the basis of a letter written by the Minister, Government of Assam, Department of Revenue & DM Hills Area Development. The reason for giving the extension for the said fishery to the respondent no.4 is not due to any loss suffered by the respondent no.4. Further, there is no official report stating that the extension of the fishery has been given to the respondent no.4 due to any loss suffered by the respondent no.4. The extension given vide the impugned order dated 29.12.2022 is arbitrary, as there was no continuity with the settlement period of the fishery and the earlier extension orders. In that view of that matter, this Court is of the view that the extension of the fishery to the respondent no.4 by way of the impugned order dated 29.12.2022 is arbitrary and not in consonance with Rule 8(b) of the Assam Fishery Rules,

1953. Accordingly the same is set aside. The State respondents shall accordingly take steps to issue a fresh tender for settlement of the fishery at the earliest. The respondent no.4 or any other person shall also not be allowed to operate the fishery on daily basis.

11. The writ petition is accordingly disposed off.

JUDGE

Comparing Assistant