

GAHC010091342023



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

Case No. : WP(C)/2432/2023

MD. IMAN ALI
S/O- MD. BABAR ALI,
R/O- VILLAGE PADUMONI,
P.O.- KAKATIGAON,
DISTRICT- NAGAON, ASSAM- 782425.

VERSUS

THE STATE OF ASSAM AND 3 ORS
REPRESENTED BY THE ADDITIONAL COMMISSIONER AND SECRETARY
TO THE GOVERNMENT OF ASSAM,
FOREST DEPARTMENT, DISPUR, GUWAHATI-6.

2:THE PRINCIPAL CHIEF CONSERVATOR OF FOREST AND HEAD OF
FOREST FORCE
ASSAM
PANJABARI
GUWAHATI- 781037.

3:THE CONSERVATOR OF FOREST
NORTHERN ASSAM CIRCLE
TEZPUR
ASSAM.

4:THE DIVISIONAL FOREST OFFICER
NAGAON DIVISION
DISTRICT- NAGAON
ASSAM

Advocate for the Petitioner : MR B D DAS

Advocate for the Respondent : SC, FOREST

**BEFORE
HONOURABLE MR. JUSTICE MICHAEL ZOTHANKHUMA**

ORDER

08.05.2023

1. Heard Mr. B.D. Das, learned Senior Counsel assisted by Mr. D. Kalita, learned counsel for the petitioner, who submits that the Office Order No.36 dated 15.03.2023 issued by the respondent no.4 should be set aside.
2. The Office Order No.36 dated 15.03.2023 states that the security money deposited against the Sand Permit Area with the petitioner has been forfeited to the Government and adjusted as Government revenue. It also states that the petitioner is debarred from participating in any subsequent sale process for a period of 5 (five) years with immediate effect.
3. The petitioner's counsel submits that the impugned Office Order No.36 dated 15.03.2023 should be set aside, as no notice was issued prior to the impugned order being issued. He also submits that the impugned order has been issued before the respondents had taken a final decision with regard to the petitioner's application for surrendering the Borpani Sand Permit Area No.1(B). The petitioner's counsel submits that the impugned order has to be set aside in view of violation of the principles of natural justice and Rule 38(6) of the Assam Minor Mineral Concession Rules, 2013 (hereinafter referred to as "2013 Rules".

4. Mr. K.P. Pathak, learned Standing Counsel, Forest Department fairly submits that the impugned Office Order No.36 dated 15.03.2023 has been issued in violation of the principles of natural justice and Rule 38 of "2013 Rules".

5. The facts of the case in brief is that the petitioner has been settled with the Borpani Sand Permit Area No.1(B) of Nagaon district in pursuant to the Letter of Intent dated 01.10.2019, for a period of 7 (seven) years at a quoted price of Rs.3,47,00,000/-. As the petitioner could not extract sufficient sand, the petitioner submitted an application dated 30.01.2013 to the respondent no.4 praying that he may be allowed to surrender the Borpani Sand Permit Area No.1(B) due to the petitioner's inability to pay the kist money, as per Rule 16 of "2013 Rules".

6. The ground for making a prayer for surrendering the sand permit area by the petitioner was on the ground that there was in-sufficient amount of sand in the river for collection by the petitioner.

7. In reply to the petitioner's application for surrender of the Borpani Sand Permit Area No.1(B), the respondent no.4 issued a letter dated 24.02.2023 stating that as per field enquiry undertaken by the State respondents, there was sufficient quantity of sand still available in the Borpani Sand Permit Area No.1(B) and hence the stand taken by the petitioner that there was insufficient sand was not correct. It further requested the petitioner to submit his statement within seven days from the date of issue of the letter dated 24.02.2023 and reminded

him that the 13 No. Kist money was to be paid on 03.03.2023. It further stated that the petitioner's request for surrender of the sand permit area would be accepted with immediate effect, if he had no further statement to make and the kist money would be realised by way of forfeiture of security money. The petitioner thereafter submitted a further statement, vide letter dated on 03.03.2023, i.e. on the 7th day of issue of letter dated 24.02.2023. Subsequent to the above, the impugned Office Order No.36 dated 15.03.2023 has been issued.

8. Rule 38(iv) of the "2013 Rules" provides as follows :

"Rule.38(6) In case of any default in payment of the instalments of dead rent/ contract money/ royalty/ contribution to the 'Mines and Minerals Development, Restoration and Rehabilitation Fund' on the due that (s), the amount would be payable along with interest at the following rates:-

Serial Number	Period of delay	Rate of Interest application
(i)	<u>If paid within a period of 7 days from the due date:</u>	<u>A grace period of up to 7 days is allowed without any interest;</u>
(ii)	<u>If paid after 7 days but up to the 30 days of the due date: period;</u>	<u>15% on the amount of default for period of default including the grace</u>
(iii)	<u>If paid after 30 days but within 60 days of the due date:</u>	<u>18% on the amount of default for the period of default including the grace period;</u>
(iv)	<u>Delay beyond 60 days of the due date calculated percent for the default.</u>	<u>Termination of the lease/contract and the entire outstanding amount would be recoverable along with</u>

*interest at the rate of twenty
one entire period of*

9. As can be seen from Rule 38(6) of the "2013 Rules", termination of a lease can be made only if the kist money is not paid within 60 days. As can be seen from the respondent no.4's letter dated 24.02.2023, the kist money was to be paid on 03.03.2023. As such, the petitioner had a further 60 days' to pay the 13 No. kist money, i.e. on or before 02.04.2023. However, the impugned office order has been issued just 12 days after the kist money was to be paid. On this ground alone the impugned Office Order No.36 dated 15.03.2023 is not sustainable.

10. In terms of the judgment of the Apex Court in the case of *Gorkha Security Services vs. Government of NCT of Delhi & Others*, reported in (2014) 9 SCC 105, the petitioner is to be given prior show-cause-notice, before he is debarred/blacklisted from participating in any future tender/settlement. As no notice has been issued by the respondents, the debarment of the petitioner from participating in any subsequent sale process does not with-stand the scrutiny of law, as it is violative of the judgment of the Apex Court. In view of the reasons stated above, the impugned Office Order No.36 dated 15.03.2023 being unsustainable is hereby set aside.

11. The State respondents shall take a final decision with regard to the petitioner's application dated 30.01.2023, for surrendering the Borpani Sand Permit Area No.1(B).

12. The writ petition is accordingly allowed.

JUDGE

Comparing Assistant