

GAHC010113522023



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

Case No. : WP(C)/3023/2023

BATGAON NAYAPARA MIN SAMABAY SAMITI LIMITED
REPRESENTED BY ITS SECRETARY,
SRI JOYDEV DAS, AGED ABOUT 77 YEARS,
S/O- LATE NABADEEP DAS,
R/O- VILLAGE- GANAKPARA,
P.O.- CHENGA, DISTRICT- BARPETA,
ASSAM.

VERSUS

THE STATE OF ASSAM AND 4 ORS
THROUGH THE COMMISSIONER AND SECRETARY TO THE GOVERNMENT
OF ASSAM,
FISHERY DEPARTMENT, DISPUR,
GUWAHATI- 781006.

2:THE JOINT SECRETARY TO THE GOVERNMENT OF ASSAM
FISHERY DEPARTMENT
DISPUR
GUWAHATI- 781006.

3:THE DEPUTY COMMISSIONER
BARPETA (FISHERY BRANCH)
P.O. AND DISTRICT- BARPETA

ASSAM
PIN- 781301.

4:THE ADDL. DEPUTY COMMISSIONER
BARPETA (FISHERY BRANCH)
P.O. AND DISTRICT- BARPETA
ASSAM

PIN- 781301.

5:THE DISTRICT FISHERY DEVELOPMENT OFFICER
BARPETA
P.O. AND DISTRICT- BARPETA
ASSAM

PIN- 781301

Advocate for the Petitioner : MR. N C DAS

Advocate for the Respondent : GA, ASSAM

BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA

ORDER

Date : 20-07-2023

Heard Mr. N.C. Das, learned Senior counsel assisted by Mr. A. Das, learned counsel for the petitioner. Also heard Mr. M. Chutia, learned Government Advocate appearing for all the respondents.

2. In brief, the case of the petitioner is that the petitioner Society, namely, Batagaon Nayapara Min Samabay Samiti Ltd. was granted lease in respect of no. 1 Chaulkhowa River fishery for a period of 7 years commencing from 25.06.2015 to 24.06.2022 at an annual revenue of Rs.12,00,000/- per year. In this regard fishery lease dated 25.06.2015 was executed. The petitioner society claims that it could not run/operate the fishery smoothly because of lockdown during the covid-19 pandemic period, encroachment of the fishery and other factors for which they claim to have suffered a huge financial loss even than they claim to have paid their rent regularly.

3. On 10.03.2022, a representation was submitted before the Joint Secretary to the Government of Assam, Fishery Department for extension of lease for the

period of 3 years with an alternative prayer for granting remission on remedy. However, the said authority by order dated 17.12.2021, extended the period of lease only for 1 year. The petitioner projects that they could not operate the fishery for the said extended period of time because the fishery was not formally handed over to the petitioner and therefore the possession of the fishery could not been taken over. However, by the impugned notice dated 04.03.2023, the Secretary of the petitioner Society was directed to pay the kist amount of Rs.11,86,500/- for the extended period from 30.06.2022 to 29.06.2023. Therefore, the petitioner has approached this Court by filing this writ petition under Article 226 of the Constitution of India, apprehending action against the petitioner society for recovery of the sum of Rs.11,86,500/- as kist amount for the period of 30.06.2022 to 29.06.2023.

4. The learned Government Advocate has produced a copy of written instruction dated 07.06.2023 received from the Additional Deputy Commissioner (Fishery), Barpeta wherein it is stated that the fishery is in possession of the petitioner society since 30.06.2022 as per the field verification report. The correctness of the said report is disputed by the learned senior counsel for the petitioner.

5. Be that as it may, the case of the petitioner is that they had submitted a representation dated 13.05.2023, addressed to the Additional Deputy Commissioner (Fishery), Barpeta with a copy to the Joint Secretary, Government of Assam, Fishery Department. The Court is of the considered opinion that this would be a proper case to relegate the petitioner to once again move the competent authority i.e Joint Secretary, Government of Assam, Fishery Department with a supplementary representation. The petitioner shall produce a certified copy of this order while submitting their supplementary representation

preferably to the Joint Secretary, Government of Assam, Fishery Department within a period of 10 days from today. On receipt of the same, the said authority shall give an opportunity of hearing the petitioner and dispose of the said representation preferably within a period of 1(one) month from the date of receipt of certified copy of this order.

6. Till the time the said representation of the petitioner is decided, the interim order passed on 29.05.2023, would stand extended.

7. In view of the discussions made above, this writ petition stands allowed to the extent as indicate above.

8. The Government Advocate has provided a photocopy of written instructions, which is retained on record.

JUDGE

Comparing Assistant