

GAHC010106142022



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

Case No. : WP(C)/3668/2022

UTTAM KUMAR DAS
S/O- LT. BHUBEN DAS, R/O- VILLAGE- KACHUTOLA, P.S.- JOGIGHOPA,
DISTRICT- BONGAIGAON, PIN- 783371, ASSAM.

VERSUS

THE ASSAM FISHERIES DEVELOPMENT CORPORATION LTD. AND 3 ORS
REPRESENTED BY THE CHAIRMAN, VIP ROAD, SIX MILE, CHACHAL,
BORBARI, GUWAHATI- 781036, ASSAM.

2:THE MANAGING DIRECTOR
ASSAM FISHERIES DEVELOPMENT CORPORATION LTD.
VIP ROAD
SIX MILE
CHACHAL
BORBARI
GUWAHATI- 781036
ASSAM.

3:THE GENERAL MANAGER
ASSAM FISHERIES DEVELOPMENT CORPORATION LTD.
VIP ROAD
SIX MILE
CHACHAL
BORBARI
GUWAHATI- 781036
ASSAM.

4:THE PROJECT MANAGER
ASSAM FISHERIES DEVELOPMENT CORPORATION LTD.
LOWER ASSAM ZONAL OFFICE
ABHAYAPURI
BONGAIGAON
ASSAM

Advocate for the Petitioner : MR. K N CHOUDHURY

Advocate for the Respondent : SC, AFDC

Linked Case : WP(C)/3509/2021

UTTAM KUMAR DAS
S/O LATE BHUBEN DAS
R/O VILL. KACHUTOLA
P.S. JOGIGHOPA
DIST. BONGAIGAON
PIN 783371
ASSAM.

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2:THE MANAGING DIRECTOR

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3:THE PROJECT MANAGER

ASSAM FISHERIES DEVELOPMENT CORPORATION LTD.
LOWER ASSAM ZONAL OFFICE
ABHAYAPURI
BONGAIGAON
ASSAM.

4:BANKIM MALO

S/O BHOLANATH MALO
R/O VILL. CHALANTAPARA
PT-I

P.O. CHALANTAPARA
P.S. JOGIGHOPAH
DIST. BONGAIGAON
PIN 783388

Advocate for : MR. K N CHOUDHURY

Advocate for : SC

AFDC appearing for THE ASSAM FISHERIES DEVELOPMENT CORPORATION
LTD. AND 3 ORS.

**BEFORE
HONOURABLE MR. JUSTICE SANJAY KUMAR MEDHI**

ORDER

10.02.2023

1. Heard Shri K.N. Choudhury, learned Senior Counsel for the petitioner, who has filed the aforesaid two writ petitions. Also heard Shri P. Sharma, learned Standing Counsel, AFDC.

2. Before going to the issue to be decided, the facts as projected may be narrated in brief as follows.

3. A tender process was initiated for settlement of Tamranga Konora Group Fisheries in the district of Bongaigaon for 7 (seven) years pursuant to a tender notice No. 3 / 2018. There was delay due to litigations in culmination of the aforesaid tender process and ultimately pursuant to orders passed in WP(C)/7042/2019 instituted by the petitioner, the process was completed and the fishery was settled with the petitioner on 20.07.2020 and the fishing activities are permitted from 22.07.2020.

4. As per the petitioner, the kist money is required to be calculated from the

date of handing over possession i.e., 22.07.2020. However, there was a demand for Rs. 48,87,403/- whereafter the fishing rights of the petitioner was stopped on 18.02.2021 and the possession itself was withdrawn on 01.03.2021. The authorities were approached by the petitioner. However, there was a demand by the authorities of Rs.22,29,403/-. According to the petitioner, the same would also include the period from which the fishing activities were stopped and the possession of the fishery itself was taken away. The petitioner accordingly submitted representation dated 18.06.2021 to the authorities wherein the other aspect of the COVID-19 pandemic was also highlighted. However, without addressing the grievance of the petitioner on 14.07.2021, a fresh NIT was issued by dividing the fishery into different parts. The said action is the subject matter of challenge in WP(C)/3509/2021 and this Court vide order dated 03.08.2021 had directed that even though the NIT No. 4 of 2021 can be gone ahead, the same should not be finalized.

5. It is the case of the petitioner that a letter dated 21.06.2021 has been issued by which the date of the petitioner was purported to be cancelled. The said information was followed by two more letters dated 08.10.2021 and 19.01.2022 by which further demands were made amounting to Rs.67,88,316 and Rs.71,14,652/-. The petitioner had approached the AFDC with a letter dated 29.03.2022 by offering his willingness to pay for the amount when the fishery was actually in his possession. However, vide an order dated 21.05.2022, the Corporation cancelled the NIT No. 4/2021 and rejected the prayer of the petitioner. It is the case of the petitioner that such rejection is against the direction of this Court passed in the first writ petition namely WP(C)/3509/2021.

6. Shri Choudhury, the learned Senior Counsel for the petitioner has submitted that in terms of the contract between the parties, the amount can be charged only for the period when the fishery is under the actual possession of the lessee. In this connection, he has placed reliance upon an order passed by this Court dated 19.02.2019 passed in WP(C)/2567/2012. In the said judgment, it has been held that unless the possession is handed over to the settlement holder, there will be no legal obligation to pay the kist money and therefore demand for kist money for a period when this fishery was not put to the possession of the petitioner was interfered with.

7. The learned Senior Counsel submits that following the said principle, the present demand for periods when the fishery was not in possession of the petitioner is liable to be interfered with.

8. Attention of this Court has been drawn to the additional affidavit filed by the petitioner on 20.06.2022 in which in paragraph 7, two charts have been prepared to demonstrate the period in which the petitioner was not in possession of the fishery in question in spite of which demands have been made. On one occasion, there was delay in handing over the possession and in other occasion, the possession was forcefully taken away from the petitioner. As per the petitioner, the balance which is liable to be paid has been worked out to be Rs. 9,93,078/- for the year 2021. The learned Senior Counsel submits that even taking from 18.02.2020, there would be a marginal increase of the amount to Rs. 12,75,364/- which the petitioner is willing to deposit.

9. Shri Sharma, the learned Standing Counsel, AFDC submits that inability to

pay the kist money was itself a reason for discontinuing / terminating the lease agreement.

10. The learned Standing Counsel has however fairly submitted that during an earlier regime, the demands were not uniform.

11. After hearing the parties and on consideration of the facts and circumstances and the principle laid down that for a period when settlement holder is not handed over possession, the petitioner does not have a legal obligation to pay the kist money, in the instant case, even taking a conservative side in favour of the Department, the maximum amount which is payable to the Corporation comes out to be Rs. 12,75,364/-. Accordingly, this Court directs the petitioner to pay the aforesaid amount within a period of 2 (two) months from today.

12. It is needless to state that any amount paid in the meantime is required to be adjusted. It is further held that since the petitioner is continuing in terms of the interim order, he may be allowed to continue and the settlement which has been given to the petitioner may be continued till the completion of the term unless there are other relevant factors not to do so.

13. Both the Writ petitions accordingly stand disposed of.

JUDGE

Comparing Assistant