

GAHC010119432023



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

**Case No. : WP(C)/3321/2023**

MD. AKKASH ALI  
S/O- LATE ARFAN ALI, R/O- VILL.- AMOLAPAM, P.O. NAPAM, P.S. TEZPUR,  
DIST. SONITPUR, ASSAM, PIN- 784028.

VERSUS

THE STATE OF ASSAM AND 2 ORS  
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE GOVT.  
OF ASSAM, PANCHAYAT AND RURAL DEVELOPMENT DEPTT., PANJABARI,  
GUWAHATI-781037.

2:THE SONITPUR ZILA PARISHAD  
REPRESENTED BY THE CEO  
SONITPUR ZILA PARISHAD  
TEZPUR  
PIN- 784001.

3:THE GABHORU ANCHALIK PANCHAYAT  
REPRESENTED BY THE EXECUTIVE OFFICER  
P.O. DIPUTA  
DIST. SONITPUR  
ASSAM  
PIN- 784150

**Advocate for the Petitioner : MD. M H CHOUDHURY**

**Advocate for the Respondent : SC, P AND R.D.**

**BEFORE  
HONOURABLE MR. JUSTICE MANISH CHOUDHURY**

**ORDER**

**Date : 12-06-2023**

Heard Mr. P. Chakraborty, learned counsel for the petitioner; Mr. N.K. Dev Nath, learned Standing Counsel, Panchayat & Rural Development [P&RD] Department for all the respondents.

2. The petitioner has approached this Court by instituting the writ petition under Article 226 of the Constitution of India seeking two reliefs, *firstly*, a writ in the nature of certiorari to cancel a Tender Notice published by Gabhoru Anchalik Panchayat on 06.05.2023 whereby the Anchalik Panchayat has *inter alia* invited bids for settlement of a market, Bihiagaon Weekly Market [Every Monday and Thursday] [‘the Market’, for sort] for the Panchayat Financial Year : 2023-2024, that is, from 01.07.2023 to 30.06.2024; and *secondly*, a writ in the nature of mandamus seeking a direction to the respondent authorities to dispose of the representations, stated to have been filed by the petitioner on 20.09.2022 and 21.03.2023 before the Deputy Commissioner, Sonitpur and the Executive Officer, Sonitpur Zilla Parishad, Tezpur respectively.

3. The case projected by the petitioner, in brief, is that pursuant to a competitive bidding process initiated by Gabhoru Anchalik Panchayat for settlement of the Market for the Panchayat Financial Year : 2022-2023, the Market came to be settled in favour of the petitioner for the period from 01.07.2022 to 30.06.2023 at his offered bid value of Rs. 2,55,501/- by an order of settlement dated 29.06.2022. The petitioner has stated that pursuant to the order of settlement dated 29.06.2022, he complied with all the formalities by depositing necessary security deposit, kist money, etc. and was allowed to operate the Market for the period from 01.07.2022 to 30.06.2023.

3.1. It is the case of the petitioner that as soon as he started operating the Market, he came to face a number of difficulties in operating the Market smoothly. According to the

petitioner, there was no definite demarcation of the Market area, which led to refusal to pay the tolls by many of the traders operating in the Market. There were also encroachers, who had constructed pucca houses inside the Market area. The petitioner also faced difficulties in trading of animals inside the Market. Highlighting the aforesaid difficulties, the petitioner submitted two representations before [i] before the Deputy Commissioner, Sonitpur on 20.09.2022; and [ii] the Chief Executive Officer, Sonitpur Zilla Parishad, Tezpur on 21.03.2023. On perusal of the two representations, it is found that the petitioner had requested the said authorities to make a spot verification and to ascertain the boundaries of the Market.

4. As per Section 105 of the Assam Panchayat Act, 1994, as amended, all markets within the territorial jurisdiction of an Anchalik Panchayat are to be settled in the manner prescribed for a period coinciding with and not exceeding one Panchayat Financial Year by inviting tenders at the office of the Anchalik Panchayat by its President. 'Panchayat Years' is defined in Section 2[26][i] of the Assam Panchayat Act, 1994 and 'Panchayat Year' means the year commencing on the 1<sup>st</sup> date of July or on such other date as the State Government may by notification appoint. The State Government has notified that the Panchayat Financial Year means the period from the 1<sup>st</sup> July of a year to the 30<sup>th</sup> day of June of the subsequent year.

5. A Division Bench of this Court upon going through the provisions of the Assam Panchayat Act, 1994, more particularly, Section 105, in Md. Abdul Barik vs. The State of Assam and others, reported in 1997 [1] GLT 164, has held that Section 105[1] of the Assam Panchayat Act, 1994 clearly indicates that the Legislature has given a mandate to the concerned Anchalik Panchayat that as far as hats [markets] are concerned, they have to be settled only for a period of 1 [one] Panchayat year and by inviting tenders. It is held that the power of the Anchalik Panchayat is absolutely circumscribed by the provisions of Section 105[1] and the settlement cannot be for a period of more than 1 [one] year. Further, the settlement has also to be only by inviting tenders. Thus, where a settlement has been made for 1 [one] year already, the period of settlement cannot be extended for any period beyond the period of 1 [one] year. Moreover, after the period of 1 [one] year has expired in respect of

a settlement, the next settlement has to be only by inviting tenders from all intending parties and not by extending the settlement of the party in whose favour the settlement had been made for the earlier period. In the face of such settled position of law, the petitioner's first prayer for setting aside of the Tender Notice dated 06.05.2023 published by Gabhoru Anchalik Panchayat inviting bids for settlement of the Market for the Panchayat Financial Year : 2023-2024 cannot be countenanced and the same is rejected.

6. In so far as the second prayer is concerned, it is found that the petitioner has already submitted representations before the Deputy Commissioner, Sonitpur 20.09.2022 and before the Chief Executive Officer, Sonitpur Zilla Parishad, Tezpur on 21.03.2023. The said two representations seeking demarcation of the boundaries of the Market are stated to be pending. Since the Deputy Commissioner, Sonitpur is not made a party-respondent in the writ petition, any direction to the Deputy Commissioner, Sonitpur cannot be asked for by the writ petitioner. Therefore, it is directed that the respondent no. 2 shall take the Representation dated 21.03.2023 on board and after due consideration, shall dispose of the same by passing a speaking order within a period of 2 [two] weeks from the date of receipt of a certified copy this order from the petitioner. It is made clear that this Court has not made any observation on the merits of the claim made by the writ petitioner in the Representation dated 21.03.2023 and therefore, the respondent no. 2 shall consider the Representation on its own merits by taking into consideration the extant rules and procedure.

7. This order disposes of the writ petition.

**JUDGE**

**Comparing Assistant**