

GAHC010139982023



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

Case No. : WP(C)/3728/2023

FAKRUZZAMAN LASKAR
S/O- LATE TUTA MIA LASKAR,
VILL- RANGAUTI PART I,
P.O- RANGAUTI,
P.S AND DIST- HAILAKANDI,
ASSAM

VERSUS

THE STATE OF ASSAM AND 3 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE GOVT.
OF ASSAM. URBAN DEVELOPMENT DEPTT. DISPUR ASSAM 781006

2:THE DIRECTOR
MUNICIPAL ADMINISTRATION
DISPUR
GUWAHATI-06

3:THE HAILAKANDI MUNICIPAL BOARD
REP. BY ITS EXECUTIVE OFFICER
P.S. AND DIST. HAILAKANDI
ASSAM-788151.

4:THE CHAIRMAN
HAILAKANDI MUNICIPAL BOARD
P.O. AND DIST. HAILAKANDI
PIN-788151

Advocate for the Petitioner : MR. A H M R CHOUDHURY

Advocate for the Respondent : GA, ASSAM

**BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA**

ORDER

Date : 26.06.2023

Heard Mr. A.H.M.R. Choudhury, learned counsel for the petitioner and Mr. K. Gogoi, learned Addl. Senior Govt. advocate appearing for respondent nos. 1 and 2.

2. By filing this writ petition under Article 226 of the Constitution of India, the petitioner has assailed the issuance of NIT dated 20.06.2022 in respect of Shirajpatty Bazar Petrol Auto Parking.

3. The case of the petitioner is that he is the present lessee of the said parking which was settled by order dated 26.12.2019 for a period from 01.01.2020 to 31.12.2020. As the Covid-19 Pandemic had set in, the petitioner could not operate the parking. The authorities of the Municipal Board, Hailakandi issued a fresh NIT on 17.06.2022 for a period from 01.07.2022 to 30.06.2023 and in the said tendering process, the petitioner was settled with the said parking. The learned counsel for the petitioner has submitted that as the settlement period over for a year, retrospective effect of settlement could not have been given effect from 01.07.2022 as the settlement order was made on 13.07.2022. Accordingly, it is submitted that the fresh tendering process be stayed for at least a month so that the term as envisaged vide NIT dated 13.07.2022 would expire. It is submitted that if the tendering process is not stayed, the petitioner would suffer a loss for the previous term.

4. The prayer made in this writ petition is opposed by the learned Addl.

Senior Govt. advocate.

5. Having regard to the nature of grievance raised by the writ petitioner, the Court is of the considered opinion that at best the petitioner could not operate the parking for a fixed term, notwithstanding that he has accepted the letter dated 13.07.2022 and acted upon it, the only remedy available to the petitioner would be seek remission of the parking lease for the period from 01.07.2022 to 13.07.2022. However, for the said miniscule period of time, the Court does not find this to be a fit case to stay the tendering process which has been initiated vide notice dated 20.06.2023 (Annexure-6).

6. The Court is of the further considered opinion that as the grievance of the petitioner can be redressed if the petitioner approaches the competent authorities for remission. As the loss suffered by the petitioner can be quantified in terms of money, no case for stay of the NIT has been made out. Moreover, the rights available to the petitioner is merely a contractual right and therefore, the Court does not find that any fundamental right of the petitioner had been violated. Hence, the Court is disinclined to entertain this writ petition and accordingly, this writ petition stands dismissed at the motion stage without issuance of notice on the respondents.

7. The learned counsel for the petitioner had also referred to the order dated 17.12.2021 passed by this Court in WP(C) 6833/2021 wherein this Court had provided that in the event the petitioner files a representation before the concerned authority of the Hailakandi Municipal Board regarding the prayer made by him regarding returning of the proportionate amount of money deposited by him, the same shall be considered by the said authority as per his entitlement and in accordance with law by following the relevant provisions of

law and the rules in force and as applicable.

8. It is also projected that in the terms of the said order, the petitioner had submitted a representation dated 21.05.2022, but the same was not considered. In the said regard, the Court is of the considered opinion that there cannot be a successive writ for the same relief as the petitioner has already been provided with such relief by way of an order 17.12.2021 passed by this Court in WP(C) 6833/2021. However, at the appropriate time the petitioner had not approached the Court by complaining of willful and deliberate non-compliance of the order of the Court. Be that as it may, it is provided that the dismissal of the writ petition shall not be a bar for the Executive Officer, Municipal Board, Hailakandi to dispose of the writ petition of the petitioner in terms of hereinbefore referred order, however, without considering this as a direction of the Court.

9. Nonetheless, the dismissal of the writ petition shall not be a bar for the petitioner to approach the competent authority seeking remission of the parking lease amount for which he has not been able to operate the parking purportedly for 01.07.2022 to 13.07.2022, if so advised.

JUDGE

Comparing Assistant