

GAHC010146112023



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

Case No. : WP(C)/3902/2023

35 NO. PAKARIA MEEN SAMABAY SAMATI LIMITED
REP. BY ITS SECRETARY NAMELY JATINDRA DAS AGE 66 YEARS S/O LT.
BASANTA DAS R/O KARCHUWABORI SHIMULTOLA P.S JAGIROAD PIN
7824411 DIST. MORIGAON ASSAM

VERSUS

THE STATE OF ASSAM AND 9 ORS
REP. BY THE SECRETARY TO THE GOVT. OF ASSAM FISHERY DEPTT.
DISPUR GUWAHATI PIN 781006

2:THE JOINT SECRETARY
TO THE GOVT. OF ASSAM FISHERY DEPTT. DISPUR GUWAHATI PIN 781006

3:THE DEPUTY COMMISSIONER
MORIGAON
P.O AND P.S MORIGAON DIST. MORIGAON ASSAM PIN 782105

4:THE ADDL. DEPUTY COMMISSIONER
MORIGAON
P.O AND P.S MORIGAON DIST. MORIGAON ASSAM PIN 782105

5:THE DISTRICT FISHERY DEVELOPMENT OFFICER
MORIGAON
P.O AND P.S MORIGAON DIST. MORIGAON ASSAM PIN 782105

6:THE CIRCLE OFFICER
MAYONG REVENUE CIRCLE P.O. AND P.S. MAYONG DIST. MORIGAON
ASSAM PIN 782411

7:NO. 147 MANIPUR FISHERY CO OPERATIVE SOCIETY LTD.
REP. BY ITS SECRETARY HAVING OFFICE AT ROINAPATHER P.O. AND P.S

MORIGAON DIST. MORIGAON ASSAM PIN 78210

Advocate for the Petitioner : MR. M K HUSSAIN

Advocate for the Respondent : GA, ASSAM

BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA

ORDER

Date : 30.06.2023

Heard Mr. M.K. Hussain, learned counsel for the petitioner. Also heard Mr. M. Chetia, learned Govt. Advocate appearing for the respondent nos.1 to 6 and Mr. R.M. Dekka, learned counsel for the respondent no.7/caveator.

2. It is projected that the fishery in question, namely, No. 162/163/164 Khandajan/Sidhali/Gatua Group Fishery in Morigaon district was settled with the respondent no.7 on 21.05.2013 for a period of 7 (seven) years, which had expired on 21.05.2020. It is projected that the said lease was extended w.e.f. 21.05.2020 for a period of 3 (three) years which had expired on 21.05.2023. However, as no steps has been taken for initiating tender/sale process of the said fishery, the present writ petition has been filed under Article 226 of the Constitution of India.

3. The learned counsel for the respondent no.7 has produced a copy of letter under eCF No.304025/28 dated 06.06.2023 issued by the Joint Secretary to the Govt. of Assam, Fishery Department, the contents of the said letter is quoted below:

“Sir,

With reference to above, I am directed to inform you that the status of 162/161/164 No Khandajan/Sidhali/Gatuwa Fishery in Morigaon district has been examined from records in

the light of representation of M/S 147 No Manipur FCS Ltd. the existing lessee of the fishery. It appears that the said fishery was settled with the petitioner society vide Govt. order dated 21.5.2013 with further extension vide order dated 20.7.2020.

It appears that part of the fishery has been filled up with river soil/sand due to recurring floods over the years due to it's proximity to the river and thus has become shallow and unfit for fish breeding due to insufficient water level.

Accordingly the matter was referred to DC Morigaon in the light of representation of the lessee society. The joint inquiry report of C.O. Mayong and DFDO Morigaon corroborated the claim of the lessee society that out of total 47 Bigha area of the fishery. 22 Bigha (About -16% of total area of the fishery) have been filled up by river sand and has thus become unsuitable for fish breeding.

Based on above. Govt. granted permission for digging the fishery by the lessee society at its own cost vide Govt letter No FISH 209/2005//Pt 14 dated 10.3.2021. The ADC (Fishery) Morigaon accordingly issued NOC to the lessee society to carry out digging at their own cost on condition laid down by Govt vide order 1532023 (Copy enclosed)

It appears from the submission of the lessee society that they have carried out the exercise of digging the fishery by incurring total estimated cost of Rs 22.00 L in 2 (Two) installments.

It further appears that said silted portion of the fishers measuring 22 Bigha have now been made it for fish breeding But it will take some more time to make it fully operational for commercial fishing. The present status of the fishery has been made by the lessee through it's own efforts with due permission from authority by spending a huge amount of Rs 22.00 L.

In this connection provisions of Rule 8(b)(ii) of the Assam Fishery Rules 1953 may be need to wherein it is stated that State Govt. may extend the period of lease of a Fishery on the recommendation of the Director of Fisheries Assam with an intending Pisciculturist who should invariably be the sitting lessee who agrees to such extension at revenue fixed by Govt. and such other conditions as may be specified by Govt.

In view of above you are requested to cause an inquiry through DEDO, Morigaon and submit report to Govt. with your views comments thereon whether the proposal can be considered under the aforesaid Rule.

This has approval of Competent Authority of Govt. in Fishery Department."

4. Accordingly, it is submitted that in view of the said letter dated 06.06.2023, as the respondent no.7 has made a prayer for extension of the

lease, it would be appropriate that the respondent authorities be permitted to take a decision on the basis of the said communication dated 06.06.2023.

5. Having regard to the nature of submission made by the learned counsel for the petitioner, it appears that the Joint Secretary to the Govt. of Assam, Fishery Department, while issuing the said letter dated 06.06.2023 had referred to the provision of Rule 8(b)(ii) of the Assam Fishery Rules, 1953.

6. On a cursory perusal of the said provision, the Court does not find any provision which enables extension of the already extended lease. The provision of section 8(b) is quoted below along with its proviso:

“8. *Settling Authority-*

* * *

(b) Extension of the term of lease.- (i) Where the period of lease of registered fisheries being ordinarily not less than three years is interfered with, due to any natural cause or for any unavoidable reasons beyond the control of the lessees, Government may extend the period of such lease supported by official reports as to the nature of cause in exceptionally special cases for a reasonable period so as to enable such lessees to make good the loss;

(ii) The State Government may also on the recommendation of the Director of Fisheries extend the period of lease of a fishery with an intending pisciculturist who should invariably be the sitting lessee and who agrees to accept such an extension at a revenue and for such other additional terms and conditions as may be specified by Government:

Provided that one of the conditions of extension of lease against piscicultural plan shall invariably be the implementation of approved Scheme or Schemes of Development and improvement of such a fishery at the lessee's own cost within a target period to be fixed by Government.

The orders of extension of lease on the aforesaid grounds, passed by the State Government shall be final and no appeal shall lie against such orders of extension.”

7. Therefore, if the nature of enquiry proposed by the Joint Secretary to the Govt. of Assam, Fishery Department is to be accepted in its face value,

there may be a situation that after the original lease period of 7 (seven) years had expired, a particular lessee may even be permitted to continue with the lease for perpetuity without there being any end date of the expiry of lease because at every occasion, a particular lessee may come forward by giving an explanation which will be found acceptable by the authorities so as to allow the particular lessee to continue with the lease in perpetuity. Therefore, the ground based on which the respondent no.7 has given his side of projection does not *prima facie* find favour of the Court. With profit, we may refer to paragraph 13 to 16 of the judgment and order dated 19.05.2022, passed by this Court in the case of *Joydeb Das v. State of Assam & Ors.*, (WP(C) 1174/2021, decided on 19.05.2022, which is quoted below:

“13. In the case in hand, the initial settlement in favour of the respondent No. 6 started on 26.4.2013 and it was settled till 26.4.2020 i.e. for a period of seven years. Thus the settlement period/lease period expired on 26.2.2020. The material reveals that though the direction of this court in WP(C) No. 2501/2018 was for consideration of the prayer of the petitioner for remission and direction was also issued for consideration of such prayer of remission as per law. Under the impugned order dated 22.1.2021 extension of the lease for three years was granted along with remission after a year expiry of the lease.

14. It is not more res integra that a contract /lease cannot be extended after expiry of the same. However, the lesser and lessee shall have definite right and power to extend the period of lease during the subsistence of lease subject to limitation under Rule 8 (b) of the Fishery Rules 1953.

15. When lease is extended such extension shall mean prolongation of the lease and when renewal is done, a new lease is required to be executed. Renewal of lease and extension of lease are two distinct and separate concepts.

In case of a lease under Assam Fishery Rules, 1953, when the period of lease is over and after expiry of such period, an extension is granted, the same shall for all

meaning and purport be a fresh lease and not renewal in as much as there is no power of renewal under the Rules'1953.

Reading the Rule 8(b) and Rule 16, this court can safely conclude that the State authority is not within its power and jurisdiction to extend a lease after its expiry inasmuch as under the mandate of Rule 1953, fresh lease or renewal of lease cannot be entered/granted in exercise of such power of extension.

As discussed herein above the power of extension of lease is also limited by certain condition such as interference of lease period due to natural cause or for any unavoidable reason beyond the control of lessee or any exceptional circumstances granting extension of lease enabling the lessee to make the loss.

16. From this point of view, this court un-hesitantly holds that the extension of lease after expiry of lease was beyond the competence and jurisdiction of authority.

Accordingly, the same is interfered with."

8. Therefore, the Director of Fisheries, Assam, who is the competent authority in the matter of considering the prayer for extension of lease, while taking a decision on the letter under eCF No.304025/28 dated 06.06.2023, shall also examine the limitation, which are contained in Rule 8 of the Assam Fisheries Rules, and shall also consider the decision referred to hereinbefore.

9. Insofar as the prayer made in this writ petition is concerned, it *prima facie* appears that the lease period of the original seven years' lease granted for the fishery referred above to the respondent no.7 had expired on 21.05.2020. The lease was extended on 20.07.2020 for a period of 3 (three) years w.e.f. 21.05.2020, which has expired on 21.05.2023. Therefore, the unhesitant view of the Court is that the natural consequences of expiry of the extended period of lease would be to put the fishery to a fresh auction/sale. Therefore, this is a fit and proper case where the Director of Fisheries as well as Joint Secretary to the Govt. of Assam, Fisheries Department (respondent no.2)

is directed to take a decision as to whether there is lawfully any scope for an extension of lease in favour of the respondent no.7 and/or whether it could be lawful to put the fishery into sale/auction. The decision in this regard shall be taken within a outer period of 10 (ten) days from the date of service of certified copy of this order on the respondent no.2.

10. It shall be incumbent on the said authorities to communicate its decision to the petitioner in its e-mail address to be provided while submitting the certified copy of this order.

11. Before parting with the records, it is once again made clear that the consideration for decision on auction/sale or extension of the lease shall be within the parameters which are set out in the Assam Fishery Rules, 1953.

12. In view of order passed, the Court does not find any necessity to issue notice on the respondents and therefore, the writ petition stands disposed of at the motion stage without issuance of notice on the respondents.

JUDGE

Comparing Assistant