



THE GAUHATI HIGH COURT

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

Writ Petition (Civil) no. 5304/2022

1. Abdul Wahab Mondal, S/O. Lt. Janikuddin, Vill. and P.O. Patakata, Dist. South Salmara Mankachar, Assam, Pin-783127.
2. Falu Mondal, S/O. Lt. Sher Ali Mondal, Vill. and P.O. Patakata, Dist. South Salmara Mankachar, Assam, Pin-783127.
3. Kalu Mondal, S/O. Lt. Sher Ali Mondal, Vill. and P.O. Patakata, Dist. South Salmara Mankachar, Assam, Pin-783127.
4. Azizur Rahman Mondal, S/O. Lt. Sher Ali Mondal, Vill. and P.O. Patakata, Dist. South Salmara Mankachar, Assam, Pin-783127.
5. Atowar Mondal, S/O. Lt. Sher Ali Mondal, Vill. and P.O. Patakata, Dist. South Salmara Mankachar, Assam, Pin-783127.
6. A. Kuddus Mondal, S/O. Lt. Sher Ali Mondal, Vill. and P.O. Patakata, Dist. South Salmara Mankachar, Assam, Pin-783127.
7. A. Samad Bepari, S/O. Lt. Mofiz Uddin, Vill. and P.O. Patakata, Dist. South Salmara Mankachar, Assam, Pin-783127.

.....Petitioners

-Versus-

1. The State of Assam rep. by the Principal Secretary to the Govt. of Assam, Panchayat and Rural Development Deptt., Dispur, Guwahati-06.
2. The Commissioner of Panchayat and Rural Development Deptt., Assam, Panjabari Juripar, Guwahati-37.
3. The South Salmara Mankachar Zilla Parishad rep. by its President South Salmara Mankachar Zilla Parishad Hatsingimari P.O. Hatsingimari, Dist. South Salmara Mankachar, Assam, Pin-783135.
4. The President South Salmara Mankachar Zilla Parishad, Hatsingimari, P.O. Hatsingimari, Dist. South Salmara Mankachar, Assam, Pin-783135.
5. The Chief Executive Officer, South Salmara Mankachar Zilla Parishad Hatsingimari, P.O. Hatsingimari, Dist. South Salmara Mankachar, Assam, Pin-783135.
6. The President of South Salmara Anchalik Panchayat South Salmara, P.O. Fakirganj and P.S. South Salmara, Dist. South Salmara Mankachar, Assam, Pin-783127.
7. The Executive Officer South Salmara Anchalik Panchayat, P.O. Fakirganj, Dist. South Salmara Mankachar, Assam, Pin-783135.
8. Jel Hoque, S/o Lt. Barek Ali Sarkar, Vill. and P.O. Patakata, Dist. South Salmara Mankachar, Assam, Pin-783127.

.....Respondents

Advocates :

Petitioners : Mr. R. Islam, Advocate

Respondent nos. 1, 2, 3, 5 & 7 : Mr. N.K. Dev Nath, Standing Counsel,
P&RD Department

Respondent no. 6 : Mr. A. Chakraborty, Advocate

Respondent no. 8

: Mr. R. Ali, Advocate

Date of Hearing, Judgment & Order : 23.06.2023

BEFORE
HON'BLE MR. JUSTICE MANISH CHOUDHURY
JUDGMENT & ORDER [ORAL]

The present writ petition has been instituted under Article 226 of the Constitution of India seeking *inter alia* setting aside of [i] an Order dated 30.06.2022 passed by the President, South Salmara Mankachar Zilla Parishad whereby the respondent no. 8 has been given permission to run a market named *Patakata Hat* for the year : 2022-2023, that is, 01.07.2022 to 30.06.2023, subject to payment of an amount of Rs. 1,05,000/- at a time in advance; and [ii] an Order dated 13.07.2022 passed by the Executive Officer, South Salmara Anchalik Panchayat whereby the temporary settlement of a market named *Patakata Hat* settled earlier in favour of present petitioner no. 1 vide his previous Order dated 01.07.2022, has been cancelled. The petitioners have also sought for a direction to allow the present petitioner no. 1 to collect tolls, etc. from the market named *Patakata Hat* pursuant to the Order dated 01.07.2022 passed by the Chief Executive Officer, South Salmara Anchalik Panchayat, whereby, the present petitioner no. 1 was allowed to run the market named *Patakata Hat* and to collect the tolls, etc. from the said *Patakata Hat* for the period from 01.07.2022 to 30.06.2023, subject to deposit of Rs. 36,000/- in advance to the South Salmara Anchalik Panchayat.

2. The case projected by the petitioners, 7 [seven] in nos., in the writ petition is *inter alia* to the effect that a market named *Patakata Hat* was earlier used to operate from a parcel of land under the control of South Salmara Anchalik Panchayat. But few years earlier, the said parcel of land wherefrom the market named *Patakata Hat* used to operate, went under the River Brahmaputra. Prior to the erosion, the market named *Patakata Hat* over the said parcel of land [since eroded] was used to be settled by

tender process by the South Salmara Anchalik Panchayat in accordance with the procedure laid down in the Assam Panchayat Act, 1994, as amended.

3. It is the case of the petitioners that after erosion of the parcel of land wherefrom the market named *Patakata Hat* used to operate, the South Salmara Anchalik Panchayat authorities in negotiation with the petitioners, decided to operate the market named *Patakata Hat* from another parcel of land measuring 6 Bighas 2 Kathas 4 Lessas [06B-02K-04L], located at Revenue Village - Patakata, South Salmara Revenue Circle which the petitioners have claimed to have belonged to them, temporarily on a purported understating that the Anchalik Panchayat authorities would not give settlement of the market named *Patakata Hat* and the same would be run by the petitioners, until shifted therefrom. According to the petitioners, despite such understanding, the respondent Anchalik Panchayat authorities published a Tender Notice on 26.05.2017 for settlement of the market named *Patakata Hat* for the Panchayat Financial Year : 2017-2018 [without making any alternative arrangement of land to operate the *Patakata Hat*]. Aggrieved by the publication of the Tender Notice dated 26.05.2017, the petitioner no. 1 and the petitioner no. 6 herein along with Patakata M.V. School as the three petitioners preferred a writ petition, W.P.[C] no. 3695/2017 advancing a plea that no settlement of the market named *Patakata Hat* could be given on a parcel of land, which is a private land. When the writ petition, W.P.[C] no. 3695/2017 came up for consideration on 19.06.2017, the Court after hearing the learned counsel for the parties, while not interfering with the tender process, directed the respondent authorities not to settle the market named *Patakata Hat* over any portion of the private land belonging to the petitioners therein. It was further made clear that the market named *Patakata Hat* could be settled by the respondent authorities over any other land without including the private land of the petitioners in the settlement process.

4. After the interim order dated 19.06.2017, the Executive Officer, South Salmara Anchalik Panchayat had passed an order to the following effect on 04.07.2018 :-

As per the Hon'ble High Court Guwahati's Case no. W.P.[C] no. 3695/2017 and as per deed agreement vide Sl. no. 3798 dated 2nd July/2018 and a resolution adopted in the Hat/Ghat Settlement Committee's dated 29.06.2018, the undersigned has settled the *Patakata Hat* to Abdul Wahab Mandal, S/o Lt. Janik Uddin Sk. and Abdul Kuddus Mandol, S/o. Late Manik Uddin Sk. Village + P.O. Patakata, P.S. South Salmara, District – South Salmara, Mankachar – Hatsingimari to run said *Patakata Hat* temporarily from 08.07.2018 to 07.10.2018 and asked them to deposit the 30% tolls amount to the Office of the undersigned.

5. Abdul Wahab Mandal was the petitioner no. 2 [the present petitioner no. 1] in W.P.[C] no. 3695/2017 and Abdus Kuddus Mandal was the petitioner no. 1 [the present petitioner no. 6] in W.P.[C] no. 3695/2017. The President and the Executive Officer of South Salmara Anchalik Panchayat entered into a Deed of Agreement with the petitioner no. 1 and the petitioner no. 6 on 02.07.2018 after adopting a Resolution in the meeting of the General Standing Committee of South Salmara Anchalik Panchayat on 29.06.2018. Subsequent thereto, the present petitioner no. 1 and the present petitioner no. 6 were allowed to run the market named *Patakata Hat* temporarily from 08.07.2018 to 07.10.2018 on the condition of deposit of 30% of the toll amount collected therefrom at the office of the Executive Officer, South Salmara Anchalik Panchayat pursuant to the order dated 04.07.2018. Thereafter, the present petitioner no. 1 and the present petitioner no. 6 were allowed to run the market named *Patakata Hat* temporarily upto 07.01.2019 and then, for another period of 3 [three] months w.e.f. 08.01.2019 to 07.03.2019 by passing another order dated 18.01.2019 on the same condition of deposit of 30% of the toll amount collected therefrom at the office of the Executive Officer, South Salmara Anchalik Panchayat. With the passing of the order dated 04.07.2018 and

the order dated 08.01.2019, the writ petition, W.P.[C] no. 3695/2017 came to be dismissed as infructuous by an order dated 17.11.2020 on the submissions of the learned counsel for the parties on instruction.

6. It is the case of the petitioners herein that on the strength of the Deed of Agreement executed on behalf of the petitioners and the authorities in the South Salmara Anchalik Panchayat, they were allowed to run the market named *Patakata Hat* up to 30.06.2022. In order to support such contention, the petitioners have referred to a Tender Notice dated 07.06.2022 published by the South Salmara Anchalik Panchayat whereby tenders were invited for settlement of a number of markets for the Panchayat Financial Year : 2022-2023 excluding the market named *Patakata Hat*. By referring to three Orders, dated 06.07.2019, dated 01.07.2020 & dated 30.03.2022, passed by the South Salmara Anchalik Panchayat it is contended on behalf of the petitioners that by the said orders, the Chief Executive Officer, South Salmara Mankachar Zilla Parishad had also approved the settlement of the market named *Patakata Hat* in their favour, subject to the conditions indicated therein. After issuance of the Tender Notice dated 07.06.2022, a Deed of Agreement was executed between the present petitioner no. 1 herein and the President of South Salmara Anchalik Panchayat on 24.06.2022 allowing the present petitioner no. 1 herein to run the market named *Patakata Hat* for a period of 1 [one] year w.e.f. 01.06.2022 to 31.05.2023, subject to deposit of an amount of Rs. 36,000/- to the South Salmara Anchalik Panchayat for the said period of 1 [one] year. It is stated that the other petitioners are close relatives of the present petitioner no. 1 and they have authorized the present petitioner no. 1 to represent their causes with the respondent Panchayat authorities. Reference is made to a Resolution adopted in the Meeting of the Executive Committee of the South Salmara Anchalik Panchayat, held on 30.06.2022, to the effect that in view of non-availability of any Government land to run the market named *Patakata Hat*, the settlement of the market named *Patakata Hat* would be as per the Deed of Agreement made with the land owners of the private land, that is, the present petitioner no. 1

with information to the jurisdictional Zilla Parishad, that is, South Salmara Mankachar Zilla Parishad. After execution of the Deed of Agreement dated 24.06.2022 and as per the Resolution adopted on 30.06.2022, another order came to be passed under the hand of the Executive Officer, South Salmara Anchalik Panchayat on 01.07.2022 whereby the present petitioner no. 1 was allowed to run the market named *Patakata Hat* and to collect revenue therefrom for the period w.e.f. 01.07.2022 to 30.06.2023, subject to deposit of Rs. 36,000/- within 7 [seven] days therefrom.

7. The cause of grievance for the petitioners arose on 30.06.2022 when the President, South Salmara Mankachar Zilla Parishad passed an order of even date whereby temporary permission was granted to the respondent no. 8 to run market named *Patakata Hat* for the Panchayat Financial Year : 2022-2023 w.e.f. 01.07.2022 to 30.06.2023, subject to payment of Rs. 1,05,000/- at a time in advance on the premise that there was no tender process initiated for the market named *Patakata Hat* for the year : 2022-2023. It was observed in the said order dated 30.06.2022 that the arrangement was purely temporary and shall remain in force until further order. The order dated 30.06.2022 of the President, South Salmara Mankachar Zilla Parishad was followed by a consequential order dated 13.07.2022 of the Executive Officer, South Salmara Anchalik Panchayat whereby the order dated 01.07.2022 passed by the same authority making settlement of the market named *Patakata Hat* in favour of the petitioner no. 1 earlier, had been cancelled.

8. Aggrieved by the order dated 30.06.2022 of the President, South Salmara Mankachar Zilla Parishad and the order dated 13.07.2022 of the Executive Officer, South Salmara Anchalik Panchayat, the present petitioners approached the Zilla Parishad authorities ventilating their grievances by stating that there was already a Deed of Agreement executed on 24.06.2022 whereby the petitioners were authorized to run the market named *Patakata Hat*. On 18.07.2022, an order came to be passed by the President, South Salmara Mankachar Zilla Parishad whereby

the temporary permission granted to the respondent no. 8 to run the market named *Patakata Hat* for the year : 2022-2023 was cancelled until further order with the further provision that the revenue from the market named *Patakata Hat*, for the time being, would be collected by the Tax Collector, South Salmara Mankachar Zilla Parishad with the help of the local Panchayat. Challenging the order dated 18.07.2022, the respondent no. 8 herein as the petitioner, had preferred a writ petition, W.P.[C] no. 4765/2022 without making the present petitioners herein as party-respondents there.

9. When the writ petition, W.P.[C] no. 4765/2022 came up for consideration on 29.07.2022 at motion stage, it was canvassed on behalf of the respondent no. 8 herein i.e. the petitioner therein, that he had deposited the entire *kist* money in respect of the temporary settlement of the market named *Patakata Hat* but the order of cancellation dated 18.07.2022 was passed arbitrarily without affording any opportunity to him to present his version. Taking note of the submissions of the learned counsel for the parties, more particularly, the submission of the learned counsel for the petitioner therein [the respondent no. 8 herein] that he should be allowed to run the market named *Patakata Hat* till a regular settlement was made by floating a tender notice, the writ petition was disposed of by an order dated 29.07.2022 directing the President and the Chief Executive Officer of South Salmara Mankachar Zilla Parishad to consider the grievance of the petitioner therein i.e. the respondent no. 8 herein and to pass appropriate orders therein, as might be warranted in the facts and circumstances of the case, keeping in mind that the entire *kist* money was already deposited and there was no process initiated for settlement of the market named *Patakata Hat* by floating any tender notice.

10. Pursuant to the disposal of the writ petition, W.P.[C] no. 4765/2022 in the afore-stated manner, the President, South Salmara Mankachar Zilla Parishad passed an order on 03.08.2022 in the following manner :-

**Govt. of Assam
Office of the Chief Executive Officer,
Zilla Parishad, South Salmara Mankachar,
Hatsingimari**

Mail :- zpssmhsm@gmail.com

No. ZPSSM-03/Pt-I/*Patakata Hat*/2022/30 Dated, Hatsingimari the 3rd August, 2022

ORDER

In compliance of the order of the Hon'ble Guwahati High Court, Dated the 29th July/2022, in W.P.[C] no. 4765/2022. The cancellation order in respect of *Patakata Hat* under South Salmara Mankachar Zilla Parishad issued vide order no. ZPSSM-03/Pt-I/*Patakata Hat* I hereby withdrawn until further order or till the matter is finally decided by the Hon'ble Guwahati High Court. Shri. Jel Hoque, S/o Lt. Barek Ali, who was given temporary settlement is allotted to run the market for the time being.

This order is passed in the interest of public service and to save the exchequer in govt. revenue.

[Merina Khan]
President
Zilla Parishad South Salmara
Mankachar, Hatsingimari

11. In the backdrop of afore-stated sequence of events, the instant writ petition has been filed.

12. I have heard Mr. R. Islam, learned counsel for the petitioners; Mr. N.K. Dev Nath, learned Standing Counsel, Panchayat & Rural Development [P&RD] Department for the respondent nos. 1, 2, 3, 5 & 7; Mr. A. Chakraborty, learned counsel for the respondent no. 6; and Mr. R. Ali, learned counsel for the respondent no. 8.

13. The petitioners have asserted that they conjointly, are the owners of the areas of land measuring 6 Bighas 2 Kathas 4 Lessas [06B-02K-04L], covered by [i] Patta nos. 269, 282 & 170, Dag nos. 430, 456, 638, 425 and [ii] Patta nos. 236 & 270 and Dag nos. 423, 424, ['the subject-lands', for short] located at Revenue Village – Patakata, South Salmara Revenue Circle. The respondent no. 6 in paragraph no. 3 of the counter affidavit filed by him has admitted that the subject-lands are patta lands of the

petitioners. The respondent no. 7 in paragraph no. 4 of the counter affidavit filed by him has also admitted that the subject-lands, measuring 6 Bighas 2 Kathas 4 Lessas [06B-02K-04L], are patta lands belonging to the petitioners. Both the respondent no. 6 & the respondent no. 7 in paragraph no. 4 of their respective affidavit have admitted that the market named *Patakata Hat* after its erosion due to flood caused by the River Brahmaputra, was shifted to the subject-lands. Both the respondent no. 6 and the respondent no. 7 have admitted about the execution of the Deed of Agreement by South Salmara Anchalik Panchayat with the present petitioner no. 1 to collect the revenue from the market named *Patakata Hat* for the period from 01.07.2022 to 30.06.2023. The respondent no. 6 in the paragraph no. 12 of his counter affidavit has stated that by order dated 30.06.2022, temporary permission was granted to the respondent no. 8 for collection of toll at the market named *Patakata Hat* and the said order was subsequently cancelled on 18.07.2022.

14. In an Order dated 30.03.2022, the Chief Executive Officer, South Salmara Anchalik Panchayat had recorded that another Deed of Agreement dated 03.07.2021 was executed between the President, South Salmara Anchalik Panchayat and Sri Abdus Samad Bepari as the patta holder of a plot of land, measuring 5 Bighas 3 Kathas 9 Lessas at Revenue Village – Patakata. Mr. Abdus Samad Bepari is the petitioner no. 7 in the present writ petition. The order dated 30.03.2022 had referred to a Resolution dated 23.09.2021 taken in a meeting of the General Standing Committee, South Salmara Anchalik Panchayat whereby the present petitioner no. 7 was allowed to collect the revenue from the market named *Patakata Hat* w.e.f. 01.04.2022 to 30.06.2022. By the order dated 30.03.2022, Mr. Abdus Samad Bepari was requested to deposit a sum of Rs. 30,000/- for collecting the revenue at Patakata Market for the 3 [three] months period from 01.04.2022 to 30.06.2022.

15. The respondent no. 8 who has filed a counter affidavit, has stated in the paragraph no. 4 of the said affidavit that initially, the market named

Patakata Hat was being operated in the subject-lands of the petitioners but the subject-lands were also eroded by the River Brahmaputra. After erosion of the subject-lands, the market named *Patakata Hat* is presently running over the patta lands of [i] Joynal Abedin, [ii] Pashan Ali, [iii] Ayesha Khatun, [iv] Rokeya Khatun, [v] Roushonara Khatun, [vi] Rashida Khatun, [vii] Merena Khatun, [viii] Shahida Khatun and [ix] Amjad Hussain. It is further stated that the respondent no. 8 has taken the plots belonging to those persons on lease for 1 [one] year by executing three nos. of Tenancy Agreements dated 02.07.2022, dated 04.07.2022 and dated 05.07.2022 respectively. In his counter affidavit, the respondent no. 8 has further averred that during the pendency of the dispute, the Chief Executive Officer, South Salmara Mankachar Zilla Parishad requested the Circle Officer, South Salmara Revenue Circle to make a field verification regarding the existence of the market named *Patakata Hat*. The Circle Officer, South Salmara Revenue Circle made a field verification and submitted an Enquiry Report vide letter no. SSC-23/2021/28 dated 20.07.2022. As per the said Enquiry Report, only a piece of land measuring 1 Bigha 9 Lessas [01B-09L], belonging to the present petitioners, is found being utilized for the market named *Patakata Hat*. The respondent no. 8 has further contended that the said piece of land measuring 1 Bigha 9 Lessas [01B-09L], covered by Dag no. 435 & Patta no. 236, also got eroded in the meantime.

16. Section 55 of the Assam Panchayat Act, 1994 reads as under :-

55. Power to acquire, hold or dispose of property –

[1] An Anchalik Panchayat shall have the power to acquire, hold and dispose of property and to enter into contract :

Provided that in all cases of acquisition or disposal of immovable property, the Anchalik Panchayat shall obtain the previous approval of the Government through Zilla Prishad.

[2] All roads, buildings or other works constructed by an Anchalik Panchayat with its own fund shall vest in it.

[3] The State Government may allocate to an Anchalik Panchayat any public property situated within its jurisdiction, and

thereupon such property shall vest in and come under the control of the Anchalik Panchayat.

[4] Where an Anchalik Panchayat requires land to carry out any of the purpose of this Act, it may negotiate with the persons having interest in the said land, and if it fails to reach at an agreement, it may make an application to the Deputy Commissioner of the district for acquisition of land, who may, if he is satisfied that the land is required for a public purpose, take steps where permitted by law to acquire the land under the provision of the relevant Land Acquisition Act, and such land shall on acquisition, vest in the Anchalik Panchayat.

17. From Section 55 of the Assam Panchayat Act, 1994, it is evident that an Anchalik Panchayat has the power to acquire, hold and dispose of property and to enter into contract. Whenever an Anchalik Panchayat requires land to carry out any of the purpose provided in the Act, it may negotiate with the persons having interest in the said land, and if the Anchalik Panchayat fails to reach at an agreement, it may make an application to the Deputy Commissioner of the district for acquisition of land, who may, if he is satisfied that the land is required for public purpose, take steps where permitted by law to acquire the land under the relevant statute and such land shall on acquisition, vest in the Anchalik Panchayat.

18. Section 105 of the Assam Panchayat Act, 1994 has provided the authority to the Anchalik Panchayat for settlement of all markets within the territorial jurisdiction of the Anchalik Panchayat 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.

19. At this stage, it is apposite to mention Section 107 of the Assam Panchayat Act, 1994, which had provided powers of settlement of private markets [hats] under the jurisdiction of a Gaon Panchayat within the territorial jurisdiction of a Anchalik Panchayat by the Standing Committee

of the concerned Gaon Panchayat to be constituted under Section 22 of the Assam Panchayat Act, 1994. Section 107 states that the powers of settlement of private hats, ghats and fisheries under the jurisdiction of the Gaon Panchayat shall be vested in the Standing Committee as under sub-section [1][i] of Section 22.

20. From the sequence of events, mentioned hereinabove, it transpires that the market named *Patakata Hat* was being operated under the aegis of South Salmara Anchalik Panchayat from private patta lands atleast from the Panchayat Financial Year : 2017-2018 onwards. From the Deed of Agreement annexed to the case papers here, it has emerged that the authorities in the South Salmara Anchalik Panchayat have been operating the market named *Patakata Hat* under its aegis from private patta lands by executing deed of agreements, which are not registered under the provisions of the Registration Act, 1908. The Agreement dated 24.06.2022 executed between the present petitioner no. 1 and the Executive Officer, South Salmara Anchalik Panchayat which was styled as 'Agreement of Lease' was only a notarized one. The notarized agreement styled as 'Agreement of Lease' dated 24.06.2022 was executed for a lease period of one year from 01.06.2022 to 31.05.2023. Section 17 of the Registration Act, 1908 has specified the documents which are compulsorily to be registered. As per Clause [d] of sub-section [1] of Section 17 of the Registration Act, 1908, leases of immovable property from year to year, or for any term exceeding one year, or reserving a yearly rent is to be compulsorily registerable. The definition of 'lease' is provided in Section 105 of the Transfer of Property Act, 1882. As per Section 105, a lease of immovable property is a transfer of a right to enjoy such property, made for a certain time, express or implied, or in perpetuity, in consideration of a price paid or promised, or of money, a share of crops, service or any other thing of value, to be rendered periodically or on specified occasions to the transferor by the transferee, who accepts the transfer on such terms. In Section 107 of the Transfer of Property Act, 1882, how a lease is made, is provided. A lease of immovable property from year to year, or for any term

exceeding one year or reserving a yearly rent, can be made only by a registered instrument.

21. What has emerged from the Deed of Agreement dated 24.06.2022 is that the South Salmara Anchalik Panchayat by executing a notarized agreement styled as 'Agreement of Lease' on 24.06.2022 had derived benefits in the form of Rs. 36,000/- for the entire year by allowing the other party to the said Deed of Agreement to collect tolls, etc. from the market named *Patakata Hat*, which was allowed to run under the aegis of South Salmara Anchalik Panchayat. It is contended on behalf of the respondent no. 8 that he had executed three tenancy agreements of one year duration with land owners of private patta lands wherefrom he has been operating the market named *Patakata Hat* under the aegis of South Salmara Anchalik Panchayat and South Salmara Mankachar Zilla Parishad by paying an amount of Rs. 1,05,000/- to the Panchayat authorities for the period of 1 [one] year from 01.07.2022 to 30.06.2023. Those tenancy agreements, on scrutiny, are found to be only notarized ones. It is trite to mention that a lease deed creating tenancy for one year on fixed rent payable in advance is to be registered. Both the petitioners and the respondent no. 8 have, thus, made conflicting claims that the market named *Patakata Hat* is being run from private patta lands. But, what is common in their otherwise conflicting claims is that the market named *Patakata Hat* was/is operated under the aegis of South Salmara Anchalik Panchayat and for allowing them to operate the same, a sum is being collected by the South Salmara Anchalik Panchayat. The Panchayat authorities had/have allowed the private persons to operate the market named *Patakata Hat* on the basis of those notarized agreements styled as lease agreements, under the aegis of South Salmara Anchalik Panchayat/South Salmara Mankachar Zilla Parishad, without any tender process.

22. Section 107 of the Assam Panchayat Act, 1994 came for consideration before a Division Bench of this Court in **Rupam Talukdar vs.**

State of Assam and others, reported in 2009 [4] GLT 126. After considering the provisions of Section 107 of the Assam Panchayat Act, 1994 along with Article 300-A and Article 19[1][g] of the Constitution of India, Section 107 of the Assam Panchayat Act, 1994 has been declared unconstitutional. It has been held that a landowner is entitled to carry on the business of running a market on his private lands and for running such a market on private lands, no kind of permission or licence is required to be obtained from any of the authorities under Assam Panchayat Act, 1994. The another Division Bench in **Jainal Abedin and others vs. State of Assam and others**, reported in 2010 [2] GLT 17 has followed the decision in **Rupam Talukdar** [supra] and has gone on to held that there can be no manner of doubt that the provisions of the Assam Panchayat Act, 1994 cannot be applied to give settlement of markets set up over private lands by the Panchayat authorities. At the same time, it is held that the Panchayat authorities are entitled to give settlement of markets set up on Government or Panchayat lands.

23. From the aforesaid provisions contained in the Transfer of Property Act, 1882, the Registration Act, 1908, the Assam Panchayat Act, 1994 and the law declared by the two Division Benchs in **Rupam Talukdar** [supra] and **Jainal Abedin** [supra], it is evidently clear that a landowner can operate a private market in its own private lands without requiring any permission or licence from any of the Panchayat authorities under the Assam Panchayat Act, 1994. But, such private market in private lands may be subject to other laws of the land. Any Anchalik Panchayat if it wants to operate a market from any private patta lands, not belonging to Government or Panchayat, can operate such a market therefrom only after entering into a valid agreement complying with the provisions of Section 55 of the Assam Panchayat Act, 1994. If the period of holding the immovable property is for a period of one year or more, then the same has to be in compliance of the provisions of the Transfer of Property Act, 1882, the Registration Act, 1908, and the Assam Panchayat Act, 1994. If such kind of lease agreement for one year or more is entered by any Anchalik

Panchayat and the Anchalik Panchayat wants to operate a market on such lands taken on lease for a period of one year, it is obligated to follow the provisions of settlement prescribed in Section 105 of the Assam Panchayat Act, 1994 read with Section 109[6] of the Assam Panchayat Act, 1994.

24. From the discussion made above, it has emerged the South Salmara Anchalaik Panchayat and/or the South Salmara Mankachar Zilla Parishad had allowed to run the market named *Patakata Hat* under their aegis by entering arrangement, which were not permissible under the law. Such kind of arrangement cannot be allowed to continue. It is accordingly ordered. Considering the fact that the respondent no. 8 is allowed the settlement till 30.06.2023 by the respondent Panchayat authorities, he may run the same only till 30.06.2023 and not thereafter.

25. In view of the above, this Court is of the firm view that the manner in which the respondent South Salmara Anchalik Panchayat/South Salmara Mankachar Zilla Parishad had allowed the market name *Patakata Hat* to be operated under its aegis by collecting an annual amount without executing any lease agreement in compliance with the provisions of the Transfer of Property Act, 1882 and the Registration Act, 1908 is *ex facie* unlawful. It is, therefore, observed that henceforth, the South Salama Anchalik Panchayat/South Salmara Mankachar Zilla Parishad shall not allow the market named *Patakata Hat* to be run without conforming to the provisions of law.

26. With the observations made and directions given above, the writ petition is disposed of in the afore-said terms. There shall, however, be no order as to cost.

JUDGE