

GAHC010164392023



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

Case No. : WP(C)/4313/2023

M/S KALAIKHOWA PACHIM KHALAIBHANGA MATSYAJIBI SAMABAI
SAMITY LIMITED
REPRESENTED BY ITS PRESIDENT SRI RAJU BISWAS, S/O- LATE JITENDRA
MOHAN BISWAS, R/O- VILL.- PALASABARI, P.O. TETELISORA, P.S.
KAMPUR, DIST. NAGAON, PIN- 782426, ASSAM

VERSUS

THE STATE OF ASSAM AND 3 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE
GOVERNMENT OF ASSAM, FISHERY DEPARTMENT, DISPUR, GUWAHATI-
06.

2:THE JOINT SECRETARY TO THE GOVT. OF ASSAM
FISHERY DEPARTMENT
DISPUR
GUWAHATI-06.

3:THE DEPUTY COMMISSIONER
NAGAON
PIN- 782001.

4:M/S NISHARI HARIA NADI
SAMABAI SAMITTEE LIMITED
REPRESENTED BY ITS SECRETARY SRI NAVA KUMAR BISWAS
P.O. TETELISARA
DIST. NAGAON
ASSAM
PIN- 782426

Advocate for the Petitioner : MR B D DAS

Advocate for the Respondent : GA, ASSAM

**BEFORE
HONOURABLE MR. JUSTICE MANISH CHOUDHURY**

ORDER

Date : 14-08-2023

Heard Mr. B.D. Das, learned Senior Counsel assisted by Mr. H.R. Das, learned counsel for the petitioner; Mr. S.R. Baruah, learned Junior Government Advocate, Assam for the respondent nos. 1 – 3; and Mr. H. Ali, learned counsel for the caveator/respondent no. 4.

2. A fishery named '14/15 No. Nishari Haria Fishery, District – Nagaon' [the Fishery', for short], a 60% category fishery, was initially settled with the respondent no. 4 society for a period of 7 [seven] years from 01.11.2013 to 31.10.2020 vide an Order of Settlement dated 01.11.2013. The period of settlement stood extended for another 2 [two] years vide an Order dated 27.10.2020 and the said 2 [two] years extension period expired on 31.10.2022. When the respondent no. 4 society submitted another application for extension on 09.09.2022 followed by a writ petition, W.P.[C] no. 6297/2022 with a grievance about non-consideration of the application for extension, the Court taking note of the fact that the respondent no. 4 society had made a prayer for extension for the second time, disposed of the writ petition by an Order dated 26.10.2022 with a direction to the State Government in the Fishery Department to examine whether the criteria of 'exceptional special case' had been made out by the respondent no. 4 society for extension or not. A field enquiry was conducted and it was found that no major encroachment of the Fishery area was in existence, as alleged by the respondent no. 4 society. After hearing the

parties and perusal of the records, reports, etc., the State Government in the Fishery Department passed an Order on 04.07.2023 holding that the respondent no. 4 society could not make out an 'exceptional special case' for further extension of the period of settlement. It was further observed in the Order dated 04.07.2023 that after 2 [two] years of extension, the respondent no. 4 society had also enjoyed the right over the Fishery for a period more than 6 [six] months pending further decision from the Government. The Order dated 04.07.2023 had further observed that the respondent no. 4 society was yet to deposit about Rs. 10,00,000/- towards revenue for the Fishery. While rejecting the prayer for extension of the respondent no. 4 society, the Deputy Commissioner, Nagaon was directed to take steps for fresh settlement of the Fishery at the earliest with issuance of a Notice Inviting Tender [NIT] after re-assessment of the revenue of the Fishery in terms of Rule 48 of the Assam Fishery Rules, 1953 based on actual area of the Fishery. Despite rejection of the prayer of the respondent no. 4 society on merit, the State Government in the Fishery Department by the Order dated 04.07.2023 had allowed the respondent no. 4 society to run the Fishery in terms of the earlier Order dated 27.10.2020 till the completion of the process of regular settlement, on the purported ground to recoup the amount against their outstanding dues.

3. The present writ petition is filed seeking aside of that part of the Order dated 04.07.2023 whereby the respondent no. 4 society had been allowed to run the Fishery. The petitioner society has claimed that it is a registered cooperative society consisting of 100% fisherman. The petitioner society is desirous to take part in the competitive bidding process to be undertaken as per the provisions of the Assam Fishery Rules, 1953 for settlement of the Fishery. The petitioner society has, therefore, also sought for a direction to the

respondent authorities to issue a fresh Notice Inviting Tender [NIT] inviting bid for settlement of the Fishery.

4. Having regard to the issues raised in the writ petition and the factual matrix involved, the writ petition is taken up for disposal at the motion stage, after hearing the learned counsel for the parties.

5. On 07.08.2023, when the writ petition was moved, Mr. Baruah, learned Junior Government Advocate, Assam has sought time to obtain instructions as regards the status of re-assessment of the revenue of the Fishery and accordingly, the case was ordered to be listed today i.e. on 14.08.2023. Today, Mr. Baruah, learned Junior Government Advocate, Assam has obtained instructions from the office of the Deputy Commissioner, Nagaon Fishery Branch. As per the instructions contained in the letter no. NRF.10/93-99/Pt 1/485 dated 11.08.2023, the process of re-assessment of the Fishery is in progress and the settlement of Fishery would be done shortly.

6. Rule 48 of the Assam Fishery Rules, 1953 has empowered the Deputy Commissioner or the Sub-Divisional Officer with the approval of the Deputy Commissioner, to fix the value of a Fishery, which is required to be settled as per the provisions of the Assam Fishery Rules, 1953.

7. It is not in dispute that the respondent no. 4 Society has been operating the Fishery continuously pursuant to the original Order of Settlement dated 01.11.2013 and subsequent Order of Extension dated 27.10.2020. As on date, the respondent no. 4 Society has run the Fishery for a period of more than 9 years 8 months. The Order dated 04.07.2023 has clearly reflected that the respondent no. 4 society, at the time of passing the said Order, was in arrears as

the respondent no. 4 Society did not deposit a substantial amount of revenue amounting to Rs. 10,00,000/- in respect of the Fishery. When the State Government has reached a clear finding in the said Order dated 04.07.2023 to the effect that the respondent no. 4 Society could not make out an 'exceptionally special case', as directed by this Court in the Order dated 26.10.2022 passed in the writ petition, W.P.[C] no. 6297/2022, and it was in arrears for an amount of Rs. 10,00,000/- making it a defaulter, there could not be any valid and justified reason for the State Government in the Fishery Department to allow the respondent no. 4 Society to run the Fishery in terms of the earlier Order dated 27.10.2020 for any period beyond 31.10.2022, for the purpose of recouping the amount against the outstanding dues. By taking into consideration all such attending facts and circumstances of the case, this Court is of the unhesitant view that the State respondents shall complete the exercise of re-assessment of revenue of the Fishery as per the provisions of Rule 48 of the Assam Fishery Rules, 1953 at the earliest, by completing it within an outer limit of 1 [one] month from today, and thereafter, initiate the competitive bidding process for settlement of the Fishery, a 60% category fishery, as per the provisions of the Assam Fishery Rules, 1953 by publication of a Notice Inviting Tender [NIT] for wider participation. Distribution of State Largesses in the form of settlement of a 60% category fishery for an indefinite period, by way of extension is not contemplated in the Assam Fishery Rules, 1953. One of the prime objectives behind settling a 60% category fishery by the tender process is to earn maximum revenue to the State Exchequer. The respondent no. 4 society has been allowed to run the Fishery by the Order of Extension dated 27.10.2020 for the period till 31.10.2022 and also for the period beyond 30.10.2022 till date, at a rate which was fixed by the original Order of Settlement dated

01.11.2013. Therefore, it is further observed that the respondent no. 4 Society shall not be allowed to run the Fishery beyond a period of 1 [one] month from today, that is, beyond 13.09.2023. In case the process of re-assessment of revenue of the Fishery is not complete within a period of 1 [one] month from today due to any exceptional reason beyond the control of the State respondents, the State respondents shall run the Fishery by themselves on and from 14.09.2023 till the completion of the competitive bidding process initiated by publication of the NIT, as directed. It is expected that the competition bidding process is completed as expeditiously as possible, preferably within a period of 6 [six] weeks from the date of publication of the NIT.

8. With the observations made and the directions given above, the writ petition is disposed of. No cost.

JUDGE

Comparing Assistant