

GAHC010178572015



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

Case No. : WP(C)/5760/2015

M/S JUGONIAR A PROPRIETORSHIP FIRM and ANR.
REP. BY BY ITS PROPRIETOR SRI RASEL HUSSAIN.

2: SRI RASEL HUSSAIN
S/O SRI HAIDAR HUSSAIN R/O SANTIPUR HILL SIDE
P.O. SANTIPUR P.S. BHARALUMUKH DIST. KAMRUP M
ASSAM

VERSUS

THE STATE OF ASSAM AND 4 ORS
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM,
DEPARTMENT OF INDUSTRIES AND COMMERCE, SACHIVALAYA, DISPUR,
GUWAHATI -06.

2:THE DIRECTOR

INDUSTRIES
ASSAM
BAMUNIMAIDAM
GUWAHATI-21.

3:THE ASSAM INDUSTRIAL INFRASTRUCTURE DEVELOPMENT
CORPORATION
HAVING ITS OFFICE AT INDUSTRIAL ESTATE
BAMUNIMAIDAM
GUWAHATI -21.

4:THE MANAGING DIRECTOR

ASSAM INDUSTRIAL INFRACTURE DEVELOPMENT CORPORATION
INDUSTRIAL ESTATE
BAMUNIMAIDAM
GUWAHATI-21.

5:THE GENERAL MANAGER

DISTRICT INDUSTRIES and COMMERCE CENTRE
KAMRUP M
BAMUNIMAIDAM
GUWAHATI -21

For the petitioner(s) : Mr. S. Barthakur, Advocate

For the respondent(s) : Mr. M. Mahanta, Advocate

:::BEFORE:::

HON'BLE MR. JUSTICE DEVASHIS BARUAH

19.12.2023

The instant writ petition has been filed by the petitioner challenging the notification No.CL.129/2002/63 dated 20.04.2006 issued by the Additional Chief Secretary to the Govt. of Assam Industries & Commerce Department; the communication No.AIIDC/1283/2013-14/3212 dated 20.09.2013 issued by the Managing Director of AIIDC as well as have sought for a writ in the nature of mandamus not to impose the enhanced rate on the writ petitioner in respect of the industrial shed retrospectively w.e.f. 01.01.2005.

2. The facts as would be discernible from the writ petition is that the petitioner herein had taken a plot of land measuring 1 katha 4 lecha covered by Dag No. 718 and 134 included in patta No.829 at village- Fatasil, Kalapahar Industrial area for running a manufacturing unit of steel furniture. In that regard, a deed of lease was executed between the government representative and the petitioner's father on 06.11.1989. By the notification dated 20.04.2006, the Additional Chief Secretary to the Govt. of Assam, Industries and Commerce Department

enhanced the rate of Industrial shed and industrial rate of the Industrial estate, Bamunimaidam, CITI, Kalapahar. In terms of the said notification, the rent for the industrial shed was raised to Rs.2.50 and that of the open space for Rs.0.50 to Rs.0.70. In the similar manner, by the said notification dated 20.04.2006, increase in the rates in respect of the Industrial estate, Bamunimaidam CITI and Industrial area Kalapahar were mandated. As the instant writ petition pertains to the Industrial Area Kalapahar, it is relevant to take note of that the rate for the shed rent which was Rs.2.50 was kept intact at Rs.2.50, but the rent rate was increased from Rs.0.50 to Rs.0.70

3. It further reveals that the industrial estate which was earlier managed by the Industries Department of the Govt. of Assam was taken over in the year 2007 by the AIIDC. The petitioner claimed that the petitioner had reconstructed the factory and submitted representation on 05.05.2007 before the authority praying to allow him to pay lease rent in respect of the open space rather than the shed. It is also claimed by the petitioner that the respondent authority duly accepted the same and charged the petitioner the lease rent only for the open space rather than that of the shed and thereupon the petitioner was regularly paying rent @ 0.70 per Sq.ft which comes around to Rs. 8250/- per-month.

5. It is also seen from the records that the Managing Director of the AIIDC by the communication dated 20.09.2013 informed that the lease rent of the factory shed was billed as per the old rate at Rs.15 per 100 sq.ft from July, 1996 onwards. However, the lease rent was increased to Rs.2.50 per sq.ft for the factory shed and Rs.0.70 Sq.ft from 01.01.2005. It was also mentioned that due to some mistake in the billing section of the Office, the said allotment was billed as per the factory shed in the old rate w.e.f. 01.01.2005 (Rs.15/- per 100 sq.ft/month) and as open space in the new rate w.e.f. 1st July, 2007 (Rs.0.70 per sq.ft per month) instead of the new date as Industry shed effective from 01.01.2005.

6. Accordingly, a revised bill was sent to the petitioner and directed the petitioner was directed to deposit the difference of the billed amount to the tune of Rs.6,66,270/-. It is also seen that the petitioner had filed an appeal before the authorities concerned which as per the petitioner was kept pending. On the other hand, as the respondent authorities were insisting on the payment of the entire amount, the petitioner therefore approached this Court by filing the

instant petition.

7. The record reveals that pursuant to the filing of the instant writ petition, notice was issued on 21.09.2015 and in the interim, it was directed that if the petitioner have deposited the amount of Rs.2,10,000/- by 21.09.2015, the balance amount of Rs.6,66,270/- be not insisted upon by the respondent authorities.

8. The record also reveals that affidavit-in-opposition was filed by the respondents No.3 and 4 on 15.12.2021. Before taking into account the contents of the said affidavit, this Court is of the opinion that it is pertinent to take note of the submission of Mr. S. Borthakur, learned counsel for the petitioner who submits that against the increase of the rent by the notification dated 20.04.2006 various lessees have approached this Court challenging the increase in the rent. However, the petitioner did not approach. Learned counsel for the petitioner submitted that those persons who approached this Court, orders were passed by this Court to the effect that for the period 01.01.2005 to 30.06.2007, the increased rate should not be insisted upon as the lessees have agreed to pay at the enhanced rate from 01.07.2007. In the said perspective, this Court now finds it relevant to take note of the affidavit-in-opposition filed by the respondent Nos. 3 and 4.

9. A perusal of the said affidavit filed by the respondents and more particularly at paragraph-10, it reveals that those persons who have approached this Court and had obtained the order, benefit of not imposing the enhanced rate during the period from 01.01.2005 to 30.06.2007 was granted. However as the petitioner herein did not approach, the said benefit was not given to the petitioner.

10. Taking into account the above, this Court is of the opinion that if the petitioner herein is similarly situated with the lessees who have been granted the benefit of the existing rate during the period from 01.01.2005 to 30.06.2007, then the petitioner herein also should be given the similar treatment.

11. Accordingly, this Court therefore, dispose of the instant writ petition thereby directing the respondent authorities and more particularly the Managing Director of AIIDC not to impose the enhanced rate in terms of the notification dated 20.04.2006 for the period from 01.01.2005 to

30.06.2007. However, as regards the period from 01.07.2007, the petitioner herein would be liable to pay as per the enhanced rate as stipulated in the notification dated 20.04.2006 or such other rate which have been fixed from time to time thereafter. Accordingly, the communication dated 20.09.2013 issued by the MD, AIIDC is set aside and the respondents are given the liberty to issue a fresh demand in terms with the above observations.

12. With the above observation and direction, the instant writ petition stands disposed of.

JUDGE

Comparing Assistant