

GAHC010182062018



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

Case No. : WP(C)/5730/2018

M/S. BIKALPA ENTERPRISE
REP. BY ONE OF ITS PARTNERS DEBAJIT DEKA, R/O- PURBACHAL NAGAR,
NAVAGIRI ROAD, P.S- CHANDMARI, P.O- CHANDMARI, DIST- KAMRUP(M),
ASSAM, PIN- 781003

VERSUS

THE STATE OF ASSAM AND 6 ORS.
REP. BY THE CHIEF SECRETARY, GOVT OF ASSAM, DISPUR-6

2:THE COMMISSIONER AND SECRETARY
TRANSPORT DEPTT
GOVT OF ASSAM
DISPUR-6

3:THE COMMISSIONER OF TRANSPORT DEPTT
GOVT OF ASSAM
DISPUR- 6
GOVT OF ASSAM
DISPUR- 6

4:DIRECTOR GENERAL OF POLICE
ASSAM
ULUBARI- 07

5:SUPERINTENDENT OF POLICE
KOKRAJHAR
ASSAM
PIN- 783370

6:DISTRICT TRANSPORT OFFICER
KOKRAJHAR

ASSAM
PIN- 783376

7:DEPUTY SECRETARY
TRANSPORT DEPTT
GOVT OF ASSAM
DISPUR- 0

Advocate for the Petitioner : MR A K DAS

Advocate for the Respondent : GA, ASSAM

BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH

ORDER

Date : 27-09-2023

1. The instant writ petition has been filed by the petitioners challenging the termination of the lease agreement vide order dated 12.07.2018 as well as also seeking mandamus directing the respondents to refund/reimburse the money paid as annual lease amount and the expenditure borne by the petitioners in purchasing a plot of land measuring 3 bighas 4 kathas of land and the two Weighing Machines installed at Srirampur M.V Checkgate.

2. From the perusal of the materials on record, it is seen that initially an agreement was entered into between the Government of Assam in the Transport Department and the petitioners on 26.04.2001 for installation of a Weigh Bridge at Srirampur. Subsequently on 07.05.2003 another deed of agreement was made with the Transport Department, Govt. of Assam and the petitioners, and the validity of the said agreement was for a period of 10 years subject to the satisfaction of the Govt. of Assam, Transport Department. This

agreement which was entered into between the petitioners and the Govt. of Assam, was put to challenge before this court in WP(C) No.4052/2003 and in view of the certain interim orders the said Weigh Bridge for which the agreement was entered into could not be operationalised till the period of 15.06.2010 when the interim order passed by this Court in WP(C) No.4052/2003 was vacated.

3. It is further the case of the petitioners that although the petitioners were permitted to undertake compulsory weighing of the goods laid in Trucks at Srirampur M.V Gate on the basis of the agreement dated 07.05.2003, but on account of certain disruptions being made by the miscreants, the petitioners were not in a position to operationalise the said Weigh Bridge for which on 03.06.2011 a complaint was also lodged before the Commissioner of Transport as well as before the Superintendent of Police, Kokrajhar to provide adequate security persons for resumption and recovery.

4. It has been also stated that in the meantime the respondent authorities were considering granting extension to the petitioners up-till 30.06.2020. However, vide the impugned order dated 12.07.2018 it was held that as the agreement dated 07.05.2003 had no provision for extension beyond 2013, granting of extension to the petitioners did not arise. It was mentioned that the agreement automatically stood cancelled on the day when the agreement ended. It is under such circumstances that the instant writ petition has been filed seeking relief as aforementioned.

5. It reveals from the records that on 27.08.2018, this court had issued notice only on the issue pertaining to recovery of dues by

the petitioners which was sought for in prayer (d). The record further reveals that the respondents had also filed affidavit wherein the claims of the petitioners had been denied.

6. I have heard Mr. K.N Choudhury, learned senior counsel for the petitioners who submits that the petitioners have sought for refund/reimbursement of the money paid as annual lease i.e., an amount of Rs.2,50,000 per year which the petitioners has duly deposited with the respondent Transport Department and also the expenditure which was incurred by the petitioners for purchasing of the land as well as the two weighing machines installed at Srirampur M.V Check gate.

7. I have also heard Ms. M.D. Borah learned counsel appearing on behalf of the Transport Department who submits that from the materials on record it is not clear that the petitioners was not able to function during the period from 2010 to 2014 and as such the question of reimbursing or refunding the said amount to the petitioners does not arise. Further to that, it was also submitted that from a perusal of the agreement it would not show that the petitioners had purchased the land after duly intimating the government that they are going to purchase the land and the weighing machines and as such the question of reimbursing the said amounts to the petitioners as claimed did not arise.

8. This court after giving due consideration to the matter finds that there are disputed questions of facts which cannot be adjudicated upon as to whether the petitioners could or could not operate the weigh bridge during the period from 2010 to 2014 or as

to whether the petitioners had duly informed the respondent authorities before purchasing the land in question and that they would claim the refund of the said amount as well as, as to whether the petitioners have also informed the respondent authorities prior to purchasing the two Weighing Machines. These aspects of the matter could only be adjudicated by a competent Civil Court.

9. This court also finds it relevant to take note of another submission of Mr. K.N Choudhury, learned senior counsel wherein he submits that it is apparent from the facts admitted that though the agreement was entered into with effect from 07.05.2003 and for a period of 10 years but on account of various interim orders passed by this Court, the petitioners could not avail the benefits on the basis of the agreement and till 15.06.2010 the petitioners could not operationalise the Weigh Bridge and as such, the non granting of the extension have caused serious prejudice to the petitioners for which the petitioners could not recover the investments so made.

10. On the other hand Ms. M D Borah appearing on behalf of the Transport Department submits that vide the interim order dated 10.06.2003, only clause 5 of the agreement dated 07.05.2003 was challenged and there was no bar on the part of the petitioners to run the Weigh Bridge.

11. This court is of the opinion that these are all conflicting claims which cannot be adjudicated upon, not only on the question of disputed question of facts but also on the question of ascertaining the quantum of compensation. Under such circumstances, this court is of opinion that a writ sought for by way of the present writ petition

cannot be issued, for which the instant writ petition stands dismissed.

12. Be that as it may this court observes and clarifies that the petitioners herein shall be at liberty to file appropriate proceedings before the competent civil Court seeking compensation and damages from the respondent Transport Department. The dismissal of the instant writ petition for the reasons aforesaid shall not prejudice the petitioners in such proceeding so initiated.

13. This court also finds it relevant to observe that the petitioners have been pursuing their claims diligently and bonafidely before this court and under such circumstances the petitioners shall be entitled to the benefit of Section 14 of the Limitation Act, 1963 during the period the writ petition was pending i.e., with effect from 16.08.2018 till today both inclusive shall be excluded while computing the period of limitation.

14. In view of the above observations and directions the writ petition stands dismissed subject to the observations and directions contained in paragraphs 12 and 13 hereinabove.

JUDGE

Comparing Assistant