

GAHC010188302023



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

Case No. : Review.Pet./106/2023

GARJAN BULLATJAN MATCHAJIBI MINPALAN SAMABAY SAMITY
LIMITED
REP. BY ITS PRESIDENT SRI SANJAY KR. DAS, AGED ABOUT 37 YEARS,
HAVING ITS REGISTERED OFFICE AT VILL.- SATDOLA, P.O. AND P.S. HAJO,
DIST.- KAMRUP, ASSAM, PIN- 781102.

VERSUS

THE STATE OF ASSAM AND 4 ORS.
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM,
FISHERY DEPTT., DISPUR, GHY, PIN- 781006, KAMRUP (M) DISTRICT,
ASSAM.

2:ASSAM FISHERIES DEVELOPMENT CORPORATION LIMITED
VIP ROAD
CHACHAL
GUWAHATI
PIN- 781036 KAMRUP (M) DISTRICT
ASSAM
REP. BY ITS MANAGING DIRECTOR.

3:THE CHAIRMAN
ASSAM FISHERIES DEVELOPMENT CORPORATION LTD.
VIP ROAD
CHACHAL
GUWAHATI
PIN- 781036 KAMRUP (M) DISTRICT
ASSAM.

4:THE MANAGING DIRECTOR
ASSAM FISHERIES DEVELOPMENT CORPORATION LTD.
VIP ROAD
CHACHAL
GUWAHATI

PIN- 781036 KAMRUP (M) DISTRICT
ASSAM.

5:THE PROJECT MANAGER
ASSAM FISHERIES DEVELOPMENT CORPORATION LTD.
VIP ROAD
CHACHAL
GUWAHATI
PIN- 781036 KAMRUP (M) DISTRICT
ASSAM

Advocate for the Petitioner : MR. S K GOSWAMI

Advocate for the Respondent : GA, ASSAM

Linked Case : WP(C)/6742/2022

GARJAN BULLATJAN MATCHAJIBI MINPALAN SAMABAY SAMITY LIMITED
REP. BY ITS PRESIDENT SRI SANJAY KR. DAS
AGED ABOUT 37 YEARS
HAVING ITS REGD. OFFICE AT VILL- SATDOLA
P.O. AND P.S. HAJO
DIST.- KAMRUP
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ASSAM

Advocate for : MR. S K GOSWAMI
Advocate for : GA
ASSAM appearing for THE STATE OF ASSAM AND 4 ORS

BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA

ORDER

Date : 07.09.2023

Heard Mr. S.K. Goswami, learned counsel for the petitioner. Also heard Mr. P. Sarma, learned standing counsel for the respondent nos.2 to 5.

2. This review petition has been preferred in respect of the order dated 02.08.2023, passed in WP(C) 6742/2022.

3. The learned counsel for the petitioner has submitted that in paragraph 8, reference is made to "fisheries are removed". In the said regard, it has been submitted that it is the "fishes" which are to be removed and not the "fishery". It is also submitted that the petitioner was carrying out fishery in Tank

Nos.1, 2 and 3 of the Garjan Bullatjan fishery and therefore, the reference to the same may be added in paragraph 9 of the order.

4. Per contra, the learned standing counsel for the respondent nos.2 to 5 has submitted that against the order dated 02.08.2023, passed in WP(C) 6742/2022, the respondents have already preferred an appeal and accordingly, it is submitted that the time limit for removal of the fishes may not be granted as the respondents do not intend to grant any permission to the petitioner to remove the fishes.

5. As regards to the submission made by the learned standing counsel for the respondent nos.2 to 5, the Court is of the opinion that it is for the said respondents to take a call as to whether they would comply with the directions contained in paragraph 8 and 9 of the order dated 02.08.2023, passed in WP(C) 6742/2022.

6. Nonetheless, in this petition, the review of the order has been sought for to incorporate certain words, which appears to be clarificatory in nature and would not change the nature of the order. Therefore, the filing of an appeal against the order under review would not come in the way for this Court to exercise review jurisdiction. Moreover, the learned counsel for the review petitioner has submitted that till date a copy of the appeal memo has not been served on him as a caveator. The petitioner is only seeking clarification in the order so as to remove the fishes from Tank Nos.1, 2 and 3 of the said fishery, which appears to be in consonance with the stand taken in the writ petition. Accordingly, the word "fisheries" appearing in 2nd line of paragraph 8 is substituted by the word "fishes". Similarly, in paragraph 9, reference to Tank Nos.1, 2 and 3 is also included.

7. The substituted paragraph 8 and 9 of order dated 02.08.2023,

passed in WP(C) 6742/2022 shall now be read as follows:

“8. Under no circumstances, the fishes can be equated to an immovable property and it cannot be accepted that if fishes are removed it would amount to allowing the petitioner to realize the investment made. There is nothing on record in the two files produce by the learned counsel for the petitioner that any fish count was made before handing over the fishery to the petitioner so as to keep the stock of fishes which are actually handed over to the petitioner. If the petitioner is in possession of the fishery in question since the year 2020, it cannot be said that the fishes belong to any third party or would belong to the respondent authorities.

9. Accordingly, the Court is constrained to allow the oral prayer made by the learned counsel for the petitioner, who has made a prayer to allow him to leave the fishery with the fishes containing in Tank Nos.1, 2 and 3 of the Garjan Bullatjan fishery. Accordingly, the Court is inclined to provide that on a production of the certified copy of this order before the Managing Director, AFDC, the said authority shall provide the petitioner an outer period of ten days from the date from which the permission is granted by the Managing Director, AFDC to the petitioner to remove the fishes from Tank Nos.1, 2 and 3 of the fishery in question.”

8. This order shall be read together with order dated 02.08.2023, passed in WP(C) 6742/2022.

9. Accordingly, this review petition stands allowed to the extent as indicated above.

JUDGE

Comparing Assistant