

GAHC010197272017



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

Case No. : WP(C)/3414/2017

KHETRADHAR KONWAR
S/O SRI SARBESWAR KNOWAR R/O PATHALIBAM KAMALDOI GAON, P.O.
PATHALIBAM, P.S. MORAN DIST. DIBRUGARH, ASSAM

VERSUS

THE STATE OF ASSAM and 3 ORS.
REP BY THE COMMISSIONER AND SECRETARY PANCHAYAT AND RURAL
DEVELOPMENT DEPARTMENT, DISPUR, JANATA BHAWAN, GUWAHATI-06.

2:THE EXECUTIVE OFFICER-CUM- BLOCK DEVELOPMENT OFFICER
KHOWANG DEVELOPMENT BLOCK
TILOI NAGAR DIBRUGARH.

3:THE SECRETARY
OF THE KHOWANG ANCHALIK GAON PANCHAYAT
TILOI NAGAR
DIBRUGARH.

4:KHOWANG ANCHALIK PANCHAYAT
REP. BY SECRETARY
TILOI NAGAR
DIBRUGARH

Advocate for the Petitioner : MS.M BORAH

Advocate for the Respondent :

**BEFORE
HONOURABLE MR. JUSTICE MANISH CHOUDHURY**

JUDGMENT

Date : 30-01-2023

Heard Mr. H. Buragohain, learned counsel for the petitioner and Mr. N.K. Deb Nath, learned Standing Counsel, Panchayat & Rural Development [P&RD] Department for all the respondents.

2. The instant writ petition under Article 226 of the Constitution of India has been preferred by the writ petitioner seeking *inter alia* a direction to the respondent authorities in the Panchayat & Rural Development [P&RD] Department to allow the petitioner to operate the market named Naharani Weekly Market for an extended period and also for a direction to the said respondent authorities to remit an amount of Rs. 48,801/- to the petitioner as the petitioner had suffered losses for the said amount in operating the Market during the Panchayat Year : 2016–2017.

3. Responding to a Tender Notice dated 01.06.2016 whereby bids were invited by the Khowang Anchalik Panchayat [‘the Anchalik Panchayat’, for short] for settlement of the Naharani Weekly Market under the Anchalik Panchayat & the Dibrugarh Zilla Parishad, District – Dibrugarh for the Panchayat Year : 2016 – 2017 and for the period from 01.07.2016 to 30.06.2017, the petitioner submitted his bid along with other bidders. Upon evaluation of the bids submitted in response to the Tender Notice dated 01.06.2016 in respect of the Naharani Weekly Market [‘the Market’, for short], the Market came to be settled in favour of the petitioner as his bid was found to be a responsive one and the highest valid bid. The Market was settled in favour of the petitioner at his tendered bid value of Rs. 96,101/-. The petitioner accordingly deposited the requisite amount asked for, on 01.07.2016. Thereafter, an Order of Settlement dated 30.07.2016 was issued under the hand of the respondent no. 2.

4. It is the case of the petitioner that after the Market came to be settled in his favour, he had to face a number of difficulties/problems in operating the Market in the subsequent

period. According to the petitioner, due to widening of the National Highway abutting the Market into 4-Lanes, a sizable portion of the Market got affected and as a result, a number of shops located inside the Market area got demolished. The reduction in the Market area adversely affected the volume of business in the shops located inside the Market. Due to such widening of the National Highway, there used to be constant water-logging inside the area of the Market. Further, the reduced area of the Market became muddy and the same had resulted into reduction of the footfalls of the visitors to the Market as the ingress and egress to the Market got restricted. The same had resulted into a skeleton Market for the first 7-8 months of the settlement period. The same had, in turn, resulted in reduction of collection of tolls, etc. substantially and as a result, the petitioner had to suffer heavy financial losses. In addition, there were unauthorized encroachments inside the Market area as some encroachers had illegally set up shops for selling illegal liquor, etc. The atmosphere inside the Market area also got disturbed due to factors like gambling, etc. inside the Market area. Highlighting all such difficulties/problems faced by him, the petitioner as the settlement holder of the Market, stated to have submitted a Representation before the respondent no. 2 on 15.05.2017 with a prayer to extend the period of settlement of the Market in order to recoup the losses he had suffered because of such difficulties/problems, mentioned therein, faced by him and also to grant remission to the extent of Rs. 48,901/- to him.

5. Mr. Deb Nath, learned Standing Counsel, P&RD Department has submitted that the Representation dated 15.05.2017 was placed before the Dibrugarh Zilla Parishad by the respondent no. 2 vide his letter bearing no. KAP/3/2017-18/599 dated 26.05.2017. He has further submitted, on the basis of the records available with him, that the respondent authorities in the Khowang Anchalik Panchayat by the time the Representation was submitted, had already taken a decision to call for fresh tenders to settle the Market for the Panchayat Year : 2017–2018 and the period from 01.07.2017 to 30.06.2018 in its Meeting held on 09.05.2017. It has been further submitted by him that the provisions of the Assam Panchayat Act, 1994 do not allow any extension of the settlement period beyond a period of 1 [one] year.

6. When the writ petition was moved on 07.06.2017, the fact of submission of the

Representation by the petitioner on 15.05.2017 was taken note of. While issuing notice of motion on 07.06.2017, it was observed that the pendency of the writ petition shall not be a bar for the respondents to take a decision on the Representation dated 15.05.2017 in accordance with law. No response has been filed by the respondent authorities till date despite they were put to notice on 07.06.2017 nor the learned Standing Counsel, P&RD Department has been able to make any submission on the fate of the Representation dated 15.05.2017 submitted by the petitioner, the receipt of which was acknowledged by the Anchalik Panchayat. The learned Standing Counsel, P&RD Department has submitted that he has no instruction as to whether any order on the Representation dated 15.05.2017, submitted by the petitioner, has been passed in the meantime or not.

7. I have duly considered the submissions of the learned counsel for the parties and have perused the materials available on record.

8. Section 105[1] of the Assam Panchayat Act, 1994, as amended, has provided that all hats [markets] within the territorial jurisdiction of a Anchalik Panchayat shall be settled 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. 'Panchayat Year', as per Section 2[26][ii], means the year commencing on the first day of July or on such other date as the State Government may by notification appoint.

9. In so far the claim of the petitioner for extension of the period of settlement in his favour beyond the originally settled period of 1 [one] years is concerned, the issue is no longer **res integra** in view of the Division Bench judgment of this Court in **Md. Abdul Barik vs. The State of Assam and others**, reported in **1997 [1] GLT 164**. The Division Bench upon going through the provisions of the Assam Panchayat Act, 1994, more particularly, Section 105, has held that Section 105[1] of the Assam Panchayat Act, 1994 clearly indicates that the Legislature has given a mandate to the concerned Anchalik Panchayat that as far as hats [markets] are concerned, they have to be settled only for a period of 1 [one] Panchayat year and by inviting tenders. It is held that the power of the Anchalik Panchayat is absolutely circumscribed by the provisions of Section 105[1] and the

settlement cannot be for a period of more than 1 [one] year. Further, the settlement has also to be only by inviting tenders. Thus, where a settlement has been made for 1 [one] year already, the period of settlement cannot be extended for any period beyond the period of 1 [one] year. Moreover, after the period of 1 [one] year has expired in respect of a settlement, the next settlement has to be only by inviting tenders from all intending parties and not by extending the settlement of the party in whose favour the settlement had been made for the earlier period.

10. In view of the settled position of law, any prayer made for extension of the settlement period beyond the period made on behalf of any lessee of a market beyond the settlement period of 1 [one] year cannot be considered.

11. In exercise of the powers conferred by Section 41 of the Assam Panchayat Act, 1994, as amended, the State Government has framed a set of rules, 'the Assam Panchayat [Financial] Rules, 2002'. As per Rule 49 of the Assam Panchayat [Financial] Rules, 2002, it is the State Government who has been vested with the power to consider a case of remission of a market, settled under the provisions of the Assam Panchayat Act, 1994, on special grounds viz. flood, natural calamities and any other disturbances which is beyond the control of the locality and the authority. Thus, a settlement holder like the petitioner atleast has a right to be considered for remission by the State Government.

12. In so far as the prayer made by the petitioner for remission is concerned, no instruction has been placed before the Court as regards disposal of the Representation dated 15.05.2017 submitted by the petitioner, that is, whether the same has been considered by the State Government in the meantime or not. If the said Representation dated 15.05.2017 submitted by the petitioner seeking grant of remission to the extent of Rs. 48,901/-, has not been considered till date, then this Court is of the considered view that instead of keeping this writ petition pending, the same can be disposed of with a direction to the respondent no. 2 to forward the Representation of the petitioner, already placed before the respondent no. 2 as is discernible from the letter bearing no. KAP/3/2017-18/599 dated 26.05.2017 of the respondent no. 2, to the respondent no. 1, that is, the Commissioner & Secretary to the

Government of Assam, Panchayat and Rural Development Department for consideration. To facilitate the same, the petitioner shall furnish a copy of the Representation, submitted by him earlier, along with all the documents in support of his such claim and a certified copy of this order before the respondent no. 2 within a period of 2 [two] weeks from today. On such submission, the respondent no. 2 shall forward the same along with a report from his end recording his remarks on the matter of remission to the respondent no. 1 so as to enable the respondent no. 1 to consider the matter of remission in an effective manner and in accordance with law and to pass a speaking order thereafter, preferably within a period of 6 [six] weeks from the date of such receipt. It is accordingly ordered. The writ petition stands disposed of in the afore-mentioned terms. It is, however, made clear that this Court has not observed anything on the merits of the claim of the petitioner, as it is for the respondent authorities in the Panchayat & Rural Development [P&RD] Department to consider the case of the petitioner for remission as per its own merits and in accordance with law. No cost.

JUDGE

Comparing Assistant