

GAHC010199862023



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

Case No. : WA/399/2023

THE ASSAM FISHERIES DEVELOPMENT CORPORATION LIMITED AND
ANR.

VIP ROAD, CHACHAL, GUWAHATI- 781036, DIST.- KAMRUP (M), ASSAM,
REP. BY ITS MANAGING DIRECTOR.

2: THE MANAGING DIRECTOR

ASSAM FISHERIES DEVELOPMENT CORPORATION LIMITED

VIP ROAD

CHACHAL

GUWAHATI- 781036

DIST.- KAMRUP (M)

ASSAM

VERSUS

GARJAN BULLATJAN MATCHAJIBI MINPALAN SAMABAY SAMITY
LIMITED AND ANR.

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.

3: THE STATE OF ASSAM

REP. BY COMM. AND SECY. TO THE GOVT. OF ASSAM
FISHERY DEPTT.

DISPUR

GHY

PIN- 781006

KAMRUP (M) DISTRICT

ASSAM

For the appellants : Mr. P. Sharmah,
For the respondents : Mr. S.K. Goswami,
Mr. B.K. Goswami,
Mr. N. Barman, Advocates
For respondent No.1
Ms. R.B. Bora,
Govt. Advocate, Assam
For respondent No.2

– B E F O R E –

HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE KARDAK ETE

18-10-2023

S. Mehta, C.J.

Heard learned counsel representing the parties and perused the material placed on record.

2. The instant intra-Court writ appeal has been preferred by the appellant, Assam Fisheries Development Corporation Limited (for short 'AFDC') through its Managing Director for assailing the order dated 02.08.2023 passed by the learned Single Judge in WP(C) 6742/2022 instituted at the instance of the respondent No.1 herein.

3. Brief facts relevant and essential for disposal of the writ appeal are noted hereinbelow:

The appellant AFDC had settled the Garjan Bullatjan fishery consisting of three tanks out of several tanks under the fishery with the respondent No.1/writ petitioner. It is admitted that the respondent No.1/writ petitioner had paid the

requisite revenue to the AFDC up to the year 2022-23. However, vide order dated 26.04.2022, the settlement made in favour of the respondent No.1/writ petitioner was recalled and the agreement was rescinded. Aggrieved thereby, the respondent No.1/writ petitioner submitted repeated representations to the Managing Director of the AFDC praying for being allowed it to harvest the fish cultured by the society or to refund the amount of investment made by the society. Since no decision was forthcoming on the said representations, the captioned writ petition came to be filed.

During the pendency of the writ petition, the counsel representing the writ petitioner society submitted that the writ petitioner had given up the relief for continuance of the fishery for any further period. An oral prayer was made that the writ petitioner society may be allowed to leave the fishery along with the fishes, which the writ petitioner society had cultured in the three tanks of the concerned fishery stating that those fishes had been released in the tanks by the society at its own cost. It was further submitted that the said proposal was initially agreed to by the respondent Nos.2 to 5 as recorded in the Court's order dated 04.11.2022 and a formal order was passed on 13.04.2023 by the Managing Director, AFDC to this effect. However, the said order was recalled by another order dated 29.04.2023 passed by the Managing Director, AFDC. Before the learned Single Judge, the appellants/respondent Nos.2 to 5 opposed the prayer of the respondent No.1/writ petitioner for being allowed to collect and carry away the fishes it had cultured by relying upon the decisions of this Court in the cases of ***Mahmud Hussain Vs. AFDC and Ors., WP(C) 2192/2022 (decided on 21.09.2022)*** and ***Trimurti Multipurpose Farming Cooperative Society Ltd. vs. State of Assam and Ors., WP(C) 3131/2022 (decided on 28.07.2023)*** wherein, it was laid down that if the

settlement holders were aggrieved by the non-refund of investments, they would be required to approach the Civil Court and file a claim for compensation. However, after considering the submissions advanced by both the sides, learned Single Judge drew a distinction in the claim for indemnification of damages towards immovable investments and the claim for taking the fishes cultured by the writ petitioner society forming an opinion that under no circumstance, the fishes cultured by the society could be equated with immovable property and removable thereof would not tantamount to allowing the writ petitioner society to realise the investment made. It was further held that since the writ petitioner society was in possession of the fishery since the year 2020, it could not be remotely contemplated that the fishes present in the tanks belonged to any third party or the respondent authorities. Accordingly, the prayer made by the respondent No.1/writ petitioner was accepted and the society was allowed to leave the fishery with the fishes cultured in three tanks settled in its favour.

4. Having considered the submissions advanced at Bar and after going through the impugned order and the material placed on record, we are in full agreement with the view taken by the learned Single Judge that a prayer to carry away the fishes cultured by the writ petitioner society could not be equated to a prayer for reimbursing the investments made in the fishery in question. The fishes being movable property and having been cultured by the writ petitioner society whose contract had been terminated midway, there is no manifest illegality in the impugned order 02.08.2023 passed by the learned Single Judge, whereby the respondent No.1/writ petitioner has been permitted to leave the fishery in question along with the fishes, which were cultured by them in the fishery during the continuation of the settlement.

Resultantly, we find no merit in this writ appeal which is dismissed as such.

JUDGE

CHIEF JUSTICE

Comparing Assistant