

GAHC010212512022



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

Case No. : 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, ASSAM, PIN- 781102

VERSUS

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

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

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

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

GHY
PIN- 781036 KAMRUP (M) DISTRICT
ASSAM

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

Advocate for the Petitioner : MR. S K GOSWAMI

Advocate for the Respondent : GA, ASSAM

BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA

ORDER

Date : 02.08.2023

Heard Mr. S.K. Goswami, learned counsel for the petitioner. Also heard Ms. S. Baruah, learned Govt. advocate for respondent no.1 as well as Mr. P. Sarma, learned standing counsel for the AFDC, representing respondent nos. 2 to 5.

2. The matter was being listed in the motion column for a long period of time and accordingly, with consent of both sides, the matter was heard on 21.07.2023 and is taken up again as a part heard matter.

3. In view of the nature of modified oral prayer which is made by the learned counsel for the petitioner, the Court is of the considered opinion that the facts, in its entirety, need not be referred to. It would suffice to mention that the Assam Fisheries Development Corporation (AFDC for short) had settled the Garjan Bullatjan fishery consisting of three tanks out of several tanks under the fishery with the petitioner. The offer was made to the petitioner to manage the

said fishery under Direct Management System with a targeted revenue of Rs.3.00 lakhs per year up to fourth year and thereafter Rs.3.60 lakhs targeted revenue was to be paid for fifth year onwards. It is not in dispute that the petitioner had paid the requisite revenue up to the year 2022-23. Thereafter, vide order under memo dated 26.04.2022, the settlement made in favour of the petitioner vide order dated 23.03.2020 was recalled and the agreement between the petitioner and the AFDC was cancelled. The aggrieved petitioner submitted a representation before the Managing Director of AFDC on 28.04.2022, followed by another representation dated 30.09.2022, requesting the Managing Director of AFDC to either allow the petitioner to harvest the fish cultured by the society or to refund the amount of investment made by the society. As no decision was taken, the present writ petition has been filed under Article 226 of the Constitution of India.

4. The learned counsel for the petitioner, upon instructions has submitted that the petitioner is no longer interested to pursue the relief for continuance on the said fishery for any further term. However, the orally modified prayer of the learned counsel for the petitioner is that the petitioner may be allowed to leave the fishery along with the fish which he has harvested in the three tanks of the concerned fishery by submitting that those fish have been released by the petitioner at his own cost. It is submitted that the said proposal was initially agreed to by the respondent nos. 2 to 5, which was recorded in the order of the Court dated 04.11.2022. Accordingly, an order dated 13.04.2023 was passed by the Managing Director, AFDC. However, later on, the said order was recalled by order dated 29.04.2023 passed by the Managing Director, AFDC.

5. Per contra, the learned standing counsel for the AFDC has referred to the affidavit-in-opposition filed by the said respondent nos. 2 to 5 and it has

submitted that the authorities had realized that the settlement of the fishery was made in favour of the petitioner without adhering to any well established norms of settlement of the government largesee and that the settlement of the said fishery was made without inviting any tender process. By producing the records of ADFC, it is submitted that the said fishery was a government asset that was created out of government fund by expenditure made under RIDF. It is also submitted that prior to the settlement of the fishery with the petitioner, it was settled with another society. By referring to the decision of this Court in the case of *Mahmud Hussain Vs. AFDC and Ors., WP(C) 2192/2022* decided on 21.09.2022, as well as the decision of this Court in the case of *Trimurti Multipurpose Farming Cooperative Society Ltd. Vs. State of Assam and Ors., WP(C) 3131/2022* decided on 28.07.2023, it was submitted that the said two cases arise out of the same order by virtue of which the settlement of fishery with the petitioner was cancelled, but is in respect of the other fishery. It is submitted that on a conjoint reading of both the decisions, it would emerge that if the settlement holders were aggrieved by the non-refund of investments, they would have liberty to approach the Civil Courts for any claims they may have with regard to the investment or with regard to loss that may have occurred to them on account of fault, if any, of the AFDC and that the Court was disinclined to interfere with the impugned order of cancellation of the fishery on the ground that initial settlement was illegal. Accordingly, it is submitted that in view of the said two cases, the petitioner would not be entitled to take the fishes out of the fishery, but they can only approach the Civil Court for claiming damages and/ or compensation.

6. Considered the submissions from both sides and perused both the cases cited by the learned standing counsel for the AFDC. In both the cases, this

Court has refused to interfere with the order of cancellation of settlement of fisheries. It is also observed that insofar as the claim of the petitioners therein for seeking compensation and damages was concerned, this Court had refused to entertain such prayer because on the ground that the claims being disputed and otherwise constituted question of facts, and it was held that the writ court cannot embark into such arena involving disputed questions of facts and the same can be resolved only by a competent civil Court. Accordingly, this Court had observed that the parties are at liberty to approach the competent Civil Court for such relief, if permitted by law.

7. With all due respect to the two cases cited by the learned standing counsel for the AFDC, the Court finds that the said cases would not constitute an authority on the point that the erstwhile settlement holder, in the present case is the petitioner, who is enjoying the fishery in question since order dated 23.03.2020 can be said to not own the fishes which are reared in three tanks settled to the petitioner. The interpretation sought to be given by the learned standing for the AFDC that by allowing the petitioner to take away the fishes it would amount to allowing relief of damages and compensation or return of investments made by the petitioner. In this regard, the Court is of the considered opinion that in the event the petitioner seeks to realize any money from the respondents on ground of recovery of investment or damages suffered by them due to action of the respondent authorities, it would be open to the petitioner to approach the Civil Court and claim compensation. Nonetheless, it is not denied that the fishes were reared by the petitioner. Therefore, in the considered opinion of this Court if the respondent authorities want the petitioner to leave the fishery in question, the State respondents would not be entitled to make unjust enrichment by retaining the fish which are released/ reared by the

petitioner. Taking of the fishes from the fishery in question would not amount to allowing of the relief of compensation or damages to the petitioner. Therefore, the Court is unable to accept the interpretation given by the learned standing counsel for the AFDC that any order to allow the petitioner to take away the fishes while leaving the fishery in question would be an order allowing the claim of the petitioner for compensation or recovery of their investments.

8. Under no circumstances, the fishes can be equated to an immovable property and it cannot be accepted that if fisheries 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 the 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.

10. This order shall not preclude the respondents in the AFDC to take such appropriate steps as they may be so desired in respect of the fishery in question which includes settlement of fishery by sale/ settlement in a transparent manner as envisaged for settlement of the fishery in question.

11. With the aforesaid observation, this writ petition stands disposed of.

JUDGE

Comparing Assistant