

GAHC010241222023



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

Case No. : WA/424/2023

NO. 147 MANIPUR FISHERY CO OPERATIVE SOCIETY LTD.
REP. BY ITS SECRETARY SRI BROJEN BISWAS S/O LT. JAGABANDHU
BISWAS AGED ABOUT 70 YEARS HAVING OFFICE AT ROINAPATHER P.O.
AND P.S. MORIGAON DIST. MORIGAON ASSAM PIN 782210

VERSUS

THE STATE OF ASSAM AND 4 ORS.
REP BY THE SECRETARY TO THE GOVT. OF ASSAM FISHERY DEPTT.
DISPUR GUWAHATI PIN 781006

2:THE JOINT SECRETARY
TO THE GOVT. OF ASSAM FISHERY DEPTT. DISPUR GUWAHATI PIN 781006

3:THE DEPUTY COMMISSIONER
/DISTRICT COMMISSIONER
MORIGAON
DIST. MORIGAON ASSAM

4:THE DISTRICT FISHERY DEVELOPMENT OFFICER
MORIGAON
P.O. AND P.S. MORIGAON
DIST. MORIGAON ASSAM PIN 782105

5:35 NO. PAKARIA MEEN SAMABAY SAMATI LTD.
REP. BY ITS SECRETARY JATINDRA DAS R/O KARCHUWABORI
SHIMULTOLA P.S. JAGIROAD DIST. MORIGAON ASSAM PIN 78244

Advocate for the Petitioner : MS B DEVI

Advocate for the Respondent : GA, ASSAM

BEFORE

HON'BLE THE CHIEF JUSTICE (ACTING) MR. LANUSUNGKUM JAMIR

HON'BLE MR. JUSTICE KARDAK ETE

O R D E R

13.12.2023

(L.S. Jamir, C.J(Acting))

Heard Ms. B. Devi, learned counsel for the appellant as well as Mr. D. K. Sharma, learned Govt. Advocate on behalf of the official respondents.

2. The appellant society which is a registered cooperative society, was settled with a fishery named 162/163/164 No. Khandajan/Sidhli/Gatua Group Fishery situated in the Morigaon District by a settlement order dated 21.05.2013. The period of settlement of the Fishery was for 7(seven) years. Thereafter, before the expiry of the original period of settlement of 7(seven) years on 21.05.2020, the appellant society submitted an application, for extension of the period of settlement of the Fishery. The Government took some time to take a decision on the prayer of the appellant society for extension and accordingly the appellant society was allowed to run the Fishery in the interregnum on daily basis @10% above the earlier settlement of Rs. 6,51,300/- per annum as a stop gap arrangement by an order dated 21.05.2020. The Fishery Department, Government of Assam after causing enquiry, had found that a part of the Fishery area measuring about 12 bighas, was filled with river sand of

Brahmaputra. The enquiries revealed that few small ponds were also dug by the local people and as a result, a part of the Fishery could not be used for fishing by the lessee i.e. the appellant society, due to encroachment by the local people. Therefore, in order to make good the loss, the Government by invoking Rule 8[b] [ii] of the Assam Fishery Rules, 1953 (Rules of 1953 in short) extended the period of settlement for another 3 [three] years to be counted from the expiry of the original 7 [seven] years settlement period, that is, up to 21.05.2023.

3. The case of the appellant society is that it had dug the Fishery after being granted permission only in the month of March, 2023 and incurred expenditure of about Rs. 22 lakhs and therefore, on humanitarian grounds they should be allowed an extension of the settlement for another few months.

4. After the appellant society requested for 3rd extension and before the Government could take a decision, one society by the name of 35 No. Pakaria Meen Samabay Samati Limited filed Writ Petition No. 3902/2023, agitating the grievance that despite the expiry of 3(three) years extension period of settlement to the appellant society, no steps were taken by the State respondents authorities for initiating tender process for settlement of the Fishery. The said WP(C)/3902/2023 was disposed of by order dated 30.06.2023 and the relevant portion of the order reads as under:

“9. Insofar as the prayer made in this writ petition is concerned, it prima facie appears that the lease period of the original seven years’ lease granted for the fishery referred above to the respondent no.7 had expired on 21.05.2020. The lease was

extended on 20.07.2020 for a period of 3 (three) years w.e.f. 21.05.2020, which has expired on 21.05.2023. Therefore, the unhesitant view of the Court is that the natural consequences of expiry of the extended period of lease would be to put the fishery to a fresh auction/sale. Therefore, this is a fit and proper case where the Director of Fisheries as well as Joint Secretary to the Govt. of Assam, Fisheries Department (respondent no.2) is directed to take a decision as to whether there is lawfully any scope for an extension of lease in favour of the respondent no.7 and/or whether it could be lawful to put the fishery into sale/auction. The decision in this regard shall be taken within a outer period of 10 (ten) days from the date of service of certified copy of this order on the respondent no.2.

10. It shall be incumbent on the said authorities to communicate its decision to the petitioner in its e-mail address to be provided while submitting the certified copy of this order.

11. Before parting with the records, it is once again made clear that the consideration for decision on auction/sale or extension of the lease shall be within the parameters which are set out in the Assam Fishery Rules, 1953."

5. Thereafter, the State Government passed an order dated 13.07.2023 decided that there is no justifiable ground to grant further extension under the Rule 8 of the Rules of 1953 and the request of the appellant society for extension was rejected. The Deputy Commissioner, Morigaon was also directed to take possession of the Fishery from the appellant society and keep it as 'Khas' till the next regular settlement.

6. Being aggrieved, the writ petitioners filed WP(C)/4299/2023 impugning the order dated 13.07.2023, the learned Single Bench by an order dated 02.08.2023, directed *status-quo* be maintained till the next returnable date.

However, the learned Single Bench by order dated 13.10.2023 recalled the interim order dated 02.08.2023 by observing that the appellant society had already run the Fishery for a period of 10(ten) years and in view of the observation made in the order dated 30.06.2023 ,passed in WP(C) 3902/2023 the appellant society has not been able to make a *prima facie* case for extension of the *status-quo*.

7. Being aggrieved with the order dated 13.10.2023 passed in WP(C)/4299/2023 by which the *Status-quo* order was recalled, the appellant society is before us by way of this present appeal.

8. We have perused Rule 8(b) as well as Rule 8(b) (ii) of the Rules of 1953. A perusal of the same clearly indicates that extension can be given only in exceptional special cases for a reasonable period so as to enable such lessee to make good the loss. In the present case in hand, what we have noticed is that the appellant society has been given an original settlement period for 7(seven) years which was further extended by another 3(three) years totaling to 10(ten) years. The provisions of the Rule in an opinion does not provide for further extension under normal circumstances and further, as the WP(C)/4299/2023 is still pending for disposal, we limit ourselves to the finding that there is no provision for further extension of settlement of the said Fishery in favour of the appellant society under Rules of 1953.

9. Accordingly, we find no merit in the present Writ Appeal and is accordingly dismissed.

No costs.

JUDGE

CHIEF JUSTICE (ACTING)

Comparing Assistant