

GAHC010253122022



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

Case No. : WP(C)/7981/2022

ABDUL KUDDUS
S/O. LT. ABDUL JALIL, VILL. MAJGUMI, P.O. AG-GUMI, PS. CHHAYGAON,
DIST. KAMRUP (R), ASSAM, PIN-781137.

VERSUS

THE STATE OF ASSAM AND 6 ORS.
REP. BY THE SECRETARY TO THE GOVT. OF ASSAM, TRANSPORT DEPT.,
DISPUR, GUWAHATI-06.

2:THE DIRECTOR

INLAND WATER TRANSPORT
ASSAM
ULUBARI
GUWAHATI
PIN-781007.

3:DEPUTY COMMISSIONER

KAMRUP
AMINGAON
ASSAM.

4:THE DEPUTY SECRETARY
TO THE GOVT. OF ASSAM
TRANSPORT DEPT.
DISPUR
GUWAHATI-781006.

5:ADDL. DEPUTY COMMISSIONER

KAMRUP
AMINGAON
ASSAM.

6:THE EXECUTIVE ENGINEER
INLAND WATER TRANSPORT DIVISION
GUWAHATI
ULUBARI
PIN-781007.

7:UTPAL KUMAR DAS
S/O. LT. RAJANI KANTA DAS
VILL. DAKUCHI
P.O. NAGARBERA
DIST. KAMRUP
ASSAM
PIN-781127

Advocate for the Petitioner : MR B D DAS

Advocate for the Respondent : GA, ASSAM

BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA

ORDER

Date : 19.06.2023

Heard Mr. B.D. Das, learned senior counsel, assisted by Mr. D. Kalita, learned counsel for the petitioner and also heard Ms. M.D. Borah, learned standing counsel for Transport Department, representing respondent nos. 1, 2, 4 and 6, Mrs. S. Sarma, learned Government advocate for respondent no. 3 and 5, as well as Mr. S. Kotoky, learned counsel for the private respondent no. 7.

2. Impugned in this writ petition filed under Article 226 of the Constitution of India is the order dated 26.10.2022, issued by the Deputy Secretary to the Govt. of Assam, Transport Department (respondent no. 4), by which the Hohuwa Sombaria Bhogdia Directory Ferry Service was settled with

Utpal Kumar Das (respondent no. 7).

3. The learned senior counsel for the petitioner has submitted that pursuant to the tender notice dated 28.06.2022, the petitioner and three other bidders had participated in the bidding process in respect of the aforesaid ferry service for the period 2022-2024. It is submitted that the land valuation certificate that was submitted by the respondent no. 7 along with his bid was defective because the said respondent no. 7 had procured and submitted with his bid a land valuation certificate dated 19.07.2022, issued by the Addl. Deputy Commissioner, Kamrup, Amingaon, showing the value of his 2 bigha-2 katha- 3 lessa land was Rs.82,90,000/- (Rupees Eighty two lakh ninety thousand only) at the rate of Rs.30,00,000/- per bigha. According to the learned senior counsel for the petitioner, the said valuation was highly inflated and based on market valuation, which should have been assessed on the basis of zonal valuation fixed for the said land i.e. Rs.8,00,000/- (Rupees eight lakh per bigha).

4. By referring to the land valuation certificate dated 24.05.2022 by the Addl. Deputy Commissioner, Kamrup, Amingaon in respect of the land of the petitioner, the learned senior counsel for the petitioner had submitted that the same authority had his land valued at the rate of Rs.3,00,000/- (Rupees three lakh only) per bigha. Accordingly, it was submitted that the same authority had adopted two yardstick to issue the two land valuation certificate, one to the petitioner, and other to the respondent no. 7.

5. In this regard, by referring to the decision of this Court in the case of *Arup Chetia v. Sunil Gogoi*, (2018) 2 GLR 525, it was submitted that the facts of the case was that during the year 2013, the accused no. 1 therein was the Circle Officer of a particular Revenue Circle. The accused no. 2 had applied before him for a land valuation certificate for the purpose of submitting tender

for settlement of a particular ferry service, which was prepared by the accused no. 1 on the basis of report of the concerned *Lot Mandal* and accordingly, the concerned Addl. Deputy Commissioner (Revenue) had issued land valuation certificate dated 24.12.2014 without following Government valuation in the area/ zone. The petitioner of the said case had used the said valuation certificate while submitting the tender. Subsequently, on being approached, the Deputy Commissioner of the concerned district, on enquiry, had held that the valuation certificate was not as per Government notification and cancelled the same. Thereafter, on the basis of a complaint, the jurisdictional Magistrate had examined the complainant and his witnesses under Section 200 Cr.P.C. and took cognizance of the offence under Section 177, 468 and 471 IPC. The petitioner of the case had applied for quashing of the complaint and this Court had declined to quash the complaint.

6. Accordingly, it was submitted that the principle which can be culled out from the said cited decision was that valuation certificate can only be issued as per zonal valuation and that submission of valuation certificate based on market valuation ought to be held to be illegal.

7. Hence it was submitted that this is a fit and proper case for setting aside and quashing of the settlement of Hohuwa Sombaria Bhogdia Directory Ferry Service with the respondent no. 7, and that a direction be issued upon the respondents to settle the said ferry service with the petitioner.

8. The learned departmental counsel had produced a copy of the written instructions dated 12.06.2023 received from the Director, IWT, Assam wherein it was stated that the respondent no. 7 had defaulted in paying first *kist* money for the second year and had not come forward to execute the lease agreement for the second year i.e. for a period from 01.04.2023 to 31.03.2024

and therefore, the said ferry service was being run departmentally and moreover, the Executive Engineer, IWT has initiated steps to invoke Clause 27(III) of the Control and Management of Ferries Rule, 1968. However, on legal principles, the learned standing counsel for the IWT Department has referred to the following cases, viz., (i) *Cartel Infotech Ltd. v. Hindustan Petroleum Corporation Ltd. & Ors.*, (2019) 14 SCC 81, (ii) *Michigan Rubber (India) Ltd. v. State of Karnataka & Ors.*, (2012) 8 SCC 216, (iii) *Tata Cellular v. Union of India*, (1994) 6 SCC 651, and (iv) *Ridley Life Science Pvt. Ltd. v. State of Assam & Anr.*, 2020 (1) GLT 273.

9. Per contra, the learned counsel for the respondent no. 7 had submitted that if the respondent no. 7 has defaulted, the law would take its own course. However, it was submitted that the Court can exercise power of judicial review in respect of the decision making process and not sit over the decision as an appellate authority. In support of the said contention, the case of *Lieutenant General Manomoy Ganguly, VSM v. Union of India & Ors.*, (2018) 18 SCC 83 (para 30) was referred to. It was also submitted that the land valuation certificate dated 19.07.2022 issued in favour of the respondent no. 7 contained (i) zonal valuation of land, as well as (ii) market value of land. Therefore, the tendering authority had accepted the valuation based on market value, which was based on inputs contained in the certificate, it cannot be said that the said certificate was baseless and was liable to be rejected. In support of the said contention, the case of *Karpagam Faculty of Medical Sciences and Research v. Union of India & Ors.*, (2017) 16 SCC 568 (para 22) was referred to. Moreover, it was submitted that the correctness of the decision of the tendering authority to accept market value cannot be examined by the Court and in this connection, the case of *Silppi Constructions Contractors v. Union of India & Anr.*, (2020) 16

SCC 489 (para 20) was cited.

10. For the purpose of this case, it would be relevant to quote the contents of the land valuation certificate dated 19.07.2022, issued by the Addl. Deputy Commissioner, Kamrup, Amingaon in respect of the land offered by the respondent no. 7, which reads as follows:-

“Certified that the valuation of land measuring 2 Bigha 2 Katha 3 Lessa of Kheraj Patta No 112 and Dag Nos.271, 275 & 312 of village Dokuchi under Nagarbera Mouza of Nagarbera Revenue Circle has been assessed Rs. 19,44,000/- (Rupees nineteen lakh forty four thousand) only @ Rs. 8,00,000/- (Rupees eight lakh) only per Bigha as per Zonal Valuation for the year 2021-22 and the market value of the aforesaid land has been assessed Rs. 82,90,000/-(Rupees eighty two lakh ninety thousand) only @ Rs. 30,00,000/-(Rupees thirty lakh) per bigha as per the report of the concerned Circle Officer, LM & Gaonpradhan.”

11. The terms and conditions of tender notice has not been annexed to the writ petition as a part of the tender notice dated 28.06.2022. Nonetheless, the respondent no. 7, in the affidavit-in-opposition, has annexed a copy of the “detail terms and conditions of NIT for leasing out of I.W.T. Ferry services for the period of 2022-24.” as Annexure-A thereto. The correctness of the said document is not disputed by the petitioner or his learned senior counsel or by the IWT Department or its learned standing counsel. As per the clause 7 of the terms and conditions of the NIT dated in question, there is a requirement to submit certificate in support of the periodic patta land in his own name within the district or sub-division of value not less than the bid/tender money from the authorities mentioned therein. The said condition is quoted below:-

“7. The tenderer have to submit Certificate in support of periodic patta land in his own name within the District of the Subdivision of value note less than the bid/ tender money from the Deputy Commissioner/ Additional Deputy

Commissioner/ Sadar Sub divisional Officer of the District or Sub divisional Officer (Civil) of the Subdivision concerned.

The land documents and land valuation of a successful bidder against any ferry service will not be accepted in other ferry service if the valuation does not cover the total bid amount."

12. In this regard, the learned departmental counsel and the learned senior counsel for the petitioner could not show any clause in the NIT dated 28.06.2022 and/or terms and conditions of NIT or from any other relevant Act, Rules or notifications of the State Government requiring that land valuation certificate should (i) be issued only on the basis of zonal land valuation and not on the basis of market value, and/or (ii) requiring that the tendering authorities would accept only those land valuation certificates which are issued on the basis of zonal valuation alone.

13. Therefore, in the absence of any provision in any (a) Act, (b) Rules, including in the Control and Management of Ferries Rule, 1968, (c) notifications, or (d) any clause in the tender notice dated 28.06.2022, etc., requiring that land valuation certificate based on zonal valuation alone would be valid, *ex facie*, the Court is unable to find fault with the land valuation certificate dated 19.07.2022 (Annexure-3 to writ petition). The Court is unable to presume that there was a violation of the tender conditions. Rather, the presumption that may be drawn by the Court is the presumption available under Illustration (e) of Section 114 of the Evidence Act, 1872, which provides that all judicial and official acts have been regularly performed. The said relevant provision is quoted below:-

114. Court may presume existence of certain facts.- *The court may presume the existence of any fact which it things likely to have happened regard being had to the common course of natural events human conduct and public and private*

business, in their relation to the facts of the particular case.

Illustrations

* * *

(e) That judicial and official acts have been regularly performed;

* * *

14. Moreover, the contents of the said land valuation certificate dated 19.07.2022, as extracted herein before, makes it crystal clear that the Addl. Deputy Commissioner has assessed the value of land at Rs.19,44,000/- as per zonal valuation for the year 2021-22. and as per market value, the value of land is assessed at Rs.82,90,000/- as per the report of the concerned Circle Officer, LM and *Gaon Pradhan*. The learned senior counsel for the petitioner has questioned the authority of the *Gaon Pradhan* to comment on market value of the land. The question appears to be otherwise valid, but the Court finds no reason why the Circle Officer or the *Gaon Pradhan* would not know the market value of land within his jurisdiction.

15. In this case, the decision making process of the Addl. Deputy Commissioner, Kamrup, Amingaon, has a basis to issue the land valuation certificate which contains both the zonal valuation as well as the market valuation and therefore, the act of the tendering authority to accept the market value component for settling ferry service to the respondent no. 7 cannot be said to be vitiated by mala fide, or be termed as arbitrary or illegal or otherwise hit by the Wednesbury's principle of unreasonableness.

16. Coming to the case of *Arup Chetia (supra)*, the same has been considered. In this regard, the Court is unable to accept that any law has been laid down in the said case that if land valuation certificate is issued otherwise than as per zonal valuation, an offence is *ex facie* made out under any law in

force. A judgment to refuse to quash the complaint proceeding is not a conclusive proof that an offence has been committed by the accused. Such a judgment and order is only a conclusive proof that the Court was not satisfied that a case of quashing the complaint has been made out and such an order would not constitute a finding of the fact, which would compel the trial Court to convict the accused merely because a superior Court had not quashed the complaint.

17. The same view is arrived at on examining the point in light of Section 42 of the Evidence Act, 1872, which is extracted below together with the Illustrations provided thereunder. The said section together with its illustration is quoted below:-

“42. Relevancy and effect of judgments, orders or decrees, other than those mentioned in section 41.- Judgments, order or decrees other than those mentioned in section 41, are relevant if they relate to matters of a public nature relevant to the enquiry, but such judgments, orders or decrees are not conclusive proof of that which they state.

Illustration

A sues B for trespass on his land. B alleges the existence of a public right of way over the land, which A denies.

The existence of a decree in favour of the defendant, in a suit by A against C for a trespass on the same land in which C alleged the existence of the same right of way, is relevant, but it is not conclusive proof that the right of way exists.”

18. Therefore, a judgment in a quashing application filed under Section 482 Cr.P.C., on different set of facts on which the said case of *Arup Chetia (supra)* was decided, and where no law was laid down by this Court, would not constitute a binding precedent for the present writ petition in hand. Accordingly, the Court is constrained to hold that no case has been made out by the petitioner for setting aside the land valuation certificate dated 19.07.2022 issued in respect of respondent no.7.

19. As the Court has not found merit in this case of the petitioner on facts, no purpose would be served to discuss the cases cited by the learned standing counsel for the respondent nos. 1, 2, 4 and 6 and the learned counsel for the respondent no. 7.

20. Therefore, in light of the discussions above, this writ petition fails and the same is dismissed.

21. However, the dismissal of this writ petition shall not come in the way of the I.W.T. Department to take an appropriate steps as may be permissible in law if the respondent no. 7 has defaulted in paying *kist* money or failed to enter into an agreement for the ferry service in question for the current financial year.

22. The parties are left to bear their own cost.

JUDGE

Comparing Assistant