

GAHC010270832022



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

Case No. : WP(C)/8448/2022

BISHWAJIT GOGOI
SON OF SRI MOHAN GOGOI,
RESIDENT OF LEKAI THAKUR THAN,
P.O.- SESSA, P.S.- DIBRUGARH,
PIN- 786003.

VERSUS

THE STATE OF ASSAM AND 9 ORS
REPRESENTED BY THE PRINCIPAL SECRETARY TO THE GOVERNMENT OF
ASSAM,
DEPARTMENT OF ENVIRONMENT AND FOREST,
DISPUR, GUWAHATI- 781006, ASSAM.

2:THE SECRETARY TO THE GOVERNMENT OF ASSAM
DEPARTMENT OF GEOLOGY AND MINING

DISPUR
GUWAHATI- 781006
ASSAM.

3:THE DIRECTOR OF GEOLOGY AND MINING
ASSAM
KAHILIPARA
GUWAHATI- 781019

KAMRUP(METRO) DISTRICT
ASSAM.

4:THE PRINCIPAL CHIEF CONSERVATOR OF FORESTS AND HEAD OF
FOREST FORCE
ASSAM

PANJABARI
GUWAHATI- 781037.

5:THE PRINCIPAL CHIEF CONSERVATOR OF FORESTS (T)
UPPER ASSAM ZONE
KACHARIGHAT

GUWAHATI- 781001
ASSAM.

6:THE ADDL. PRINCIPAL CHIEF CONSERVATOR OF FORESTS(T)
UPPER ASSAM ZONE
KACHARIGHAT

GUWAHATI- 781001
ASSAM.

7:THE CONSERVATOR OF FORESTS
EASTERN ASSAM ZONE
JORHAT
NEAR CIRCUIT HOUSE

JORHAT
PIN- 785001.

8:THE DIVISIONAL FOREST OFFICER
DIBRUGARH DIVISION
NEAR DC COURT

DIBRUGARH- 786003.

9:THE DEPUTY COMMISSIONER
DISTRICT- DIBRUGARH

ASSAM. PIN- 786003.

10:THE RANGE OFFICER
DIBRUGARH RANGE

DIBRUGARH DIVISION

DIST- DIBRUGARH
ASSAM

PIN- 786001

Advocate for the Petitioner : MR. D DAS SR. ADV

Advocate for the Respondent : SC, FOREST

**BEFORE
HONOURABLE MR. JUSTICE MANISH CHOUDHURY**

ORDER

10.04.2023

Heard Mr. D. Das, learned senior counsel assisted by Mr. H.K. Nath, learned counsel for the petitioner; Mr. R.R. Gogoi, learned Standing Counsel, Environment and Forest Department for the respondent nos. 1, 4 – 8 & 10; and Mr. C.K.S. Baruah, learned Junior Government Advocate, Assam for the respondent nos. 2, 3 & 9.

2. The petitioner has invoked the extra-ordinary jurisdiction of this Court under Article 226 of the Constitution of India, being aggrieved by an impugned order dated 20.12.2022 passed by the respondent no. 8, whereby, the petitioner has been directed to deposit all the outstanding dues with interest against Mining Permit Area no. DBR/18/Buridihing/Bhekulajan/Sand of 2019-2021 for allowing extraction of sand from the said Mining Permit Area, meaning thereby, it would only in the petitioner deposits the entire outstanding dues in respect of the afore-mentioned Mining Permit Area, the petitioner would be allowed to collect/extract sand therefrom.

3. The background events leading to the institution of the writ petition, can be narrated, in brief, as follows :-

3.1. A Sale Notice, dated 25.02.2019 & 30.05.2019, was issued by the respondent Forest Department authorities through the respondent no. 8 for settlement of a Mining Permit Area no. DBR/18/Buridihing/Bhekulajan/Sand of 2019-2021 [hereinafter referred to as 'the Mining Permit Area', for short] for allowing collection/extraction of sand from the said Mining Permit Area. Finding the petitioner's bid responsive to the terms and conditions laid down in the Sate Notice, a Provisional Letter of Intent [LoI] in respect of the Mining Permit Area came to be issued under the hand of the respondent no. 8 on 13.01.2020, whereby, the petitioner was

informed that the Provisional Letter of Intent [LoI] had been granted in his favour to operate the Mining Permit Area at his offered price of ₹ 82,00,500/- for a period of 2 [two] years for collection/extraction of 5000 cubic metres of sand, subject to payment of all Government dues as and when necessary and according to the provisions of the Assam Minor Mineral Concession Rules, 2013. The petitioner was thereby, asked to deposit 25% Bid Security @ ₹ 10,25,063/- and 1 [one] month Permit Money @ ₹ 3,41,688/-.

3.2. After issuance of the Provisional Letter of Intent [LoI], the State Environment Impact Assessment Authority, Assam granted Environment Clearance vide its letter dated 05.02.2021 with a validity period of 2 [two] years from the date of its issuance, that is, 05.02.2021 to the petitioner for collection/extraction of sand from the Mining Permit Area. The Environment Clearance was followed by a Final Settlement Order dated 21.05.2021 issued by the respondent no. 8 for the Mining Permit Area whereby the Mining Permit Area had been settled finally with the petitioner for a period of 2 [two] years at the amount of ₹ 82,00,500/- offered by the petitioner for the period from 21.05.2021 to 21.05.2023. By the Final Settlement Order dated 21.05.2021, the petitioner was also asked to sign the Mining Contract Deed in respect of the Mining Permit Area. The Final Settlement Order had also mentioned the details of the installment amounts to be payable by the petitioner for the period of 2 [two] years in 8 [eight] nos. of installments. According to the petitioner, he paid 1st installment amount of ₹ 13,07,467/- on 04.02.2021 along with the bid security deposit of ₹ 10,25,063/-. Further, an amount of ₹ 8,00,000/- [approx] was deposited in relation to the 2nd installment on 13.11.2021 and 19.11.2021.

3.3. It is the case of the petitioner that the area allotted in connection with Mining Permit Area was 3.85 Hectares and the petitioner was required to collect/extract sand from the area of 3.85 Hectares, falling within the below-mentioned GPS coordinates:-

	Longitude [East]	Latitude [North]
1	E - 95°12'03.06"	N - 27°21'27.95"
2	E - 95°12'08.20"	N - 27°21'32.59"

3	E - 95°12'15.10"	N - 27°21'30.40"
4	E - 95°12'10.54"	N - 27°21'25.51"

3.4. As per Clause 26 of the Environment Clearance dated 05.02.2021, a maximum depth of 2.0 m would be allowed for mining the river bed from un-mined bed level, keeping at least 2.5 m of Sand Layer below the water level of the river as sand bed.

3.5. It is the case of the petitioner that no sooner the Final Settlement Order was issued on 25.01.2021, the River Buridighing with which the Mining Permit Area is related, changed its course and as a result, the entire Mining Permit Area got submerged under water. As the petitioner was prevented from operating the Mining Permit Area even for a single day for reasons beyond his control, that is, change of the course by River Buridighing, he requested the respondent no. 8 by an application dated 06.10.2021 to change the location to enable him to collect/extract sand from another area near the designated Mining Permit Area so that he could be able to collect/extract sand and pay the installment amounts timely. In support of his claim regarding submerged status of the designated Mining Permit Area, the petitioner stated to have submitted relevant photographs along with his application dated 06.10.2021. It transpires that on receipt of the application dated 06.10.2021, the respondent no. 8 decided to get the matter enquired through the respondent no. 10. The respondent no. 10 in reference to letter dated 06.10.2021 of the respondent no. 8, visited the designated Mining Permit Area on 22.10.2021 and found the designated Mining Permit Area under water. The respondent no. 10 by his Enquiry Report dated 28.10.2021 reported that the claim of the Letter of Intent [LoI] holder was found to be genuine and shifting of the location as prayed for, was to be allotted if the departmental rules and regulations would permit so.

3.6. The petitioner had thereafter, submitted a detailed Representation to the respondent no. 8 on 09.11.2021 for allotment of an adjacent mining area in view of such submerged condition of the designated Mining Permit Area by the change of the course by River Buridighing. When the Representations, referred above, were pending for consideration, the Mining Contract Agreement was executed between the petitioner and the respondent no. 8 on 11.11.2021 specifying the rights and obligations of the parties. As the petitioner was not

able to operate in the designated Mining Permit Area in terms of the Final Settlement Order and the Mining Contract Agreement, the petitioner submitted another Representation before the respondent no. 8 on 16.12.2021 reiterating his earlier prayer. In the subsequent period also, the petitioner made several Representations before the authorities in the Environment and Forest Department. When no conscious decision was found forthcoming from the ends of the respondent authorities in the Environment and Forest Department, the petitioner on 27.12.2021, submitted a letter of even date expressing his inability to pay the installment amounts as he had been prevented completely from operating in the designated Mining Permit Area due to reasons beyond his control, that is, submersion of the entire designated Mining Permit Area under water due to change of the course by River Buridihing. Aggrieved by such purported inaction on the part of the respondent authorities in the Environment and Forest Department, the petitioner had preferred a writ petition, W.P.[C] no. 108/2022 with the apprehension that in view of non-deposit of installments, the respondent authorities might take resort to coercive action against the petitioner. The said writ petition, W.P.[C] no. 108/2022 was disposed of by an order dated 07.01.2022 with a direction to the respondent authorities to consider the petitioner's Representation dated 16.12.2021 as expeditiously as possible. It was observed therein that while considering the Representation, the claim of the petitioner as regards change of course by River Buridihing and inability of the petitioner to collect/extract sand from the designated Mining Permit Area were to be taken into consideration and till the disposal of the Representation, no coercive action should be taken against the petitioner. The petitioner was also granted liberty to approach the Court if the Representation of the petitioner was rejected by the respondent authorities.

3.7. It transpires that subsequent to the direction made in the order dated 07.01.2022, there were deliberations amongst the respondent no. 6, the respondent no. 7 and the respondent no. 8. After such deliberations, the respondent no. 8 by his letter dated 23.02.2022 informed the petitioner about rejection of the Representation dated 16.12.2021. The rejection of the petitioner's Representation dated 16.12.2021 by a letter dated 23.02.2022 of the respondent no. 8, has been put to challenge by a writ petition, W.P.[C] no. 1504/2022, in terms of the liberty granted by this Court in the order dated 07.01.2022 passed in the writ petition, W.P.[C] no. 108/2022. This Court after hearing the learned counsel for the

parties and on perusal of the records, while issuing notice of motion by order dated 11.03.2022 in the writ petition, W.P.[C] no. 1504/2022, had observed, in the interim, that until further order of the Court, the respondent authorities in the Forest Department shall not take any coercive action against the petitioner for not depositing any kist money [installment] pertaining to the Mining Permit Area settled in favour of the petitioner vide the Final Settlement Order dated 21.05.2021. It is submitted at the bar that the writ petition, W.P.[C] no. 1504/2022 is pending as on date and the interim order is in operation.

3.8. It is during the pendency of the writ petition, W.P.[C] no. 1504/2022 the areas within the GPS coordinates, mentioned above, have become conducive again for collection/extraction of sand, meaning thereby, the Mining Permit Area under reference was no longer submerged under River Buridiging. Having noticed such developments, the petitioner had approached the respondent no. 1 and the respondent no. 8 by way of a Representation dated 17.10.2022 with the prayer **inter alia** to allow him to operate in the designated Mining Permit Area forthwith as such permission would facilitate the petitioner to pay the requisite installment amounts. After submission of the Representation dated 17.10.2022, the respondent no. 10 made visits to the Mining Permit Area on 02.11.2022 and on 23.11.2022 respectively. As per the Report submitted by the respondent no. 10 to the respondent no. 8 on 06.12.2022, the respondent no. 10 saw formation of sand bar in the designated Mining Permit Area but with a continuous flow of river water in the form of a stream. The respondent no. 10 had reported that during his second visit to the designated Mining Permit Area on 23.11.2022, sand deposits as sand bar was seen and since the strength of the stream had weakened, it could be considered as dried up. In his Enquiry Report dated 06.12.2022, the respondent no. 10 had reported that it could be stated that at that time, there was ample deposit of river sand in the designated Mining Permit Area. The matter was, thus, placed for consideration of the respondent no. 8. But the respondent no. 8 by his impugned order dated 20.12.2022, had put the condition of depositing all the outstanding dues with interest against the designated Mining Permit Area to the petitioner for allowing the petitioner to operate the designated Mining Permit Area.

3.9. From the facts stated above, it is clear that the designated Mining Permit Area under

reference within the GPS coordinates, indicated in the Table hereinabove, came to be settled in favour of the petitioner after a competitive bidding process, initiated under the provisions of the Assam Minor Mineral Concession Rules, 2013, for the period from 21.05.2021 to 21.05.2023, subject to deposit of 8 [eight] nos. of installments and other amounts, as indicated in the Final Settlement Order dated 05.02.2021. It is the grievance of the petitioner that though the designated Mining Permit Area has been settled in his favour by the Final Settlement Order dated 21.05.2021 for the period upto 21.05.2023, he could not operate in the designated Mining Permit Area to collect/extract sand therefrom even for a single day for reasons beyond his control. It is the case of the petitioner that the entire designated Mining Permit Area came and remained under water due to change of course by River Buridihing. Since the petitioner has not been able to collect/extract sand from the Mining Permit Area, he has not been able to deposit the requisite installments, etc., as directed by the Final Settlement Order dated 21.05.2021. It is also the case of the petitioner that he would have been able to pay the requisite installment amounts only when he had derived any kind of benefit from the distribution of State largesse under reference, that is, settlement of Mining Area Permit. In the event one was not able to derive any benefit from the settlement of a mining permit area like in the case in hand, one should not be forced or coerced to pay out of his pocket when the reasons for not able to derive any benefit were not at all attributable to that person's fault but for natural courses and beyond that person's control. The petitioner has referred to the Enquiry Report of the respondent no. 10 dated 28.10.2021 and the Report of the respondent no. 8 dated 27.12.2021, addressed to the respondent no. 7, in support of his such contentions that the Mining Permit Area was submerged throughout the entire period.

4. Mr. Gogoi, learned Standing Counsel, Environment & Forest Department has submitted that the Enquiry Report dated 28.10.2021 of the respondent no. 10 and the Report of the respondent no. 8 dated 27.12.2021 might be correct, but there is no provision in the Assam Minor Mineral Concession Rules, 2013 or in the Mining Contract Agreement for waiver of the installment amounts, etc. for inability of a settlement holder to collect/extract sand from a Mining Permit Area for reasons like the ones in case in hand. Mr. Gogoi, learned Standing Counsel, Environment & Forest Department has submitted that as the respondent no. 4 is the

appellate authority under Rule 68 of the Assam Minor Mineral Concession Rules, 2013 and also the Head of the Environment & Forest Department, the respondent no. 4 is vested with the authority and jurisdiction to consider the case of the petitioner in appropriate manner.

5. Having regard to the entire conspectus of fact situation obtaining in the case in hand, this Court is of the considered view that if neither the provisions of the Assam Minor Mineral Concession Rules, 2013 nor the Mining Contract Agreement has conceived of an eventuality like the one that has been confronted by the petitioner in the case in hand, that is, the inability of the petitioner not to derive any benefit from the Mining Permit Area despite being settled with him, for reasons beyond his control, then the matter deserves consideration from the highest authority in the Environment & Forest Department, that is, the Principal Chief Conservator of Forest & Head of Forest Force, Assam.

6. Having considered the entire facts and circumstances obtaining in the case in hand, more particularly, the fact that the petitioner has not been able to derive any benefit from the designated Mining Permit Area for a substantial period of time and the respondent no. 8 has, by his order dated 20.12.2022, put the condition of depositing all the outstanding dues before permitting the petitioner to collect/extract sand from the designated Mining Permit Area, which condition, in the considered view of this court, appears to be *prima facie* onerous, this Court finds it appropriate that the case of the petitioner should be considered by the respondent no. 4 taking all the attending facts and circumstances into consideration. To facilitate such consideration, the petitioner should file an Appeal/Representation before the respondent no. 4 at the earliest, preferably within a period of 7 [seven] days from the date of receipt of a certified copy of this order and the respondent no. 4 shall consider and dispose of the Appeal/Representation within a period of 2 [two] weeks from the date of receipt of such Appeal/Representation by passing a speaking order.

7. Mr. Gogoi, learned Standing Counsel, Environment & Forest Department has submitted, on instruction, that the petitioner can be allowed to operate in the designated Mining Permit Area forthwith for collection/extraction of sand therefrom till the end of the settlement period, that is, up to 21.05.2023, subject to deposit of requisite amounts payable for the period he

operates. Having regard to such submission of Mr. Gogoi, this Court is of the considered view that the petitioner is to be permitted to collect/extract sand from the designated Mining Permit Area forthwith till 21.05.2023. It is further observed that as the petitioner has deposited 1st installment and some amounts towards the 2nd installment, as indicated in paragraph 3.2 above, the dues payable for the period the petitioner operates in the designated Mining Permit Area henceforth shall first be subject to adjustment of the amounts the petitioner has already deposited before the respondent Environment & Forest Department. It is also observed that the respondent authorities shall not take any coercive action in terms of the impugned letter dated 20.12.2022 of the respondent no. 8 till the decision is taken by the respondent no. 4 on the Appeal/Representation to be submitted by the petitioner, as directed hereinabove. If the petitioner is aggrieved by the speaking order to be passed by the respondent no. 4, the petitioner will be at liberty to seek appropriate remedy under the law.

8. This order disposes of the writ petition. No cost.

JUDGE

Comparing Assistant