

GAHC010287122023



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

Case No. : WA/465/2023

M/S BAGHPORI MAIMAL MEEN SAMABAI SAMITY LTD
A REGISTERED FISHERY CO-OPERATIVE SOCIETY VIDE REGISTRATION
NO. M1/1978-79, HAVING ITS REGISTERED OFFICE AT VILL- BAGHPORI,
P.O.-MANGALDOI, DIST- DARRANG, ASSAM, REPRESENTED BY ITS
PRESIDENT, MD. KAJIMUDDIN, 65 YEARS

VERSUS

THE STATE OF ASSAM AND 3 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE
GOVERNMENT OF ASSAM, FISHERY DEPARTMENT, DISPUR, GUWAHATI-6

2:THE JOIN SECRETARY TO THE GOVERNMENT OF ASSAM
FISHERY DEPARTMENT
DISPUR
GUWAHATI-781006

3:DEPUTY COMMISSIONER
DARRANG
P.O.-MANGALDAI

4:M/S SREEGANGA FISHERMAN SAMABAI SAMITY LTD.
HAVING ITS OFFICE AT P.O. AND P.S.-KHARUPETIA
DIST-DARRANG
ASSAM
PIN-784115 REPRESENTED BY ITS SECRETARY SRI SANJAY DA

Advocate for the Petitioner : MR. M NATH

Advocate for the Respondent : SR. GA, ASSAM

**BEFORE
HONOURABLE THE CHIEF JUSTICE (ACTING)
HONOURABLE MR. JUSTICE KAUSHIK GOSWAMI**

ORDER

20.12.2023

(K. Goswami, J)

Heard Mr. M. Nath, learned Sr. Counsel assisted by Mr. D.P. Borah, learned counsel appearing for the appellant. Also heard Mr. D.K. Sharma, learned Addl. Sr. Government Advocate appearing for the State respondent Nos. 1 to 3 and Mr. K.K. Mahanta, learned Sr. Counsel assisted by Ms. N. Begum, learned counsel appearing for the respondent No. 4.

2. This appeal has been preferred against the impugned judgment and Order dated 13.12.2023 passed by the learned Single Judge in I.A. (Civil) No.3136/2023 arising out of WP(C) No.5210/2023, whereby the interim order dated 08.09.2023, passed by this Court in the connected writ petition was vacated.

3. The brief facts of the case is that the appellant Society is a Fishery Co-operative Society registered under the provisions of the Assam Co-operative Societies Act. It has been stated that its members are 100% actual fishermen belonging to Maimal fisherman community belonging to the erstwhile Cachar district. In the year 2013, a bidding process was undertaken for settlement of the fishery, namely 'No.2 Sootea Brahmaputra Meen Mahal' (hereinafter referred to as the 'fishery') for a period of 7 years. The said fishery is a 60% category fishery situated in district Darrang. Upon completion of the bidding process, the fishery was settled in favour of the appellant Society for a period of 7 years by order of settlement dated 27.06.2016. The said settlement period expired on 05.07.2023. It is further stated that during the said settlement period of 7 years

when the petitioner Society was operating the fishery, about 80% area of the fishery got included in the 2nd edition of the extended Orang National Park vide a gazette notification dated 25.08.2022. As a result, there has been shrinkage in the area of the fishery from its original area and at present, the fishery is being operated from an area of about 20% of the original area of the fishery.

4. Thereafter, a joint verification was undertaken by the respondent State Authorities and accordingly, a decision was taken to undertake regular settlement of the fishery with 20% area of the original fishery area after assessing the annual revenue of the fishery under Rule 48 of the Assam Fishery Rules, 1953. It is submitted that the said process is not complete. Since the said process is not complete, the fishery has been allowed to run by the appellant Society by an order dated 22.06.2023 issued by the Deputy Commissioner, Darrang (respondent No.3) on a daily basis @Rs.2,100/- per day. Accordingly, the appellant Society was operating the fishery by duly depositing the revenue on daily basis. The respondent No.2 by an order dated 01.09.2023 allowed the respondent No. 4 to run the fishery on daily basis @Rs.3,000/- per day thereby revisiting the matter of daily basis running of the fishery in terms of the order issued by the Deputy Commissioner, Darrang (respondent No.3), the appellant was allowed to run the fishery.

5. The appellant Society being aggrieved by the said order, filed WP(C) No.5210/2023. In the aforesaid writ proceeding, this Court vide an order dated 08.09.2023 in the interim was pleased to suspend the operation of the said order dated 01.09.2023. Being aggrieved by the said interim order, the respondent No. 4 filed an application being I.A. (Civil) No.3136/2023 praying for vacation/ modification of the said interim order dated 08.09.2023 passed in WP(C) No.5210/2023. In the said interlocutory application, this Court vide order

dated 13.12.2023 was of the opinion that the order dated 01.09.2023 cannot be allowed to operate in perpetuity and therefore, while vacating the said interim order dated 08.09.2023, disposed of the writ petition with the following directions-

“i) The exercise for ascertaining the boundaries of the Fishery in question be completed expeditiously and in any event within a further period of a month from today as more than five months have already passed from the date of expiry of the earlier settlement;

ii) Immediately on completion of the aforesaid exercise, the Fishery in question may be settled strictly by following the procedure prescribed in law;

iii) The order dated 01.09.2023 by which the respondent no. 4 has been allowed to operate the Fishery on daily basis would continue for a period of one month by which time, the exercise of demarcation has been directed to be completed.

iv) In the event, the exercise for demarcation is not completed within the prescribed period of one month, the Fishery may be operated on temporary arrangement for a further period which may extend to a further maximum period of two months and no further. Such temporary arrangement, however, is to be made after a notice whereby all intending eligible parties may offer their rates and keeping in mind the public interest.”

6. The appellant/petitioner being aggrieved by the said order of this Court preferred the instant appeal.

7. Mr. M. Nath, learned Sr. Counsel appearing for the appellant submits that the appellant is only assailing the said order dated 08.09.2023 to the extent of the direction that the respondent No. 4 has been allowed to operate the fishery on daily basis for a period of 1 month. He further submits that the earlier order dated 22.06.2023 by which the appellant/petitioner was permitted to operate the fishery on daily basis was cancelled without giving any opportunity and

therefore there was gross violation of the principles of natural justice. He submits that a right had accrued upon the appellant/petitioner to operate the fishery by virtue of the said order and that the appellant/petitioner is agreeable to offer a same rate and therefore an opportunity was required to be given to the appellant/petitioner.

8. On the other hand, Mr. K.K. Mahanta, learned Sr. Counsel for the respondent No. 4 submits that the term of the earlier settlement with the appellant/petitioner having admittedly expired on 05.07.2023, the initial order dated 22.06.2023 by which the extension was granted to the appellant/petitioner was itself illegal. He further submits that the appellant/petitioner has no right to continue with the fishery after expiry of the tenure. He submits that the respondent No. 3 lacks jurisdiction and power to issue the initial order of extension dated 22.06.2023. In support of the aforesaid submission, he refers to Rule 12 of the Assam Fishery Rules, 1953.

9. Rule 12 of the Assam Fishery Rules, 1953 is extracted hereinbelow for ready reference-

“[12. Except those referred to in sub-rule No 8(b) above, all registered Fisheries shall be settled under tender system of sale in place of sale auction:]

[Provided that the Government shall settle a 60% category fishery with special category of co-operative Societies, Non-Government Organisations and Self Help Groups consisting of 100% actual fishermen in the neighbourhood of the fishery concerned by the Tender System.]

10. By referring to the said Rule, he submits that the order dated 22.06.2023 is illegal.

11. Mr. D.K. Sharma, learned Addl. Sr. Government Advocate appearing for the State respondent Nos. 1 to 3, submits that the process for settlement of the fishery by tender has already been undertaken.

12. We have duly considered the submissions made at the bar and also perused the records of the case.

13. It appears that the order dated 22.06.2023 was passed by the Deputy Commissioner, Darrang (respondent No. 3) allowing the appellant/petitioner to operate the fishery temporarily on daily basis. A reading of the Rule 12 of the said Rules shows that the prescribed authority to make such settlement of fishery under the said Rules is vested with the government. As such, the said order dated 22.06.2023 is totally illegal and without jurisdiction. It further appears that since the fresh process of settlement was not been able to be initiated, by order dated 01.09.2023, the respondent State Authorities allowed the respondent No. 4 to operate the fishery by a temporary arrangement on daily basis.

14. As such, this Court is of the opinion that the judgment and order dated 13.12.2023, whereby this Court vacated the interim order dated 08.09.2023 thereby allowing the respondent No. 4 to run the fishery for a period of 1 month, warrants no interference from this Court.

15. The appeal is accordingly dismissed.

16. No cost.

JUDGE

CHIEF JUSTICE(ACTING)

Comparing Assistant