

GAHC010032132016



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

Case No. : WP(C)/7392/2016

TULESWAR SAIKIA
S/O- SRI TARANI KANTI SAIKIA, R/O VILL.- DIPOTA BAMUNCHUBURI,
P.O.- DEPOTA, DIST.- SONITPUR, ASSAM.

VERSUS

STATE OF ASSAM and 4 ORS.
THROUGH THE COMMISSIONER AND SECY. TO THE GOVT. OF ASSAM,
PANCHAYAT and RURAL DEVELOPMENT DEPTT., DISPUR, GHY- 6.

2:THE COMMISSIONER
PANCHAYAT AND RURAL DEVELOPMENT
ASSAM
PANJABARI
JURIPAR
GHY- 37.

3:THE EXECUTIVE OFFICER
SONITPUR ZILLA PARISHAD
TEZPUR
DIST.- SONITPUR
ASSAM
PIN- 784001.

4:THE PRESIDENT
SONITPUR ZILLA PARISHAD
TEZPUR
DIST.- SONITPUR
ASSAM
PIN- 784001.

5:THE BLOCK DEVELOPMENT OFFICER

GABHARU DEVELOPMENT BLOCK AND EX-OFFICIO SECY.
GABHARU ANCHALIK PANCHAYAT
P.O.- GABHARU
PIN- 784153
DIST.- SONITPUR
ASSAM

Advocate for the Petitioner : MS.K L R YANTHAN, MS.L HAZARIKA,MS.A DAS,MR.D BANIA,MR. E AHMED,MR.S C BISWAS,MR.P BISWAS

Advocate for the Respondent : GA, ASSAM, MR. S DUTTA, SC, P & RD

BEFORE
HONOURABLE MR. JUSTICE MICHAEL ZOTHANKHUMA

ORDER

20.08.2024

1. Heard Mr. S.C. Biswas, learned counsel for the petitioner and Mr. S. Dutta, learned counsel for the P&RD Department.
2. The petitioner's case is that he had been settled with the Ketekibari Bi-weekly Market under Gabharu Anchalik Panchayat for the year 2011 – 2012 @ Rs.5,21,151/-. Pursuant to the settlement of the market, the petitioner executed an agreement with the Anchalik Panchayat and submitted the required security deposit. After completion of his settlement period i.e. 30.06.2012, the petitioner was returned his security deposit. The petitioner had also submitted the required fee of Rs.5,21,151/- for the settlement period from 01.07.2011 to 30.06.2012.
3. The grievance of the petitioner is that the respondent no.3 has however issued the impugned letter dated 28.10.2016 to the petitioner, asking him to deposit Rs.75,639/- as cost of Stamp Duty and Registration Fees for registration

of the Lease Agreement, which was executed for the settlement of the Ketekibari Bi-weekly Market.

4. The petitioner's counsel submits that when the respondents did not insist for registration of the agreement at the relevant point of time and as there was no wrong doing on the party of either of the petitioner or the respondents, the respondents could not have issued the impugned letter asking him to deposit the Stamp Duty and Registration Fees required for registering the Lease Agreement, which had not been registered at the relevant point of time.

5. Mr. S. Dutta, learned counsel for the P&RD Department submits that in terms of Rule 47(11) of the Assam Panchayat (Financial) Rules, 2002, the tenderer has to deposit not less than 30% of his quoted amount in his tender as security. The amount of security has to be recorded in the register in the prescribed form and the agreement has to be duly stamped as per the Schedule to the Rules. In the present case, the petitioner did not submit the cost of the Stamp Papers and as such, the petitioner's Lease Agreement was not registered in terms of Rule 47(16) of the Assam Panchayat (Financial) Rules, 2002. As the Accountant General, Audit Inspection Team had raised objections regarding non-registration of the Lease Agreement, which resulted in loss of Government revenue, the Committee on Public Accounts, Assam Legislative Assembly took a serious view of the matter and ordered for recovery of the revenue from the concerned lessee. As such, the petitioner has been asked to deposit the required fee for Stamp Duty and Registration Fees.

6. I have heard the learned counsels for the parties.

7. As can be seen from the submissions made by the counsels for the parties,

the Lease Agreement made between the Anchalik Panchayat and the petitioner, which was required to be registered, had not been registered under Rule 47(11) and 47(16) of the Assam Panchayat (Financial) Rules, 2002. The security deposit made by the petitioner was also returned to the petitioner by the respondent authorities, after expiry of the settlement period of the market. The claim for payment of Stamp Duty and Registration Fees has been made by the respondent authorities 4 (four) years after the petitioner's settlement period of the market had been completed. The claim of the respondent authorities for payment of the Stamp Duty and Registration Fees appears to be time barred as per the Limitation Act, 1963.

8. On considering the fact that the State respondents had not made any request to the petitioner for registering the Lease Agreement executed at the relevant point of time and as the claim for the Stamp Duty and Registration Fees has been made 4 years after the settlement period of the market had expired, this Court is of the view that the respondents cannot now make a claim for recovery of the amount at this belated stage. Accordingly, as this Court is of the view that the impugned letter dated 28.10.2016 issued by the respondent no.3 is not sustainable, the same is set aside.

9. The writ petition is accordingly allowed.

JUDGE

Comparing Assistant