

GAHC010044442024



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

Case No. : WP(C)/1264/2024

BIREN MAJUMDAR
VILL- KASHARIJAN, P.O.-KARATIPAM, P.S.-MORIGAON, MOUZA-
GHAGUA, DIST- MORIGAON, ASSAM, PIN-

VERSUS

THE STATE OF ASSAM AND 8 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY FISHERY
DEPARTMENT, GOVERNMENT OF ASSAM, DISPUR, GUWAHATI-781006

2:THE ASSAM FISHERIES DEVELOPMENT CORPORATION LTD
REPRESENTED BY ITS CHAIRMAN
VIP ROAD
CHACHAL
GUWAHATI-781036
ASSAM

3:THE CHAIRMAN
ASSAM FISHERIES DEVELOPMENT CORPORATION LTD.
CHACHAL
VIP ROAD
GUWAHATI-781036
KAMRUP (M) DISTRICT
ASSAM

4:THE MANAGING DIRECTOR
ASSAM FISHERIES DEPARTMENT CORPORATION LTD
VIP ROAD
CHACHAL
GUWAHATI-781036
ASSAM

5:THE REGISTRAR OF COOPERATIVE SOCIETIES
ASSAM
KHANAPARA
GUWAHATI-781022

6:THE PROJECT MANAGER
ASSAM FISHERIES DEVELOPMENT CORPORATION LTD.
VIP ROAD
CHACHAL TO HE GUWAHATI-781036
KAMRUP (M)
ASSAM

7:THE DISTRICT FISHERY DEVELOPMENT OFFICER
MORIGAON
MORIGAON DISTRICT
ASSAM
PINCODE-782105

8:THE ASSISTANT REGISTRAR OF CO-OPERATIVE SOCIETIES
MORIGAON
DIST-MORIGAON
PINCODE-782105

9:CIRCLE OFFICER
MAYONG REVENUE CIRCLE
MORIGAON
MORIGAON DISTRICT
PINCODE-782110

Advocate for the Petitioner : MR. K N CHOUDHURY

Advocate for the Respondent : SC, AFDC

**BEFORE
HONOURABLE MR. JUSTICE NELSON SAILO**

ORDER

Date : 16-05-2024

Heard Mr. K.N. Choudhury, learned Senior Counsel assisted by Ms. R. Kakoti, learned counsel for the petitioner and Mr. P. Sarma, learned counsel for the respondent Nos. 1 to 7.

2. It is the second time the petitioner is before this Court. The earlier the writ petition being WP(C) No. 4296/2023 was disposed of on 31.07.2023 with a direction that the balance amount of earnest money be allowed to be deposited by the petitioner by 11.09.2023. On depositing the said amount by the petitioner, the respondent authorities will recall the impugned order dated 07.07.2023 by which the settlement in favour of the petitioner was cancelled.

3. The petitioner thereafter deposited the balance amount but he has been served with a letter dated 06.01.2024 issued by the Managing Director, Assam Fisheries Development Corporation Limited (respondent No. 4) by which the application of the petitioner praying for permission to carry out the developmental works of Udari Meen Mahal in the district of Morigaon was made subject to him depositing the amount of revenue due for the year 2022-2023 amounting to Rs.23,80,193.00 (Rupees Twenty Three Lakhs Eighty Thousand One Hundred and Ninety Three) and for the year 2023-2024 amounting to Rs.24,46,022.00 (Rupees Twenty Four Lakhs Forty Six Thousand and Twenty Two). The total amount that has been demanded is Rs.48,26,215.00 (Rupees Forty Eight Lakhs Twenty Six Thousand Two Hundred and Fifteen). The said communication dated 06.01.2024 has been put to challenge by the petitioner in the instant writ petition.

4. Mr. K.N. Choudhury, learned Senior Counsel assisted by Ms. R. Kakoti, learned counsel for the petitioner submits that Udari Meen Mahal has not been formally handed over to the petitioner and despite this, the respondent No. 4 has issued the impugned letter dated 06.01.2024 demanding the revenue as stipulated in the said letter. He submits that in fact the land area and the water area has been reduced to $\frac{1}{4}^{\text{th}}$ compared to what was stated by the respondent No. 2 in the advertisement. The petitioner having not been able to make any

developmental works in the Fishery, the respondent No. 4 has arbitrarily demanded revenue as mentioned in the communication dated 06.01.2024.

5. The learned Senior Counsel submits that it is a settled position in law that under no circumstance, can it be construed that demand of kist money for a period where the fishery was not even in possession of the allottee be held to be a legitimate demand, as was done in the instant case. In support of his submissions, the learned Senior Counsel relies upon the case of *M/S Parghat Koibarta Min Shilpa Samabai Samity Ltd. Vs. The State of Assam and Ors., [WP(C) No. 2567/2012]* which was disposed of by a Coordinate Bench of this Court vide order dated 19.02.2019. While challenging the claim made by the respondent No. 4 vide communication dated 06.01.2024, the learned Senior Counsel however submits that the petitioner does not dispute the amount of kist money payable for 2023-2024 to the Corporation which comes to Rs.24,46,022.00 (Rupees Twenty Four Lakhs Forty Six Thousand and Twenty Two). He therefore submits that the impugned communication dated 06.01.2024 should be set aside.

6. Mr. P. Sarma, learned counsel for the respondent Nos. 1 to 7 on the other hand submits that a Deed of Agreement was executed on 29.09.2023 between the respondent Corporation and the petitioner, settling the fishery for a period of seven (7) years beginning from 07.08.2023 up-to 31.03.2029 and therefore, the petitioner cannot dispute the fact that no handing over of the fishery had taken place. As for the impugned communication dated 06.01.2024, the learned counsel for the respondent Nos. 1 to 7 agrees that there may be some mistake in the demand made for the financial year 2022-2023 and for which the respondents may be given liberty to examine the same.

7. The learned counsel by further referring to the letter dated 11.10.2023

(Annexure-I) written by the respondent No. 4 to District Commissioner, Morigaon district submits that it is clear from that letter that the petitioner has submitted a complaint about the unauthorized fishing carried out by some persons in the fishery (beel) allotted to the petitioner vide letter No. AFDC 06/2022/4170 dated 29.09.2023 for a period of seven (7) years up-to 31.03.2029. Therefore, the petitioner cannot dispute the fact that the fishery has been allotted to him and much less dispute the handing over the fishery to him.

8. Upon hearing the learned counsel for the parties, the Court is of the considered view that in view of the discrepancies that has been noticed in the impugned letter dated 06.01.2024 (Annexure-K), the respondent authorities concerned should reconsider the demand made for the revenue from the petitioner in the light of the agreement entered between the parties on 29.09.2023 and also in view of the fact that as per the claims of the petitioner the actual possession of the Meen Mahal is that the same has been reduced to $\frac{1}{4}^{\text{th}}$ of the area as compared to what was stated by the respondent No. 2 in the advertisement concerned.

9. In view of the above, the impugned communication dated 06.01.2024 is set aside and the matter is remanded back to the respondent No. 4 for reconsideration and for passing appropriate orders. It is also provided herein that before such order is passed, the respondent No. 4 shall give the petitioner an opportunity of hearing. The decision be taken by the respondent No. 4 within a period of four (4) weeks from the date of receipt of certified copy of this order. Till such decision is taken by the respondent authorities, no coercive steps be taken against the petitioner.

10. Writ petition stands disposed of in the above terms.

JUDGE

Comparing Assistant