

GAHC010047722018



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

Case No. : WP(C)/1436/2018

DILDAR HUSSAIN
S/O MD. ALAL UDDIN
VILL- UPPER DOOMDOMIA
P.O. BALISATRA P.S. BATADRAVA
DIST. NAGAON, ASSAM,
PIN - 782122.

VERSUS

THE STATE OF ASSAM AND 3 ORS.
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM,
PANCHAYAT AND RURAL DEVELOPMENT DEPARTMENT,
DISPUR, GUWAHATI - 781006.

2:THE NAGAON ZILLA PARISHAD

REP. BY ITS CHAIRMAN
NAGAON
ASSAM
PIN - 782001.

3:THE CHIEF EXECUTIVE OFFICER

NAGAON ZILLA PARISHAD
NAGAON
DIST. NAGAON
ASSAM
PIN - 782001.

4:THE BATADRAVA ANCHALIK PANCHAYAT

REP. BY ITS PRESIDENT

DIST. NAGAON
ASSAM
PIN - 782122

Advocate for the petitioner(s): Mr. L Sangtam

Advocate for the respondent(s): Ms. N Borah, Standing Counsel
P & RD Department, Govt. of Assam

**BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH**

ORDER

Date : 08.11.2024

Heard Mr. L Sangtam, the learned counsel appearing on behalf of the petitioner. Also heard Ms. N Borah, the learned counsel appearing on behalf of the P & RD Department, Govt. of Assam.

2. The instant writ petition has been filed by the petitioner seeking a direction upon the respondent authorities to return the balance amount of Rs.7,96,312/- out of the security deposit amount of Rs.20,00,000/-, which the petitioner had deposited as advance settlement value for the settlement of Balisatra Bi-Weekly Market for the Panchayat year 2017-18.

3. From a perusal of the materials on record, it is seen that the Batadrava Anchalik Panchayat has issued a NIT dated 01.05.2017 for settlement of the Balisatra Bi-Weekly Market for the year 2017-18 for the period from 01.07.2017 to 30.06.2018. The petitioner had participated in the said bidding process and

had quoted an amount of Rs.99,99,900/-. Being the highest bidder, the petitioner's bid was accepted for settlement for the Balisatra Bi-Weekly Market and the petitioner was asked to deposit the necessary tender value and the earnest money on or before 20.07.2017. It is further seen that the petitioner had to deposit a security deposit along with 20% of the kist money and accordingly the petitioner was asked to deposit 30% of the security money of Rs.29,99,970/- and 20% of the kist money amounting to Rs.19,99,980/- totaling to Rs.49,99,950/-. However, the petitioner only deposited an amount of Rs.20,00,000/- in two installments, on 20.07.2017 and 25.07.2017 respectively, and sought for further time for depositing the remaining amount of Rs.29,99,950/-.

4. The record further reveals that the petitioner was granted an extension to deposit by a period of another 30 days, but the petitioner failed to deposit. It is also seen from the records, including the para-wise reply that as the petitioner was asked thereafter to deposit the second kist, the petitioner thereupon surrendered the market.

5. It is the case of the petitioner herein that the petitioner on account of flood could not operate and, as such, the petitioner had sought for release of a part of the security deposit i.e. Rs.7,96,312/- and in that regard had submitted representations. The said representations having not been considered, the petitioner had approached this Court. It is further relevant to mention herein that from a perusal of the para-wise reply that the petitioner not only failed to deposit the remaining Rs.29,99,950/- but the petitioner midway also had surrendered the market, which resulted in the Department to run the market

under official management. Thereupon, the same was settled for a period in favour of Sri Bapuram Saikia i.e. w.e.f. 04.12.2017 to 30.06.2018 @ Rs.7,17,688/- on the basis of his yearly bid value of Rs.12,51,501/-, *inasmuch as*, all the other higher bids had already been withdrawn. It is also submitted that the Department had incurred losses.

6. This Court upon hearing the learned counsel appearing on behalf of the petitioner had also enquired as to on what basis the petitioner states that there was flood which made it impossible for the petitioner to run the Bi-Weekly Market in question. There is no document in regard to that or any certificate issued by any authority in this regard.

7. Under such circumstances, in the opinion of this Court, the instant writ petition cannot be entertained, *inasmuch as*, the question of facts as to whether there was a flood or not has to be proved only by way of evidence. Accordingly, this Court in view of the fact that there are disputed questions of facts is not inclined to entertain the instant writ petition, for which, the writ petition stands dismissed.

8. The instruction dated 30.08.2024 submitted by Ms. N Borah, the learned counsel for the P & RD Department, Government of Assam is kept on record and marked with the letter 'X'.

9. The learned counsel for the petitioner has also been served with a copy of the document which has been kept on record and marked with the letter 'X'.

10. Before parting with the record, this Court, however, observes that the dismissal of the writ petition on the ground that there are factual disputes which cannot be adjudicated in a proceedings under Article 226 of the Constitution shall not preclude the petitioner to avail such other remedies as may be available before the competent Civil Court, if so advised.

JUDGE

Comparing Assistant