

GAHC010123842024



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

Case No. : WP(C)/3232/2024

DAKHIN SALMARA MATSYAJIBI FISHERY CO-OPERATIVE SOCIETIES
LTD.,
REPRESENTED BY ITS SECRETARY NAMELY SHRI BINOY KRISHNA DAS,
SON OF LATE GANESH CH. SARKAR, R/O- VILL.- SOUTH SALMARA,
BALADOBA, P.O. AND P.S. SOUTH SALMARA, DIST. SOUTH SALMARA
MANKACHAR, ASSAM, PIN- 783127.

VERSUS

THE STATE OF ASSAM AND 8 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE GOVT.
OF ASSAM, FISHERY DEPARTMENT, DISPUR, GUWAHATI-06.

2:THE DIRECTOR OF FISHERIES

GOVT. OF ASSAM
MEEN BHAWAN
GOPINATH NAGAR
GUWAHATI-16.

3:THE SECRETARY TO THE GOVT. OF ASSAM
PANCHAYAT AND RURAL DEVELOPMENT DEPARTMENT
DISPUR
GHY-06.

4:THE ADDITIONAL SECRETARY TO THE GOVT. OF ASSAM
FISHERY DEPARTMENT
DISPUR
GUWAHATI-06.

5:THE DISTRICT COMMISSIONER

SOUTH SALMARA MANKACHAR
ASSAM
P.O. HATSINGIMARI
DIST. SOUTH SALMARA MANKACHAR
ASSAM
PIN- 783135.

6:THE DISTRICT COMMISSIONER
DHUBRI
ASSAM
PIN- 783301.

7:THE CHIEF EXECUTIVE OFFICER
ZILLA PARISHAD
DHUBRI -CUM- I/C PRESIDENT OF JAMADARHAT ANCHALIK PANCHAYAT
CHIRAKUTI
P.O.
P.S. AND DIST. DHUBRI
ASSAM
PIN- 783301.

8:THE EXECUTIVE OFFICER
JAMADARHAT ANCHALIK PANCHAYAT
CHIRAKUTI
-CUM- BLOCK DEVELOPMENT OFFICER
JAMADARHAT DEVELOPMENT BLOCK
P.O. JAMADARHAT
DIST. DHUBRI
ASSAM
PIN- 783127.

9:THE OFFICER-IN-CHARGE
FAKIRGANJ POLICE STATION
P.O. FAKIRGANJ
DIST. DHUBRI
ASSAM
PIN- 783330

Advocate for the Petitioner : MR. A F N U MOLLAH

Advocate for the Respondent : GA, ASSAM

Linked Case : WP(C)/2013/2024

LALCHAN ALI
S/O- LATE FULCHAN ALI

VILL.- MOIRAKUCHI PART-I

P.O.- AIRKATA

P.S.- FAKIRGANJ

DIST.- DHUBRI (ASSAM)

PIN- 783330.

VERSUS

THE STATE OF ASSAM AND 13 ORS
REPRESENTED BY THE CHIEF SECRETARY

GOVT. OF ASSAM

DISPUR
GHY-06.

2:THE SECRETARY TO THE GOVT. OF ASSAM
PANCHYAT AND RURAL DEVELOPMENT DEPARTMENT
DISPUR
GHY-06.

3:THE PRINCIPAL SECRETARY TO THE GOVT. OF ASSAM
PANCHAYAT AND RURAL DEVELOPMENT DEPARTMENT
DISPUR
GHY-06.

4:THE COMMISSIONER
PANCHAYAT AND RURAL DEVELOPMENT
PANJABARI
GHY-37.

5:THE ADDITIONAL SECRETARY TO THE GOVT. OF ASSAM
FISHERY DEPARTMENT
DISPUR
GHY-06.

6:THE DISTRICT COMMISSIONER
DHUBRI
ASSAM.

7:THE DISTRICT COMMISSIONER
SOUTH SALMARA MANKACHAR
ASSAM.

8:THE CHIEF EXECUTIVE OFFICER
DHUBRI ZILLA PARISHAD
ASSAM.

9:THE CHIEF EXECUTIVE OFFICER

SOUTH SALMARA MANKACHAR
ASSAM.

10:THE EXECUTIVE OFFICER
JAMADARHAT ANCHALIK PANCHAYAT
DIST.- DHUBRI
ASSAM.

11:THE CIRCLE OFFICER
SOUTH SALMARA REVENUE CIRCLE
SOUTH SALMARA
DIST.- DHUBRI

ASSAM.
12:THE M/S DAKHIN SALMARA MATSHYAJIBI FCS LTD.
REPRESENTED BY ITS SECRETARY

VILL- BALADOBA

P.O.- SOUTH SALMARA
DIST.- DHUBRI

ASSAM.
13:THE OFFICER-IN-CHARGE
FAKIRGANJ POLICE STATION
DIST.- DHUBRI

ASSAM.
14:THE OFFICER-IN-CHARGE
SOUTH SALMARA POLICE STATION
DIST. SOUTH SALMARA MANKACHAR

ASSAM.

Advocate for : MR. M U MONDAL
Advocate for : GA
ASSAM appearing for THE STATE OF ASSAM AND 13 ORS

BEFORE
HONOURABLE MR. JUSTICE MICHAEL ZOTHANKHUMA

ORDER

25.07.2024

Heard Mr. A.F.N.U. Mollah, learned counsel for the petitioner in WP(C) 3232/2024 and Mr. M.U. Mondal, learned counsel for the petitioner in WP(C)

2013/2024. Also heard Mr. P. Sarmah, learned Standing Counsel, Fishery Department; Mr. S. Dutta, learned Standing Counsel, P&RD Department and Mr. S.R. Baruah, learned counsel for the State respondents.

2. Both the writ petitions are disposed of by this common order.

WP(C) 3232/2024

3. The petitioner's case in WP(C) 3232/2024 is to the effect that the 3/89 Bhangamore Jingiram Part-I & Part-II Fishery in South Salmara Mankachar district was settled with the petitioner Society for a period of 7 years, vide order dated 01.02.2024 issued by the Fishery Department, specifically, the respondent No.4 in WP(C) 3232/2024. The petitioner's grievance is that the respondent Nos.7 & 8, i.e., Jamadarhat Anchalik Panchayat, Chirakuti have published an NIT dated nil for settlement of the said same fishery by giving it a different name, i.e., Airkata Bridge Moirakuchi Part-I Jinjiram Fishery.

4. This Court passed an order dated 26.06.2024 in WP(C) 3232/2024, directing that a joint verification should be made by the District Commissioners of South Salmara Mankachar District and Dhubri district, to clarify whether the 3/89 Bhangamore Jingiram Part-I & Part-II Fishery, which has been settled with the petitioner, overlapped the Airkata Bridge Moirakuchi Part-I Jinjiram Fishery, which had been published for regular settlement in the NIT dated nil issued by the respondent No.7. The joint verification was to clarify as to whether the area of 3/89 Bhangamore Jingiram Part-I & Part-II Fishery was wholly or partly within South Salmara Mankachar district or within Dhubri district.

5. Mr. S.R. Baruah, learned counsel for the State respondents submits that

the direction passed by this Court for a joint verification, in terms of the order dated 26.06.2024 passed in WP(C) 3232/2024, has not been undertaken by the two District Commissioners Offices till date. He accordingly prays for time to enable the two offices to make a spot verification.

6. Mr. S. Dutta, learned counsel for the P&RD Department submits that the NIT dated nil, by which a new settlement was sought to be given by the Jamadarhat Anchalik Panchayat over the fishery, which had already been settled by the Fishery Department with the petitioner, has now been cancelled vide letter dated 29.06.2024 issued by the Principal Secretary to the Government of Assam, P&RD Department. He accordingly submits that WP(C) 3232/2024 has become infructuous.

WP(C) 2013/2024

7. In WP(C) 2013/2024, the case of the petitioner was that he had been settled with the Airkata Bridge Moirakuchi Part-I Jinjiram Fishery by the Jamadarhat Anchalik Panchayat with approval of the Zilla Parishad, Dhubri on 18.10.2023 and the settlement period of the said fishery expired on 30.06.2024. The petitioner's grievance in WP(C) 2013/2024 is that the Airkata Bridge Moirakuchi Part-I Jinjiram Fishery overlaps the 3/89 Bhangamore Jingiram Part-I & Part-II Fishery, which has been settled by the Fishery Department with the petitioner in WP(C) 3232/2024. Accordingly, the petitioner in WP(C) 2013/2024 has prayed for setting aside the order dated 01.02.2024, by which the said fishery had been settled by the Fishery Department with the petitioner in WP(C) 3232/2024.

8. Mr. P. Sarma, learned counsel for the Fishery Department submits that the P&RD Department and the Jamadarhat Anchalik Panchayat do not have any competency to settle the said fishery with any person, as it is a government fishery. In this regard, he has relied upon the Order No. FISH.224/2014 dated 07.03.2017, issued by the Principal Secretary to the Government of Assam, Fishery Department, which is to the effect that administrative control over all natural water bodies, dead river courses, river tributaries and reservoirs vests with the Fishery Department henceforth.

9. Mr. S. Dutta, learned counsel for the P&RD Department submits that WP(C) 2013/2024 has also become infructuous, in view of the fact that the settlement period of the fishery with the petitioner in WP(C) 2013/2024 had expired on 30.06.2024.

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

11. As can be seen from the submissions made by the learned counsels for the parties, there appears to be overlapping of the area of 3/89 Bhangamore Jingiram Part-I & Part-II Fishery settled by the Fishery Department in favour of the petitioner in WP(C) 3232/2024, with the Airkata Bridge Moirakuchi Part-I Jinjiram Fishery settled by the Jamadarhat Anchalik Panchayat with the petitioner in WP(C) 2013/2024. The other alternative view that can be taken is that it is the same fishery with different names being given to it. The challenge made by the petitioner in WP(C) 3232/2024 to the NIT dated nil issued by the Jamadarhat Anchalik Panchayat has now become redundant, in view of the fact that the said NIT dated nil has been cancelled vide Notification dated 29.06.2024 issued by the Principal Secretary, P&RD Department. WP(C)

2013/2024 is also infructuous, inasmuch as, the settlement period of the said fishery with the petitioner in WP(C) 2013/2024 has expired.

12. As stated in the foregoing paragraph, the submissions of the counsels show that there are 2 fisheries having different names given by the Fishery Department and the Jamadarhat Anchalik Panchayat. Thus, a clarification is required to be made with regard to who has administrative control over the said fishery, but also as to whether there are two separate fisheries with overlapping areas or one fishery having two names. Accordingly, to clarify the said issue, the District Commissioners of South Salmara Mankachar district and Dhubri district shall make a verification report, as to whether the fishery, i.e., 3/89 Bhangamore Jingiram Part-I & Part-II Fishery is the same fishery having a different name, i.e., Airkata Bridge Moirakuchi Part-I Jinjiram Fishery, or whether they are two different distinct fisheries having some overlapping areas with each other, besides stating as to which District they are located in.

13. As the petitioner in WP(C) 2013/2024 has submitted an appeal under Section 135 of the Assam Panchayat Act, 1994, to the Chief Secretary to the Government of Assam, to take a decision on the dispute between the two departments regarding the fishery/fisheries, i.e., the Fishery Department and the P&RD Department and as to who has administrative control over the said fishery/fisheries, the Chief Secretary should take a decision on the matter, after perusing the spot verification report made by the two District Commissioners Offices.

14. The above being said, prior to taking a decision, the Chief Secretary should also peruse the Order No. FISH.224/2014 dated 07.03.2017 issued by

the Principal Secretary to the Government of Assam, Fishery Department, which is as follows:-

“No. FISH. 224/2014.- In exercise of power conferred by Section 155 and 156 of Assam Land & Revenue Regulation, 1886 (Regulation 1 of 1886) read with Section 6 of Indian Fisheries Act, 1897 (Act No. 4 of 1897) the Governor of Assam is pleased to vest the administrative control of all natural water bodies viz. beels, ox-bow lakes, low laying areas, swamps, derelict water bodies, dead river courses, river tributaries and reservoirs with the Fishery Department henceforth which are presently being settled by Revenue & Disaster Management Department and are administered by concerned Deputy Commissioner/SDO of a district/civil sub-division for proper scientific method of conservation and management and for sustainable development of such rich natural resources in a productive manner or overall economic development of people living in the vicinity of such natural water bodies.

Accordingly, the Revenue & Disaster Management Department shall hand over possession of such natural water bodies under the Department through concerned DC/SDO to Fishery Department represented by DFDO of the concerned district. Consequently upon above, the land record of concerned Revenue Circle & Sadar records shall be modified to reflect the administrative control of such natural water bodies by the Fishery Department.

It is further ordered that, in case of any such natural water body already leased out by concerned DC/SDO; the right of fishing over such natural water bodies by the lessee shall not in any way get affected till expiry of the lease period subject to the condition that such lessee shall not obstruct in any way the steps taken by the Fishery Department for development of such natural water bodies in the intervening period till completion of lease.

The Governor is further pleased to allow settlement/ leasing of such natural water bodies by Fishery Department for which detailed procedure shall be worked out based on existing Act/Rules by the Department within a period of 30 days from this Order coming into force.

Such natural water bodies shall be administered by Govt. of Assam Fishery Department through its Directorate/ District/Sub-divisional level offices and in case if such natural water bodies falls within the Sixth Schedule area, the

respective Council will administer through District/Sub Div. Level offices of Fishery Department under overall control of Government of Assam, Fishery Department.

***Principal Secretary to Govt. of Assam,
Fishery Department.”***

15. Till a decision is taken by the Chief Secretary on the issues raised in this case and a clarification is made by way of a speaking order, the Jamadarhat Anchalik Panchayat shall not issue any NIT for settlement of the fishery, i.e., 3/89 Bhangamore Jingiram Part-I & Part-II Fishery/ Airkata Bridge Moirakuchi Part-I Jinjiram Fishery, which has been settled by the Fishery Department with the petitioner in WP(C) 3232/2024.

16. The Chief Secretary shall take a decision on the directions passed by this Court, within a period of 4(four) months, from the date of receipt of a certified copy of this order.

17. The letter dated 23.07.2024 issued by the Addl. District Commissioner, Dhubri addressed to Mr. S.R. Baruah, Jr. Government Advocate, stating that spot verification could not be done due to the present fishery being submerged with flood water, is made a part of the record and marked as Annexure-X.

18. The writ petitions are accordingly disposed of.

JUDGE

Comparing Assistant