

GAHC010096562020



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

Case No. : WP(C)/2871/2020

KAMRUL ISLAM
S/O- ABDUL JALIL, R/O- VILL- BAZARBND, P.O- CHATAL, DIST-
KARIMGANJ, ASSAM

VERSUS

THE ASSAM FISHERIES DEVELOPMENT CORPORATION LIMITED(AFDC)
AND 3 ORS
CHACHAL, VIP ROAD, GUWAHATI- 36

2:THE MANAGING DIRECTOR
AFDCL
CHACHAL
VIP ROAD
GUWAHATI- 36

3:THE DEPUTY COMMISSIONER
KARIMGANJ
ASSAM
PIN- 788710

4:AMIRUL ISLAM
S/O LT. MAKLISUR RAHMAN
VILL-BAZARBOND
P.O- CHATAL
PIN- 788710
DIST.-KARIMGANJ
ASSAM

Advocate for the Petitioner : MR. J M A CHOUDHURY, MR. A B T HAQUE

**Advocate for the Respondent : SC, AFDC, MS. S B CHOUDHURY (R-4),MR B GOGOI,GA,
ASSAM**

Linked Case : I.A.(Civil)/1597/2020

AMIRUL ISLAM
S/O- LATE MAKLISUR RAHMAN
VILL-BAZARBOND
PO-CHATAL
PIN-788710
DIST- KARIMGANG
ASSAM

VERSUS

KAMRUL ISLAM
S./O- ABDUL JALIL
R/O- VILL- BAZARBND
P.O- CHATAL
DIST- KARIMGANJ
ASSAM

Advocate for : MS. S B CHOUDHURY
Advocate for : MR. J M A CHOUDHURY appearing for KAMRUL ISLAM

BEFORE
HONOURABLE MR. JUSTICE N. UNNI KRISHNAN NAIR

ORDER

Date : 08.08.2024

Heard Mr. A. B. T. Haque, learned counsel appearing on behalf of the petitioner. Also heard Mr. P. Sarma, learned standing counsel, Assam Fisheries Development Corporation Ltd(AFDCL).

2. The petitioner by way of instituting the present proceeding, has presented a challenge to a communication, dated 21.02.2020, by which the Managing Director, Assam Fisheries Development Corporation Ltd(AFDCL), had cancelled the extension as granted to the lease of the petitioner, herein, in respect of his Fishery, vide order, dated 20.02.2020.

3. The facts requisite for consideration of the issue arising in the matter, is noticed as under:

The petitioner, herein, was settled with a Fishery named Gopachang Group Fishery, Karimganj, for a period of 7 years w.e.f. 01.04.2012 to 31.03.2019. The petitioner contends that he had remitted to the authorities of the Assam Fisheries Development Corporation Ltd(AFDCL), the due *kist* money involved. However, on account of encroachments being made on a major part of the said Fishery; the petitioner, herein, could not carry-out the fishing activities therein, in terms of the projections as made by the authorities of the area of the Fishery at the time of the initial settlement of the same, with him.

The petitioner, thereafter, approached the respondent authorities for remission of the *kist* amount and/or for granting him the extension of the lease of his Fishery so as to recoup the loss so sustained by him.

On consideration of the prayer so made by the petitioner, herein; the Managing Director, Assam Fisheries Development Corporation Ltd(AFDCL), vide his communication, dated 20.02.2020, proceeded to accept the prayer of the petitioner and extended the lease of the petitioner for a period of 3 years till 31.03.2023, in the manner as specified therein.

However, on the next very date i.e. 21.02.2020, the said extension as granted to the lease of the petitioner, herein, came to be withdrawn; leading to the institution of the present proceeding.

4. At the outset, it is to be noted that the lease of the petitioner, herein, had come to an end on 31.03.2019, and the communication, dated 20.02.2020, extending his lease has the effect of extending a lease after the same had come to an end and not during the currency of the same, which admittedly was not permissible. It is the settled position of law that a lease/settlement the tenure of which has already expired; the same cannot be extended by authorities in any manner.

5. Be that as it may; it is contended at the Bar that the settlement of the said Fishery was so made with the petitioner by way of direct recruitment. The authorities of the Assam Fisheries Development Corporation Ltd(AFDCL) had also made direct settlement of few other Fisheries, by way of direct recruitment and the same, on being cancelled; the settlement holders assailed the same, before this Court, in a number of writ proceedings which on being dismissed, lead to institution of writ appeals before this Court.

6. This Court in Writ Appeal No. 366/2022(**Nisar Ahmed v. AFDC Ltd. & ors.**) and other analogous matters, vide judgment & order, dated 06.05.2024, proceeded to consider the issue involved and upon hearing the parties to the proceeding therein; by applying the decision of the Full Bench of this Court rendered in the case of **M/s. 129 Haria Dablong Min Mahal Samabhai Samity Ltd v. Assam Fisheries Development Corporation Ltd. & ors.**, reported in **AIR 2001 Gau 139**; proceeded to hold that the Assam Fisheries Development Corporation Ltd(AFDCL) authorities had no power of direct settlement of Fisheries and therefore, the Fisheries as settled in favour of the appellants therein, without calling for the tenders, was illegal.

7. Applying the decision of this Court in the case of **Nisar Ahmed** (supra), it

is found that in the present case also, that the initial settlement, as made with the petitioner by the Assam Fisheries Development Corporation Ltd(AFDCL) authorities was so made, by direct settlement and not, by a tender process, and accordingly, the said settlement being **void ab initio**; any grievance of the petitioner in relation to the said settlement so made, cannot be considered by this Court in the present proceeding.

8. In view of the above position; the settlement as made in favour of the petitioner, herein, being **void ab initio**; this Court is of the considered view that the grievance as raised by the petitioner in the present proceeding, for an extension of the term of his lease as granted to him in the matter, cannot be entertained and accordingly; the writ petition is held to be devoid of any merit.

9. In view thereof, the writ petition accordingly stands dismissed. However, there shall be no order as to costs.

JUDGE

Comparing Assistant