



2024:GAU-AS:11845-DB

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

WRIT APPEAL No.233 OF 2023

No.1, 1(A) & 2 Upper Part Brahmaputara Fishery Co-Operative Society Limited, Panikhaiti, Pragjyotishpur, represented by its Secretary Sri Dwijen Hazarika, Son of Nabin Hazarika, Resident of M.C. Road, Uzan Bazar, PO: Uzan Bazar, PS: Latashil, District: Kamrup (M), Assam.

.....Appellant

-Versus-

1. The State of Assam, represented by the Commissioner & Secretary to the Government of Assam, Fishery Department, Dispur, Guwahati – 781006.
2. The Secretary to the Government of Assam, Fishery Department, Dispur, Guwahati – 781006.
3. The Joint Secretary to the Government of Assam, Fishery Department, Dispur, Guwahati – 781006.
4. The Commissioner & Secretary to the Government of Assam, Revenue Department, Dispur, Guwahati – 781006.
5. The Registrar of Co-Operative Societies, Assam, Guwahati – 781001, Kamrup (M), Assam.

6. The Assistant Registrar of Co-Operative Societies, Assam, Guwahati, Kamrup (M), Assam.

7. The Deputy Commissioner, Kamrup (M), Assam.

8. The Circle Officer, Chandrapur Revenue Circle, Chandrapur, Kamrup (M), Assam.

9. The District Fishery Development Officer, Guwahati, Kamrup (M), Assam.

10. No.11 Part-V Kolong Nadi Anchalik Meen Samabai Samity Limited, a registered Fishery Co-Operative Society, Niz-Gobardhan, PO: Chandrapur, District: Kamrup (M), Assam and is represented by its Secretary Sri Jentu Barman, Son of Late Jagadish Barman, resident of Niz-Gobardhan, PO: Chandrapur, District: Kamrup (M), Assam.

11. Shri Jentu Barman,
Son of Late Jagadish Barman,
Secretary of No.11 Part-V Kolong Nadi Anchalik Meen Samabai Samity Limited,
Resident of Niz-Gobardhan, PO: Chandrapur, District: Kamrup (M), Assam.

.....Respondents

- B E F O R E -

**HON'BLE THE CHIEF JUSTICE MR. VIJAY BISHNOI
HON'BLE MR. JUSTICE KAUSHIK GOSWAMI**

For the Appellant : Mr. K.N. Choudhury, Senior Advocate,
assisted by Ms. R.R. Kakati, Advocate.

For the Respondents : Mr. D.K. Sarmah, Additional Senior
Government Advocate, Assam for
respondent Nos.1, 2, 3, 7, 8 & 9.

: Ms. N. Bordoloi, Standing Counsel,
Revenue Department for respondent
No.4.

: Ms. M.D. Borah, Standing Counsel, Co-Operation Department for respondent Nos.5 & 6.

: Mr. T.J. Mahanta, Senior Advocate, assisted by Ms. P. Bhattacharya, Advocate and Ms. P. Sarma, Advocate for respondent Nos.10 & 11.

Date of Hearing : 25.11.2024.

Date of Judgment : **29.11.2024.**

JUDGMENT & ORDER (CAV)

(Kaushik Goswami, J)

Heard Mr. K.N. Choudhury, learned Senior Counsel, assisted by Ms. R.R. Kakati, learned counsel for the appellant. Also heard Mr. D.K. Sarmah, learned Additional Senior Government Advocate, Assam appearing for the respondent Nos.1, 2, 3, 7, 8 & 9; Ms. N. Bordoloi, learned Standing Counsel, Revenue Department appearing for the respondent No.4; Ms. M.D. Borah, learned Standing Counsel, Co-Operation Department appearing for the respondent Nos.5 & 6 and Mr. T.J. Mahanta, learned Senior Counsel, assisted by Ms. P. Bhattacharya and Ms. P. Sarma, learned counsel appearing for the respondent Nos.10 & 11.

2. This writ appeal is presented against the judgment & order dated 14.06.2023 passed by the learned Single Judge in WP(C) No.9225/2019, whereby fishery settlement made in favour of the appellant by an order dated 18.11.2019 pursuant to Tender Notice dated

10.06.2019 was set aside and the settlement was awarded to the writ petitioner/respondent No.10.

3. The factual matrix of the case is that an NIT was issued on 10.06.2019 by the Deputy Commissioner, Kamrup (M) for settlement of Kamrup Pragjyotishpur Brahmaputra Meen Mahal of Kamrup (M) District (hereinafter to be referred as the "subject fishery") for a period of 7(seven) years. Pursuant to the said NIT, the petitioner and the appellant (respondent No.10 before the learned Single Judge) along with other bidders participated in the aforesaid tender process. Thereafter, though the bid of the petitioner was highest, the subject fishery was settled with the appellant.

Accordingly, the said settlement was challenged by the petitioner under Article 226 of the Constitution of India by way of a writ petition being WP(C) No.9225/2019, wherein the learned Single Judge, after hearing the parties, held that the rejection of the writ petitioner's bid and acceptance of the bid of the appellant for settlement of the subject fishery is unsustainable in law and by setting aside the impugned settlement, directed grant of the subject settlement with the petitioner No.1 at its offered price.

Aggrieved by the aforesaid judgment & order passed by the learned Single Judge, the present appeal has been preferred by the appellant.

4. Mr. K.N. Choudhury, learned Senior Counsel appearing on behalf of the appellant submits that the

interference of the learned Single Judge by the judgment & order under appeal against the impugned settlement of the subject fishery in favour of the appellant and consequent direction for grant of the settlement of the subject fishery to the petitioner is bad in law in as much as the petitioner does not fall within the neighbourhood of the subject fishery and as such, is not entitled for settlement in terms of Rule 12 of the Assam Fishery Rules, 1953, (hereinafter to be referred as "the Fishery Rules").

5. He further submits that there is no averment in the writ petition that the writ petitioner resides within the neighbourhood of the subject fishery and in absence of such jurisdictional fact, the Court cannot assume the existence of such fact. In support of the aforesaid, Mr. Choudhury relies upon the decision of the Apex Court in the case of ***Arun Kumar & Ors. Vs Union of India & Ors.***, reported in ***(2007) 1 SCC 732.***

6. He further submits that it is evident from the certificate enclosed with the writ petition as Annexure-6 that the petitioner's society is located in the neighbourhood of fishery Mahals, i.e. No.25 Dhepujijan, and not in the neighbourhood of the subject fishery.

7. Mr. Choudhury further submits that pursuant to the direction of this Court dated 19.07.2019 in WP(C) No.4774/2019 filed by appellant, the respondent authorities by speaking order dated 23.09.2019 has held that the neighbourhood certificate submitted by the writ

petitioner is incorrect as none of the villages having operational area of the society is situated in the bank of the subject fishery jurisdiction. He accordingly submits that the writ petitioner does not fall under the neighbourhood of the subject fishery and as such, the subject fishery cannot be settled with the petitioner. In support of the aforesaid submission, he relies upon the decision of the Division Bench of this Court in the case of ***Majorati Min Samabai Samity Ltd. (M/S) Vs. M/S Sukhraj Min Samabai Samity Ltd. & Ors.***, reported in ***1998 (1) GLT 405***.

8. Per Contra, Mr. T.J. Mahanta, learned Senior Counsel appearing for the writ petitioner submits that the judgment & order of the learned Single Judge, whereby the settlement of the subject fishery with the appellant has been set aside by directing settlement in favour of the petitioner No.1, is in consonance with the Fishery Rules. He further submits that it is clearly established on the face of the record that the members of the petitioner's society reside within 1 kilometer of the subject fishery and as such, are within the neighbourhood as contemplated under Rule 12 of the Fishery Rules. He further submits that the petitioner being the highest bidder, the rejection of the petitioner's bid was bad and therefore, the judgment & order under appeal warrants no interference from this Court.

9. We have given our prudent consideration to the arguments made by the learned counsels appearing for the

contesting parties and have perused the material available on record and have also considered the citations submitted at the bar.

10. It appears that pursuant to the NIT dated 10.06.2019 for settlement of the subject fishery, the appellant, after coming to know that the writ petitioner has submitted tender in the said tender process, filed a writ petition, i.e. WP(C) No.4774/2019, alleging that the petitioner is ineligible to participate in the subject tender process. In the said writ petition, the learned Single Judge by judgment & order dated 19.07.2019 was pleased to dispose of the writ petition at the motion stage with a direction to the Deputy Commissioner, Kamrup (M) to examine the complaint made by the appellant and dispose of the same by a reasoned order before issuing any final order of settlement of the subject fishery. It appears that pursuant to the aforesaid direction of the learned Single Judge, the jurisdictional Deputy Commissioner, by speaking order dated 23.09.2019, held the neighbourhood certificate submitted by the writ petitioner to be incorrect as none of the villages having operational area of the petitioner's society is situated in the bank of the subject fishery jurisdiction and that majority of the society shareholder resides in the village, i.e. Gobordhon, which is situated in the bank of river Kolong, which is 1 kilometer distance from the subject fishery.

It appears that the aforesaid speaking order dated 23.09.2019 was put to challenge by the writ

petitioner before this Court by way of a writ petition, i.e. WP(C) No.8174/2019, in which notice was issued on 08.11.2019 with an observation that the prayer of *interim* order would be considered on the returnable date and further that the process of settlement of the subject fishery shall abide by further orders that may be passed in the case. However, before the returnable date, i.e. 29.11.2019, the respondent settled the subject fishery on 18.11.2019 with the appellant/respondent No.10 and the same is assailed in the writ petition from which this appeal has arisen.

11. Apt to refer to the impugned Settlement Order dated 18.11.2019, which is reproduced hereunder for ready reference:

“GOVT OF ASSAM
FISHERY DEPARTMENT
DISPUR: GUWAHATI: 781006

No.FISH-188/2017/207 (eCF No.42043)

Dated Dispur the 18th November, 2019

ORDER

Examined: The proposal for settlement of Kamrup Pragjyotishpur Brahmaputra Fishery submitted by DC, Kamrup(Metro) vide letter No KRF 40/2003/Part-I/329 dated 23.9.19

Also Read: The Speaking order passed by the ADC, Kamrup(Metro) vide No KRF (M) 40/2003/Pt-I/330 dated 23.9.19 in the light of order of the Hon'ble High Court dated 19.7.19 In WP(C) No 4774/2019

Read: The Order of the Hon'ble High Court dated 8.11.2019 in WP(C) No 8174/2019.

From the perusal of records it is seen that on expiry of current lease, DC, Kamrup (M), Guwahati Issued. NIT dt.

10.06.19 for fresh settlement fixing 08.07.19 as last date for submission of tender with annual Govt. Revenue at Rs. 1,07,142.00 for settlement of Kamrup Pragjyotishpur Brahmaputra Fishery.

In response, 5(five) societies submitted tenders. DC forwarded copies of tender with documents along with Comparative Statement vide letter date. 23.09.2019 quoted above.

The tenders have been scrutinized and status of each bid is shown below:-

1. M/S 3(C) Lower Part Brahmaputra MMCS Ltd Amingaon, Dist. Kamrup has offered the 5th highest bid of Rs.7,77,500.00 for 7 years @ Rs.1,10,500.00 PA (Flat rate)

The society has submitted Bakijal clearance certificate and the neighbourhood certificate in Individual name and it has not submitted Call Deposit. So, the bid offered by it is invalid tender and rejected outright.

2. M/S Pub Malolbari MBSS Ltd. Vill. Pub Malolbari, Kamrup (M) has quoted the 2nd highest bid of Rs. 51,70,513.00 for 7 years @ 10% yearly increase.

Bakijal certificate is in individual name. 100% actual Fisherman certificate is not issued by competent authority viz ARCS. The list of Members prepared by Secretary of the society is endorsed by B.O.L.R. Branch, DC's office Kamrup (M) which is not acceptable. Neighbourhood certificate not submitted. Hence, it is not a valid bid.

3. Chandrapur Anchalik MSS Ltd. Chandrapur Kamrup (M) has offered 3rd highest bid of Rs50,40,000.00 @ Rs. 7,20,000/- PA (Flat rate)

Fishing experience certificate has not been issued by competent authority viz. DFDO, Kamrup instead it has been issued by C.O Chandrapur.

It appears that society is located at a distance of 1 K.M of the fishery as per report of C.O Chandrapur dated 06.07.2019

4. M/s No.1, I (A) & 2 Upper Part Brahmaputra FCS Ltd. Panikhaiti, Dist. Kamrup(M) has offered the 4th highest Bid Rs. 38,63,184.00 for 7 years @ 10% enhanced rate PA.

The society has submitted all the documents which are found to be in order. As per report of CO, the members of the society reside on the bank of the river fishery.

5. M/s 11 No. Part V Kalong Nadi Anchalik MSS Ltd. Vill & Niz Gobardhan, Chandrapur has offered the 1st

highest bid of Rs. 60,71,789.00 for 7 years @ 10% enhanced rate PA.

The 100% Actual Fisherman Certificate has been issued by DFDO, Kamrup Instead of ARCS, Kamrup & another Certificate issued by C.O Chandrapur that the society consist of Fishermen. But both the certificates are not as per format.

As regards neighbourhood issue of 1st highest bidder, No II DI V Kalong Nadi AMSS Ltd., another bidder society namely M/S No I, I (A) & 2 Upper Part Brahmaputra PCS Ltd filed a complaint that the certificate issued by C.O. dated 17.02.12 has been fraudulently obtained. The matter went to High Court vide WP(C) No.4774/19 wherein the Hon'ble High Court vide order date 19.07.2019 directed DC, Kamrup (M) to examine the complaint and dispose of by a reasonable order before settlement of the fishery. Accordingly ADC based on fresh Inquiry by CO disposed of the matter with a speaking order dated 23.09.19 & came to the conclusion that M/S No I, I (A) & 2 Upper Part Brahmaputra FCS Ltd is in the bank of the fishery whereas M/S No II Pt V Kalong Nadi AMSS Ltd. is located at a distance of 1 KM.

Further, from the certificate Issued by Co on neighbourhood in respect of M/S Chandrapur Anchalik MSS Ltd., it appears, the society is located at a distance of 1KM from the fishery.

In respect of 1 and 3rd highest bidders, one document each is not issued by competent authority. The 4 highest bidder has submitted all the documents in terms of NIT.

As regards neighbourhood issue in the light of provision of Rule 12 of Assam Fishery Rules, 1953 (As amended), it appears that out the 3 contenders under zone of consideration, the 4 highest bidder is more suitable as the members of the society reside on the bank of river Fishery whereas other two are located at a distance of 1 KM.

Considering all aspects of the matter Including neighbourhood issue in the light of provision of Rule 12 of Assam Fishery Rules, 1953 (As amended), Govt is pleased to settle Kamrup Pragjyotishpur Brahmaputra Fishery with M/S No.1, I (A) & 2 Upper Part Brahmaputra FCS Ltd. Panikhaiti, Dist. Kamrup(M) at Rs 38,63,184.00 for 7 years with effect from the date of handing over possession of the fishery.

The Deputy Commissioner, Kamrup(Metro), Guwahati will take necessary action accordingly for handing over possession of the fishery to the settlement holder after completion of all required formalities as per Rule.

This order is issued with approval of the Competent Authority of Govt in Fishery Department subject to further order in W(C) No 8174/2019 in the light of interim order of the Hon'ble High Court dated 8.11.19 in the above noted writ petition.

*Joint Secretary to the Govt of Assam
Fishery Department
Dated Dispur the 18th November, 2019”*

12. A perusal of the said Settlement Order indicates that out of the 5(five) bidders in the subject settlement, bids of 2(two) bidders were rejected having found their bids to be invalid. It further appears that the bids of the petitioner, appellant and another bidder were taken up for consideration. However, in respect of the petitioner and another bidder, it was held that one document each is not issued by the competent authority. It also appears that the bid submitted by the petitioner is the highest amongst the three bidders. It further appears that the respondent authorities had preferred the appellant society out of the said 3(three) qualified bidders on the ground that the members of the appellant society reside on the bank of the river of the subject fishery, whereas the petitioner's society and the other qualified bidder are located at a distance of 1 kilometer.

13. It is thus apparent that the bid of the petitioner was rejected merely because the petitioner's society is

situated at a distance of 1 kilometer from the subject fishery.

14. Pertinent that as per as the issue of non issuance of the 100% Actual Fisherman Certificate by the competent authorities concerned, it has already been established on the basis of the original record that the competent authorities had issued the said Certificate and the learned Counsel appearing on behalf of the appellant has also accordingly not pressed the said issue before the learned Single Judge. In this regard, apt to refer to paragraph 25 of the impugned judgment which reads as under:

“25. Defending the action of the respondents in rejecting the bid of the petitioners and making the settlement in favor of the private respondent, Shri. S. Borthakur, learned counsel for the private respondent has submitted that since the records has revealed that the 100% Actual Fisherman Certificate in favor of the petitioner by the concerned ARCS was there, he would not join issues so far as the argument regarding the first ground of rejection is concerned.”

15. It is further apparent that the learned Single Judge by perusing the said Certificate has held that the same is issued by the competent authority. The learned Single Judge has held that the 100% Actual Fisherman Certificate is issued by the ARCS as evident from the original record produced by the State Counsel. Hence, we do not find any infirmity with the aforesaid finding of the learned Single Judge.

16. Returning back to the issue of neighbourhood, apt in this regard to refer to Rule 12 of the Fishery Rules, which reads as hereunder:-

“12. Except those referred to in sub-rule No.8(b) above, all registered Fisheries shall be settled under tender system of sale in place of sale auction:

Provided that the Government shall settle a 60 % category fishery with special category of co-operative Societies, Non-Government Organisations and Self Help Groups consisting of 100% actual fishermen in the neighbourhood of the fishery concerned by the Tender System.”

17. It is apparent from the perusal of the aforesaid Rule that one of the pre-requisites, which must be satisfied before the power of settlement of fishery by Tender System can be exercised by the State Government under the proviso of Rule 12 of the Fishery Rules, is that a settlement of a registered fishery can only be made with a fishery co-operative formed with 100% actual fisherman of fishing population residing in the neighbourhood of the fishery concerned.

18. In other words, settlement has to be made only with 100% actual fisherman of the neighbourhood of the concerned fishery. Therefore, co-operative society in order to be qualified for settlement of fishery must consist of 100% actual fisherman and they must reside in the neighbourhood of the subject fishery. The term “neighbourhood” therefore has to be understood in the context of the object and purpose Rule 12 aims to achieve. The said proviso manifestly demonstrates that the intention of the legislature is to ameliorate the socio economic condition of the fishing population residing in the neighbourhood of the fishery concerned. Thus, the proviso embodies a social purpose and has been incorporated in

the rules to provide succor to the needy fishermen of the neighbourhood so as to provide a means of their livelihood.

19. In ***Arabinda Das Vs. State of Assam & Ors.***, reported in **1982 1 GLR 280**, a Full Bench of this Court has observed that the purpose of the proviso under Rule 12 of Fishery Rules is to give opportunity to the deserving actual fishermen of the locality who may be eminently suitable for settlement of the fishery but because of their economic condition they may not be in a position to compete with other tenderers in settlement of fishery under the Tender System. Paragraphs 19 & 20 of the aforesaid judgment are reproduced hereunder for ready reference:-

“19. The principles that can be culled from the decisions discussed above are that under the provision of Rule 12 both old and new, the State Government has got the unfettered power to settle the fisheries directly in compliance with the provisions contained therein. The above principles of law have been holding the field for the last about two decades and we do not find any warrant for departing from them.

20. On a careful perusal of the proviso to Rule 12 we find that the exercise of the power under it is not arbitrary. There are certain pre-requisites which must be satisfied before the power of direct settlement can be exercised by the State Government under the proviso. These pre-requisites are that-

(a) a settlement of a registered fishery can only be made with a fishery co-operative;

(b) formed with hundred per cent actual fisherman of fishing population;

(c) in the neighbourhood of the fishery concerned;

- (d) belonging to the Scheduled Castes of the State or Maimal Community of the Cachar District; and
- (e) at a revenue calculated and for a period decided by the State Government from time to time.

The above pre-requisites are demonstrative of the fact that the State Government can directly settle the fishery within the four corners of the provisions contained in the proviso. Unless the above conditions are in existence the power of settlement under the proviso would never be available to the State. If any one and more of the pre-conditions noted above are absent, the power under the proviso would not be available to the State. These pre-requisites are indicative of the fact that the rule making authority has given a guideline for the exercise of the power under the proviso, and has not been left to the arbitrary discretion of the State. Therefore, exercise of such power cannot be said to be maked, unguided or uncanalised.

The purpose behind the incorporation of the proviso to Rule 12 seems to be to give opportunity to the deserving actual fishermen of the locality who may be eminently suitable for the settlement of the fishery but their economic conditions may be such that they may not be in a position to compete with the other tenderers in settlement of fisheries under tender system. This proviso is really very whole some, pragmatic and meaningful which is meant to secure settlement to the deserving actual fishermen of the neighbourhood of the fishery. This proviso, in a sense, is an improvement on the old Rule 12. Now the Stats Government's power is to a certain extent circumscribed, inasmuch as it can only exercise when the pre-requisites noted above are in existence but within that constricted sphere, its power is plenary. In our opinion, this is a piece of social legislation which is framed for the purpose of giving opportunity to the listed class of persons mentioned in the proviso to Rule 12, in the matter of their avocation.”

20. Thus, it is clear that the proviso to Rule 12 of the Fishery Rules is to secure settlement to the deserving actual fishermen of the neighbourhood of the fishery. In ***Brahmaputra Part II Mach Mahal Samabai Samity***

Ltd. Vs State of Assam, reported in **2003 (1) GLT 155**, a Division Bench of this Court held that the proviso to Rule 12 of the Fishery Rules aims to provide livelihood opportunities to the fishing population in the neighbourhood of the fishery. The term "neighbourhood" was also interpreted in the said case by the said Division Bench in the aforesaid judgment which reads as hereunder:-

"13. Turning to the aspect of neighbourhood, we feel that the expression needs interpretation so as to advance the object and purpose of the rules and not to frustrate it. As observed earlier, in a given fact situation, there may be more than one society in the neighbourhood of the fishery. It may so happen that a society fulfilling the other conditions of the proviso and which is more deserving for such settlement is, distance wise, slightly further away from the fishery, than the other eligible societies. Will the object and purpose of the proviso be served if the former society is discarded only on the ground that though it is more deserving, the other societies are nearer to the fishery? In other words, is the word 'neighbourhood' to be interpreted in terms of inches, feet and yards or a more pragmatic and purposive, interpretation has to be provided thereto. The Black Law's Dictionary defines the word 'neighbourhood' as a place near; an adjoining or surrounding district; a mere minimum vicinity: vicinage... In ordinary and common usage 'locality is synonymous in meaning with 'neighbourhood'. In the Law Lexicon by P. Ramanatha Aiyer, the word 'neighbourhood' has been defined to signify nearness as opposed to remoteness. "Whether a place is in the neighbourhood of another place depends upon no arbitrary rule of distance or topography. One house may be said to be in the neighbourhood of another house and not structurally adjoin it....."

14. The term 'neighbourhood' does not express any definite idea of distance. A few feet or several 100 yards or even a greater distance from an object would be in its neighbourhood.

15. Thus, no mathematical formula has been devised to define and measure neighbourhood. Within the meaning attributed to the word as above, there is evidently an element of flexibility and, therefore, while dealing with the proviso to Rule 12 as above, it would, in our opinion, neither be permissible nor desirable to ascertain the "neighbourhood by a measuring tape. If the residence of the members of an otherwise eligible fishery co-operative society is in the vicinity and proximity of the fishery as is understood in common parlance, they are deemed to be in the neighbourhood thereof. Any attempt to measure the neighbourhood in terms of inches, feet, yards, or centimetres and metres, would render the proviso otiose in a given fact situation.

16. It would be appropriate at this stage to extract the observations of this Court on the aspect of neighbourhood as contained in its decision in *Majorati Min Samabal Samity Ltd.* (supra) wherein, this Court observed as follows:

'The question of neighbourhood and area of operation has been the subject matter of debate and discussions in several judgments and even the learned Single judge has also made a reference to it, towards end of the judgment, indicating as to what is meant by neighbourhood in the context of Rule 12. Without disputing the proposition, here again, the question that falls for consideration is one of the extent and scope of judicial review whether this Court in exercise of its power under Article 226 examine the question of neighbourhood with such minutest factual details as to measure every inch of the distance at which a Society is situated.

It is not something to be measured in foot and inches, all that this Court extending the writ jurisdiction such an extent would be nothing sort being violent to the Article 226 of the Constitution, all that the Court can examine as to whether the condition and requirements of neighbourhood, as prescribed under the rules, it was present to the mind of the settling authority. It is not expected that the writ Court would be the Surveyor and measure

the distance in meter and centimeter. If the Settling Authority is alive to the requirements of the rules and the same is reflected in the order of settlement of a fishery, the writ Court will not be justified an undertaking and exercise of measuring the distance between two competent claimants. After all 'neighbourhood' is a relative term which is to be taken into account alongwith other conditions. It is not the intend of rules to treat neighbourhood with geometrical altitude and procedure.'

17. *We are in respectful agreement with the views expressed as above."*

21. Reading of the aforesaid decisions, it is apparent that while considering the term "neighbourhood" appearing under the proviso to Rule 12 of the Fishery Rules, it is imperative to bear in mind that the term "neighbourhood" does not convey any definite idea of distance. Further the same cannot be measured by measuring tape. The difference in the distance of a few feet or several yards or even 1 or 2 kilometer would not really be material for the purpose of determining the question of neighbourhood. The word neighbourhood as defined in the Black Law's dictionary, 9th edition means "*1. The immediate vicinity; the area near or next to a specified place. 2. People living in a particular vicinity, usu. forming a community within a larger group and having similar economic statuses and social interests. 3. The condition of being close together.*" Therefore, neighbourhood in the context of Rule 12 of the Fishery Rule would mean the vicinity and the area near or next to the subject fishery. In other words, the members who are residing near or next to the subject fishery

irrespective of the village would come within the meaning of neighbourhood.

22. Thus, what is important to note is whether the residents of the members of the Fishery Co-operative Society who are otherwise eligible is within the vicinity and proximity of the fishery as is understood in common parlance, for settlement thereof.

23. Apt at this juncture to refer to the Speaking Order dated 23.09.2019 which examined the neighbourhood certificate produced by the writ petitioner, which reads as hereunder:-

“GOVERNMENT OF ASSAM
OFFICE OF THE DEPUTY COMMISSIONER
KAMRUP METROPOLITAN DISTRICT: GUWAHATI
Telephone-0361-2540149 Fax-0361-2544452

E-mail-deo-kamrupm@nic.in Web Site www.kamrupmetro.nic.in

NO.KRF(M)40/2003/P1-1/330 Dated 23/09/2019

SPEAKING ORDER

Whereas, Sh. Dwijen Haharika, Secretary No 1, 1&2 Upper Part Brahmaputra Fishery Co-operative Society Ltd. Panikhaiti, Pragjyotishpur, Kamrup (Metro) aggrieved for not passing any appropriate order against the prayer petition submitted by him addressed to the Deputy Commissioner, Kamrup Metropolitan District on 20/08/2018 on the validity of the neighborhood certificate bearing No 474 dated 17/02/2012 issued in favour of Jagadish Barman, against the Fraud committed by the Secretary, No 11, Part 5, Kolong Nadi Anchalik Meen Samabai Samittee Ltd. by processing neighborhood certificate bearing No 474 dated 17/02/2012 through misrepresentation of actual facts in collisions with the concerned officials with the ulterior motive of taking settlement of the Kamrup Pragjyotishpur Brahmaputra Fishery to which they are otherwise not entitle under the law.

And whereas, Hon'ble Gauhati High Court, on hearing the Writ Petition No 4774/2019 passed a direction on 19/07/2019 to examine the complain made by the petitioner Sh. Dwijen Hazarika and dispose of the same by a reasoned order, before issuing any final order of settlement of the fishery in question;

Accordingly, a hearing was initiated and the date was fixed on 22/08/2019 for hearing. Both the parties were present and heard. Both the parties were asked to produce current original neighborhood certificate in original for examination. But the parties failed and had asked for time to produce the original for which the next date of hearing was fixed on 20/09/2019 directing both the parties to produce original neighborhood issued by competent authority.

And whereas, sufficient time was given to both the parties and they failed to produce original neighborhood certificate during the 2nd date of hearing on 20/09/2019, A report was called from Circle Officer, Chandrapur Revenue Circle, Kamrup Metropolitan district mentioning the distance of the villages namely Panikhaiti, Chandrapur, Bonda, Nij Gobordhon, Kajolichowki and digarumukh to determine the nearest neighborhood cooperative Society of the Kamrup Pragjyotishpur Brahmaputra Fishery.

And whereas, the report of Circle Officer, Chandrapur Revenue Circle, Kamrup (Metro) letter no CPC(Fishery) D.9/2019/Pt./662 Dated 21/09/2019 clearly mentioned that the villages namely Painikhaiti and Kajolichuk is situated in the river bank of river Brahmaputra, within the jurisdiction of Kamrup Pragjyotishpur Brahmaputra Fishery, the No 1, 1&2 Upper Part Brahmaputra Fishery Co-operative Society Ltd, Pankhalti, Pragjyotishpur, considered to be the nearest neighborhood Cooperative society among the tenderers.

And whereas, the matter to determine of nearest neighborhood Co-operative Society of Kamrup Pragjyotishpur Brahmaputra Fishery is settled with the report of Circle Officer, Chandrapur Revenue Circle, the entire tender papers with Comparative Statement is sent to Fishery Department, Government of Assam vide letter no KRF.40/2003/Pt-1/329 dated 23/09/2019 for settlement of Kamrup Pragjyotishpur Brahmaputra Fishery as they are the competent authority for settlement of the Fishery.

The Neighborhood certificate submitted by No 11, Part 5, Kolong Nadi Anchalik Meen Samabai Samittee Ltd. in their tender papers bearing No 474 dated 17/02/2012 was examined and found that, the information provided through the certificate is incorrect as none of the villages having operational area of this society is situated in the bank of the Kamrup Pragivotishpur Brahmaputra Fishery

jurisdiction. Majority of the society share holder resides in the village Niz Gobordhon which is situated in the bank of river Kolong, 1 KM distance from Kamrup Pragjyotishpur Brahmaputra Fishery.

Yours faithfully

*Additional Deputy Commissioner
Revenue Fishery Branch
Kamrup Metropolitan District”*

24. It is apparent from the above Speaking Order that the Additional Deputy Commissioner has held the neighbourhood certificate of the petitioner incorrect as the petitioner’s society does not have operational area in the bank of the subject fishery jurisdiction. It is further apparent that the Additional Deputy Commissioner has clearly stated that the members of the petitioner’s society resides in the village Gobordhon which is situated in the bank of river Kolong which is located at a distance of 1 kilometer from the subject fishery.

25. Thus, what transpires from the above is that the members of the petitioner’s society are residing in villages which does not fall under the area of operation of the subject fishery and also that such village in which the members of the petitioner’s society resides are within 1 kilometer distance from the subject fishery. It is thus apparent that the respondent authorities considered the area of operation of the petitioner’s society in order to decide the issue of neighbourhood. In ***Babul Das Vs State of Assam***, reported in ***1989 1 GLR 263***, a Division Bench of this Court has clearly held that the relevant factors to be considered for the purpose of proviso to Rule

12 of the Fishery Rules is not the area of operation of the society but the fact that whether a particular society is in the neighbourhood of the society or not. Therefore, the consideration of the area of operation by the respondent authority to decide whether the petitioner's society resides in the neighbourhood of the subject fishery is wholly irrelevant and immaterial for the purpose of deciding the issue of neighbourhood. Therefore, the respondent authorities ought to have considered whether the members of the petitioner's society reside within the neighbourhood of the subject fishery. If the answer to such query would be in the affirmative, then the petitioner's society stands eligible for consideration under the proviso to Rule 12 of the Fishery Rules.

26. In the present case, as borne out from the records, the members of the petitioner's society are 100% actual fisherman and are residing at a distance of 1 kilometer from the subject fishery. It further appears that the petitioner's bid is the first highest eligible bid. It further appears that though the petitioner's bid was taken under the zone of consideration by the respondent authorities, however, the bid of the petitioner's society despite being the first highest bid, was rejected merely on the ground that the petitioner's society is located at a distance of 1 kilometer from the subject fishery and accepted the appellant's bid which was much lower than the bid offered by the petitioner merely on the ground that the appellant society is located at the bank of the subject fishery. The

said approach of the respondent authorities is totally illegal, arbitrary, violative of the Fishery Rules and against the interest of public at large. The difference in the distance of few feet, or even 1 or 2 kilometer is of no consequence for determining the question of neighbourhood. In the present case, it is apparent that the petitioner's society resides within the vicinity and proximity of the subject fishery and is also otherwise eligible. The respondent authorities having considered the difference of 1 kilometer in rejecting the bid of the writ petitioner, the said rejection is therefore, not sustainable in law.

27. The learned Single Judge has also taken into account the list of members of the petitioner's society along with their addresses which would show that other than the village Gobordhan, there are other villages also where the members of the petitioner's society reside. The findings of the learned Single Judge that the mere fact that certain members are residing at a distance of 1 kilometer of the subject fishery cannot govern the fate of the society and that the requirement is only that the actual fisherman belonging to the Schedule Caste community residing in the vicinity should get the benefit, appears in the considered opinion of this Court to be in consonance with the Fishery Rules. It further appears that the learned Single Judge has also taken into account the difference of the financial bids offered by the petitioner and the appellant which is about Rs.22,00,000/- (Rupees twenty two lakhs).

28. Pertinent that the Commissioner & Secretary to the Government of Assam, Fishery Department had, pursuant to order dated 06.09.2022 in WP(C) No.8674/2018 passed by this Hon'ble Court, taken the decision to take into consideration the members of such bidders who are inhabitants of villages/areas falling within 5 kilometer radius of the subject fishery for determining the issue of neighbourhood. The said clarification of the Government of Assam is though not applicable to the facts of the present case as the said clarification was issued after the settlement was made, however, the same clarifies that members who are residing near or next to the subject fishery irrespective of the village or distance of a few feet or several yards or even few kilometer would come within the meaning of definition of neighbourhood under Rule 12 of the Fishery Rules.

29. In view of the above, we do not find any infirmity with the impugned judgment & order passed by the learned Single Judge. Resultantly, the judgment & order dated 14.06.2023 passed in WP(C) No.9225/2019 warrants no interference from this Court. Accordingly, the appeal fails. No costs.

JUDGE

CHIEF JUSTICE

Comparing Assistant