

GAHC010146552018



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

Case No. : WP(C)/4592/2018

ON THE DEATH OF AMJAD HUSSAIN, HIS LEGAL HEIR-
S/O LT. JALAL UDDIN SARKAR
R/O WARD NO. 3,
DHUBRI TOWN,
DIST. DHUBRI, ASSAM

1.1: ATIQUL HUSSAIN
SON OF LT. AMJAD HUSSAIN
R/O-WARD NO.3
DHUBRI TOWN
DIST.-DHUBRI
ASSAM

VERSUS

DHUBRI MUNICIPAL BOARD AND 4 ORS.
REP. BY ITS CHAIRMAN AND HAVING ITS OFFICE AT WARD NO. 1,
DHUBRI TOWN, DHUBRI- 783301, ASSAM

2:THE EXECUTIVE OFFICER

DHUBRI MUNICIPAL BOARD
DHUBRI
ASSAM
PIN - 783301.

3:KALIMUDDIN SHEIKH
S/O LT. KARIMUDDIN SHEIKH

C/O DHUBRI MUNICIPAL BOARD HAVING ITS OFFICE AT WARD NO. 1
DHUBRI TOWN

DHUBRI - 783301
ASSAM

4:KAMAL SHEIKH
S/OLT. KARIMUDDIN SHEIKH
C/O DHUBRI MUNICIPAL BOARD HAVING ITS OFFICE AT WARD NO. 1
DHUBRI TOWN

DHUBRI- 783301
ASSAM

5:ISMAIL HUSSAIN
S/O ABDUR RAHMAN MOLLAH
R/O VILL- MAHAMAYAR CHAR
P.O. MUTHAKHOWA
DIST. DHUBRI
PIN - 783323
ASSA

BEFORE
HON'BLE MR. JUSTICE MICHAEL ZOTHANKHUMA

For the petitioner : Mr. U. K. Goswami ... Advocate.

For the respondents nos.1 & 2 : Mr. P.S. Bhattacharyya ... Advocate.

For the respondents no.4 : Mr. M.U. Mondal ... Advocate.

For the respondents no.5 : Mr. T. Chakraborty ... Advocate.

Date of hearing : 12.12.2024

Date of Judgment : 16.12.2024

JUDGMENT AND ORDER (CAV)

1. Heard Mr. U. K. Goswami, learned counsel for the petitioner and Mr. P. S. Bhattacharyya, learned counsel for the respondent Nos. 1 & 2. Mr. M. U.

Mondal, learned counsel appears for the respondent No. 4, while Mr. T. Chakraborty, learned counsel for the respondent No. 5.

2. The petitioner has prayed for setting aside the impugned termination notice dated 15.05.2018 issued by the respondent no.2, by which the allotment of Stall No.2 at Lainey Municipal Market in favour of the petitioner's father Amjad Hussain has been cancelled. The petitioner, who is the son of the Late Amjad Hussain, has also prayed for setting aside the impugned notice dated 19.06.2018 issued by the Executive Officer, Dhubri Municipal Board, calling for tenders and allotments of Stall No.2 of Lainey Municipal Market and directing the respondent authorities to de-seal Stall No.2 at Lainey Municipal Market. The petitioner's father, the Late Amjad Hussain, had initially filed this case. On his death, the present petitioner, Atiqul Hussain has substituted the Late Amjad Hussain.

3. The petitioner's case is that the petitioner's father Amjad Hussain had been running a retail-cum-stationary shop since the year 1966 from Stall No.2 in the Lainey Municipal Market under the control of the Dhubri Municipal Board, on the basis of allotment orders and the latest allotment order was dated 01.02.2013. As per the allotment order dated 01.02.2013, subletting/transfer of the stall was permissible, with the prior consent and permission from the Board. Since the petitioner's father, Amjad Hussain was 72 years old in the year 2016, Amjad Hussain made a request to the authorities, vide letter dated 17.07.2016, to transfer the said stall in favour of the respondent no.5, who was his alleged business partner since long. In this regard, the Dhubri Municipal Board held a meeting on 13.10.2017, wherein it was decided to discuss the matter on

another date, due to the absence of Amjad Hussain and the respondent no.5. Thereafter the Dhubri Municipal Board, vide letter dated 15.05.2018 informed Amjad Hussain that the Municipal Board had resolved to cancel the allotment of Stall No.2, Lainey Municipal Market (Ground Floor) given to Amjad Hussain. The stall was also sealed by the authorities thereafter.

4. The petitioner's father Amjad Hussain thereafter submitted a representation dated 29.05.2018 to the Executive Officer, Dhubri Municipal Board, stating that he had no source of income except his shop and as he had to clear his liabilities, he requested that the stall may be de-sealed, so that Amjad Hussain could make use of the stall. However, no decision was taken by the authorities on the representation of Amjad Hussain. The petitioner's counsel submits that subsequent to the cancellation of the allotment of the stall to Amjad Hussain and the sealing of the said stall, the impugned notice dated 19.06.2018 was issued by the Dhubri Municipal Board, for allotment of Stall No.2 of Lainey Municipal Market through call of Tender.

5. The petitioner's counsel submits that the notice dated 19.06.2018 was not advertised. However, despite the above, the settlement/allotment of the Stall No.2 was made in favour of the respondent no.3, who is the brother of the Ward Commissioner of Ward No.7 of Dhubri Municipal Board, i.e respondent no.4. The petitioner's counsel submits that the manner in which the stall has been allotted to the respondent no.3 is illegal and has been done in a very secretive manner. The impugned orders and notices being *ex facie* illegal, arbitrary and unfair, the same should be set aside.

6. The counsel for the respondent nos.1 & 2 submits that Stall No.2 was allotted in favour of Amjad Hussain for a period of 1 (one) year, one of the conditions being that in the event of the licensee being in arrears for a period of three months in respect of the fees payable, the allotment would be cancelled. He submits that the allotment of the stall had been renewed from time to time. He also submits that as per the allotment order, the licensee could not sublet any portion of the allotted premises to anyone or transfer the use of the said premises to anyone, without the written consent and permission of the Board. However, the petitioner's father Amjad Hussain, on 18.07.2017, submitted an affidavit before the Dhubri Municipal Board stating that he had given a No Objection Certificate (NOC), allowing the respondent no.5 to get the Stall No.2 transferred in the name of the respondent no.5. Amjad Hussain had also stated in the affidavit that the respondent no.5 was his business partner in Stall No.2 and that Amjad Hussain had delivered the said Stall No.2 to the respondent no.5 to run the business alone. The counsel for the respondent no.2 submits that the action of Amjad Hussain had been done without the consent and written permission of the Dhubri Municipal Board. He also submits that the respondent no.5 had submitted an application dated 17.07.2017 before the Chairperson/Executive Officer, Dhubri Municipal Board, with a request to transfer the allotment of Stall No.2 in the name of the respondent no.5. The counsel for the respondent no.2 further submits that the Board had fixed three dates for hearing with regard to the letters issued by Amjad Hussain and the respondent no.5. However, Amjad Hussain had failed to appear on three occasions and due to the above reasons and the fact that he was a defaulter in making payments of the required fees, the allotment of Stall No.2 to Amjad Hussain was cancelled by declaring Amjad Hussain as a defaulter.

7. The counsel for the respondent nos.1 & 2 further submits that notice was issued to Amjad Hussain to handover possession of Stall No.2 and as the same was not done, the same was sealed by the authorities. He also submits that the Notice Inviting Tender on 19.06.2018 for allotment of Stall No.2, had been made by FLS on three sessions. As the respondent no.3 was the highest bidder, the respondent no.3 was asked to deposit the tender amount of Rs.6,01,000/-, which has been done. The counsel for the respondent nos.1 & 2 submits that during the pendency of the writ petition, the original petitioner, i.e. Amjad Hussain expired on 09.03.2022 and his son Atiqul Hussain has substituted his deceased father.

8. The counsel for the respondent no.4 submits that the allotment of Stall No.2 with the petitioner was cancelled and the same was reflected as a news item in the "Dainik Gana Adhikar" newspaper dated 23.05.2018. He submits that by notice dated 19.06.2018, tender had been invited for allotment of Stall No.2 (Ground Floor), Lainey Municipal Market, Dhubri and the respondent no.3 had also deposited the said amount, as he was the successful tenderer.

9. I have the learned counsels for the parties.

10. The first question that springs to mind is as to whether the present petitioner has any right to Stall No.2, inasmuch as, the said stall had been allotted to his father, the Late Amjad Hussain. A perusal of the allotment order of the stall to Amjad Hussain shows that Amjad Hussain had no right to sublet

Stall No.2, without the permission of the Dhubri Municipal Board. The extract of the allotment order is reproduced hereinbelow, as follows :

“Now hereby it is agreed between the said Jalaluddin Sarkar hereinafter called the "Licensee" and the Dhubri Municipal Board, herein after called as the Board, action through its Chairman, in consideration of the premises and on payment of Rs. 071/-per mensum of as license fees (payable within the 15th day of the month following according to English Calendar for the privilege of occupying the said stall no. 2 in the municipal market, the Board grants into the licensees and authorizes him to use the said stall for a period of one year commencing from 1 day of feb/13 as the stall shop for the purpose of carrying on business as dealer in Retail Stationery or in such other commodity or commodities as the Board may, on previous application in writing by the licensee deem fit to allow, which permission will not be unreasonably withheld, provided always that the licensee shall be bound to quiet the premises within one week of the revocation of this license By the Board in the event of a breach of any of the terms, conditions of this license or the rules as apportioning failed to as aforesaid or in the event of the licensee being in arrears for a period of three months in respect of the fees payable as herein prescribed.

The overall control and superintendence of the said stall shall remain vested in the Board, with officer shall at all reasonable ours be entitled to inspect the said stall about his bona fides user etc.

The licensee shall not be allowed to sublet, any portion of the said premises to anyone or transfer the use of the said premises to anyone without written consent and permission of the Board.

The licensee shall not be entitled to allow any other person to occupy the premises..... The licensee shall have no interest in the said stall nor shall In the event of the death of Amjad Hussain within three weeks of such death of licensee, in any of the heirs want to continue the business in the said premises for the remaining period he is to take written permission from the Chairman. In the event of the death of the licensee prior to the expiry of the period fixed in the license, the

heir or legal representative of the licensee shall not be entitled to use the premises, except he shall be permitted to remove the goods and belongings of the licensee within the stall within the stall 3 weeks of such death of the licensee.

On expiry of the period fixed in the license or the revocation thereof under the conditions and..... fixed in the license or under the rules prescribed thereof, the Board may assume exclusive and absolute possession of the said stall and deal with it in any manner as it may deem fit. Any belongings of the licensee in such stall shall be liable to be actioned, unless came within one month of assumption of such absolute and sole possession by the Board, The Board shall be entitled to appropriate out of the proceeds of sales, the money due to the Board from the licensee.

11. It is clear from the above extract of the allotment order that at the time of death of Amjad Hussain, the present petitioner could have applied for the licence to run Stall No.2 in place of his father. However, the allotment of the stall had been cancelled by the authorities much prior to the death of Amjad Hussain. It is clear from the documents on record that Amjad Hussain did not have any right to sublet or give possession of Stall No.2 to the respondent no.5, as no permission had been taken for the same from the authorities. As such, any action taken by Amjad Hussain in favour of respondent no.5 is void and the same does not give any right to the respondent no.5 in respect of the said Stall No.2. The stall not being heritable, there is no question of the present petitioner inheriting the said stall also.

12. The affidavit submitted by Amjad Hussain to the Dhubri Municipal Board, which is annexed to the affidavit filed by the respondent no.2, states that due to

financial hardship Amjad Hussain had taken Ismail Hussain (respondent no.5) as a partner, to finance his business in the stall. He suffered losses in his business share in the stall and he was unable to pay his share of the loss to the respondent no.5. Thus Amjad Hussain had delivered Stall No.2 of Lainey Municipal Market, Dhubri to the respondent no.5, who would thereupon run the business exclusively. Amjad Hussain also stated that he would not make any claim to any share in the business being run in the stall by the respondent no.5.

13. The letter dated 17.07.2016 issued by the respondent no.5, which is annexed to the writ petition, shows that the same has been addressed to the Chairperson/Executive Officer, Dhubri Municipal Board. The said letter dated 17.07.2016 states that the respondent no.5 had been given Stall No.2 of Lainey Municipal Market (Ground floor), Dhubri, which had been allotted in the name of Amjad Hussain. Amjad Hussain was his business partner and the stall was handed over to him by Amjad Hussain by way of an affidavit. Accordingly, the respondent no.5 prayed that the name of the allottee of the stall should be mutated from Amjad Hussain, to the name of the respondent no.5.

14. The above facts makes it clear that the Late Amjad Hussain had handed over/given possession of Stall No.2 to the respondent no.5, without taking the prior permission of the Dhubri Municipal Board, which was in violation of the allotment order.

15. The impugned notice dated 15.05.2018, cancelling the allotment of Stall No.2, shows that Amjad Hussain had been asked to appear before the Dhubri Municipal Board three times. Amjad Hussain never appeared before the Dhubri

Municipal Board and had also not been paying the rent for 7 (seven) months. The contents of the impugned letter dated 15.05.2018 issued by the Executive Officer of the Dhubri Municipal Board is reproduced hereinbelow, as follows :

“To

Sri Amzad Hussain,

S/O Jalaluddin Sarkar,

Ward No.3, Dhubri.

Sub: Notice to Vacant Stall No.2

It is observed that after three continues notice to appear before this Board for hearing in the matter of the stall No.2, Lainey Market (Ground floor), you never appeared, also you have not been paying the rent since 7(Seven) month. In such situation the Board has resolved to cancelled the allotment of the stall.

You are hereby asked to handover the possession of the said stall to the undersigned within 2 days after receipt of this letter.”

16. As can be seen from the allotment order, the Dhubri Municipal Board could revoke the allotment of the stall, in the event the licensee was in arrears for a period of 3 months in respect of the fees payable by the licensee. In the present case the impugned letter dated 15.05.2018 shows that Amjad Hussain had not been paying rent for the last 7 months. Though Amjad Hussain has taken a stand that he subsequently made payment of the entire arrears of rent payable by him on 19.05.2018, as per the money receipt annexed to the writ petition, the fact remains that Amjad Hussain had not paid rent for 7 months. In fact, the subsequent payment of the lump sum rent amount has proved the fact that the Late Amjad Hussain had not been paying his rent for a number of months.

17. As the allotment order and the impugned letter clearly shows that the Late Amjad Hussain had not been paying rent for more than three months, there was no infirmity in the decision of the Dhubri Municipal Board to cancel the allotment of Stall No.2 to the Late Amjad Hussain, on the basis of the reasons provided in the impugned letter/notice dated 15.05.2018.. Accordingly, this Court is of the view that there is no ground for this Court to exercise it's discretion in the present case, for setting aside the letter/notice dated 15.05.2018.

18. The only question that remains to be decided is whether the allotment of Stall No.2, by way of the impugned notice dated 19.06.2018, had been given wide circulation, by publishing it in a newspaper. In this respect, the reply made by the State Public Information Officer, Dhubri Municipal Board, to the petitioner's application under RTI Act dated 05.10.2020, shows that the impugned notice dated 19.06.2018 for allotment of Stall No.2, was not published in any newspaper. The contents of the notice dated 19.06.2018 is reproduced hereinbelow, as follows :

"OFFICE OF THE MUNICIPAL BOARD :: DHUBRI

Letter No. DM/2018-19/183/A

Date: 19.06.2018

NOTICE

The Municipal Tax-payer of Dhubri Municipal Board are hereby informed that the Tender invited for allotment of stall No.2 (Ground Floor) of Lainey Market under Dhubri Municipal Board will be received upto 2 p.m. of 02.07.2018 and will be allotted on the same day. The persons intending participate in the Tender/Auction process may submit Tender by depositing Bank Demand Draft of Rs. 10,000/- (Rupees ten thousand only) along with each Tender. In case, the 1st selected Tenderer fails to take up the shop for any reason, the security Money of Rs.10,000/- (Rupees ten thousand only) shall be forfeited. The decision of the

Municipal Authority in the Tender/auction process shall be treated as final."

The contents of the above Notice dated 19.06.2018 also do not indicate that the same was to be published or was published in any newspaper.

19. To a query put by this Court to Mr. P.S. Bhattacharyya, counsel for the respondent nos.1 & 2, as to the meaning of FLS, the learned counsel for the respondent nos.1 & 2 could not give any answer to the same. Suffice to say that a perusal of the notice dated 19.06.2018 and the reply made by the S.P.I.O, Dhubri Municipal Board to the petitioner's RTI application, shows that the impugned notice had not been published in a newspaper. In view of the reasons stated above, the allotment of Stall No.2 (Ground Floor) of Lainey Municipal Market in favour of the respondent no.3 cannot be said to be transparent or fair, as it was not given wide publicity, so as to enable a number of persons, including the petitioner, to participate in the tender. The allotment of the stall in favour of respondent no.3 is hereby set aside. Any consequential order/letter issued by the State respondents is also set aside. The State respondents are directed to issue a fresh notice, by circulating the same in a local newspaper for allotment of Stall No.2 (Ground Floor) of Lainey Municipal Market. It is needless to add that the petitioner and the respondent no.3 should also be permitted to apply for the same, provided they fulfil all the eligibility criteria required of bidders. The notice for allotment of Stall No.2 should be made at the earliest and preferably within a period of 1 (one) month, from the date of receipt of a certified copy of this order.

20. The writ petition is accordingly disposed of.

JUDGE

Comparing Assistant