

GAHC010153382020



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

Case No. : WP(C)/4634/2020

MD. MASIUR RAHMAN
S/O- LT. JAIN UDDIN, VILL- BEHARA PART-VI, P.O. HILARA, P.S.
KATIGORAH, DIST.- CACHAR, ASSAM, PIN- 788805

VERSUS

THE STATE OF ASSAM AND 7 ORS
REP. BY THE COMM. AND SECY. GOVT. OF ASSAM, DEPTT. OF REVENUE,
DISPUR, GHY-6

2:THE COMM. AND SECY.
GOVT. OF ASSAM
DEPTT. OF FISHERY
DISPUR
GHY-6

3:THE DY. COMMISSIONER
CACHAR
ASSAM

4:THE SETTLEMENT OFFICER
CACHAR AND HAILAKANDI DISTRICT
SILCHAR
CACHAR

5:THE ASSTT. SETTLEMENT OFFICER
KATIGORAH REVENUE CIRCLE
KATIGORAH
DIST.- CACHAR
ASSAM

6:THE DISTRICT FISHERIES DEVELOPMENT OFFICER

CACHAR
SILCHAR
ASSAM

7:ABDUL HANNAN BARBHUIYA
S/O- LT. KHALILUR RAHMAN BARBHUIYA
VILL- NOON NAGAR
P.O. KATIGORAH
P.S. KATIGORAH
DIST.- CACHAR
ASSAM

8:NURUAL HAQUE BARBHUIYA
S/O- LT. ABDUL SATTAR BARBHUIYA
VILL- NOON NAGAR
P.O. KATIGORAH
P.S. KATIGORAH
DIST.- CACHAR
ASSA

Advocate for the Petitioner : Mr. I. Alam, Advocate
Mr. T. Sk., Advocate

Advocate for the Respondents : Mrs. U. Das,
Addl. Sr. Govt. Advocate
Mrs. R. Choudhury, Advocate

BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH

Date of Hearing : 04.01.2024

Date of Judgment : 04.01.2024

JUDGMENT AND ORDER (ORAL)

Heard Mr. I. Alam, the learned counsel for the petitioner and Mrs. U. Das, the learned Additional Senior Government Advocate, Assam appearing on behalf of the respondent Nos.1 to 6. Also heard Mrs. R. Choudhury, the learned counsel appearing on behalf of the respondent Nos.7 & 8.

2. The instant writ petition has been filed by the petitioner challenging the order dated 29.06.2020 passed by the Settlement Officer, Cachar and Hailakandi Districts who is the respondent No.4 in the instant proceedings whereby the 2nd Class Fishery Nos.8, 9 & 10 of Cachar District was allotted to the respondent Nos.7, 8 and the petitioner respectively.

3. The facts as could be discerned from the writ petition is that the respondent Nos.7 & 8 were permitted to catch fish from the 2nd Class Fishery vide an order dated 23.09.2002 passed by the respondent No.5. The permission so granted to the respondent Nos.7 & 8 was subject to certain conditions. The said conditions were incorporated in the order dated 23.09.2002 which has been enclosed as Annexure-3 to the writ petition. Taking into account its relevance, the said conditions are incorporated herein under:

“(a) The petitioner shall abide by the Rules and Regulation of 2nd class fishery and any violation of 2nd class fishery Rule the permission will be rejected at any time.

(b) The permission holder shall pay annual Revenue of Rs. 700/- to the Tahsil and produce challan to the Settlement Officer through Asstt. Settlement Officer, Katigorah.

(c) The permission is to be renewed in every year on the prayer petition along with Revenue deposit challan and fresh assessment report to be submitted by the ASO Katigorah.

(d) The permission holder shall not disturb any way the usual uses as has been in practice such as utilization for cattle, irrigation, drinking and other essential facilities required to be derived from by the locality.”

4. The petitioner herein who belongs to the fisherman community had submitted a prayer petition on 18.09.2018 before the respondent No.5 along with other eight persons as caretaker/representative of 2nd Class fishery Nos. 8, 9 and 10 covering Patta No.8, 9 and 10 in Dag No. 108 within the area Mohanpur Part I, Porgona Katigorah which is located within 1 KM from the residence of the petitioner and the others. Upon the said petition being filed necessary enquires were carried out and a report was submitted to the effect that the petitioner along with others were original inhabitants from the fisherman community and the annual income of the 2nd Class Fishery was Rs.50,000/-

and as such the Government revenue would be 10% yearly and their residence was within 1 km of the respective Mahals. Pursuant thereto, the respondent No.5, vide an order dated 21.06.2019 included the names of the petitioner along with others in the 2nd Class Fishery Mahal Nos.8, 9 & 10 of Mouza - Mohanpur Part I, Porgona Katigorah of Cachar District.

5. The respondent Nos.7 & 8 being aggrieved by the inclusion of the name of the petitioner and others submitted a representation before the respondent No.4 for cancellation of the names of the petitioner and the others. The said representation has been enclosed as Annexure-7 to the writ petition. A perusal of the said representation however reveals that the reason sought for cancelling the names of the petitioner and others was that the respondent Nos.7 & 8 were educated unemployed persons and they were settled on the recommendation made by the Minister of Fishery and they have been rendering business by paying Government revenue. It was also mentioned in the representation that the inclusion of the names of the petitioner along with others has resulted in creating great problem for them for rendering the fishery business and pay the Government revenue.

6. On the basis of the said representation, the respondent No.4 called for a report from the respondent No.5. On 04.12.2019, a report was submitted by the respondent No.5 stating inter-alia that the respondent Nos.7 & 8 have been enjoying the 2nd Class Fishery Nos.8, 9 & 10 of Mohanpur Part I, Porgona Katigorah as they were allowed/permitted to catch fish in the said water bodies on the basis of some terms and conditions imposed vide Office Order dated 23.09.2002. It was further mentioned that the respondent Nos.7 & 8 had violated the conditions as mentioned in point No. (c) of the said letter as they neither paid fresh assessment of the Government revenue nor renewal of the order. It was also mentioned that the respondent Nos.7 & 8 were paying Government revenue as per the old assessment of the year 2002 @ Rs.875/- and Rs.500/- and Rs.1,000/- and Rs.625/- only in the current year as appears from the xerox copy of the revenue paying

challan enclosed with their petition. It was mentioned that the newly permitted persons who were included vide the order dated 21.06.2019 were fishermen by community and fishing by profession. Their names were proposed for inclusion in the 2nd Class Fishery as representatives on realization of the Government revenue as per the current assessment rate of Rs.5,250/-, and accordingly, the letter was issued to include their names in the fishery Mahal as representatives in the 2nd Class Fishery Register. Pursuant to the said report being submitted on 04.12.2019 by the respondent No.5, the impugned order was passed on 29.06.2020 whereby the respondent No.4 divided the 2nd Class Fishery amongst the petitioner as well as the respondent Nos.7 & 8. As per the impugned order, the respondent No.7 was made the representative of the 2nd Class Fishery Mahal No.9; the respondent No.8 was made representative of the 2nd Class Fishery Mahal No.8 and the petitioner along with others were made representatives of Mahal No.10 of the 2nd Class Fishery. It is against the said impugned order dated 29.06.2020 that the petitioner has approached this Court.

7. This Court vide an order dated 10.11.2020 issued notice. The record reveals that the respondent No.5 had filed an affidavit-in-opposition on 13.09.2023. In the said affidavit-in-opposition, it was mentioned that the 2nd Class Fishery in question, i.e. small water bodies is to be constituted with person or group of persons (who are representatives of the local villagers) by the local Revenue Authority i.e. the Settlement Officer during Re-settlement period in the light of Provision of the 2nd Class Rules 14 & 15. It was mentioned that for choosing the candidates for the 2nd Class Fishery under Government land usually a water body is to be formed from the local villagers and land holders surrounded by the Government 2nd Class Fishery as a care taker and the representative of the Government Land under the 2nd Class Fishery Mahal. It was also mentioned that the duties and responsibilities of the Government representatives are to collect and deposit the Government revenue as assessed by the Circle Officer/ the Asstt. Settlement

Officer on the basis of the annual income from the 2nd Class Fishery Mahal. It was further mentioned that the settlement of the 2nd Class Fishery in the Cachar district are made on the basis of proposal for selection of candidates after field enquiry as well as assessment report of the annual revenue by the Assistant Settlement Officer of the concerned Revenue Circle. In paragraph No.7 of the said affidavit-in-opposition, the respondent No.5 has stated the terms on the basis of which the Settlement Officer may reselect/select the representative by passing an order as well as fix the annual revenue of the said fishery. Taking into account its relevance, the paragraph No.7 is reproduced herein under:-

“7. That the deponent begs to state that the Settlement officer may re-settled /select the representative by passing an order as well as fixed the Annual Revenue of the said fishery on the basis of following terms and conditions.

a) The representative shall abide by the Rules and Regulations of 2" class fishery and any violation of the said Rules the permission will be rejected at any time.

b) The permission holder shall pay Annual Revenue as fixed, to the tahsil and produce challan to the Settlement Officer through concerned Assistant Settlement Officer.

c) The permission is to be renewed in every year on the prayer petition alongwith Revenue deposit challan and fresh assessment report to be submitted by the concerned Assistant Settlement Officer.

(d) The permission holder shall not disturb any way the usual uses as has been in practice such as utilization for cattle, irrigation, drinking and other essential facilities required to be derived from by the locality.”

8. The record also reveals that an affidavit-in-opposition was filed by the respondent Nos.7 & 8. It was mentioned that the respondent Nos.7 & 8 were the great grandsons of one late Chandu Mia and three 2nd Class Fisheries, namely, i) Donorupa Chirua Mahal No. 8, (ii) Habrakhal Mahal No. 9 and (iii) Uttaiia Mahal No. 10 are surrounded by the land which originally belonged to late Chandu Mia and the same has now been inherited

by the present Respondent Nos. 7 & 8 as the legal heirs of late Chandu Mia along with his other legal heirs. It was also mentioned that the three fisheries which are 2nd Class Fisheries were settled with the predecessors of the Respondent Nos. 7 & 8 and they were paying the annual rent as fixed by the competent authorities from time to time. At this stage it may however be relevant to mention that the documents enclosed to the writ petition do not show payment of any revenue beyond 2002.

9. In the backdrop of the above pleadings, this Court has also heard the learned counsels for the petitioner as well as the respondents. From a perusal of the writ petition and more particularly the impugned order dated 29.06.2020, it is seen that the same was passed in a whimsical manner without taking into consideration the facts in its proper perspective. It further transpires from a perusal of the impugned order that though the respondent No.4 had duly taken note of that the respondent Nos.7 & 8 had violated the terms and conditions of the permission to catch fish accorded in the year 2002, but still opined that as the respondent Nos.7 & 8 were representing the Mahal Nos.8, 9 & 10 of the 2nd Class Fishery and they got the Mahals on recommendation of the erstwhile Fishery Minister as well as the order passed by this Court, they should also be made representatives of Mahal Nos.8 & 9. The basis on which the Settlement Officer had come to its opinion in passing the order, in the opinion of this Court, is not tenable and reflects the arbitrariness in exercising the power by the Settlement Officer in as much as the settlement which was granted to the respondent Nos.7 & 8 were subject to certain terms and conditions which admittedly, as could be seen from the perusal of the impugned order itself, was violated by the respondent Nos.7 & 8. Merely because of the fact that the settlement was made on the recommendation of the erstwhile Minister of Fishery and thereupon the respondent Nos.7 & 8 were allowed to represent the Mahal Nos.8, 9 & 10 of the 2nd Class Fishery would not absolve the respondent Nos.7 & 8, to continue with the right to represent the said Mahals, without adhering to the terms and conditions of the order dated 23.09.2002. Further to that, this Court has also perused the

order of this Court reference to which was made in the impugned order dated 29.06.2020. The said order has been enclosed as Annexure-2 to the writ petition. From a perusal of the said order dated 24.04.2002 passed in WP(C) No.7659/2001, it reveals that this Court had directed the Settlement Officer, Cachar and Hailakandi District, i.e. the respondent No.4 in the year 2002 to examine the representation submitted by the respondent Nos.7 & 8, and thereupon, grant the necessary permission. The said order do not in any manner direct granting of settlement in favour of the respondent Nos.7 & 8 but only directed examination. Further to that, even assuming that the order had directed that the respondent Nos.7 & 8 be granted the permission, then also such permission has to be understood to be subject to the terms and conditions of the permission, which admittedly have been violated by the respondent Nos.7 & 8. Under such circumstances, in the opinion of this Court, the impugned order dated 29.06.2020 suffers from gross arbitrariness, unreasonableness as well as appears to have been infected with abuse of the powers conferred upon the authorities. For the said reasons, assigned above, this Court therefore sets aside the impugned order dated 29.06.2020 passed by the respondent No.4.

10. It is however made clear that setting aside of the impugned order dated 29.06.2020 would not debar the respondent authorities to take such other decisions in respect to the Mahals in question, if otherwise permissible under law.

11. In view of the above direction and observation, the instant writ petition stands disposed of.

JUDGE

Comparing Assistant