

GAHC010230582022



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

Case No. : WP(C)/7223/2022

BATCHARAMUKH SOONMOINA YUBAK SANGHA AND ANR
REP. BY ITS PRESIDENT SRI BHOYRAB BORAH, S/O. HEMCHANDRA
BORAH, VILL. BASUDEV BATSARA, P.O. DHAKUAKHANA, P.S.
GHILAMARA, DIST. LAKHIMPUR, ASSAM, PIN-787055.

2: BHOYRAB BORAH
S/O. HEMCHANDRA BORAH
VILL. BASUDEV BATSARA
P.O. DHAKUA KHANA
P.S. GHILAMARA DIST. LAKHIMPUR
ASSAM PIN-787055

VERSUS

THE STATE OF ASSAM AND 6 ORS
REP. BY COMM. AND SECY. TO THE GOVT. OF ASSAM, FISHERY DEPTT.,
DISPUR, GUWAHATI-06.

2:THE DEPUTY SECRETARY
TO THE GOVT. OF ASSAM FISHERY DEPTT. DISPUR GUWAHATI-06.

3:THE DY. COMMISSIONER
LAKHIMPUR OF NORTH LAKHIMPUR PIN-

4:THE SUB DIVISIONAL OFFICER (CIVIL)
DHAKUAKHAN SUB DIVISION
DIST. LAKHIMPUR ASSAM PIN-787055.

5:THE CIRCLE OFFICER
SUBANSHRI REVENUE CIRCLE GHILAMARA DIST. LAKHIMPUR ASSAM
PIN-787053.

6:ANIL DAS
S/O. DULESWAR DAS VILL. SANATAN GAON

P.O. AND P.S. NORTH LAKHIMPUR ASSAM.

7:THE ASSAM FISHERIES DEVELOPMENT CORPORATION LTD (AFDC)
REP. BY THE CHAIRMAN CUM MANAGING DIRECTOR
CHACHAL GUWAHATI-36

Advocate for the Petitioner : MR. A KHANIKAR

Advocate for the Respondent : GA, ASSAM

**BEFORE
HONOURABLE MR. JUSTICE MICHAEL ZOTHANKHUMA
ORDER**

Date : 09.02.2024

Heard Mr. A. Khanikar, learned counsel for the petitioners and Mr. P. Sarmah, learned Standing Counsel, AFDC. Also heard Mr. M. Chetia, learned counsel for the respondent Nos. 1 to 5.

2. No one appears for the respondent No. 6. However, the office note dated 10.01.2024 states that in terms of the Lawazima Court's order dated 10.10.2023, service is complete in respect of the respondent No. 6 and, as such, service is deemed to be served on the respondent No. 6.

3. The petitioner No. 1 is a registered Society, whose members are the inhabitant of Basudev Batsara village. The villagers have been using a pond named Kila-Kili pond, which measures about 2 Bighas and is located in Revenue Village – Batcharamukh, Revenue Circle – Subanshri, Sub-Division – Dhakuakhana. According to the petitioners, the inhabitants of the village near Kila-Kili pond have been using the pond for various purposes including agricultural purposes. The petitioners have instituted the instant writ petition on the ground that the said Kila-Kili pond has been made a part of Bolahi Champora Fishery, which is a fishery settled by the respondent AFDC Ltd. by a tender process with the respondent No. 6. The contention of the petitioners is

that Kila-Kili pond was never a part of Bolahi Champora Fishery at any earlier point of time. The inclusion of Kila-Kili pond as part of Bolahi Champora Fishery for settlement is therefore illegal and arbitrary. The petitioners have preferred this writ petition having learnt that Bolahi Champora Fishery along with Kila-Kili Pond has been settled with the respondent no. 6.

4. The petitioners' counsel submits that as per the letter dated 03.11.2022, issued by the Circle Officer, Subansiri Revenue Circle, Ghilamara, Kila-Kili pond is located about 4 K.M. from the main stream of the Champora River, which the villagers have been using as a means for their livelihood.

5. The petitioners' counsel submits that Kila-Kili pond being a natural pond was never a part of the fishery and as such, the same cannot be included for settlement with the respondent No. 6. He submits that the District Commissioner, Lakhimpur should cause an enquiry and take a decision as to whether Kila-Kili pond was ever a part of Bolahi Champora Beel, after hearing the parties and having a spot verification of the area through his representative/s.

6. Mr. P. Sarmah, learned Standing Counsel, AFDC and Mr. M. Chetia, learned counsel for the respondent Nos. 1 to 5, submit that they have got no objection to the prayer made by the petitioners' counsel.

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

8. The letter No. SRC.3/Fishery/2022/031 dated 03.11.2022, issued by the Circle Officer, Subansiri Revenue Circle, Ghilamara, states as follows:-

“Sub:-Regarding public petition on Bolahi Champora Beel.

Ref:- NO.DD.59/Pt-II/2011/187; dtd:- 5th September, 2022.

Sir,

With reference to the subject cited above and letter under reference I have the honour submit herewith the report regarding Bohali Chapora Beel as follows:-

Kila-Kili is a natural pond situated at 1 No. Gohain Chapori under Mornoi Gaon Panchayat. It is located about 4 KM from the main stream of the Champora River. The villagers have been using the pond as a means of their livelihood.

On the other hand Assam Fisheries Development Corporation Limited has settled Bolahi Champora Beel including Kila-Kili pond to Sri Anil Das vide office order No.AFDC.73/2022/5445, dtd: 16/09/2022. But due to protest of the villagers the sitting lessee could not take over the possession of this part.

Prima-facie, the sitting lessee, Sri Anil Das has legal right to fishing in this part.

This is for favour of your kind information and necessary action. ”

9. As the question whether the Kila-Kili pond is a part of Bolahi Champora Beel is a disputed question of fact, the District Commissioner, Lakhimpur (respondent No. 3) is directed to cause an enquiry, with regard to whether the Kila-Kili pond is a part of Bolahi Champora Beel and take a decision on the same, after hearing the parties and having a spot verification of the area. The District Commissioner should give an opportunity of hearing to the AFDC, the petitioner and the respondent No. 6, prior to taking a decision on the above issue. The entire exercise should be concluded within a period of 3 (three) months from the date of receipt of a copy of this order.

10. This writ petition is accordingly disposed of.

JUDGE

Comparing Assistant