

GAHC010235862023



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

Case No. : WP(C)/6143/2023

CHARAN RAY
S/O PARESH RAY R/O VILL. BESIMARI P.O. GAHIA P.S SARTHERBARI DIST
BARPETA ASSAM PIN 781311

VERSUS

THE STATE OF ASSAM AND 3 ORS
THROUGH THE COMMISSIONER AND SECRETARY TO THE GOVT OF
ASSAM FISHERY DEPTT DISPUR GUWAHATI 781006

2:MANAGING DIRECTOR
ASSAM FISHERY DEVELOPMENT CORPORATION LTD. GUWHATI 781036
DIST. KAMRUP M ASSAM

3:THE DEPUTY COMMISSIONER
BARPETA
DIST. BARPETA ASSAM PIN 781301

4:CIRCLE OFFICER
SARTHEBARI REVENUE CIRCLE
P.O. SARTHEBARI DIST BARPETA ASSAM PIN 781311

5:SRI GAURANGA DAS
AGED 33 YEARS
S/O LATE SANKAR DAS
R/O.- VILL.- BATGAON NAYAPARA
P.O.- MAKRIKUCHI
DIST.- BARPETA
ASSAM
PIN-781305

Advocate for the Petitioner : MR H DAS

Advocate for the Respondent : SC, AFDC

**BEFORE
HONOURABLE MR. JUSTICE MICHAEL ZOTHANKHUMA**

ORDER

03.06.2024

1. Heard Mr. H. Das, learned counsel for the petitioner. Also heard Mr. P. Sarma, learned counsel for the AFDC, Mr. K. Gogoi, learned counsel for the respondent nos.3 & 4 and Mr. N. Haque, learned counsel for the respondent no.5.

2. The petitioner is aggrieved with the impugned order dated 14.07.2023 issued by the respondent no.2, cancelling the settlement order dated 07.11.2022, by which the Kharsutha Fishery had been settled with the petitioner for 7 (seven) years, as the petitioner failed to deposit Rs.9,03,000/- as *kist* money.

3. The case of the petitioner is that pursuant to a competitive bidding process initiated by a Re-Tender Notice no. 14/2022 dated 19.09.2022, whereby bids were invited from eligible bidders for the settlement of a number of fisheries under the Assam Fishery Development Corporation Limited [AFDCL], including the Kharshutha Fishery, District – Barpeta, [‘the Fishery’, for short], an offer for settlement of the Fishery was made in favour of the petitioner by an offer letter dated 07.11.2022. In the offer letter, the petitioner was informed that the Tender Committee had found the petitioner to be the highest bidder and it was proposed to settle the Fishery at ₹ 9,03,000/- for the Financial Year :

2022-2023 i.e. upto 31.03.2023 at Rs.9,03,000/- and for next 6 [six] years from the Financial Year : 2023-2024 to 2028-2029 onwards at Rs.11,50,500/- per year. The petitioner was asked to deposit a total amount of Rs.5,13,375/- towards instalment, etc., in addition to a bank guarantee for an amount Rs.4,152/-. The petitioner had accordingly deposited the entire amount as asked by the offer letter dated 07.11.2022. On deposit of the said amount and compliance of the other requisite formalities, the respondent ADFCL authorities issued the Final Settlement Order dated 16.11.2022 for the Fishery and also executed a Contract Agreement.

4. It is the further case of the petitioner that when he found that the actual area of the Fishery was lesser than 100 Hectares [Water] than the area notified in the Re-Tender Notice no. 14/2022 dated 19.09.2022, he made a Representation to the respondent authorities to demarcate the actual area of the Fishery and thereafter, to handover the Fishery. The Representation of the petitioner was followed by a Letter dated 09.02.2023 of the respondent no. 2 addressed to the respondent no. 3 i.e. the Deputy Commissioner, Barpeta, whereby the respondent no. 3 was requested to demarcate the area of the Fishery for the greater interests of the fishermen. When the demarcation of the area of the Fishery was not made, the petitioner submitted another Representation on 10.05.2023, whereby, he stated that the respondent authorities had not demarcated or handed over the possession of the Fishery. When the Representation dated 10.05.2023 was not disposed of, the petitioner preferred a writ petition, W.P.[C] no. 4049/2023, wherein, this Court, in the interim, observed that it would not be a bar for the respondent no. 2 to consider the Representation of the petitioner dated 10.05.2023. But instead of disposing

the Representation, the respondent no. 2 proceeded to cancel the settlement of the Fishery by passing the impugned Order of Cancellation dated 14.07.2023, on the premise that an amount of Rs.9,03,000/- was found due from the petitioner. The Order of Cancellation was followed by a Tender Notice dated 05.08.2023, by which the respondent no. 2 has put up the Fishery again for settlement.

5. In view of the Tender Notice dated 05.08.2023 being issued and as the petitioner's representation had not been decided by the respondent authorities, the writ petitioner filed WP(C) No.5550/2023 on 11.10.2023, praying for setting aside the Tender Notice dated 05.08.2023 and for a direction to be issued to the respondent authorities, to consider the petitioner's representation dated 10.05.2023.

6. Two days after filing WP(C) No.5550/2023, the respondent no.5 was issued an offer of settlement of the fishery dated 13.10.2023 by the respondent no.2. This Court thereafter, vide order dated 16.10.2023, directed that though the tender process initiated vide the Tender Notice dated 05.08.2023 may proceed, no final order of settlement of the fishery should be made.

7. The petitioner's counsel submits that no one is operating the fishery subsequent to the interim order dated 16.10.2023 issued by this Court. He submits that though the authorities had taken a decision to demarcate the boundary of the fishery, the same has not been done till date. He submits that until and unless demarcation of the boundary is done, the petitioner cannot be forced to deposit the revenue payable to the respondent authorities. He accordingly submits that the order cancelling the settlement of the fishery with

the petitioner, vide order dated 07.11.2023, the Tender Notice dated 05.08.2023 and offer of settlement order dated 13.10.2023 should be set aside.

8. Mr. N. Haque, learned counsel for the respondent no.5, on the other hand submits that the settlement of the fishery with the petitioner was a contract and if the petitioner is aggrieved with the alleged breach of contract by way of cancellation of the settlement order, the petitioner should file a civil suit for damages in terms of Section 41 of the Specific Relief Act, 1963. Further, as per Section 37 of the Indian Contract Act, the obligation of the petitioner to complete the contract subsists and as per Section 73 of the Contract Act, the petitioner can claim compensation for damages for breach of contract.

9. Mr. P. Sarma, learned counsel for the AFDC submits that the petitioner is deemed to know the boundary demarcation of the fishery at the time of submission of his bid in terms of Clause 30 of the Contract agreement. Further, in terms of Clause 4 of the Contract Agreement executed between the petitioner and the AFDC, the failure on the part of the petitioner to submit the revenue payable by him amounting to Rs.9,03,000/- makes him a defaulter, for which a settlement of a fishery can be cancelled.

10. The official records have been brought before this Court and a perusal of the same shows that the petitioner had signed an agreement with the respondents for running the fishery. Clause 30 of the agreement states that as the successful tenderer has showed interest in taking the fishery on lease, after examining the total area and the boundary of the Meen Mahal after making spot verification of the same, any application filed by him to the respondents in the

event of facing loss under any circumstances, will not be entertained by the respondents. The said Clause in the agreement has also been inserted in the terms and conditions of the re-tender notice no.14/2022 dated 19.09.2022 at Clause No.6.2. The said re-tender notice and the terms and conditions thereto have also been accepted by the petitioner by putting his signature on the same. Clause 4 of the agreement states as follows :

“4. If the Second Party does not pay installment on time, the First Party will forthwith cancel the agreement and take steps to collect the remaining revenue as arrear of land revenue. Moreover, the First Party will also have the right to take legal recourse for collection of the arrear revenue, if it thinks fit to do so.”

11. In view of the terms and conditions provided in the re-tender notice and the agreement which is known to the petitioner, this Court does not find any ground to interfere with the impugned order dated 14.07.2023 issued by the respondent no.2, cancelling the settlement of the fishery with the petitioner.

12. Consequently, the writ petition is dismissed.

13. In the event the petitioner is entitled to receive any dues from the State respondents, as per law, the same may be given/returned to him.

14. Interim order passed earlier stands vacated.

JUDGE

Comparing Assistant