

GAHC010088882023



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

Case No. : WP(C)/2258/2023

ANUPAL DAS

S/O- SRI RANJIT DAS, R/O- RADHIKA SHANTI PATH, WARD NO. NO. 3,
SIVASAGAR TOWN UNDER SIVASAGAR MUNICIPAL BOARD, P.O., P.S. AND
DIST. SIVASAGAR, ASSAM-785640.

VERSUS

SIVASAGAR MUNICIPAL BOARD AND 3 ORS.
REPRESENTED BY ITS CHAIRPERSON, P.O., P.S. AND DIST. SIVASAGAR,
ASSAM, PIN- 785640.

2:CHAIRPERSON
SIVASAGAR MUNICIPAL BOARD
P.O.
P..S AND DIST. SIVASAGAR
ASSAM
PIN- 785640.

3:EXECUTIVE OFFICER
SIVASAGAR MUNICIPAL BOARD
P.O.
P.S. AND DIST. SIVASAGAR
ASSAM
PIN- 785640.

4:THE DIRECTOR
MUNICIPAL ADMINISTRATION
ASSAM
DISPUR
GHY- 6.

5:SHRI SANJAY DEKA

SON OF TARUN DEKA
RESIDENT OF WARD NO. 4
POST OFFICE
POLICE STATION AND DISTRICT- SIVASAGAR
ASSAM

Advocate for the Petitioner : MR. DITUL DAS

Advocate for the Respondent : SC, SIVASAGAR MUNICIPAL BOARD

Linked Case : WP(C)/6957/2023

SANJAY DEKA
S/O- TARUN DEKA
R/O- 4 NO. WARD
P.O.
P.S. AND DIST. SIVASAGAR
ASSAM

VERSUS

THE STATE OF ASSAM AND 6 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO
GOVERNMENT OF ASSAM
URBAN DEVELOPMENT DEPARTMENT
DISPUR
GUWAHATI-781006.

2:THE SECRETARY MUNICIPAL ADMINISTRATIVE DEPARTMENT
DISPUR
GUWAHATI-06.

3:THE DIRECTOR

MUNICIPAL ADMINISTRATIVE DEPARTMENT
DISPUR
GUWAHATI-06.

4:THE MUNICIPAL BOARD
SIVASAGAR
REPRESENTED BY THE CHAIRPERSON
SIVASAGAR
ASSAM
PIN- 785640.

5:THE EXECUTIVE OFFICER

SIVASAGAR MUNICIPAL BOARD
SIVASAGAR
ASSAM
PIN- 785640.
6:THE JOINT SECRETARY TO THE GOVT. OF ASSAM
URBAN DEVELOPMENT DEPARTMENT
JANATA BHAWAN
DISPUR
GUWAHATI-06.
7:ANUPAL DAS
S/O- RANJIT DAS
RADHIKA SANTI PATH
WARD NO. 03
SIVASAGAR
PIN- 785640
DIST. SIVASAGAR
ASSAM

Advocate for : MR. B K DAS
Advocate for : GA
ASSAM appearing for THE STATE OF ASSAM AND 6 ORS

BEFORE
HONOURABLE MR. JUSTICE MICHAEL ZOTHANKHUMA

ORDER

29.01.2024

1. Heard Mr. D. Das, learned counsel for the petitioner in WP(C) 2258/2023. Also heard Mr. S. Sarma, learned counsel for the respondent No. 5 in WP(C) 2258/2023 and the writ petitioner in WP(C) 6957/2023. Mr. K. Gogoi, learned counsel appears for the state respondents while Mr. T.J. Mahanta, learned Sr. Counsel appears for the Sivasagar Municipal Board.

2. The two writ petitions are being disposed of by this common order, inasmuch as, the issue in both the cases are similar and pertaining to whether the petitioner should continue to collect taxes on a daily basis from the Central Market in Ward No.8 under Sivasagar Municipal Board.

3. The petitioner and others had taken part in the selection process for settlement of the Central Market in Ward No.8 under Sivasagar Municipal Board for the period 2022-23 on the basis of an advertisement. The petitioner in WP(C) No.2258/2023 was selected as a successful tenderer. However, due to certain delays and problems, the Central Market was settled with the petitioner in WP(C) No.2258/2023 for a period of 10 months only, that is, from 01.06.2022 to 31.03.2023. It may be stated here that there is no challenge to the settlement of the market to the petitioner in WP(C) No.2258/2023 for the period from 01.06.2022 to 31.03.2023.

4. Subsequent to the expiry of the settlement period of the market with the petitioner in WP(C) No. 2258/2023, the Sivasagar Municipal Board approved the proposal for extension of the settlement of Central Market to the petitioner for a further period of 1 year from 01.04.2023 to 31.03.2024, vide resolution dated 13.03.2023. The said resolution/proposal was to be approved by the Director of Municipal Administration.

5. The petitioner's counsel submits that the petitioner has been collecting the taxes from the Central Market on a daily basis since 01.04.2023 till today, in terms of the resolution passed by the Sivasagar Municipal Board on 31.03.2023, as no final approval of the proposal has been forthcoming from the Director.

6. The petitioner in WP(C) 2258/2023 prays that a direction should be issued to the Sivasagar Municipal Board to issue a formal order, extending the period of settlement of the Central Market in Ward No.8 in favour of the petitioner, in terms of the resolution No. 1(Ka) adopted in the Special Meeting of Sivasagar Municipal Board held on 04.03.2023.

7. The counsels for all the other respondents submit that the proposal to extend the settlement of the market with the petitioner made by the Sivasagar Municipal Board, needed the prior approval of the Director of Municipal Administration in terms of Rule 2 of the 'Rules for Procedure for the Sale of Pounds and Markets By Municipal Boards and Town Committees in Assam' as notified vide Notification No.LML 51/58, dated 24.06.1958. They submit that unless the previous approval of the Director of Municipal Administration is given to the proposal for extension of the market in favour of the petitioner in WP(C) No.2258/2023, the proposal made by the Sivasagar Municipal Board has no validity and cannot be acted upon.

8. Mr. T.J. Mahanta, learned Sr. Counsel appearing for the Sivasagar Municipal Board also submits that in terms of Rule 3 of the 'Rules for Procedure for the Sale of Pounds and Markets By Municipal Boards and Town Committees in Assam', the right to collect taxes and levy fines in respect of market places will have to be initiated by the Municipal Board before 14th February of each year and as the proposal of the Municipal Board for extension of the settlement of the market in favour of the petitioner in WP(C) No.2258/2023 has not been approved by the Director of Municipal Administration, the petitioner does not have any right to carry on as the settlement holder of the market. Mr. Mahanta, learned Sr. Counsel submits that in view of the above facts and circumstances, the petitioner in WP(C) 2258/2023 has been allowed to collect taxes from the market on a daily basis in terms of the resolution passed by the Municipal Board on 31.03.2023 and not on a seasonal basis.

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

10. Rule 2 and 3 of the 'Rules for Procedure for the Sale of Pounds and Markets by Municipal Boards and Town Committees in Assam' states as follows-

“2. The period of lease for a pound or market shall be one year provided that the Board may if it thinks fit, with previous approval of the Director of Municipal Administration extend the period of lease for a total period of two years but not exceeding one year at a time.

3. The sale by public auction of the right to levy fines and charges in respect of any pounds and to collect the authorised fees in respect of any market shall be held, public notice having been given one month previously, not later than the 14th day, of February in the financial year preceding that in which the lease is to take effect.”

11. A perusal of the above Rules clearly goes to show that the extension of a settlement of a market can only be made with the approval of the Director of Municipal Administration and no right accrues to a settlement holder, whose proposal for extension has not been approved by the Director of Municipal Administration.

12. Rule 3 also provides that the settlement of markets should be initiated prior to 14th February of each year and in view of the above Rule 3, there is no ground to allow the prayer of the petitioner for extending his settlement rights over the Central Market which had expired on 31.03.2023, beyond 31.03.2023. Consequently, in view of the above reasons, the petitioner in WP(C) No. 2258/2023 has no right to continue as a settlement holder of the market, as the settlement period has expired. Accordingly, WP(C) No. 2258/2023 is dismissed.

13. As the Director of Municipal Administration has not taken a decision on the proposal for extension of settlement of the market, the Director is accordingly

directed to take a decision on the proposal made by the Sivasagar Municipal Board, with regard to whether extension of the petitioner's settlement of the Central Market of Ward No.8 should be approved. The decision should be taken within a period of 1(one) week from the date of receipt of a certified copy of this order. In the event no decision is taken by the Director, the same will imply that the Director has rejected the proposal for extension. Thereafter, the Sivasagar Municipal Board is to initiate the process for a fresh settlement of the market in terms of Rule 3 of the 'Rules for Procedure for the Sale of Pounds and Markets By Municipal Boards and Town Committees in Assam.'

14. It is further directed that the new selection process to be initiated and the selection of the successful tenderer should be concluded on or before 31.03.2024.

15. The writ petitions are accordingly disposed off.

JUDGE

Comparing Assistant