

GAHC010315602019



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

Case No. : WP(C)/9476/2019

DHARMESWAR DAS
S/O- LT. KRISHNA DAS, R/O- VILL. NO. 1 KHANAPARA, P.O.- SIPAJHAR,
DIST. DARRANG, ASSAM, PIN- 784125.

VERSUS

THE STATE OF ASSAM AND 3 ORS
REP. BY THE SECY., GOVT. OF ASSAM, FISHERY DEPTT., DISPUR, GHY.-06.

2:THE COMMISSIONER OF PLAINS DIVISION
DISPUR
GHY.-06.

6:THE DY. COMMISSIONER
DARRANG
DIST. DARRANG
ASSAM
PIN- 784125.

7:ADDITIONAL DEPUTY COMMISSIONER
REVENUE
DARRANG

MANGALDA

For the petitioner (s) : Mr. B. P. Borah, Advocate

For the respondent (s) : Mr. G. Bokalial, Govt. Advocate
Mr. P. Sarma, SC, AFDC

BEFORE
HON'BLE MR. JUSTICE DEVASHIS BARUAH
O R D E R

08.11.2024

Heard Mr. B. P. Borah, the learned counsel appearing on behalf of the petitioner. Mr. P. Sarma, the learned counsel appears on behalf of the respondent No.1 and Mr. G. Bokalia, the learned counsel appears on behalf of the respondent No.6.

2. The instant writ petition has been filed seeking a writ in the nature of mandamus directing the respondent authorities, more particularly the respondent No.6 to remit the revenue for the year 2018-19 and adjust the amount already paid in the year 2019-20, and in addition to that the petitioner has also sought for setting aside/revoking/canceling the notice dated 03.12.2019.

3. From the materials on record, it transpires that an NIT was issued on 27.02.2018 wherein the petitioner participated. Taking into account that the petitioner was the highest bidder, the petitioner was awarded the No.10 Tupurachala Fishery for a period of 7 years, i.e. from 2018-19 to 2024-25. It is further seen from Annexure-A to the writ petition that the revenue which was required to be paid by the petitioner for the year 2018-19 was Rs.2,13,330/- which stood increased by 10% annually. It is the further case of the petitioner that the petitioner was handed over

the possession of the fishery on 06.02.2019, and thereupon, the petitioner started operating the fishery in question. Subsequent thereto, on 16.11.2019, the petitioner sought for remission of the revenue for the year 2018-19 on the ground that the petitioner was handed over the fishery only on 06.02.2019. Various representations were filed in that regard.

4. Be that as it may, the petitioner was issued a notice on 03.12.2019 whereby the petitioner was asked to pay an amount of Rs.1,33,330/- as the fishery revenue for the year 2018-19 financial year of the No.10 Tupurachala Fishery. Being aggrieved on account of non-consideration of the representations of the petitioner as well as issuance of the impugned notice dated 03.12.2019, the petitioner has approached this Court.

5. The record reveals that this Court vide an order dated 06.01.2020 issued notice and further directed that till the next, state status-quo as on the date be maintained in respect to the No.10 Tupurachala Min Mahal. The interim order thereupon has been extended from time to time.

6. It is further relevant to take note of that an affidavit was filed by the Assistant Commissioner, Darrang on behalf of the respondent No.6. In the said affidavit, it was categorically mentioned that when the petitioner was allotted the Meen Mahal

in question on 26.02.2018, the possession was also handed over to the petitioner and the petitioner continued to reap benefits. However, the handing over of the fishery in question was not by way of any written document. It was only on 06.02.2019, the formal possession of the fishery in question was handed over to the petitioner. Under such circumstances, it was therefore submitted that the petitioner was not entitled to any remission. Further, the impugned notice ought not to be interfered with. The record reveals that the said affidavit was filed in the year 2021 and no reply was filed there against.

7. This Court has duly heard the learned counsels appearing on behalf of the parties. Taking into account the stand so taken by the respondent No.6 in the affidavit, this Court had put a specific query upon Mr. B. P. Borah, the learned counsel appearing on behalf of the petitioner as to whether there was any document to show that the petitioner after the settlement being made, complained till 06.02.2019 of not being handed over the possession of the fishery. No such document however could be shown during the course of the hearing.

8. Further to the above, it also transpires during the course of the hearing that the question as to whether the petitioner was handed over the possession of the fishery after 26.02.2018 or only on 06.02.2019 are questions of fact which can only be

decided in a proceedings wherein evidence can be led.

9. Under such circumstances, this Court therefore is not inclined to exercise its writ jurisdiction in the instant proceedings taking into account the involvement of disputed question of facts. Accordingly, the writ petition stands dismissed on the ground of it being not entertained.

10. Be that as it may, this Court however observes that the petitioner would be at liberty to approach the appropriate Civil Court if the petitioner is aggrieved with the action on the part of the respondent authorities. This Court further observes that the period during the pendency of the writ petition from 18.12.2019 till date be excluded while computing the period of limitation.

11. With the above observations and directions, the instant writ petition stands disposed of.

12. Interim order, if any, stands vacated.

JUDGE

Comparing Assistant