GAHC010113442020

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

Case No. : WP(C)/3339/2020

DIBRUGARH FISHERY CO-OPERATIVE SOCIETY LTD.
DIBRUGARH, DIST.- DIBRUGARH, ASSAM, AGED ABOUT 50 YEARS, REP. BY ITS CHAIRMAN, SRI BIKASH DAS, S/O- LT. BOKUL DAS, R/O- NORTH AMOLAPOTTY, DIBRUGARH TOWN, DIST.- DIBRUGARH, ASSAM

VERSUS

THE STATE OF ASSAM AND 4 ORS.
REP. BY THE PRINCIPAL SECY. TO THE GOVT. OF ASSAM, FISHERY DEPTT., DISPUR, GHY-06

2:THE MISING AUTONOMOUS COUNCIL
REP. BY ITS PRINCIPAL SECY.
GOGAMUKH
DHEMAJI

3:THE DY. COMMISSIONER
DIBRUGARH
ASSAM

4:THE CIRCLE OFFICER
DIBRUGARH WEST REVENUE CIRCLE
DIBRUGARH

5:DHARMENDRA TAYENG
SETTLEMENT HOLDER
MOINA MARI GAON RANDHONI BEEL UNDER NO. 35 DISANG DIKHOW MAC CONSTITUENCY
GOGAMUKH
DHEMAJ

Advocate for the Petitioner : MR. S BANIK

Advocate for the Respondent : GA, ASSAM

Linked Case : WP(C)/3488/2020

DIBRUGARH FISHERY CO-OP. SOCIETY LTD.
DIBRUGARH ASSAM. REPRESENTED BY ITS CHAIRMAN
SRI BIKASH DAS
SON OF LATE BOKUL DAS
AGED ABOUT 50 YEARS
RESIDENT OF NORTH AMOLAPOTTY. DIBRUGARH ASSAM

VERSUS

THE STATE OF ASSAM AND 4 ORS.
REPRESENTED BY THE PRINCIPAL SECRETARY TO THE GOVERNMENT OF ASSAM
FISHERY DEPARTMENT
DISPUR GUWAHATI 781006

2:THE JOINT SECRETARY
TO THE GOVERNMENT OF ASSAM
FISHERY DEPARTMENT
DISPUR
GUWAHATI 781006

3:THE MISSING AUTONOMOUS COUNCIL
REPRESENTED BY ITS PRINCIPAL SECRETARY GOGAMUKH
DHEMAJI

4:THE DEPUTY COMMISSIONER
DIBRUGARH
ASSAM

5:SASHI CHANDRA MILI
S/O UPEN MILI
VILLAGE MOINA MISSING GAON
PS BORBORUAH
DIBRUGARH

Advocate for : MR. S BANIK
Advocate for : GA
ASSAM appearing for THE STATE OF ASSAM AND 4 ORS.: Advocate ,

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, appearing for 2,

3,

4,

5, respectively.

BEFORE
HONOURABLE MR. JUSTICE MANISH CHOUDHURY

ORDER

Date : 09-12-2020

Heard Mr. S. Banik, learned counsel for the petitioner. Also heard Ms. M. Bhattacharjee, learned Additional Senior Government Advocate for the State of Assam and Mr. S. Borthakur, learned Standing counsel, Mising Autonomous Council. None has appeared for the private respondent no. 5 though the names of the learned counsel are reflected in the cause-list.

2. Mr. Banik, learned counsel for the petitioner has submitted that by an order dated 03.01.2020 passed by the Deputy Commissioner, Dibrugarh in pursuance of the Government letter dated 24.12.2019, the petitioner society has been allowed to operate a fishery viz. 'Sessa Nadi Fishery' temporarily on daily basis until further orders from the Government and in pursuance to the said order, the petitioner society has been operating the said fishery till date. It is further submitted by him that the possession of the fishery was handed over to the petitioner society on 24.01.2020.

3. In W.P.(C) No. 3339/2020, the petitioner has approached this Court aggrieved by an order of settlement passed by the respondent Mising Autonomous Council on 06.08.2020 whereby the respondent Council has settled a fishery viz. 'Moina Mari Gaon Randhoni Beel' for the period 2020-2021. The case projected on behalf of the petitioner society in W.P.(C) No. 3488/2020 is that respondent Mising Autonomous Council has settled a fishery viz. 'Sessa

Nadi Moina Mising Gaon Mohpoti to Rangagarah Sessamukh Meen Mohol' by an order dated 06.08.2020 for the period 2020-2021. The petitioner society has challenged both the settlement orders dated 06.08.2020 passed by the respondent Mising Autonomous Council.

4. According to the petitioner, 'Sessa Nadi Fishery' is a 60% category fishery as per the Assam Fishery Rules, 1953 and it has well defined and demarcated boundaries. The power to settle such fishery lies on the Government. He has further submitted that the boundaries of the two fisheries settled by the respondent Mising Autonomous Council are found to be overlapping with 'Sessa Nadi Fishery' and the same has adversely affected the petitioner society in operating 'Sessa Nadi Fishery'.

5. Mr. Borthakur, learned Standing Counsel, Mising Autonomous Council has submitted that there is no dispute with regard to the fact that 'Sessa Nadi Fishery' is 60% category fishery and any settlement order settled with such fishery has a right to operate the fishery within its notified boundaries. He has further submitted that the fisheries settled by the respondent Council are not overlapping with the 60% category fishery i.e. 'Sessa Nadi Fishery' settled on daily basis with the petitioner society. It is further submitted by him that in the event the fishery settled by the respondent Council are found overlapping with the 60% fishery i.e. 'Sessa Nadi Fishery' then the respondent Council will take appropriate action in the matter.

6. I have heard the learned counsel for the parties and perused the materials on record.

7. It is not in dispute that 60% category fishery is settled by the Government in exercise of the powers under Rule 12 of the Assam Fishery Rules, 1953 ('the Rules, 1953', for short). As per the definition provided by Rule 1a of the Rules, 1953, the term "fishery" means the waters declared to be a fishery by proclamation issued under Section 16 of the Assam Land and Revenue Regulation, 1886 and includes *Kheos* or fish ways, *Dabas* and *Beels*. As per Rule 2 of the said Rule, 1953, a register of Fisheries include navigable rivers (which are public property) must be kept up by each District and Sub-Divisional Officer in Form No. 97 of the Assam Land Revenue Manual, Volume II and no alteration in the registers, whether by the addition or removal of the fisheries, or revision of fishery boundaries, may be made without the previous sanction of Government.

8. A perusal of the aforesaid provisions indicates that a 60% category fishery has well defined and demarcated boundaries and the settlement holders of such fishery has the right to operate such fishery within the defined and demarcated boundaries of such fishery. In such view of the matter, as the petitioner society claims to be the settlement holder on daily basis in respect of 'Sessa Nadi Fishery' and is operating the same till date, it is made clear that the respondent authorities, more particularly, the Deputy Commissioner, Dibrugarh shall ensure that no disturbance in respect of the rights of the petitioner society in operating the fishery shall be caused within its defined and demarcated boundary by the respondent Mising Autonomous Council and/or the settlement holders of 'Moina Mari Gaon Randhoni Beel' and 'Sessa Nadi Moina Mising Gaon Mohpoti to Rangagarah Sessamukh Meen Mohol', stated to be settled by the respondent Council.

9. If the respondent Council finds that the petitioner society is operating beyond the defined and demarcated boundaries of 'Sessa Nadi Fishery', they may lodge a complaint with the jurisdictional Deputy Commissioner along with the supporting documents and if any such complaint is made, the jurisdictional Deputy Commissioner shall look into the issue raised and decide on the same in accordance with law after affording hearing to the parties.

10. With the above observations and directions given, these writ petitions stand disposed of.

JUDGE

Comparing Assistant