GAHC010246702019

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

Case No. : WP(C)/6774/2019

DHAMOR RAIJAN FISHERY COOPERATIVE SOCIETY LTD.
HAVING ITS OFFICE AT VILLAGE- SILAPANI
P.O. AND P.S. LAKHIPUR
SUB-DIVISION GOALPARA
DIST- GOALPARA
ASSAM
PIN- 783129 REP. BY ITS SECRETARY
SRI TIPUL CHANDRA DAS
AGED ABOUT 48 YEARS
S/O- MADAN CHANDRA DAS
R/O- SILAPANI
P.O. AND P.S. LAKHIPUR
SUB-DIVISION GOALPARA
DIST- GOALPARA
ASSAM
PIN- 783129.

VERSUS

THE ASSAM FISHERIES DEVELOPMENT CORPORATION LTD. AND 4 ORS.
REP. BY ITS SECRETARY
HAVING OFFICE AT CHACHAL
VIP ROAD
GUWAHATI- 781036
KAMRUP(M)
ASSAM.

2:THE MANAGING DIRECTOR
ASSAM FISHERIES DEVELOPMENT CORPORATION LTD.
CHACHAL
VIP ROAD
GUWAHATI- 781036
KAMRUP(M)
ASSAM.

3:RAMAKANTA DEORI
CHAIRMAN
ASSAM FISHERIES DEVELOPMENT CORPORATION LTD.
CHACHAL
VIP ROAD
GUWAHATI- 781036
KAMRUP(M)
ASSAM.
4:N.C. BASUMATARY
MANAGING DIRECTOR
ASSAM FISHERIES DEVELOPMENT CORPORATION LTD.
CHACHAL
VIP ROAD
GUWAHATI- 781036
KAMRUP(M)
ASSAM.
5:KUMARIPARA MASMARA ARU JALGOTHA SAMABAY SAMITEE LTD.
REP. BY ITS SECRETARY
HAVING ITS OFFICE AT VILLAGE- KUMARI
P.O. DARIDURI
PIN- 783101
DIST.- GOALPARA
ASSAM.

Advocate for : MR. D P BORAH
Advocate for : MR. D DAS appearing for THE ASSAM FISHERIES DEVELOPMENT CORPORATION LTD. AND 4 ORS.

Linked Case : WP(C)/8250/2018

DHAMOR RAIJAN FISHERY COOPERATIVE SOCIETY LTD.
HAVING ITS OFFICE AT VILLAGE SILAPANI
P.O AND P.S- LAKHIPUR
SUB DIVISION GOALPARA
DIST- GOALPARA
ASSAM
PIN- 783129
REP. BY ITS SECRETARY SRI TIPUL CHANDRA DAS
S/O- MADAN CHANDRA DAS
R/O- VILL- SILAPANI
P.O- LAKHIPUR
P.S- LAKHIPUR
SUB DIVISION GOALPARA
DIST- GOALPARA
ASSAM
PIN- 783129

VERSUS

THE ASSAM FISHERIES DEVELOPMENT CORPORATION LTD. AND 2 ORS
REP. BY ITS SECRETARY HAVING OFFICE AT CHACHAL
VIP ROAD
GUWAHATI- 781036
KAMRUP(M) ASSAM

2:THE MANAGING DIRECTOR
ASSAM FISHERIES DEVELOPMENT CORPORATION LIMITED
CHAACHAL
VIP ROAD
GUWAHATI- 781036
KAMRUP(M)
ASSAM
3:KUMARIPARA MASMARA ARU JALGOTHA SAMABAY SAMITEE LIMITED
REP. BY ITS SECRETARY
HAVING ITS OFFICE AT VILLAGE KUMARI
P.O- DARIDURI
PIN- 783101
DIST- GOALPARA ASSAM

Advocate for : MR G RAHUL
Advocate for : SC
AFDC appearing for THE ASSAM FISHERIES DEVELOPMENT CORPORATION LTD. AND 2 ORS

BEFORE
HONOURABLE MR. JUSTICE SANJAY KUMAR MEDHI

ORDER

Date : 21.12.2020

Heard Sri D. P. Borah, learned counsel for the petitioner. Also heard Sri A. Sarma, learned Standing Counsel, AFDC.

Considering the submissions made by the parties, both these writ petitions are being disposed of by this common order.

WP(C) No. 8250/2018 was instituted by the petitioner society as there was delay in allotment of the fishery in question, namely Kumari Fishery. It is the case of the petitioner that Assam Fisheries Development Corporation Limited (hereinafter

'AFDC') had passed an order dated 05.11.2018 issuing the allotment order. However, in spite of the order dated 05.11.2018, actual allotment was not given.

This Court vide order dated 30.11.2018, while issuing notice, has directed the respondent authorities to allow the petitioner to operate the fishery in question in terms of the allotment order dated 05.11.2018 subject to payment of revenue with immediate effect. It is the case of the petitioner that in terms of the said order, the fishery in question is being operated by the petitioner by paying the revenue.

Thereafter, certain allegations were made against the petitioner based on which an order was passed on 06.09.2019 directing the petitioner society to stop fishing operation, which was the subject matter of challenge in the second Writ Petition No. 6774/2019. This Court vide order dated 11.09.2019 came to a prima facie opinion that the impugned order was in violation of the order of this Court passed in the existing writ petition and, accordingly, the operation of the order dated 06.09.2019 was suspended until further orders.

Sri A. Sarma, learned counsel for the Corporation, submits that the order dated 11.09.2019 is operating as a blanket order for which the Corporation has been precluded from going ahead even to make an enquiry and take appropriate steps as per law regarding the allegations made against the petitioner society.

By referring to the earlier order dated passed by this Court in WP(C) 8250/2018, it has been clarified that the said order in clear terms had directed to allow the petitioner to operate the fishery subject to payment of revenue and that order cannot be construed to a blanket order and total embargo not to look into the manner in which the fishery is being operated and the allegations made against it.

Sri D. P. Borah, learned counsel for the petitioner, fairly endorsed that in terms of the order dated 30.11.2018, he has been paying the revenue regularly and, therefore, he cannot be stopped by the Corporation from fishing without giving him an opportunity to defend himself. While, refuting the allegation in its entirety, Sri Borah submits that the stop fishing order was passed without affording any opportunity.

In considering the aforesaid facts and circumstances and the submissions of the learned counsel for the parties, this court is of the opinion that both the aforesaid writ petitions can be disposed of with the following direction.

The petitioner shall be entitled to run the fishery in terms of the order dated 30.11.2018 for the tenure for which the settlement has been given. However, at the same time, notwithstanding the above, the Corporation/appropriate authority shall be at liberty to make a proper enquiry against the allegations connected with operating the fishery in question and take appropriate action in accordance with law. It is needless to state that all actions, which may be adverse to the interest of the petitioner has to be preceded by an appropriate opportunity to be afforded to the petitioner and an order to be passed strictly in accordance with law.

With the above observations, these writ petitions are disposed of.

JUDGE

Comparing Assistant