



GAHC010080322019

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

Case No. : WP(C)/2482/2019

HAREN SAIKIA
S/O- LT TOTOLA RAM SAIKIA, R/O- KAJALICHOKI, P.O. CHANDRAPUR,
DIST- KAMRUP, ASSAM

VERSUS

THE STATE OF ASSAM AND 4 ORS.
REP. BY THE PRINCIPAL SECY. TO THE GOVT. OF ASSAM, ENVIRONMENT
AND FORESTS DEPTT., DISPUR, GHY-6

2:THE PRINCIPAL CHIEF CONSERVATOR OF FORESTS AND HEAD OF
FORESTRY FORCE
GHY-8

3:THE CHIEF CONSERVATOR OF FORESTS
NORTHERN ASSAM CIRCLE
TEZPUR

4:THE STATE ENVIRONMENT IMPACT ASSESSMENT AUTHORITY
ASSAM
REP. BY ITS MEMBER SECY.
THE ADDRESS OF NEW OFFICE COULD NOT BE OBTAINED ONLY WHEN
NEW AUTHORITY 2016 IS CONSTITUTED BY THE MINISTRY OF
ENVIRONMENT AND FORESTS AS TERM OF THE OLD AUTHORITY
EXPIRES ON 29TH MAY
2016. EARLIER OFFICE AT 3RD FLOOR AT THE PREMISES OF THE
POLLUTION CONTROL BOARD
ASSAM
BAMUNIMADAM
GHY-21

5:THE DIVISIONAL FORESTS OFFICER



NAGAON DIVISION
NAGAON
ASSA

Advocate for the Petitioner : MR. J SARMAH

Advocate for the Respondent : SC, FOREST

BEFORE
HONOURABLE MR. JUSTICE SANJAY KUMAR MEDHI

JUDGMENT

06.03.2024.

Heard Shri J Sarmah, learned counsel for the petitioner. Also heard Shri RR Gogoi, learned Standing Counsel, Forest Department, Assam who submits that an affidavit-in-opposition has also been filed on 30.11.2022.

2. The case of the petitioner is that pursuant to a process initiated by the Forest Department for settlement of the Nakhola Beat Sand Permit Area No. 3 in the district of Nagaon, he had participated in which, he was offered a Letter of Intent dated 03.01.2014. By the said communication, the period of settlement was specified to be 2 years and the petitioner was directed to obtain the environment clearance. Simultaneously, vide a communication dated 13.02.2014, the petitioner was directed to deposit the first Kist money which the petitioner had deposited on 15.03.2014. However, according to the petitioner, in spite of his best efforts, the environmental clearance could not be obtained by him.

3. Shri Sarma, learned counsel for the petitioner has also referred to a communication dated 17.06.2014 issued by the Divisional Forest Officer, Nagaon



Division to the Member Secretary, State Environment Impact Assessment Authority, Assam requesting for issuance of the Environmental Clearance Certificate. However, even thereafter, no such clearance was issued to him. Ultimately, vide the impugned communication dated 12.01.2015 issued by the Divisional Forest Officer, Nagaon Division, the settlement was cancelled and the security amount was forfeited, including the imposition of a penalty of debarring the petitioner from participating in similar tender process for a period of 5 years.

4. Shri Sarma, learned counsel for the petitioner has, at the outset, informed that the period of 5 years is already over and therefore, it is only the question of refund of the security amount as well as the Kist money for which necessary directions are liable to be issued. By referring to the impugned communication dated 12.01.2015, the learned counsel has submitted that the said order pertains to two areas of sand permit. He has informed this Court that so far as the other area is concerned, namely, Mayong Beat Sand Permit Area of 2014-16 wherein a similar action was taken, the said action was the subject matter of challenge in WP(C)/1258/2015 which was disposed of by this Court on 31.01.2019 interfering with the aforesaid decision and directing refund of the security amount within a period of 2 months. It is submitted that the aforesaid direction was not the subject matter of any further challenge and in fact has been complied with in the meantime.

5. Shri Sarmah, learned counsel for the petitioner, accordingly submits that following the said direction, a similar direction be issued so far as the present permit area is concerned and a further direction also be issued for refund of the first Kist money which the petitioner had deposited pursuant to the

communication of the Department dated 13.02.2014.

6. Shri Gogoi, learned Standing Counsel of the Department by referring to the affidavit-in-opposition dated 30.11.2022 has submitted that so far as the aspect of refund of the security amount is concerned, he will not join any issue as the said issue has been decided by this Court in WP(C)/1258/2015 which has been referred to by the learned counsel for the petitioner. He has also submitted that the period of blacklisting is already over and therefore, this Court need not go into the aspect of adjudication of the said issue. So far as the claim for refund of the Kist amount is concerned, Shri Gogoi, learned Standing Counsel, however, raises serious objection stating that the petitioner in spite of not obtaining the environmental clearance certificate had operated the Mahal in question by sub-letting the same in respect of which, an FIR was lodged in the concerned police station and a case is pending against him. He, therefore, submits that while he will not object to the prayer for refund of the security amount, no such direction be issued for refund of the Kist money.

7. The rival submissions of the learned counsel for the parties have been duly considered.

8. The requirement of environmental clearance is a *sine qua non* for operating sand Mahal. Such requirement is to be fulfilled by an intending lessee in which necessary cooperation is also required from the Department. In the instant case, it is seen that the DFO had also issued a communication 17.06.2014 requesting for issuance of the Environment Clearance Certificate which, however, has not been done. This Court has already observed that in



absence of such certificate, a Mahal is not able to be operated. Under such circumstances, issuance of the letter dated 12.01.2015 whereby not only cancelling the settlement but also directing forfeiting of the security amount and blacklisting of 5 years does not *prima facie* appears to be justified at all. In any case, this Court has already been informed that a Coordinate Bench of this Court in WP(C)/1258/2015 has already interfered with such an action pertaining to the said petitioner so far as another Mahal is concerned which incidentally is a part of the impugned communication dated 12.01.2015.

9. Accordingly, there is absolutely no dispute at all with regard to the entitlement of the petitioner to get the security amount refunded to him. As regards the claim for refund of the Kist amount, this Court has been informed that the petitioner had indulged in certain activities by sub-letting of the Mahal in question in respect of which an FIR has also been lodged. Taking into consideration the aforesaid circumstances, it is directed that so far as the security amount of Rs. 2,02,000/- is concerned, the same be refunded to the petitioner within a period of 45 days from today. So far as the claim for refund of the Kist amount is concerned, though in a normal circumstances without any further observation, this Court would have passed an order for consideration of such claim for refund, in view of the existence of certain other facts which have been brought on record, including filing of an FIR, this Court permits the petitioner to file a detailed representation claiming a refund of the Kist amount before the DFO, Ngaon. In the event such representation is filed, the same is directed to be considered by a speaking order which is to be done within a period of 45 days from the date of receipt of such representation.



10. The writ petition is accordingly disposed of.

JUDGE

Comparing Assistant