



GAHC010032952021

Page No.# 1/7



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

Case No. : WP(C)/1174/2021

JOYDEB DAS
S/O- DEBAKRISHNA DAS, SECY., CHENGAJAN KRIMIJAN FISHERY
SOMOBAI SAMITI LTD., DHEMAJI, R/O- VILL- PANBARI KOIBARTTA, P.O.
MUKTIAR, DIST.- DHEMAJI, ASSAM

VERSUS

THE STATE OF ASSAM AND 5 ORS
REP. BY THE COMM. AND SECY. TO THE GOVT. OF ASSAM, FISHERY
DEPTT., DISPUR, GHY-06

2:THE JOINT SECRETARY
TO THE GOVT. OF ASSAM
FISHERY DEPTT.
DISPUR
GHY-06

3:DISTRICT FISHERY DEVELOPMENT OFFICER
DHEMAJI
ASSAM
PIN- 787057

4:THE DY. COMMISSIONER
DHEMAJI
ASSAM
PIN- 787057

5:THE ADDL. DY. COMMISSIONER (FISHERY)
DHEMAJI
ASSAM
PIN- 787057



6:SAMITI DAS
W/O- SHRI PHANIDHAR DAS
SECY.
GOHAINGAON BAHUMUKHI MAHILA SAMABAI SAMITTEE LTD.
DHEMAJI R/O- VILL- BAMGAON
P.O. GOHAINGAON
DIST.- DHEMAJI
ASSA

Advocate for the Petitioner : MR. T K BHUYAN

Advocate for the Respondent : GA, ASSAM

BEFORE
HONOURABLE MR. JUSTICE ARUN DEV CHOUDHURY

Date of Hearing :29.4.2022, 05.05.2022 and 19.5.2022

Date of Order : *19.05.2022*

JUDGMENT AND ORDER(ORAL)

Heard Mr. T. K. Bhuyan learned counsel for the petitioner. Also heard Mr. N. Goswami, learned counsel for the respondent Nos. 1 to 5. None appears for the respondent No. 6., though Service of notice upon respondent No. 6 was treated to be complete by this court under order dated 26.11.2021.

2. The petitioner, who claims to be the Secretary Chengajan Krimijan Fishery Samabai Ltd., has preferred this writ petition challenging the order dated 22.1.2021, whereby the settlement of the fishery in question was extended in favour of the respondent No. 6 and remission was granted in its favour

pursuant to order of this court in WP(C) No. 2501/2018. The said writ petition was preferred by the private respondent No. 6.

3. In the said writ petition, this court without expressing any opinion on merit of claim of remission of the respondent No. 6, disposed of the said writ petition directing the respondents to consider the prayer for remission of revenue.

4. The fishery in question namely, Chengajan Group Fishery, Dhemaji was settled with the private respondent No. 6 by a settlement order dated 26.4.2013 for a period of seven years. The said settlement period expired on 26.4.2020.

5. The respondent No. 6, who was a settlement holder of five fisheries, approached this court alleging non consideration of its claim for remission. This court, as stated hereinabove, without expressing any merit on the claim of the petitioner, directed the respondent authorities to consider the prayer of remission of revenue with regard to three fisheries including the fishery in question. Pursuant to such order, the respondent authorities by impugned order dated 22.1.2021 granted remission to the respondent No. 6 and also granted extension of the lease for a another period of three years.

6. Mr. Bhuyan, learned counsel for the petitioner submits that the fishery could not have been extended after expiry of the lease period. Accordingly, he submits that the impugned order extending the period of lease in favour of the petitioner is without any sanction and authority under the law.

7. Mr. T. K. Bhuyan learned counsel further submits that the condition precedent for extension of lease as mandated under Rule 8(b) of Assam Fisheries Rule, 1953 was not available. He further contends that the lease was extended only to favour the respondent No. 6. It is the case of the petitioner that being 100% fisherman society, the petitioner is having a right to participate in the

settlement process as per mandate of Assam Fisheries Rules 1953, through open competition amongst 100% fisherman society. However, such right has been denied by issuing the impugned order of extension in favour of respondent No. 6, submits Mr Bhuyan. Therefore he prays that impugned order of extension be set aside and the respondent be directed to initiate to process of settlement as per Rule 1953.

8. Per contra Mr. N. Goswami learned counsel for respondent No. 1 to 5 submits that the authorities after enquiry and after having a subjective satisfaction on the claim of the petitioner has issued order of extension. According to Mr. Goswami, the respondent No. 6 suffered loss and due to some natural calamities he could not fish the settled fishery. He further submits that such subjective satisfaction of the authorities may not be interfered in exercise of power under Article 226 of the Constitution of India inasmuch as such power is not appellate power. Mr. Goswami also submits that due process of law has been followed while issuing the order extension of the lease and therefore this is a fit case where this writ petition should be dismissed.

9. The Rule 8(b) of the Assam Fisheries Rules 1953 empowers the Government to extend period of lease, when such period of lease is not less than 3 years and such lease is interfered with due to natural cause or any unavoidable reason beyond control of the lessee. Such determination of reason should be arrived on the basis of official reports disclosing the cause and exceptional nature of the same, the Rule mandate.

10. Rule 16 empowers the Deputy Commissioner to grant remission to a lessee of a fishery in exceptional cases.



11. The Respondent No. 6 approached this court for remission on the ground that while operating the fishery, Missing Autonomous Council had allegedly occupied large portion of the same and the fishery was also filled up by sand by unknown culprits, as a result of which the respondent No. 6 had to suffer heavy loss. In the aforesaid backdrop this court without entering into the merit disposed of the said writ petition with a direction to the authorities to consider and dispose of the prayer of remission in accordance with law.

12. As discussed hereinabove, the power and limitation of the authority for grant of extension of lease is already mandated. Therefore, the order dated 18.11.2019 passed in WP(C) No.2501/2018, shall necessarily mean that the respondent authorities were to consider the case of the respondent No. 6 under law i.e under Rule 8(b) and Rule 16.

13. In the case in hand, the initial settlement in favour of the respondent No. 6 started on 26.4.2013 and it was settled till 26.4.2020 i.e. for a period of seven years. Thus the settlement period / lease period expired on 26.2.2020. The material reveals that though the direction of this court in WP(C) No. 2501/2018 was for consideration of the prayer of the petitioner for remission and direction was also issued for consideration of such prayer of remission as per law. Under the impugned order dated 22.1.2021 extension of the lease for three years was granted along with remission after a year expiry of the lease.

14. It is not more res integra that a contract /lease cannot be extended after expiry of the same. However, the lesser and lessee shall have definite right and power to extend the period of lease during the subsistence of lease subject to limitation under Rule 8 (b) of the Fishery Rules 1953.

15. When lease is extended such extension shall mean prolongation of the

lease and when renewal is done, a new lease is required to be executed. Renewal of lease and extension of lease are two distinct and separate concepts.

In case of a lease under Assam Fishery Rules, 1953, when the period of lease is over and after expiry of such period, an extension is granted, the same shall for all meaning and purport be a fresh lease and not renewal in as much as there is no power of renewal under the Rules'1953.

Reading the Rule 8(b) and Rule 16, this court can safely conclude that the State authority is not within its power and jurisdiction to extend a lease after its expiry inasmuch as under the mandate of Rule 1953, fresh lease or renewal of lease cannot be entered/granted in exercise of such power of extension.

As discussed herein above the power of extension of lease is also limited by certain condition such as interference of lease period due to natural cause or for any unavoidable reason beyond the control of lessee or any exceptional circumstances granting extension of lease enabling the lessee to make the loss.

16. From this point of view, this court un-hesitantly holds that the extension of lease after expiry of lease was beyond the competence and jurisdiction of authority. Accordingly, the same is interfered with.

17. In the case in hand, considering loss suffered by respondent No. 6 the respondent authorities had already granted remission to the respondent No. 6.

18. So far relating to the issue of grant of remission to the respondent No.6, this court is not inclined to interfere with the same for the reason that for the remission granted to the respondent No. 6 the petitioner cannot be an



aggrieved person and no right of the petitioner has been violated from grant of such remission.

19. Accordingly this writ petition is allowed in the aforesaid terms. The respondent State is directed to sale/settle the fishery in question through Tender as per the Assam Fishery Rules, 1953 within a period of four weeks from receipt of a copy of this order to be furnished by the petitioner before the respondent authorities.

20. The records furnished by Mr. N. Goswami, learned Junior Govt. Advocate is hereby returned.

JUDGE

Comparing Assistant