



GAHC010111192022

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

Case No. : WP(C)/3800/2022

DIBYA JYOTI DAS
S/O. LT. BASANTA DAS, VILL. DHEKIAJULI, WARD NO.2, P.S. DHEKIAJULI,
P.O. DHEKIAJULI, DIST. SONITPUR, ASSAM, PIN-784110.

VERSUS

THE STATE OF ASSAM AND 2 ORS.
REP. BY THE COMM. AND SECY. URBAN DEVELOPMENT DEPTT., DISPUR,
GUWAHATI-06, ASSAM.

2:DHEKIAJULI MUNICIPAL BOARD

REP. BY ITS EXECUTIVE OFFICER
SWAHID NAGARI
DHEKIAJULI SONITPUR
ASSAM-784110.

3:THE CHAIRMAN

DHEKIAJULI MUNICIPAL BOARD SWAHID NAGARI
DHEKIAJULI SONITPUR
ASSAM-784110

Advocate for the Petitioner : MR. D SARMAH

Advocate for the Respondent : GA, ASSAM

BEFORE
HONOURABLE MR. JUSTICE ARUN DEV CHOUDHURY



ORDER

08.06.2022

Heard Mr. S. Hazarika, learned counsel for the petitioner. Also heard Mr. M. Chetia, learned Junior Government Advocate, Assam representing the respondent No. 1.

2. The petitioner was lessee for collection of toll for parking area under Dhekiajuli Municipal Board, Dhekiajuli, Sonitpur. Such lease was granted by order dated 08.05.2017 for a period commencing from 01.05.2017 to 31.03.2018 i.e. for a period of one year. Subsequently, on expiry of lease, it was extended for a period from 01.04.2019 to 31.03.2020. Thereafter, the same was further extended from 01.04.2020 to 31.03.2021 and again extended on two occasions i.e. with effect from 01.09.2021 to 31.03.2022 and with effect from 01.04.2022 to 30.04.2022. The petitioner had been collecting parking fee in the area since 2017 and for a period three years, submits Mr. S. Hazarika, learned counsel. The petitioner had filed a representation before the respondent No. 2. i.e. Executive Officer, Dhekiajuli Municipal Board for extension of the lease for the period of 2022-2023, on the ground that he had suffered loss due to "Covid pandemic".
3. The grievance of the petitioner is that the authorities are sitting over the matter and without considering and disposing of the representation of the petitioner, has issued a notice inviting tender dated 03.06.2022 for settlement for collection of toll for parking area for the year 2022-2023 under Dhekiajuli Municipal Board. Accordingly, the petitioner has approached before this Court by filing this present writ petition for setting

aside and quashing the Notice Inviting Tender dated 03.06.2022.

4. Sub Section 3 of Section 148 of the Assam Municipal Act, 1956, empowers the Board to grant a lease according to rules framed under the said section for a period not exceeding three years for the collection of rents, tolls and fees in municipal markets parking lots at the rates prescribed by the Board under Sub-Section (2).
5. In view of such provision, the petitioner shall not have any right for extension of period of settlement beyond three years. In fact, no provision has been made under Section 148 of the Assam Municipal Act, 1956 empowering the Municipal Board for extension of period of settlement of any parking lots.
6. A Rule has been framed in exercise of power under Sections 147, 148 and 301 of the Assam Municipal Act, 1956 namely Rule for Procedure of Sale of Pounds and Markets by Municipal Board and Town Committee in Assam and power of extension has been provided in the said Rule.
7. This Court in ***Achinty Das –Vs- State of Assam & Ors*** reported in ***2017 3 GLT 55*** held at Paragraph-13 that:-

“13..... Rule 3 thereof provides that sale by public auction of the right to levy fines and charges in respect of any pound and to collect the authorised fees in respect of any market shall be held by giving a public notice of 1(one) month, not later than 14th day of February in the financial year preceding that in which the lease is to take effect.

Though parking lot is not specifically mentioned in the Rule, it is noticed that Section 148 speaks about parking lots and, therefore, it will not be

incongruous to hold that even for a parking lot NIT has to be issued by the same yardstick as in the case of pounds and markets.

(emphasis supplied)

8. Rule 2 of the Rules provides that period of lease of pounds and market etc. shall be for one year provided that the Board may if it thinks fit, with previous approval of the Director of Municipal Administration extend the period of settlement/lease for a total period of three years but not exceeding one year at a time.
9. The Board or the State in Municipal Administrative Department is not bound under law to extend the lease in question. They are not even conferred with such power of extension beyond three years under the provision of Municipal Act and the Rule. Therefore, a writ of mandamus cannot be issued to the State or its instrumentality to act or do something which is against law inasmuch as writ of mandamus can be issued when there exists a right and in the present case and in the given facts no right of extension exists.
10. In the aforesaid backdrop, it is clear that while issuing the NIT, the authority has acted within its authority under law and therefore a writ of certiorari cannot also be issued by setting aside and quashing the impugned NIT.
11. In view of aforesaid mandate of law, the petitioner is not having any further right for extension of period of settlement/lease inasmuch the petitioner has already got maximum extensions permissible under law and the Board has rightly issued the tender notice.



12. In that view of the matter, this writ petition is devoid of any merit and therefore the same is dismissed. However, no order as to cost.

JUDGE

Comparing Assistant