
(2002) 10 GAU CK 0028

In the Gauhati High Court

Case No : Writ Appeal No's. 267 and 366 of 2000 in WP (C) No. 1181 and 1580 of 2002

Brahmaputra Par II Mach Mahal Samabai Samity Ltd.

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 11-10-2002

Acts Referred:

Assam Fisheries Rules, 1953 — Rule 12

Citation : (2003) 1 GLR 528 : (2003) 1 GLT 155

Hon'ble Judges : P.P. Naolekar, C.J.; Amitava Roy, J

Bench : Division Bench

Advocate : N.C. Das, B. Begum and P.K. Kalita, for the Appellant; A. Hazarika, K.P. Pathak and P. Barman, for the Respondent

Judgement

Amitava Roy, J.—Both these appeals are directed against the common judgment and order dated 30.5.2002 passed by the learned Single Judge disposing of the writ petitions being W.P. (C) No. 1181/2002 and W.P. (C) No. 1580/2002. The writ petitioners are in appeal before us being aggrieved by the impugned judgment and order dismissing the writ petitions.

2. We have heard Mr. N.C. Das, learned senior counsel assisted by Smt. B. Begum, advocate for the appellant in Writ Appeal No. 267/ 2002, Mr. P. C. Kalita, Advocate for the appellant in Writ Appeal No. 366/2002, Mrs. A. Hazarika, learned Additional Senior Govt. Advocate, Assam for the state respondents and Mr. P. Pathak, learned senior counsel assisted by Mr. P. Barman, Advocate for the private respondent M/s Bhitorkakila Mach Poha and Matshya Babasayee Samabai Samity Ltd. Bhitorkakila, P.O. Nimatighat.

3. The matter relates to settlement of Brahmaputra Part -- II Fishery of Sibsagar District (hereinafter referred to as the Fisherry) under proviso to Rule 12 of the Assam Fisheries Rules, 1953 (hereinafter referred to as the Rules). The relevant facts necessary for adjudication of the issues involved can be summarised thus.

4. The appellant/writ petitioner in W.P.C. (C) No. 1181 of 2002 assailed the order dated 21.2.2002 Annexure IX to the writ petition whereby, the fishery was settled with the private respondent named hereinabove contending inter alia, that is Fishery Co-operative Society formed with 100 % actual fishermen by profession belonging to the Scheduled Caste community of Assam and registered under Assam Co-operative Societies Act, 1948 with its registered office at Baghargaon, P.O. Ratanpur, Majuli in the District of Jorhat. The members of the said society are all actual fishermen by profession and fishing provides the only source of livelihood to them and they reside by the side of the bank of the fishery. The petitioner-Society fulfils all the requirements envisaged under the proviso to Rule 12 of the Rules and, as such, the fishery was settled with the petitioner-society for two consecutive terms upto 31.5.1996. The respondent-society was registered in the year 1960-61 as a pisciculture society with the object of breeding of fish. It does not fulfil the requirements prescribed by the proviso to Rule 12 for settlement of the fishery thereunder. However, the concerned authorities illegally and arbitrarily settled the said fishery in favour of the respondent-society by an order dated 20.6.1996 for a period of 5 years. Being aggrieved, the petitioner-society assailed the said settlement order by a writ petition before this Court registered as Civil Rule No. 3205 of 1996. The settlement was set aside by this Court by judgment and order dated 6.8.1996. Writ Appeal No. 462/1996 preferred by the respondent-society did not yield any different result and the Division Bench of this Court while upholding the judgment and order of the learned Single Judge remanded the matter to the Government of Assam in the Fishery Department for passing fresh settlement order in respect of the fishery. The fishery was, however, again settled with the respondent-society by order dated 24.10.1996 for a period of 5 years from 24.10.1996 to 23.10.2001. The further case of the petitioner-society, as can be culled out from the writ petition is that before the expiry of the period of settlement in favour of the respondent-society as above, the petitioner-society submitted an application on 5.6.2001 before the appropriate authority of the Government requesting for direct settlement of the fishery in its favour. The authority concerned acting on the said application called for a report from the learned Deputy Commissioner, Sibsagar and eventually on 8.8.2001. a report was submitted to the Government which inter alia, mentioned that the petitioner-society was composed of 100% actual fishermen belonging to the Scheduled Castes community and the members thereof were residing on the bank of the fishery in question. The report contained a recommendation for the settlement of the fishery in favour of the petitioner-society. Along with the petitioner-society, two other societies namely, M/s Dwarka Part III Meen Samabai Samittee Limited and also the petitioner-society had also submitted applications for direct settlement of the fishery in question and similarly, reports were also called for on the said applications from the learned Deputy Commissioner, Jorhat and Sibsagar. The petitioner-society in its writ petition referred to certain communications/certificates dated 1.8.2000, 1.8.2001, 3.9.2001 and 19.11.2001. The communication dated 1.8.2000, which was addressed by the

Deputy Commissioner, Sibsagar to the Commissioner and Secretary, Government of Assam, Department of Fisheries, Dispur discloses that as per report of the Circle Officer, Majuli, the members of the petitioner-society are inhabitants of the north bank of the fishery and those of the respondent-society are the inhabitants of south bank thereof but, as per report of the Circle Officer, Jorhat East Revenue Circle, the members of the respondent-society are inhabitants of the bank of the fishery. According to the Deputy Commissioner, Sibsagar, report of the Circle Officer, Majuli was to be treated as authentic. The communication dated 1.8.2001 reveals that the distance in between the respondent-society and the fishery is about 10.5 K.M. By the communication dated 3.9.2001, the Circle Officer, Jorhat East Circle, Jorhat after referring to the findings in the enquiries with regard to distance between the respondent-society and the fishery, recommended further enquiry to ascertain the correct state of affairs. The certificate dated 19.11.2001 issued by the Circle Officer, Majuli Revenue Circle, Kamalabari discloses that the members of the petitioner-society are residing on the north bank of the fishery whereas, those of the respondent-society are residing on the bank of Brahmaputra Part III fishery. These documents, the petitioner-society has annexed as Annexures III, IV and VI to the writ petition. From these documents, the writ petitioner contended that the respondent-society was not situated in the neighbourhood of the fishery in question and, therefore, it was not eligible to be settled with the fishery under proviso to Rule 12 of the Rules. In spite of the above, the respondent authorities by order dated 28.8.2001 again settled the fishery in favour of the respondent-society. The order of settlement was again challenged by the petitioner-society before this court by a writ petition being W.P. (C) No. 6529 of 2001. The appellant-writ petition being W.P.(C) No. 6529 of 2001. The appellant-writ petitioner in Writ Appeal No. 366 of 2002 (W.P. (C) No. 1580/2002) also questioned the said settlement in favour of the respondent-society by filing another writ petition being W. P. (C) No. 6575 of 2001. Both the writ petitions were disposed of by this court on 31.12.2001 quashing the order of settlement dated 28.8.2001 and remanding the matter back to the Government for considering the applications of all the applicants in accordance with law to pass orders by 31.1.2002 after hearing the applicants or their representatives. Thereafter, the petitioner-society on 14.12.2001 submitted a representation before the Government reiterating Inter alia, that the members of the respondent-society were residing by the side of the bank of Brahmaputra part III fishery and further that M/s Dwarika Part III Fishery Co-operative Society Limited had already been settled with another fishery namely, Dwarika Part III Fishery and that, therefore, the fishery in question be settled in its favour for a period of 5 years after rejecting the applications submitted by the other two contenders. In terms of the directions of this Court, the concerned authority of the Government thereafter heard the representatives of the applicants-societies and by the impugned order dated 21.2.2002 settled the fishery in favour of the respondent-society for a period from 20.2.2002 to 24.10.2006 at an enhanced rate of 15% above the existing annual revenue under proviso to Rule 12 of the Rules. It is this order of settlement which the petitioner-society had challenged in

the writ petition.

5. The case of the writ petitioner in W.P.(C) No. 1580 of 2002 is substantially in the same lines as above. It claimed that it is a registered co-operative society with its office at P.P. Dikhowmukh, village-Saragari Koilbarta Gaon in the District of Sibsagar. It is comprised of 100% actual fishermen who reside on the bank of Brahmaputra. It has been settled with a fishery Dwarika Part III Meen Mahal. However, as the said fishery is a small one, it decided to seek settlement of a bigger fishery, i.e., Brahmaputra Part II Meen Mahal and, accordingly, filed an application before the concerned authority on 27.12.2000 for direct settlement under the Rules. A report was called for on its application which was duly submitted by the authorities concerned. According to it, the respondent-society is comprised of members who are not residing in the neighbourhood of the fishery in question. The members thereof are not engaged in fishing and though the fishery in question had been settled with it (respondent society) from 24.10.1996, the respondent-society instead of fishing through its members, sold the same to some professional fishermen on contract basis. The statements with regard to settlement of the fishery in favour of the respondent-society, the challenge thereof before this Court etc. has been reiterated in the writ petition and for the sake of brevity the repetition thereof is avoided. While assailing the impugned order dated 21.2.2002 whereby the fishery in question has been settled with the respondent-society as mentioned hereinabove, it has been contended that the petitioner-society (W.P.(C) no. 1580/2002) had been discarded only on the ground that it had already been settled with another fishery namely, Dwarika Part III Fishery by totally leaving out of consideration that the respondent-society is not eligible for direct settlement as it is not situated in the neighbourhood of the fishery in question.

6. No affidavit-in-opposition had been filed on behalf of the State respondents. The case of the respondent-society as set out in its affidavit-in-opposition inter alia, is it is one of the oldest reorganised fishery societies, in the Jorhat District, the members whereof are 100% actual fishermen belonging to the Scheduled Caste community and fishing is their only source of living. It is the only society in the District of Jorhat which fulfils, all the pre-requisites of getting direct settlement under proviso to Rule 12 of the Rules and that the concerned authorities being fully satisfied about this aspect of the matter, settled the fishery in question in the year 1996 for a period of 5 years which expired on 23.10.2001. It has contended that after the initial settlement of the fishery in its favour in the year 1996, was challenged before this Court and the matter was remanded before the authorities for fresh consideration, the fishery was again settled in its favour for a period of 5 years w.e.f. 24.10.1996 to 23.10.2001 after considering all relevant aspect of the matter including the issue of neighbourhood and while granting the said settlement, the concerned authority on the question of neighbourhood recorded the following findings:

"Regarding neighbourhood to the fishery, the Deputy Commissioner, Sivasagar,

intimated the Government vide his W.T. Message No. SBRF 15/87-96/188 dated 15.10.1996 that M/s Bhitor Kokila Mach Poha & Matchaya Bebasayee Samabai Samitee Ltd. is in the neighbourhood of the Brahmaputra Part II fishery. The area of operation is confined to Bhitor Kokila Mach Poha and Matsha Bebosayee S. S. Ltd. is in the neighbourhood of the Bhramputra Part II fishery. The area of operation is confined to Bhitor Kokila Gaon Neemati area and the village Bhitor Kokila Gaon is quite adjacent to Bharmaputra Part, II fishery. This being the position, it is prudent that M/s Bhitor Kokila Mach Poha and Matshya Bebosayee S. S. Ltd. is more suitable for getting the settlement of the said fishery on the point of neighbourhood over M/s Brahmaputra Part II Mach Mahal Samabai Samiti Limited."

This order of settlement was not challenged by the petitioner-societies and according to the respondent-society, therefore, they were estopped from raising the question of neighbourhood in respect of the fishery thereafter. The respondent-society in its affidavit also referred to two W. T. Message dated 15.10.1996, Annexure B and B 1, mentioning that the respondent-company was in the neighbourhood of the fishery in question. It dismissed the communications with regard to the neighbourhood as annexed to the writ petition in W.P. (C) No. 1181 /2002 as baseless. According to it, after the matter was remanded to the concerned authorities, all the applications were duly considered along with the reports and other materials on record and the fishery was rightly settled with the respondent-society by the impugned order dated 21.2.2002 and that, therefore, there was no reason to justify any interference therewith. It further mentioned in the affidavit that not only did the respondent-society fulfil the requirements for direct settlement under proviso to Rule 12 of the Rules, the settlement was made also keeping in view the fact that it had incurred huge loss in the previous term, detailed whereof were mentioned in its application for fresh settlement.

7. By the impugned Judgment and order, the learned Single Judge has dismissed both the writ petitions holding inter alia, that all the three societies are in the neighbourhood of the fishery in question and the petitioner-society Dwarika Part III Meen Samabai Samittee Ltd. was not considered for settlement on the ground that it had already been settled with another fishery named Dwarika Part III fishery. It further held that the fishery, in the facts and circumstances of the case, was settled with the respondent-society on the additional ground that it had suffered loss during its earlier term and that the reason recorded by the concerned authority in making the settlement cannot be said to be violative of any provision of law and that, therefore, the impugned settlement cannot be termed as arbitrary.

8. Mr. Das, learned senior counsel appearing for the appellant in Writ Appeal No. 267 of 2002 has argued that the respondent-society is not eligible for being considered for direct settlement of the fishery under proviso to Rule 12 of the Rules as it is clear from the reports that it is not in the neighbourhood of the fishery and, therefore, the impugned order of settlement by ignoring the

essential pre-requisite therefor, is patently illegal and is liable to be set aside. He strenuously argued that on the other hand, the contemporaneous reports demonstrably proclaimed that the petitioner is in the neighbourhood of the fishery and is eligible in all respect for direct settlement and, therefore, the impugned action of the respondent authorities in overlooking its superior claim for the said purpose, is ex facie against the letter and spirit of Rule 12 of the Rules without any justification whatsoever and, therefore, it is a fit case where an appropriate writ be issued directing the respondent authorities to settle the fishery with the appellant under proviso to Rule 12 of the Rules. He argued that the impugned order of settlement was opposed to the object and purpose of the proviso to Rule 12 and on that ground alone, the same is liable to be set aside and quashed. In support of his submission, the learned senior counsel placed reliance on two decisions of this Court reported in 1982 (1) GLR 280, Arbinda Das, Petitioner v. State of Assam and Ors., Respondents and in 1989 (1) GLR 263, Shri Babu Das, Petitioner v. State of Assam and Ors., Respondents.

9. Mr. Kalita, learned counsel for the appellant in Writ Appeal No. 366/2002 while endorsing the submissions made by Mr. Das, argued that the appellant-society too was in the neighbourhood of the fishery and satisfied all other conditions of eligibility prescribed by proviso to Rule 12 for direct settlement of the fishery. While contending that the respondent-society is not situated in the neighbourhood of the fishery in question and, is thus, not eligible for direct settlement under proviso to Rule 12 of the Rules, the learned counsel argued that the concerned authorities acted illegally and arbitrarily in leaving out of consideration the case of the appellant-society on the purported ground that it had already been settled with another fishery. According to the learned counsel, the said consideration is not a relevant one and, therefore, the appellant-society has been treated unfairly and with discrimination in the matter of settlement of the fishery for which, the process is vitiated by unfairness, arbitrariness and unreasonableness. He maintained that the impugned order of settlement in favour of the respondent-society was illegal and opposed to the Rules and is thus, liable to be set aside and quashed.

10. Mrs. Hazarika, learned Addl. Senior Govt. Advocate, Assam submitted in reply that the concerned authorities in making the impugned order of settlement had acted strictly in terms of the directions issued by this court in its judgment and order dated 3.12.2001 passed in W.P.(C) no. 6575/2001 after hearing the representatives of the applicants-society and on a detailed consideration of the materials on record vis-a-vis, proviso to Rule 12 of the Rules.

11. Mr. Pathak, learned senior counsel appearing for the respondent-society while strongly controverting the arguments advanced on behalf of the appellants contended that the respondent-society is indubitably situated in the neighbourhood of the fishery and the materials on record establish that it satisfies all other conditions prescribed by the proviso to Rule 12 for direct settlement under the Rule and, therefore, the concerned authorities were fully

justified in settling the fishery in question with it after duly considering all relevant aspects of the matter. Referring to the settlement of the same fishery in favour of the respondent-society far back in the year 1996, the learned senior counsel urged that the said settlement which was made after the remand by this Court, had not been assailed thereafter by anybody including the appellant societies and as the said settlement had been made in favour of the respondent-society also considering the aspect of neighbourhood and being satisfied that the respondent-society fulfils that condition of eligibility as well, it is not open for the appellant societies to agitate the same matter once again in the appeal. He contended that in the above facts and circumstances, the appellant societies are estopped in law from taking up a plea that the respondent-society is not in the neighbourhood of the fishery and, therefore, was not eligible for direct settlement thereof. He further argued that the respondent-society in operating the fishery during its earlier term had suffered huge loss and, therefore, in the application for fresh settlement, it furnished details of the loss suffered and the reasons therefore and requested to concerned authorities to grant it a fresh settlement to recoup the loss. He argued that apart from the fact that the respondent-society was fully eligible under proviso to Rule 12 of the Rules for direct settlement of the fishery, the additional consideration for granting the settlement thereof in its favour was the loss suffered by it in its earlier term and the respondent authorities, according to him, did not commit any error or illegality in taking that factor into consideration also while passing the impugned order of settlement. On the aspect of neighbourhood, the learned senior counsel argued that while determining the same, minutest, factual details such as to measure the distance of the society concerned from the fishery is not necessary to be examined for determining whether the society is in the vicinity of the fishery or not. He submitted that as it was apparent that the respondent-society satisfied the above test, the concerned authorities considered it suitable to be settled with the fishery. In support of his submissions the learned senior counsel placed reliance on a decision of this court reported in 1998 (1) GLR 405, *Majorati Min Samabhai Samity Ltd., Appellant v. Sukhraj Min Samabai Samity Ltd. and Ors., Respondents*.

12. The rival contentions of the parties, therefore, turn primarily on the question of eligibility of the respondent-society for being considered for direct settlement under proviso to Rule 12 of the Rules and further, whether the action of the concerned authorities in preferring it for such settlement is in accordance with the above provision of the Rules. Admittedly, the settlement in hand is one as envisaged under proviso to Rule 12 of the Rules. Thereunder, the State Government may settle any registered fishery otherwise than under tender system with a Fishery Co-operative society formed with 100% actual fishermen of the fishing population in the neighbourhood of the fishery concerned and belonging to the Scheduled Castes of the State or Mimal community of the Cachar District at a revenue calculated and for a period decided by the State Government from time to time. The said proviso, therefore, lays down the

conditions of eligibility for being considered for direct settlement of a registered fishery by the State Government. The conditions enumerated therein clearly demonstrate the object and purpose of framing the said proviso. It is a provision to ameliorate the socio-economic conditions of the fishing population residing in the neighbourhood of the fishery concerned. The proviso embodies a social purpose and has been incorporated in the Rules to provide succour to the needy fishermen of the neighbourhood so as to provide a means of their livelihood. As has been observed by this Court in *Arabinda Das (supra)*, the purpose of the proviso is to give opportunity to the deserving actual fishermen of the locality who may be eminently suitable for settlement of the fishery but, because of their economic conditions, they may not be in a position to compete with other tenders in settlement of fisheries under the tender system. The proviso is, therefore, to secure settlement to the deserving actual fishermen of the neighbourhood of the fishery. In a fact situation, it is likely that there may be more than one co-operative societies fulfilling the requirements of the proviso. Remembering that the requirements of the proviso are only the conditions of eligibility, one cannot deny the power and discretion of the authority competent to grant settlement to choose the most suitable society from amongst the eligible ones. However, for the said purpose, the discretion and the power has to be exercised on relevant considerations. The settlement under the proviso to Rule 12 not only has to be in conformity with the requirements thereof but also, should be fair, reasonable and non-arbitrary, the supervening consideration being to provide an opportunity to the fishermen in the neighbourhood of the fishery to earn their livelihood from such settlement. It being a socio-economic measure, as alluded above, while granting such settlement, a relevant consideration may be to discourage monopolistic pursuits. Indeed, under Article 38(2) of the Constitution of India wherein, one of the directive principles of State Policy is ingrained in income and endeavour to eliminate inequalities in status, facilities and opportunities not only amongst individuals but also amongst groups of people residing in different areas or engage in different vocations. The consideration of distributive justice, therefore, is a necessity in a situation of this kind. The authority, competent to make a direct settlement as above would, therefore, has to be granted some elbow room to make a choice from amongst the eligible societies by taking into consideration all relevant factors and if in that process, one society has to be picked up in preference to others, such an action cannot be automatically dubbed and denounced as illegal arbitrary, whimsical and discriminatory. In the case in hand, the appellant-society *Dwarika Part III Meen Samabhai Samittee Ltd.* though found to be eligible for direct settlement was not preferred as admittedly it had already been settled with another fishery. In view of the above observations, we are unable to hold that such action of the respondent authorities in not choosing the above mentioned appellant-society on the above consideration is vitiated by any illegality warranting interference by this Court. The contentions raised on behalf of the appellants in this regard, therefore, fails.

13. Turning to the aspect of neighbourhood, we feel that the expression needs interpretation so as to advance the object and purpose of the Rules and not to frustrate it. As observed earlier, in a given fact situation, there may be more than one society in the neighbourhood of the fishery. It may so happen that a society fulfilling the other conditions of the proviso and which is more deserving for such settlement is, distance wise, slightly further away from the fishery, than the other eligible societies. Will the object and purpose of the proviso be served if the former society is discarded only on the ground that though it is more deserving, the other societies are nearer to the fishery? In other words, is the word "neighbourhood" to be interpreted in terms of inches, feet and yards or a more pragmatic and purposive, interpretation has to be provided thereto. The Black Law's Dictionary defined the word "neighbourhood" as a place near ; an adjoining or surrounding district ; a mere minimum vicinity ; vicinage In ordinary and common usage "locality" is synonymous in meaning with "neighbourhood". In the Law Lexicon by P. Ramanatha Aiyer, the word "neighbourhood" has been defined to signify nearness as opposed to remoteness.... "Whether a place is in the neighbourhood of another place depends upon no arbitrary rule of distance or topography. One house may be said to be in the neighbourhood of another house and not structurally adjoin it.".....

14. "The term "neighbourhood" does not express any definite idea of distance. A few feet or several 100 yards or even a greater distance from an object would be in its neighbourhood."

15. Thus, no mathematical formula has been devised to define and measure neighbourhood. Within the meaning attributed to the word as above, there is evidently an element of flexibility and, therefore, while dealing with the proviso to Rule 12 as above, it would, in our opinion, neither be permissible nor desirable to ascertain the neighbourhood by a measuring tape. If the residence of the members of an otherwise eligible fishery cooperative society is in the vicinity and proximity of the fishery as is understood in common parlance, they are deemed to be in the neighbourhood thereof. Any attempt to measure the neighbourhood in terms of inches, feet, yards or centimetres and metres, would render the proviso otiose in a given fact situation,

16. It would be appropriate at this stage to extract the observations of this court on the aspect of neighbourhood as contained in its decision in Majorati Min Samabai Samity Ltd. (supra) wherein, this court observed as follows :

"The question of neighbourhood and area of operation has been the subject matter of debate and discussions in several judgments and even the learned Single Judge has also made a reference to it, towards end of the judgment, indicating as to what is meant by neighbourhood in the context of Rule 12. Without disputing the proposition, here again, the question that falls for consideration is one of the extent and scope judicial review whether this court in exercise of its power under Article 226 examine the question of neighbourhood

with such minutest factual details as to measure every inch of the distance at which a Society is situated.

It is something to be measured in foot and inches, all that this court extending the writ jurisdiction such an extent would be nothing sort being violent to the Article 226 of the Constitution, all that the court can examine as to whether the condition and requirements of neighbourhood, as prescribed under the Rule, It was present to the mind of the settling authority. It is not expected that the writ court would be the Surveyor and measure the distance in meter and centimeter. If the settling Authority is alive to the requirements of the Rules and the same is reflected in the order of settlement of a Fishery, the Writ Court will not be justified an undertaking and exercise of measuring the distance between two competent claimants. After all "neighbourhood" is a relative term which is to be taken into account along with other conditions. It is not the intend of Rules to treat neighbourhood with geometrical altitude and procedure."

17. We are in respectful agreement with the views expressed as above.

18. Another aspect of the matter as far as the present case in concerned has to be noted Admittedly, the respondent-society was settled with the same fishery in the year 1996 for a period of 5 years after the matter was remanded to the concerned authorities by this Court as discussed hereinabove. The said settlement was also under proviso to Rule 12 where the question of neighbourhood was involved. The said settlement was not challenged by the appellant societies. The impugned order clearly mentions about this aspect of the matter while observing that the issue of neighbourhood vis-a-vis, the respondent-society had been settled long back in the year 1996. In the above premises, we are inclined to accept the contention raised on behalf of the respondent-society that the appellant societies are estopped in law from raising this plea again, more particularly, considering the fact that the question of neighbourhood is one of facts. Having regard to the documents relied upon by the appellant-societies as well as the respondent-society with regard to the aspect of neighbourhood and the interpretation of the said word as it appeals to us, coupled with the fact the respondent-society had been earlier settled with the same fishery in the year 1996, we cannot persuade ourselves to hold that the conclusion of the respondent authorities that the respondent-society is in the neighbourhood of the fishery for being considered for direct settlement under the above proviso, is without any factual basis whatsoever. Therefore, in the exercise of our power of judicial review under Article 226 of the Constitution of India, we are not inclined to interfere with the same. In coming to this conclusion, we have further noticed that the parties have been engaged in a series of litigations in connection with the settlement of the said fishery over the years and we feel in view of the materials on record, that the controversy with regard to the conditions of eligibility vis-a-vis, the litigating societies should be set at rest.

19. In Arabinda Das (supra), this Court was primarily concerned with the scope and content of the proviso to Rule 12 and the power of the State Government to

settle and fishery thereunder. This Court while examining the object and purpose of the proviso and the conditions prescribed for the settlement thereunder, held that in absence of the existence of the pre-requisites for exercise of power under the proviso, the State Government had no authority to make such settlement. There is absolutely no dispute with regard to the legal proposition as above. The question is with regard to the applicability thereof in the facts of the present case.

20. In Babul Das (supra), this Court noticed the distinction between the expression "area of operation" and "neighbourhood" appearing in the proviso to Rule 12. This decision in our opinion, is of no assistance to the appellant-society in the facts of the present case.

21. On perusal of the impugned order of settlement we find that the concerned authority was fully alive to the directions issued by this Court in the judgment and order dated 3.12.2001 and in compliance thereof had made a detailed consideration of the materials available on record and had granted settlement in favour of the respondent-society after hearing the representatives of the competing societies. The appellant-society M/s Dwarika Part -- III Meen Samabai Samity Ltd. was left out of consideration as it had already been settled with another fishery namely, Dwarika Part III Fishery and that the members of the said society were earning their livelihood from the said fishery. The respondent-society and the appellant society -M/s Brahmaputra Part II Mach Mahal Samabai Samity Ltd. were found at par fulfilling the requirements of the proviso to Rule 12 of the Rules, However, taking into account the loss of Rs. 1,58,849 suffered by the respondent-society during the period 1998-2001 and that its fishermen have no other alternative but to fish in the next settlement period for their livelihood and make good the loss, it was preferred for the settlement. The concerned authority in passing the impugned order has categorically mentioned that the respondent-society is in the neighbourhood of the fishery relying on a report of the Deputy Commissioner further observing that the said issue had already been decided while settling the fishery in 1996 in favour of the respondent-society. Thus, the question of neighbourhood vis-a-vis, the respondent-society had not escaped the notice of the respondent authority in examining its eligibility for the settlement.

22. As alluded above, the respondent authority in these matters, within the permissible limits, has to be permitted a play in the joints. So long as the discretion in the matter of making the choice is within the bounds of law, any exercise thereof cannot be said to be ultra vires. The learned senior counsel for the respondent-society invited the attention of this Court to the relevant materials on record to indicate that it had suffered loss during the operation of the fishery in the previous terms and further that the details thereof had been mentioned in its application for direct settlement. This aspect of the matter seems to have weighed with the settling authority. Having regard to the object and purpose of the proviso, we are not in a position to conclude that the same is an irrelevant consideration so much so to render the impugned order of

settlement illegal and unsustainable in law and on facts.

23. The contours of judicial review are well marked. This court in exercising its power of judicial review is not supposed to act as a court of appeal. It is concerned only with the decision making process and not the decision itself. If the decision making process is not vitiated by any error of law, unfairness, unreasonableness or arbitrariness or if while taking the decision, the authority concerned has not left out of consideration relevant factors having a bearing on the decision or has not been swayed by extraneous considerations, this court under Article 226 of the Constitution would not interfere only because in its view, another conclusion, different from the one arrived at by the authority, is equally possible. The Apex Court in a decision rendered in *Haryana Financial Corporation and Another Vs. Jagdamba Oil Mills and Another*, while dealing with the aspect of judicial review observed as hereunder:

"The obligation to act fairly on the part of the administrative authorities was evolved to ensure the rule of law and to prevent failure of justice. This doctrine is complementary to the principles of natural justice which the quasi-judicial authorities are bound to observe. It is true that the distinction between a quasi-judicial and the administrative action has become thin, as pointed out by this Court as far back as 1970 in *A.K. Kraipak v. Union of India*. Even so the extent of judicial scrutiny/judicial review in the case of administrative action cannot be larger than in the case of quasi-judicial action. If the High Court cannot sit as an Appellate Authority over the decisions and orders of quasi-judicial authorities, it follows equally that it cannot do so in the case of administrative authorities. In the matter of administrative action, it is well known, more than one choice is available to the administrative authorities ; they have a certain amount of discretion available to them. They have "a right to choose between more than one possible course of action on which there is room for reasonable people to hold differing opinions as to which is to be preferred" (as per Lord Diplock in *Secy. of State for Education and Science v. Metropolitan Borough Council of Tameside*, All ER at p. 695f). The court cannot substitute its judgment for the judgment of administrative authorities in such cases, only when the action of the administrative authority is so unfair or unreasonable that no reasonable person would have taken that action, can the court intervene. To quote the classic passage from the judgment of Lord Greene, M.R. in *Associated Provincial Picture Houses Ltd. v. Wednesbury Corpn.* (All ER pp. 682H-683A)

"It is true the discretion must be exercised reasonably. Now what does that mean? Lawyers familiar with the phraseology commonly used in relation to exercise of statutory discretions often use the word "unreasonable" in a rather comprehensive sense. It has frequently been used and is frequently used as a general description of the things that must not be done. For instance, a person entrusted with the discretion must, so to speak, direct himself properly in law. He must call his own attention to the matters which he is bound to consider. He

must exclude from his consideration matters which are irrelevant to what he has to consider. If he does not obey those rules, he may truly be said, and often it said, to be acting "unreasonably". Similarly, there may be something so absurd that no sensible person could ever dream that it lay within the powers of the authority."

24. On an overall view of the facts and circumstances of the case, we are of the opinion that the impugned order of settlement does not suffer from any infirmity calling for interference by this Court in exercise of its power of judicial review. The learned Single Judge has minutely examined the pros and cons of the matter and we find no cogent reason to differ from the conclusions arrived at by him. The impugned order of settlement in the above conspectus of facts appears to be based on the materials on records, following a detailed consideration of the relevant aspects. We are, therefore, not inclined to uphold the contentions raised on behalf of the appellant societies. The Writ appeals, in our opinion, are devoid of merit and are, therefore, dismissed. However, in the facts and circumstances of the case, there would be no order as to costs.