

(2024) 03 GAU CK 0035

In the Gauhati High Court

Case No : Writ Petition (Civil) No. Of 5951 Of 2018

Debaraj Rabha

APPELLANT

Vs

State Of Assam And 6 Ors

RESPONDENT

Date of Decision : 14-03-2024

Acts Referred:

Citation : (2024) 03 GAU CK 0035

Hon'ble Judges : Michael Zothankhuma, J

Bench : Single Bench

Advocate : M. J. Quadir, R. R. Gogoi, A. Gayan

Final Decision : Dismissed

Judgement

1. Heard Mr. M. J. Quadir, learned counsel for the petitioner and Mr. R. R. Gogoi, learned counsel for the respondent Nos. 1, 3, 4, 5 & 6. Also heard Ms. A. Gayan, learned CGC for the respondent No. 2.
2. The petitioner has prayed for setting aside the letter dated 27.04.2018 issued by the DFO, Kamrup West Division, Bamunigaon, by which the proposal for settling the mining contract of Besimari Kulsi-2 Sand Mahal has been canceled. The further prayer is that the mining contract should be settled with the petitioner pursuant to the tender notice dated 08.02.2017.
3. The briefs fact of the case are that pursuant to a tender notice dated 08.02.2017, for sale of minor minerals for a period of 5 years in respect of Besimari Kulsi-2 Sand Mahal, the DFO, Kamrup West Division, Bamunigaon (respondent No. 6) issued a letter dated 07.09.2017 to the petitioner, stating that he had been provisionally selected as User Agency for use of forest land for non-forest purpose. However, vide the impugned letter dated 27.04.2018 issued by the DFO, Kamrup West Division, Bamunigaon, the provisional selection of the petitioner was cancelled.
4. The petitioner thereafter submitted a representation dated 30.06.2018 to the

respondent No. 6, stating that he had received the letter of cancellation of the settlement of the mahal, which has been allotted to him in the month of June from the respondent No. 6. He accordingly requested the respondent No. 6 to settle the mahal with the petitioner. However, the representation dated 30.06.2018 has not been decided by the respondents till date.

5. The counsel for the petitioner submits that the earnest money of the petitioner is still lying with the respondents. He submits that though 5 years have elapsed, in terms of the tender notice dated 08.02.2017, the Conservator of Forest (C), North Eastern Regional Office, Ministry of Environment, Forest and Climate Change, Government of India had written a letter dated 24.01.2018 to the Secretary to the Government of Assam, Environment and Forest Department, Dispur, Guwahati, stating that the State Government has to furnish the following information in case of any fresh proposal under Forest (Conservation) Act, 1980 for stone quarry, which is as follows:-

(i) State Govt. shall not grant other areas for mining in the mining zone unless comprehensive mining plan for entire zone with shape file of the entire mining zone coupled with adequate compensation measures for Forest & Environment conservation is prepared.

(ii) State Govt. shall also adhere to the recommendation of the Ministry of Environment Forest & Climate Change i-e.

(a) Minimum size of mine lease should be 5 ha.

(b) Minimum period of mines lease should be 5 years.

(c) A cluster approach to mines should be taken in case of smaller mines leases operating currently.

d) Mines plans should be made mandatory for minor minerals as well.

(e) A separate corpus should be created for reclamation and rehabilitation of mined out areas.

(1) Hydro geological reports should be prepared for mining purpose below ground water table.

(g) For river bed mining, leases should be granted stretch wise, depth may be restricted to 3metre/water level, whichever is less and safety zones should be worked out.

(n) The present classification of minerals into major and minor categories should be re-examined by the Ministry of Mines in consultation with the State.

(iii) State Govt. shall clarify the reasons for grant of mining for 5(five) years whereas 7(seven) years is minimum duration as mentioned in Assam Minerals concession Rule, 2013,

(iv) The User Agencies shall provide for Compensatory Afforestation, NPV and

keep provision of safety zone as part the guidelines specified under Forest Conservation Act, 1980.

6. The petitioner's counsel submits that the Conservator of Forest, (C) has asked the State Government to clarify the reasons for grant of mining for 5 years, whereas 7 years is the minimum duration, as mentioned in the Assam Minor Mineral Concession Rules, 2013. He accordingly submits that the petitioner can be granted settlement of the mining area beyond 5 years.

7. Mr. R. R. Gogoi, learned counsel for the Forest Department, on the other hand, submits that the area of Besimari Kulsi-2 Sand Mahal is 0.95 hectares and as such, if the lease area is to be given in terms of the letter dated 24.01.2018 issued by the Conservator of Forest (C), the Besimari Kulsi-2 Sand Mahal, which is 5 hectares in area, cannot be settled with the petitioner in any circumstances. Further, the letter dated 24.01.2018 issued by the Conservator of Forest (C) pertains to stone quarries and does not pertain to a sand mahal.

8. Mr. R. R. Gogoi further submits that the tender notice had been issued for settlement of the sand mahal for only 5 years and as more than 7 years have elapsed from the date of issuance of NIT dated 08.02.2017, the writ petition has become infructuous.

9. I have heard the learned counsels for the parties.

10. In the case of Monnet Ispat & Energy Ltd. -vs- Union of India reported in (2012) 11 SCC 1 and in the case of State of Rajasthan and others -vs- Sharwan Kumar Kumawat , reported in 2023 LiveLaw (SC) 586, it has been held that no person can claim any fundamental right for mining purposes.

10. Without going into the merits of the case, this Court finds that the tender notice dated 08.02.2017 had been issued for settlement of the sand mahal for a period of 5 years only. No challenge has been made by the petitioner to the condition in the tender notice regarding the period of settlement of the mahal for 5 years. As more than 7 years have elapsed from the date of issuance of the tender notice and as 6 years have elapsed from the date of cancellation of the provisional selection of the petitioner for settlement of the mahal, this Court is of the view that the writ petition has become infructuous. The State respondents are at liberty to go for a fresh tender process for settlement of the mahal, if there is no other legal impediment to the same.

11. Accordingly, this writ petition is dismissed, as infructuous.