

**(1981) 09 GAU CK 0025**

**In the Gauhati High Court**

**Case No : Civil Rule No. 411 of 1980**

Desang Part II Min Samabai Samity Ltd.and Others.

APPELLANT

Vs

State of Assam & Ors.

RESPONDENT

**Date of Decision : 22-09-1981**

**Acts Referred:**

Assam Fisheries Rules, 1953 — Rule 8(e), 8(e)

**Citation : (1982) 1 GLR 143**

**Hon'ble Judges : K.Lahiri, J and K.N.Saikia, J**

**Bench : Division Bench**

**Advocate : A.C.Bora, J.C.Medhi, P.Prasad, U.C.Das, Advocates appearing for Parties**

## Judgement

Saikia, J.—The writ petitioner herein impugns the order dated 1.7.80 of the Assam Board of Revenue directing settlement of Disang Part II Fishery (for brevity "the Fishery") with the Respondent No. 6, and the order passed by the Additional Deputy Commissioner, Sibsagar, settling the Fishery with the Respondent No. 6 and also cancelling the subsisting settlement of the Fishery with the petitioner.

2. The petitioner is a Cooperative Society registered under the Assam Cooperative Societies Act, 1949 and has been the lessee of the Fishery for the period from 1.4.76 to 31.3.79 and further from 1.4.79 to 31.3.82. It appears that for the year 1979-80 upto 15.1.80 there was temporary default committed by the petitioner Society in respect of kists of fishery revenue. The S.D.O., Sibsagar on 24.1.80 issued sale notice inviting tenders for the sale of the Fishery on 28.2.80 for the period from 1.3.80 to 31.3.82 without any notice to, and without cancelling the subsisting lease of, the petitioner Society. In his order dated 28.2.80 the Collector, Sibsagar, said that only 3 (three) tenders were received against 3 (three) fisheries out of 18 fisheries. So he ordered for retender.

3. The petitioner Society meanwhile applied to the S.D.O. for permission to pay the arrear kist money and in fact paid Rs. 5,000/ on 25.3.80 and Rs, 6,292/ on

27.3.80. The S.D.O., Sibsagar, allowed time upto 31.3.80 to clear the arrears for first year of settlement.

4. The Respondent No. 6 appealed to the Assam Board of Revenue against the aforesaid order of this S.D.O. for retender dated 28.2.80. The petitioner Society was not made a party to the appeal and so it did not receive any notice thereof. The Board called for a report from the S.D.O.; and upon hearing the parties, by its judgment dated 1.7.80 directed the fishery to be settled with the Respondent No. 6. The petitioner Society came to learn about the aforesaid order only on 22.7.80. On 18.8.80 on its inquiry, the S.D.O., Sibsagar told the petitioner Society that its lease had not been cancelled before issuance of the sale notice on 24.1.80.

5. We have perused the sale notice and we do not find that the sale is at the risk of the existing lessee i. e. the petitioner Society as required under Rule 8(e) of the Fishery Rules. We have also perused the order of the Board dated 1.7.80 which mentions that the resale was for default of the lessees who had probably been enjoying the Fishery. There is no mention whatsoever that the settlement of the Fishery with the petitioner Society was cancelled prior to the issue of the sale notice on even at the time of the Board passing the impugned order. The Board without mentioning about the subsisting settlement of the petitioner Society allowed the appeal and directed that the Fishery be settled with the appellant (Respondent No. 6) forthwith according to law.

6. Pursuant to the aforesaid order of the Board the Additional Deputy Commissioner, Sibsagar, by his order dated 22.7.80 settled the Fishery with Respondent No. 6 Shri Bali Narayan Hazarika with effect from 22.7.80 to 31.3.81 and the subsisting lease of the petitioner Society was thereby cancelled.

7. Rule 8(e) of the Assam Fishery Rules provides:

"(e) Resale of Fisheries—When for default of kist money or for violation of the conditions of the fishery lease including any of the provisions of these Rules by a lessee the fishery shall be put to resale under tender system at the risk of original lessee. Notice of resale shall be given as in the case of original sale with the additional proviso that the resale shall be at the risk of and on account of the original lessee:

Provided that the question of such resale shall not be applicable where State Government permits extension of time for payment of kist money".

Clause VII of the prescribed Fishery Lease, Form No. 98 states:

"VII Should you, or your partner, or any person holding from you infringe any of the condition of this lease the Deputy Commissioner/Subdivisional Officer may cancel your lease of his own authority, in which case all sums paid by you will be forfeited and you will further be held liable for any loss which may be incurred by Government in releasing the fishery by the Deputy Commissioner/Subdivisional Officer"".

8. Admitted facts are that when the resale notice was issued on 24.2.80 the lease with the petitioner Society was subsisting; the petitioner Society was granted time upto 31.3.80 to pay its arrear kists of the first year of settlement; that the resale was not at the risk of the petitioner Society; when the S.D.O, ordered for retender, the lease was subsisting. Whsn the Board ordered for resale of the fishery then also the lease was subsisting; and the Board appears to have been oblivious of this fact. The Additional Deputy Commissioner while giving effect to the Board's order by settling the fishery with the Respondent No. 6, Shri Bali Narayan Hazarika, only then purported to cancel the lease pursuant to the order of the Board. This shows that the order of re settlement was superimposed over a subsisting settlement which the authorities, including the Board ought not to do. There is also clear violation of the principles of natural justice in not impleading the petitioner Society and not giving notice to it at the time of cancellation of the lease and also while the appeal was heard by the Board. The lease was a property of the petitioner Society and it could not be deprived of that property without notice. There is clear violation of principles of natural justice in depriving without notice. Cancellation of leave also amounts to penalty which cannot be imposed without notice.

9. On the above grounds, namely the violation of principles of natural justice and statutory violation of the provisions of Clause VII of the statutory lease deed and Rule 8(e) of the Fishery Rules the Board's impugned order and the impugned consequential order of the Additional Deputy Commissioner cannot be sustained; and those are accordingly set aside and quashed. The petition is allowed and the Rule is made absolute. No order as to costs.

The learned counsel for the petitioner urged some more points which we do not consider necessary to discuss in view of the position stated above. Petition allowed.