
(2018) 05 GAU CK 0152
In the Gauhati High Court
Case No : WP(C) 1977 of 2018

Dilip Das

APPELLANT

Vs

Assam Fisheries Development Corporation Ltd. And 3 Ors.

RESPONDENT

Date of Decision : 16-05-2018

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2018) 05 GAU CK 0152

Hon'ble Judges : ARUP KUMAR GOSWAMI, J

Bench : Single Bench

Advocate : K. Uddin, S.B. Sarma, T.C. Chutia

Final Decision : Disposed Off

Judgement

1. Heard Mr. K. Uddin, learned counsel for the petitioner. Also heard Mr. S.B. Sarma, learned standing counsel, AFDC appearing for the respondent

Nos. 1 and 2 and Mr. T.C. Chutia, learned State counsel appearing for the respondent Nos. 3 and 4.

2. Kumri Beel (Fishery) in the district of Goalpara was settled with the petitioner for a period of seven years up to 31.3. 2018 on an annual revenue at

Rs. 21,00,000/-.

3. A Lease Agreement was executed on 29.7.2011. The petitioner had submitted a representation on 2.11.2017 (Annexure-6) praying for extension of

lease period for a period of one year on account of suffering loss as a result of encroachment, flood etc.

4. The said representation was rejected by the order dated 17.2.2018 by the respondent No. 2 and challenging the said order, this writ petition under

Article 226 of the Constitution of India was filed.

5. Mr. Uddin submits that only on the ground that the amount of loss could not be quantified, his prayer for extension was rejected and therefore, the impugned order is arbitrary. He submits that there is no dispute that the petitioner had suffered loss. Placing reliance on the additional affidavit filed, he has submitted that the petitioner had incurred an amount of Rs. 53,92,400/- as expenditure for the financial year 2017-2018 as against his income of Rs. 36,98,850/- from sale of fish and thus he had sustained loss of Rs. 16,93,550/-. It is also submitted by him that the petitioner never defaulted in making payment of revenue and therefore, the petitioner is entitled to extension of the term of lease for one year as per clause 36(Ka) of the Agreement.

6. Mr. Sarma has submitted that Annexure-A, which is a handwritten document of the Secretary of the petitioner Society without date, showing income and expenditure for financial year 2017-2018, is not admissible and further more, the petitioner had not even mentioned as to whether any return had been submitted by the petitioner before the Income Tax Authorities. It is submitted by him that though in the impugned order, non-ascertainment of loss suffered was shown as the ground for rejection of the application for extension submitted by the petitioner, the said ground may not have been appropriate as extension cannot be granted for loss and power of extension can be exercised only under Clause 36(Ka) and (Kha). He also submits that lease agreement demonstrates that no remission can be granted on account of suffering loss on the ground of drought, flood, fish disease, fishing by unauthorised persons and other natural calamities etc.

7. I have considered the submissions of the learned counsel for the parties and have perused the materials on record.

8. Perusal of Clauses of the Lease Agreement indicates that extension can only be granted under Clause 36(Ka) or Clause 36(Kha) and that on the ground of sufferance of loss, no extension can be granted by AFDC. Under Clause 36(Ka), AFDC can consider grant of extension for one year only if during the period of settlement, kist money and advances are paid in time. In terms of Clause 36(Kha), there is a provision for extension of the lease period for three years in case of undertaking certain projects, development works, etc. for increase of fish production within a period of two years after taking approval of the project from the AFDC. The learned counsel for the

parties have not brought to the notice of the Court any other guideline authorising AFDC to grant extension of lease in case of suffering of loss by the settlement holder. The impugned order, in that view of the matter, reflects total non-application of mind on the part of respondent No. 2.

9. Though the petitioner has pleaded before the court that he is entitled to extension of one year on the touch-stone of Clause 36(Ka), however, no application was filed by the petitioner seeking extension by bringing his case within the parameters of Clause 36(Ka).

10. Considering the matter in its entirety, while not interfering with the impugned order, the writ petition is disposed of permitting the petitioner to file a fresh representation on or before 25.5.2018 for grant of extension under Clause 36(Ka) in terms of the Lease Agreement dated 29.7.2011 and in the event of filing any such application, the same shall be considered strictly in terms of Clause 36(Ka) and appropriate orders shall be passed on or before 8.6.2018.

11. Till then no notice inviting tender shall be issued for settlement of the fishery in question. However, it is also made clear that if the petitioner does not file any application on or before 25.5.2018, the respondents may proceed to issue notice inviting tender. It is further made clear that this Court had expressed no opinion on the entitlement of the petitioner to get settlement under Clause 36(Ka) and it will be for the respondents to take a decision on the application for extension.