
(2008) 07 GAU CK 0033
In the Gauhati High Court
Case No : Writ Petition (C) No. 2436 of 2008

Dulen Borgohain	Vs	APPELLANT
State of Assam and Others		RESPONDENT

Date of Decision : 14-07-2008

Acts Referred:

Assam Panchayat (Financial) Rules, 2002 — Rule 49
Constitution of India, 1950 — Article 226

Citation : (2009) 1 GLR 870

Hon'ble Judges : Iqbal Ahmed Ansari, J

Bench : Single Bench

Advocate : A.K. Goswami, N.K. Baruah and B.K. Sarma, for the Appellant; R. Gogoi, for the Respondent

Final Decision : Dismissed

Judgement

I.A. Ansari, J.—Heard Mr. N.K. Baruah, learned Counsel, for the Petitioner and Ms. R. Gogoi, learned Counsel, for the Respondents.

2. The Petitioner was a lessee in respect, or Sapekhati Weekly Market, which falls under Sivasagar Zila Parishad, the lease being for the year 2007-08. When the Respondents/authorities concerned published a Notice Inviting Tender for settlement of the said market for the year 2008-2009, the Petitioner applied for extension of his term of settlement for one more panchayat year, with effect, from 1.7.2008, in order to compensate himself for the loss, which, according to the Petitioner, he had sustained.

3. On 18.5.2008, a representation to the Respondent No. 5, namely, President, Sibsagar Zilla Parishad, was made by the Petitioner seeking remission of the rent/lease amount, which the Petitioner was, under the terms of the settlement, liable to pay. As the Respondents/authorities concerned decided to go ahead with the tender process, the Petitioner has come to this Court seeking, with the help of the present application, made under Article 226 of the Constitution of India, issuance of appropriate writ(s) setting aside and quashing the tender notice

aforementioned and for further direction to the Respondents to grant remission of a sum of Rs. 60,228 to the Petitioner in respect of his dues. In the meanwhile, pursuant to the tender process aforementioned, settlement of the market has already been made in favour of the one of the tenderers. The settlement, so made, is not under challenge in the present writ petition.

4. Coupled with the above, what can also not be ignored is that the Petitioner's entire writ petition depends on the provisions of Rule 49 of the Assam (Financial) Rules, 2002. Hence, Rule 49 is reproduced herein below:

Notwithstanding Government may consider the remission cases of the Hat/Ghat/Fisheries on special ground, viz., flood, natural calamities and any other disturbances which is beyond the control of the locality and the authority.

5. From a bare reading of Rule 49, three material aspects become abundantly clear, namely (i) Rule 49 cannot be resorted to for the purpose of extension of settlement of any market, (ii) remission, if any, can be granted by the Government and not by any Zilla Parishad, and (iii) remission can be granted only on the grounds as mentioned in Rule 49, namely, flood, natural calamities and/or any other disturbance, which is beyond the control of the locality and the authority.

6. In view of what have been indicated above, it becomes transparent that there is no provision, in Assam Panchayat (Financial) Rules, 2002, for extension of the period of lease on the ground of loss which a lessee may have sustained. The only remedy available to such a lessee is to apply for remission, in terms of Rule 49, to the State Government.

7. In the present case, the Petitioner has, admittedly, not applied for remission to the State Government.

8. Considering, therefore, the matter in its entirety and in the interest of justice, it is hereby, made clear that as far as the Petitioner's prayer for extension of his period of lease is concerned, the same is not sustainable in law and cannot, therefore, be acceded to.

9. In the result and for the reasons discussed above, while the Petitioner's prayer for extension of the term of his lease is not allowed, the Petitioner is given the liberty to make appropriate application/representation to the Respondent No. 1, namely, Secretary to the Government of Assam, Panchayat and Rural Development, Guwahati, seeking remission in terms of the provisions of Rule 49 and if such an application is made by the Petitioner, Respondent No. 1 shall consider and dispose of the same, in accordance with law, within a period of two months from the date of the receipt of the representation by the Respondent No. 1.

10. With the above observations and directions, this writ petition shall stand disposed of. No costs.