

(2013) 09 GAU CK 0035
In the Gauhati High Court
Case No : Rev. Pet. No. 105 of 2013

Haridhan Das

APPELLANT

Vs

Chunilal Das and Others

RESPONDENT

Date of Decision : 20-09-2013

Acts Referred:

Citation : (2014) 1 GLT 682

Hon'ble Judges : Biplab Kumar Sharma, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Biplab Kumar Sharma, J.

This is an application filed under Chapter X of the Gauhati High Court Rules read with Order 47 Rule 1 and 2 of the CPC seeking review of the order dated 18.6.2013 passed in WP(C) No. 2848/2013. By the said order dated 18.6.2013, the writ petition was disposed of directing the respondent Fishery Corporation to settle the fishery as per the procedure established by law as expeditiously as possible.

In the writ petition, it was stated that the earlier lease period having expired in February 2012 with the one year extension, no further extension should be provided to the respondent No. 6/review petitioner. Noticing the fact that one year extension granted to the review petitioner had expired in February. 2012 and by the time, the order under review was passed on 18.6.2013 almost 4 months had expired since expiry of the existing lease, it was provided that the fishery should be settled as per the procedure.

According to the review petitioner who was the respondent No. 6 in the writ petition, the writ petition having been disposed of at the motion stage itself, the respondent No. 6 did not get the opportunity of being heard. It has further been contended that as per the particular policy decision of the respondent corporation, the review petitioner was entitled to grant of further two years

extension of the lease period. In this connection, the particular agreement/MOU arrived at by and between the respondent corporation and the State Bank of India has been referred to, which has been annexed as Annexure-3 to the review petition. It is the case of the review petitioner that in terms of the said agreement when the matter relating to further extension of the lease period was under consideration of the respondent corporation, the order under review having been passed, the said process had been abandoned by the respondent corporation, but for which and for sure the review petitioner would have been granted two years further extension of the lease period.

2. I have heard Mr. A.M. Buzarbarua, learned counsel for the review petitioner as well as Mr. M.K. Choudhury, learned Sr. Counsel, assisted by Mr. M.H. Rajbarbhuiyan, learned counsel for the writ petitioner. Also heard Mr. S.R. Rajbongshi, learned Standing Counsel, AFDC. I have also considered the entire materials on record including the records produced by Mr. Rajbongshi, learned Standing Counsel, AFDC.

3. On being asked as to whether there is any proposal for extension of the lease period, Mr. Rajbongshi, learned Standing Counsel, AFDC submits that although the proposal was processed, but certain irregularities were noticed in respect of running of the fishery and also in respect of utilization of the loan amount that was sanctioned in favour of the review petitioner as per the aforesaid MOU. On perusal of the records produced by Mr. Rajbongshi, learned Standing Counsel, AFDC certain alleged irregularities, such as bringing fishermen from outside, delay in payment of installment, non-utilization of the loan amount in full towards development of the fishery etc. were noticed. However, no opinion is expressed in this regard. Mr. Choudhury, learned Sr. Counsel, appearing for the writ petitioner submits that the earlier lease period coupled with the extension having already expired in February, 2013, there was no question of granting further extension with retrospective effect. He submits that question of extension might come on the basis of something existing. When the lease period itself ceased to exist, there was no question of granting any further extension. According to him, although the review petitioner had prayed for further extension, there being no extension after February, 2013 irrespective of any order passed by the respondent corporation, it should be deemed to have been rejected. He has also placed reliance on the Full Bench decision reported in 129 Haria Dablong Min Mahal Samabai Samity Ltd. Vs. Assam Fisheries Devp. Corporation Ltd. and Others, , by which, it was held that irrespective of transfer of the management of the fisheries to the corporation, the statutory fishery rules will continue to be applicable in the settlement made by the corporation. It was further directed that the AFDC should frame its guideline. He has also placed reliance on the Division Bench judgment of this Court reported in (1992) 2 GLR 1 (Tanuram Tayeng v. State of Assam), in which dealing with the question of grant of extension, it was held that there cannot be any grant of extension of settlement of a fishery after the period of settlement has expired. In another judgment reported in (1985) 2 GLR 38 (Shri Jagannath Urang v. State of

Assam), in which also it was held that it is for the petitioner to prove "exceptional circumstances" entitling him to get the extension. While holding so, it was also held that after expiry of the lease period, the State Government is not empowered to grant further extension.

4. While it is true that as per the aforesaid MOU, the respondent corporation is entitled to consider grant of extension to the settlement holder of fishery depending upon certain circumstances. The loan obtained by the settlement holder is for the purpose of development of the fishery. For the purpose of granting extension, the corporation is to see whether the loan obtained by the lessee has been utilized for the development of the fishery; whether the loan has been repaid as per the schedule of programme etc. Referring to the documents available on record, Mr. Choudhury, learned Sr. Counsel for the writ petitioner has submitted that as regards the loan amount obtained by the review petitioner, he could return only a fraction of it to the respondent Bank.

Mr. Buzarbarua, learned counsel for the review petitioner has submitted that the authority ought to have passed an order either granting or refusing to grant extension. I am afraid such a plea cannot be accepted in this review petition. If the review petitioner was aggrieved by non-granting of extension beyond February, 2013, he ought to have pursued legal remedy instead of awaiting in the expectation of grant of extension. Law is well settled that an extension of existing lease period can be granted only in continuation of the lease date of the lease period and only, if the order is passed during subsistence of lease period and not thereafter. By the time the order under review was passed, about 4 months had gone by from the expiry of the lease period.

5. Above apart, the respondent corporation has already floated tender for settlement of the fishery on 11.9.2013. For all the aforesaid reasons, I do not find any merit in the review petition and accordingly, it is dismissed.