
(2007) 05 GAU CK 0070
In the Gauhati High Court

Jorhat Chak Bazar Beboshai Santha

APPELLANT

Vs

State of Assam and Others

RESPONDENT

Date of Decision : 24-05-2007

Acts Referred:

Assam Municipal Act, 1956 — Section 148(2)

Citation : (2009) 3 GLR 191

Hon'ble Judges : B.K. Sharma, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

B.K. Sharma, J.—Heard Mr. T.J. Mahanta, learned Counsel for the petitioner and Ms. R. Chokraborty, learned State counsel. I have also heard Mr. Y. Doloi, learned Counsel representing the Jorhat Municipal Board

2. The petitioner is the association of the traders of the market called Jorhat Chak Bazar. The members of the Association are aggrieved by the communication dated 31.3.2003 issued by the Executive Officer of the Municipal Board to the petitioner's Association. By the said communication referring to the discussion held with the Association on 17.2.2003 and 19.2.2003, fixation of rent of room/space at-Rs. 3 and Rs. 1.50 per square feet respectively was conveyed. By the said communication the Association was requested to deposit rent on that basis.

3. According to the petitioner the rent as has been fixed by the aforesaid communication dated 31.3.2003 is exorbitant. In this connection, the petitioner has name four traders showing the percentage of increase in the monthly rent. It is the case of the petitioner that since the traders are not being provided with minimum facilities required for running business and that rooms/stalls in the market under their possession being in dilapidated condition, such increase of rent is arbitrary and unreasonable.

4. The respondents have filed two affidavits justifying the action to refix the rent.

According to them such fixation of rent is as per the agreement arrived at by and between the parties. The respondents in their affidavits have stated that there is proposal for construction of new market building in replacement of present temporary sheds/rooms. In paragraph 7 of the affidavit, the respondents have stated that the members of the petitioner's association would also be accommodated in the market. According to them due to pendency of the writ petition the construction of the market could not be carried out.

5. In paragraph 8 of the additional affidavit, the respondents have made reference to the monthly rent in respect of some other markets of the area. According to the respondents compared to such rent in respect of the Other markets, the rent; fixed by the Board in respect of the market in question is very nominal. Mr. Doloi, learned Counsel representing the Board has placed reliance on the decision of the Division Bench of this Court as reported in *Hojai Fish Market Association v. State of Assam* 1990 (2) GLJ 42.

6. The impugned communication dated 31.3.2003 is in reference to the discussion of the Association in the meeting held on 17.2.2003 and 19.2.2003. A reference has been made to the said meeting in paragraph 8 of the writ petition. As per the impugned communication, the petitioners Association agreed for fixation of rent as indicated in the letter. However, the petitioner has disputed the same in paragraph 8 to the writ petition. According to the petitioner they had agreed for fixation of rent at Rs. 3 and Rs. 1.50 per room and open space respectively per annum and not per month as indicated in the impugned communication.

7. From the statement made in paragraph 8 of the writ petition, what could be gathered is that the petitioners have not denied the discussions held with the representatives of the Board on 17.2.2003 and 19.2.2003. The petitioners have also not denied fixation of rent at Rs. 3 and Rs. 1.50 p?r square feet. However, it is the contention of the petitioner that such agreement was for fixation of rent per year and not per month. According to the petitioners fixation by the Board is arbitrary being exorbitant comparing to the rent the members of the Association used to pay to the Board prior to 2003-2004.

8. While entertaining the writ petition this Court by order dated 4.4.2003 provided that the respondents would be entitled to realize the rent from the members of the petitioners' Association @ Rs. 25% of the enhanced rent. Later on, same was further modified permitting the respondent Board to realize the enhanced rent @ 50%. This was done by order dated 28.4.2004 passed in Misc. Case No. 2421/04. Thus, the members of the petitioners' Association have been paying rent of 50% of the enhanced rent.

9. In the decision referred by Mr. Doloi, i.e., *Hojai Fish Market Association* (supra), the Division Bench of this Court dealt with the question relating to enhancement of rent of daily market per month. Referring to the provision of Section 148(2) of Assam Municipal Act, 1956, it was held that enhancement of

rent by the Board was within its domain, competence and jurisdiction. It was further held that enhancement of rent of Rs. 1 from 0.50 paise was not exorbitant or excessive. The reasons furnished by the Board for such enhancement was held to be reasonable and accordingly the decision of the Board to enhance the rent was not interfered with.

10. Mr. Mahanta, learned Counsel for the petitioners has produced a copy of the minutes of discussion in the meetings held on 17.2.2003 and 19.3.2003 in reference to which the impugned communication dated 31.3.2003 has been issued. The copy of the said minutes of discussion was endorsed to the President and Secretary of the petitioners' Association. On a bare perusal of the said minutes of discussion, it is seen that in fact, the petitioners had agreed for fixation of rent at Rs. 3 per room/stall and Rs. 1.50 for open space. However, a dispute has been raised whether such fixation is per year or per month. In the minutes of discussion, there is no indication that such fixation is per year. Since the rent concerns per month, there is no question of fixation of such rent per year. If the plea of the petitioner is accepted, then in that case the monthly rent would be in the lower side than that of the rent, members of the petitioners' Association used to pay prior to 2003-2004.

11. There is no dispute that the Board is empowered to enhance and refix the rent in respect of market. Once such power satisfies the test of reasonableness, it is not the business of the writ court to interfere with the same. Learned Counsel for the petitioner submits that fixation of rent as has been indicated in the impugned communication is arbitrary being exorbitant. On the other hand, learned Counsel representing the Board as well as learned State counsel submit that the writ court will be reluctant to interfere with such fixation in absence of any material to show that same is arbitrary and exorbitant. The minutes of discussion held in the meeting on 17.3.2003 and 19.3.2003 have been referred to above. On a bare perusal of the same, there is no manner of doubt that the petitioners' Association agreed for fixation of rent at Rs. 3 per square feet in respect of the stall/room and Rs. 1.50 per square feet for the open space. If that be so, the petitioners' Association is precluded from making the grievance against the same. The Association having agreed to the proposal made, it cannot now turn round the same by questioning its validity. The ground assigned towards challenging the same is reflected in paragraph 8 of the writ petition about which mention has been made above.

12. As has been held by the Apex Court in *M/s. Shri Sitaram Sugar Co. Ltd. and another Vs. Union of India and others*, judicial enquiry is confined to the question whether the findings of fact was reasonably based on evidence and whether such findings are consistent with the laws of the land. Rent fixation is not within the province of this Court. Judicial function in respect of such matters is exhausted when there is found to be a rational basis for the conclusions reached by the concerned authority.

13. In the instant case the power of the Board to refix the rent is not disputed.

Coupled with this, the Association itself agreed for such fixation.

14. In view of the above, I am of the considered opinion that no interference is called for to the decision of the Board. However, I hasten to add that it will be open for the Board to review the matter, if so advised. In this connection, they may also consider the plea of the petitioner that the members are ready to pay rent at the enhanced rate, which may be found to be reasonable, after construction of the market building. At the same time, it cannot be lost sight of the fact that the members of the petitioners' Association have been paying the monthly rent at 50% of the enhanced rent for all these years. From the date of the impugned communication, i.e., 31.3.2003, more than four years have passed.

15. Subject to the above observations, the writ petition is dismissed. It is expected that the respondent Board shall construct the market building as expeditiously as possible and shall provide adequate stalls/rooms to the members of the Association. Interim order passed earlier standi vacated.