
(2021) 06 GAU CK 0128

In the Gauhati High Court

Case No : Writ Petition (Civil) No. 3089, 3128 Of 2021

Lochan Bora And 6 Ors

APPELLANT

Vs

State Of Assam And 12 Ors

RESPONDENT

Date of Decision : 23-06-2021

Acts Referred:

Constitution Of India, 1950 — Article 226

Assam Panchayat Act, 1994 — Section 105, 105(1), 106, 106(1)

Citation : (2021) 06 GAU CK 0128

Hon'ble Judges : Kalyan Rai Surana, J

Bench : Single Bench

Advocate : B D Das

Final Decision : Disposed Of

Judgement

1) Heard Mr. B.D. Das, learned senior counsel along with his instructing counsel on record for the petitioners. Also heard Mr. M. Nath, learned

standing counsel for respondent nos.1, 2, 4, 6, 8, 10 and 12 and Mr. K. Gogoi, learned Govt. Advocate appearing for respondent no.3.

2) By filing this writ petition under Article 226 of the Constitution of India, the petitioner no.1, who is the sitting lessee of Kewtekibari Bi-weekly

Market, petitioner no.2, who is the sitting lessee of Ketekibari Daily Market, Sootea under Gabharu Anchalik Panchayat, petitioner no.3, who is the

sitting lessee of Borgaon Weekly Market under Bihagur Anchalik Panchayat, petitioner no.4, who is the sitting lessee of Bindukuri Weekly Market,

under Balipara Anchalik Panchayat, petitioner no.5, who is the sitting lessee of Khelmari Weekly Market (Sunday), under Balipara Anchalik

Panchayat, petitioner no.6, who is the sitting lessee of Balipara Daily Market, under Balipara Anchalik Panchayat and petitioner no.7, who is the sitting

lessee of Garubandha Weekly Market, under Dhekiajuli Anchalik Panchayat for the year 2019-20, as extended from time to time to 30.06.2021, has

filed this writ petition, inter-alia, seeking intervention by his Court in respect of tender notice nos.G.A.P./Tender/2020-21/2101-11/27 dated 17.05.2021,

B.A.P.4/Pt./2020-21/937 dated 20.05.2021, tender notice dated 25.05.2021 and tender notice no.DDB-4/Settlement/2021-22/199 dated 25.05.2021;

and for a direction upon the respondent authorities to extend the term of the present lease for the period 2021-22 to enable the petitioners to recover

their loss.

3) The learned counsel for the petitioners has submitted that during the tenure of his respective lease, lockdown was imposed since 24.03.2020 due to

outbreak of Covid-19 pandemic and as such the Deputy Commissioner cum District Magistrate, Sonitpur had closed the hat/ market from time to time

for a period of 20 (twenty) weeks during the tenure of the present lease. It is submitted that the petitioners had deposited his kist money without any

default for the period up to 30.06.2021. However, during the Covid-19 pandemic situation, the petitioners have suffered huge financial losses. The

learned counsel for the petitioners has submitted that in view of the financial losses, this was a fit case for ordering cancellation of the tender process

with a direction to the respondent authorities to extend the period of lease for a reasonable time so as to enable the petitioners to recover their losses.

The learned counsel for the petitioners has referred to the statements made in the writ petition in support of his argument.

4) The learned standing counsel for the BTC has opposed this writ petition and the prayer for interim relief on the ground that there is no provision in

the Assam Panchayat Act, 1994 or rules framed thereunder for extension of the period of lease/ settlement of hats. It is submitted that it is open to the

petitioners to seek remission in respect of the kist money under any appropriate provisions of law. In support of his submissions the learned standing

counsel has relied on the decision of this Court dated 18.06.2021 rendered in WP(C) 3073/2021 (Sekura Boro vs. The Principal Secretary, BTC & 3

Ors.), wherein this Court had permitted the petitioner therein to submit representation to the respondent no.1 with a direction to the said authority to

dispose of the same in accordance with law, further providing that the earlier settlement in favour of the petitioner was valid till 30.06.2021, his

possession shall not be disturbed till that date.

5) Perused the writ petition and documents annexed thereto. The only question with which the Court is confronted with is whether it serves any public

interest to extend the tenure of settlement of markets/ hats, etc. on consideration of the plea of the petitioners that they had suffered losses.

6) In this regard, the Court is of the considered opinion that if the petitioners have suffered losses, it is open for them to file a suit and prove their

entitlement to recover losses from lease rent/ kist money payable and/or paid for the period he was settled with the market/ hats. There is no public

interest involved in ordering extension of lease period merely because the petitioners have projected that they had suffered losses. There is no doubt

that world over, business enterprise of every conceivable description have suffered huge losses due to Covid-19 pandemic. Till now, the world has

seen two waves of Covid-19 pandemic and without commenting whether it is true or not, but there are predictions in print and television media that

very shortly India would suffer third wave of Covid-19 pandemic. Thus, the times are uncertain. Even the petitioners cannot predict that if their lease

is extended for a number of days, months, or years, they would be able to recover losses. The documents annexed to the writ petition do not

indicate that there was assurance from the respondents that the lease for the market/ hat in question was designed to assure profit to the successful

bidder. Therefore, if the petitioners have suffered losses, it is open to them to file a civil suit and recover compensation from the respondent

authorities, but there is no public interest involved to stay the tender process and to direct the authorities to extend the term of lease of the petitioners.

7) In this regard, the Court is reminded of the case of Ali Akbar Vs State of Assam, 2009 (2) GLT 553, where dealing with the provisions of the

Panchayat Act, 1994, this Court had made the below extracted observations:-

(7) Coupled with the above, the settlement, in the present case, has been made by an Anchalik Panchayat in exercise of its jurisdiction under Section

105 of the Assam Panchayat Act, 1994, and the Rules framed thereunder. Neither the Assam Panchayat Act, 1994, nor the Rules framed thereunder

make provisions for extension of the period of settlement for the purpose of enabling a lessee or a settlement holder of a ferry ghat to recover the loss,

which he may have incurred after he had received the settlement. In fact, in

Kosheswar Bharali Vs. State of Assam, reported in (2000) 3 GLT 528, it was urged before this Court that since the Assam Panchayat Act, 1994, is silent as regards extension of settlement of a ferry, the Court should take an equitable view and hold that the authority concerned have the power to grant extension in appropriate cases, where the lessee suffers loss during the period of settlement. Rejecting the submissions, so made, the Court observed and held as follows:

5. The reason for rejecting the prayer for extension of the petitioner, inter alia, therefore, is that there is no provision in the Assam Panchayat Act, 1994 for extension of settlement of hat/ghat/ferries. Section 105 (1) of the Assam Panchayat Act, 1994, provides that all hats within the territorial jurisdiction of Anchalik Panchayat shall be settled in the manner prescribed for a period coinciding with and not exceeding one Panchayat financial year by inviting tenders at the office of the Anchalik Panchayat. Similarly, Section 106(1) of the Assam Panchayat Act, 1994 stated that all public ferries, other than Government ferries within the territorial jurisdiction of the Anchalik Panchayat shall be settled in the manner prescribed for a period coinciding with and not exceeding one Panchayat financial year by inviting tenders at the office of the Anchalik Panchayat by its President. On a reading of different provisions of Sections 105 and 106 of the said Act, it appears that there is no provision for extension of Settlement either of hats or of public ferries.

6. Mr. Hazarika, however, submitted that since the said two sections of the Assam Panchayat Act, 1994, are silent with regard to extension of settlement of hat or ferry, the Court should take an equitable view and hold that the authorities have the power to grant extension in appropriate cases where the lessee suffers loss during the period of settlement. I am unable to accept the said submission of Mr. Hazarika as both Sections 105 and 106 of the Assam Panchayat Act, 1994, state that the settlement of hat or public ferry is not to exceed one Panchayat financial year and further state that such settlement has to be made by inviting tenders. Thus, the express provisions of Section 105 and 106 of the Assam Panchayat Act, 1994 prohibited any extension or settlement beyond the period of one Panchayat financial year and further mandate that any settlement has to be made by inviting tenders. Therefore, I hold that no extension can be granted in respect of a public

ferry settled under Section 106 of the Assam Panchayat Act, 1994, by inviting tenders and that after a period of settlement of one year such public ferry can only be settled afresh by inviting tenders and not otherwise.

(emphasis added)

(8) From what have been observed and concluded above, what becomes clear is that when there is no provision made in the Assam Panchayat Act,

1994, for granting extension of the period of settlement and when the said Act makes it clear that the settlement shall be for one Panchayat financial

year, it is not possible for a Panchayat to extend the period of settlement, even though the settlement holder or lessee might have sustained loss. Had

the legislature intended making such provisions, it could have done so as have been done in the cases of fisheries. I, therefore, see no reason to take a

view different from what has been taken in Kosheswar Bharali (supra) and I hold that extension of the period of settlement of a ferry ghat cannot be

granted by a Panchayat under the provisions of the Assam Panchayat Act, 1994.

(9) Because of the conclusions reached above, it becomes clear that the directions, given by the Commissioner, in the impugned order, dated 06. 05.

2008, to the said Panchayat to compensate Safiqul Hoque (i.e., the petitioner in WP (C) No. 2063/2008), by way of extension of the settlement, which

had been granted to him, is completely without jurisdiction and must be set aside. If the order dated 06.05.2008, is set aside, the consequence would be

that the writ petition, filed by the Safiqul Hoque, seeking direction to the State respondents to extend his period of settlement, must also fail.

(10) In the result, and for the reasons discussed above, the impugned orders dated 06.05.2008 and 30.06.2008 are hereby set aside and quashed. The

prayer for extension made by the petitioner, Safiqul Hoque, in WP (C) No. 2063/2008, is not allowed; hence, this writ petition shall stand dismissed.

(11) It is further directed that the said Panchayat shall proceed with the finalization of the lease, if they so decide, in terms of the notice inviting tender,

dated 03. 05. 2008. It is further made clear that Safiqul Hoque (i. e., the petitioner in WP (C) No. 2063/2008) shall remain at liberty to recover his loss

by taking resort to appropriate provisions of law.â??

8) It is seen that this Court in the case of Sekura Boro vs. The Principal Secretary, BTC & 3 Ors., WP(C) 3073/2021 decided on 18.06.2021, without

interfering with the tender process had granted time to the petitioner to submit a

proper representation before the respondent no.1 therein to be considered on merit, however, with a direction that the possession of the market shall not be disturbed till 30.06.2021, date till which the settlement was valid.

9) In view of the discussions above, the Court is of the considered opinion that the ratio of the above referred case of Ali Akbar (supra) squarely applied to the facts and circumstances of this case. Accordingly, the Court has no hesitation to hold that the writ petition is devoid of any merit.

10) Accordingly, this writ petition stands disposed of by granting liberty to the petitioners to submit their representation before the respondent no.1

through e-mail along with such documents on which they intend to rely upon and on receipt of such representation, the respondent no.1 shall take note

that the present settlement has been extended till 30.06.2021, and dispose of the representation within the said period. Mr. M. Nath, learned standing

counsel shall provide the e-mail address of the Principal Secretary to the Govt. of Assam, P&RD Department (respondent no.1) to the assisting

counsel of the learned senior counsel for the petitioners so as to enable the petitioners to submit a representation through e-mail along with a soft copy

of the writ petition.

11) Before parting with the records, the Court is inclined to observe that this order shall not preclude the petitioners to avail appropriate remedy as

they may be so advised to recover loss by taking resort to appropriate provisions of law.