
(2001) 07 GAU CK 0012

In the Gauhati High Court

Case No : Writ Petition (C) No. 71 (SH) of 2001

M. Rani

APPELLANT

Vs

Khasi Hills Autonomous District Council and Others

RESPONDENT

Date of Decision : 23-07-2001

Acts Referred:

Citation : (2001) 2 GLT 356

Hon'ble Judges : A.K. Patnaik, J

Bench : Single Bench

Advocate : H.S. Thankhiew, B.W. Phira, K. Khan and I.W. Phira, for the Appellant; E.S. Jyrwa, A.S. Siddique and B.B. Narzary, for the Respondent

Judgement

A.K. Patnaik, J.—This writ petition under Article 226 relates to settlement of lease to collect toll by the Syiem of Myllem for lewduh market and lewduh Parking lot for the period from 1.4.2001 to 31.3.2002.

2. Facts briefly are that on 26.2.2001, the Syiem of Myllem settled the lease for collecting tolls in the aforesaid market place and the parking lot in favour of the petitioner for period of one year from 1.4.2001 to 31.3.2002. Pursuant to the said settlement agreements were executed by the Syiem of Myllem and the petitioner on 26.2.2001. Under the said lease agreements the petitioner was to pay a sum of Rs. 13,00,000 for the market place for the entire period from 1.4.2001 to 31.3.2002 and a sum of Rs. 5,00,000 for the parking lot for the entire period for the year 2001-2002. Pursuant to the said lease agreements the petitioner deposited a sum of Rs. 6,95,000 on 26.2.2001 as advance for the period of six months for the market place and a sum of Rs. 1,05,000 for the parking lot on the same day with the Syiem of Myllem. On or about 29.3.2001, the respondent No. 5 submitted an application before the Executive Committee Khasi Hills Autonomous District Council, Shijlong, stating therein, inter alia, that by a lease agreement executed by the Syiem of Myllem and the respondent No. 5 on 5.5.1999, the aforesaid market and the parking lot had been leased out to him for a period of five years with effect from 1.4.1999 to 31.3.2002 for a total

sum of Rs. 26,20,000 and the respondent No. 5 had already paid the entire amount of Rs. 26,10,000 to the Syiem of Myllem. On the said application of the respondent No. 5, the Executive Committee, Khasi Hills Autonomous District Council, Shillong, passed an order dated 29.3.2001 restraining the Syiem of Myllem from leasing the aforesaid market and the parking lot pending disposal of the said application of the respondent No. 5 and allowed the respondent No. 5 to collect toll and deposit the agreed amount with Syiem of Myllem. The petitioner then filed an application before the Executive Member Incharge Market, Khasi Hills Autonomous District Council, praying for vacating the said order dated 29.3.2001, Simultaneously, the Syiem of Myllem also filed an application on or about 3.4.2001 before the Executive Member, Incharge Market, Khasi Hills Autonomous District Council, for vacating the said order dated 29.3.2001. When the said order dated 29.3.2001 was not vacated by the Executive Member, Incharge Market, Khasi Hills Autonomous District Council, Shillong, the petitioner filed the present writ petition with, inter alia, prayer for quashing the said order. While the matter was pending, before this Court, the petitioner received a communication dated 17.4.2001 from the Under Secretary, Incharge Market etc. Khasi Hills Autonomous District Council, Shillong, that the Executive Committee, Khasi Hills Autonomous District Council, has left it to this Court to decide the dispute between the parties in the present writ petition.

3. Mr. B W Phira, learned counsel for the petitioner, submitted that by a circular dated 14.8.1996 issued by the Joint Secretary, Khasi Hills Autonomous District Council, all the concerned Syiem under Khasi Hills Autonomous District Council were informed that the Executive Committee directed all the Syiemship and Lyngdoh to strictly follow and adhere to the directions specified in the said circular. One of the directions in the said circular is that the leases of markets and other assets of the Syiemship and Elakas shall be for one year at a time and the lease should be settled in the month of March each year, meaning thereby, the lease shall commence from the month of April of the particular year and shall end on 31st March the following year. Mr. Phira vehemently argued that since as per the said direction of the Executive Committee of the Khasi Hills Autonomous District Council, a lease of market or parking lot can only be settled for one year, the respondent No. 5 could not have been settled with a lease of lewduh market area or parking lot for three years from 1st April 1999 to 31.3.2002. Mr. Phira further argued that, as a matter of fact, for this reason although the initial lease agreement dated 5.5.1999 between the respondent No. 5 and the Syiem of Myllem for the aforesaid market place and the parking lot was for a period of three years from 1st April 1999 to 31st March 2002, by a subsequent communication dated 13.7.2000 the respondent No. 5 was informed that the Darbar of Myllem had cancelled the settlement by letter dated 5.5.1999 and the lease agreement dated 5.5.1999 between the Acting Syiem of Myllem and responded No. 5 and has instead confined the lease for the lewduh market area and the parking lot for the year 2000-2001 which has expired on 31.3.2001. Mr. Phira contended that if the respondent No. 5 was aggrieved by the said

communication dated 13.7.2000 for cancellation of the letter dated 5.5.1999 and the lease agreement dated 5.5.1999 by the Darbar of Myllem, the respondent No. 5 should have challenged the same before the appropriate forum. But the respondent No. 5 has not challenged the same and as a consequence the lease of the respondent No. 5 in respect of the aforesaid market place and the parking lot has expired on 31.3.2001 and no right or claim of the respondent No. 5 beyond 31.3.2001.

4. Mr. A. S. Siddique, learned counsel for the respondent No. 5, on the other hand, submitted that by the communication dated 13.7.2000, the lease agreement of the respondent No. 5 and the Acting Syiem of Myllem has not been conceited as such but has been modified. He further contended that no notice was given to the respondent No. 5 to show cause against the cancellation before the Darbar of Myllem took action as communicated by the letter dated 13.7.2000. Mr. Siddique further submitted that on 5.5.1999, the Acting Syiem of Myllem had acknowledged in writing to the respondent No. 5 that the Syiem of Myllem and the Darbar had extended the contract to the respondent No. 5 for collection of toll in the aforesaid market place and the parking lot right upto 31.3.2000. He also referred to the letter dated 7.7.2000 of the respondent No. 5 to the Syiem of Myllem and the Darbar, Mawkhar, Shillong, a copy of which has been annexed as Annexure-C to the affidavit-in-opposition filed on behalf of the respondent No. 5 to show that on 3.7.2000 there was a discussion in the Darbar that the respondent No. 5 will pay another Rs. 5,00,000 per year for the lease of lewduh market and parking lot taken by the respondent No 5 for the year 2000-2001 and 2001-2002. Finally Mr. Siddique argued that the settlement of the aforesaid market place and the parking lot has been made in favour of the petitioner without holding any public auction and that the said settlement was not at all valid. He submitted that the settlement in favour of the petitioner was challenged in another writ petition before this Court by some other party but the said writ petition was withdrawn subsequently on the influence of the petitioner.

5. Mr. B B Nurzary, learned counsel appearing for the Khasi Hills Autonomous District Council, submitted that it appears that there is actually a fight between there earlier Acting Syiem and the present Syiem of Myllem. While the earlier Acting Syiem settled the market and the parking lot in favour of the respondent No. 5, the present Syiem has settled the said market place and the parking lot in favour of the petitioner. He. However, very fairly stated that since the present Writ petition has been entertained by this Court and the Executive Committee has taken a decision to leave the matter to be decided by this Court, this Court should decide the matter as per law. Mr. T T Deingdoh, learned counsel appearing for the Syiem of Myllem, has produced the records of the case as directed by this Court.

6. The Khasi Hills District (Establishment, Management and Control of Markets) Regulation, 1979, for short "the Regulation" framed by the District Council under Sixth Schedule of the Constitution provides for regulation and control of markets

as well as-for collections of toll, tax, etc. from such markets. Clause 8(1) of the Regulation provides that subject to the provisions of the Regulation and the rules made thereunder, Elaka markets shall be managed by the Chief together with his Durbar. Clause 10(2) of the Regulation provides that the market tolls or tax as prescribed by the Executive Committee shall be collected in respect of Elaka markets by the Chief and his Durbar. Clause 4 of the Regulation, which is relevant for this case, is quoted herein below :

"4. All markets in the Khasi Hills District shall be under the control of the District Council and the Executive Committee may issue such orders or directives to the owner of management concerned conducive to the betterment of the market not contradictory to the provision of this Regulations."

It will be clear from the aforesaid provisions under Clause 4 that in exercise of its control on all the markets under Khasi Hills District Autonomous District Council, the Executive committee has the power to issue order or directives to the owner of management concerned conducive to the betterment of the market not contradictory to the provision of the regulation. Thus while the power of management of Elaka is vested with the Chief together with his Durbar, the Chief and his Durbar have to follow the orders or directives Issued by the Executive Committee of the District Council for betterment of the market. Similarly, although the power to collect market tolls and taxes in respect of an Elaka market is vested with the Chief and his Durbar, such power can be exercised by the Chief and his Durbar only in accordance with the orders or directives issued by the Executive Committee of the District Council.

7. It appears from Annexure-1 to the writ petition that the Executive Committee, Khasi Hills Autonomous District Council had, inter alia, directed that the lease of markets and other assets of the Syiemship/ Elakas should be for one year at a time and the lease should be settled in the month of March of a particular year so as to commence the lease from 1st April of that particular year and to end on 31st March of the following year. In view of these specific directives of the Executive Committee of the Khasi Hill Autonomous District Council that the lease of the market and other assets of the Syiemship/Elakas shall be only for one year, the respondent No. 5 could not have been settled with the lease of lewduh market place and the parking lot for a period of three years from 1st April, 1999 to 31.3.2002. It is perhaps for this reason that it appears from the records of the Syiem of Myllem produced before the Court that the Durbar of Syiem of Myllem cancelled the earlier letter dated 5.5.1999 of the Acting Syiem of Myllem and the earlier agreement dated 5.5.1999 between the Acting Syiem of Myllem and the respondent No. 5 whereunder the lease of the aforesaid market place and the parking lot were settled right upto 31.3.2002. It also appears from the records of the Syiem of Myllem produced before the Court that by communication dated 13.7.2000, the respondent No. 5 was informed that the said letter dated 5.5.1999 of the Acting Syiem of Myllem and the lease agreement dated 5.5.1999 had been cancelled by the Durbar and that the Durbar had only

accepted the request of the respondent No. 5 in his letter dated 7.7.2000 to lease the market place and the parking lot for the year 2000-2001 which as expired on 31.3.2001.

8. Ofcourse, as has been contended by Mr. Siddique, learned counsel for the respondent No. 5, the respondent No. 5 was not issued with a show cause notice before the cancellation of the letter dated 5.5.1999 and the agreement dated 5.5.1999 under which the aforesaid market place and parking lot had been leased out to the respondent No. 5 right upto 31.3.2002. But the respondent No. 5 has not challenged the said cancellation before any appropriate forum on the ground that the said cancellation was done without giving any show cause notice to him or on any other ground. As a result, the cancellation of the earlier letter dated 5.5.1999 and the lease agreement dated 5.5.1999 under which the respondent No. 5 was to operate the said market and the parking lot right upto 31.3.2002 remained effective and as per the said letter dated 13.7.2000, the lease of the respondent No. 5 for the market place and parking lot expired on 31.3.2001. For this reason, I am of the considered opinion, that the respondent No. 5 had no right under the letter dated 5.5.1999 of the Acting Syiem and the lease agreement dated 5.5.1999 to collect tolls for the lewduh market and the parking lot after 31.3.2001. Further, since for the period 1.4.2001 to 31.3.2002, the lease for collection of tolls of the aforesaid market place and the parking lot has been granted by the Syiem of Myllichem in favour of the petitioner, the petitioner has the right to collection tolls from the said market and the parking lot upto 2002.

9. It, however, appears that by virtue of the impugned order dated 29.3.2001, issued by the Executive Committee, Khasi Hills Autonomous Council, the respondent No. 5 has been allowed to continue to collect tolls and deposit the agreed amount for the aforesaid market and the parking lot even after 31.3.2001 and by virtue of the said interim order, the respondent No. 5 has been collecting tolls from the said market and the parking lot till today. Now that this Court has held in this judgment that it is the petitioner, not the respondent No. 5, who is entitled to collect tolls from the aforesaid market and the parking lot upto to 31.3.2001, I direct that with effect from 1.8.2001, the petitioner will be allowed to collect tolls from lewduh Market area and parking lot for the period upto 31.3.2002 in terms of the lease agreement dated 26.2.2001. The Syiem of Myllichem and the authorities of the Khasi Hills Autonomous District Council will ensure that the proportionate amount of lease amount paid by the respondent No. 5 for the period from 1.8.2001 to 31.3.2002 is refunded to him within a period of three months from today. It is stated by Mr. Lyngdoh, appearing for the present Syiem of Myllichem, that the entire amount under the earlier lease executed on 5.5.1999 by the Acting Syiem in favour of the respondent No. 5 has been collected by the acting Syiem of Myllichem and retained by him and was not deposited with the present Syiem of Myllichem. If this be so, the present Syiem of Myllichem will take steps to recover whatever amount is payable by the Acting Syiem of Myllichem in accordance with law, if necessary, with the help of

authorities of the Khasi Hills Autonomous District Council so that the respondent No. 5 is refunded the proportionate amount as directed above within a period of three months from today. It is also needless to say that the petitioner is liable to pay proportionate amount under the lease executed in his favour on 26.2.2001 only for the period from 1.8.2001 to 31.3.2002 since he will be allowed to operate the said market and the parking lot with effect from 1.8.2001.

10. From a perusal of the records produced on behalf of the Syiem of Myllem it appears that the lease executed in favour of the petitioner in respect of the said market and the parking lot was settled not by public auction but by some other method. Under Clause 11(1) of the Khasi Hills District (Establishment, Management and Control of Markets) Regulation, 1979, the right to collect taxes and market tolls shall, as far as practicable, be settled by public auction in the presence of an officer appointed by the Executive Committee and intimation of the date of auction shall be sent by the management of the market concerned to the Executive Committee at least 15 days ahead of the date fixed for the auction. Hence the right to collect taxes and market tolls can only be settled by a Syiem and his Durbar by a public auction. It is only where public auction is not practicable in a particular situation, other modes may be followed by the Syiem and the Durbar to settle the right to collect taxes or market tolls. Therefore, unless the Syiem and his Durbar come to the conclusion that the right to collect taxes and market tolls in a particular case cannot be practically settled by public auction, they can not follow some mode other than public auction to settle the right to collect taxes and market tolls. This Court hopes and trusts that the Chiefs and the Durbars of the respective Elakas will henceforth settle the market place and parking lot strictly in accordance with the said provisions of Clause 11(1) of the Regulation.

11. With the aforesaid directions, the writ petition is disposed of. Considering the facts and circumstances of the case, the parties shall bear their own costs.