

(2009) 09 GAU CK 0076
In the Gauhati High Court
Case No : Writ Appeal No. 208 of 2009

Navayug Matshyajibi Samabai Samity Ltd.	APPELLANT
Vs	
Oujari Kataguri Bhurbandha Matshyajibi Samabai Samity Ltd. and Others	RESPONDENT

Date of Decision : 23-09-2009

Acts Referred:

Fisheries Rules, 1953 — Rule 12, 8, 8(6)

Citation : (2009) 1 GLD 661 Supp

Hon'ble Judges : Jasti Chelameswar, J; Iqbal Ahmed Ansari, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

I.A. Ansari, J.—The respondent No. 1 herein is a co-operative society, registered under the relevant statute, and respondent No. 2 is the President of the said society. They filed a writ petition seeking to get set aside and quashed the order, dated 22.4.2008, passed by the State respondents, extending the period of settlement of respondent No. 5 Sonai Nadi Part-III Meen Mahal fishery, by 2 (two) years, in favour of the appellant herein, which is also a co-operative society registered under the relevant statute. This writ petition gave rise to WP(C) No. 1851 of 2008.

2. By judgment and order, dated 18.6.2009, a learned Single Judge of this Court has set aside and quashed the impugned order, dated 22.4.2008, aforementioned on the ground that the present appellant had been enjoying the settlement for the last about 19 years and the extension, so granted in the present case, was against law inasmuch as extension, if any, of the settlement, can be granted, in exercise of powers Rule 8(6) of the Fishery Rules, 1953, under special circumstances so as to enable a lessee recover the loss, which the lessee might have sustained. By judgment and order under appeal, the State respondents have also been directed to settle the fishery, in question, by resorting to tender process in terms of Rule 12 of the said Rules.

3. Aggrieved by the fact that the said order of settlement, dated 22.4.2008, has been set aside and quashed and the fishery, in question, has been directed to be settled by resorting to tender process, respondent No. 5, in the writ petition, has preferred this appeal.

4. We have heard Mr. N.S. Deka, learned Counsel for the appellant.

5. In view of the fact that the appellant has been admittedly, enjoying the lease of the fishery, in question, for the last more than 19 years, and in view also of the fact that the extension, in present case, was granted, in favour of the appellant, by the impugned order, dated 22.4.2008, without making any special case in terms of Rule 8(b) of the said Rules, we are of the view that the learned Single Judge was justified in setting aside and quashing the said order of extension. This apart, ordinarily, a fishery should be settled by resorting to tender process as has been provided in Rule 12 of the said Rules and it is only in exceptional circumstances that the State Government may, for good reasons, allow extension of the settlement period in order to enable a lessee recover his loss. In the present case, no such reason was assigned, while granting extension. Hence, the extension of the period of lease, in favour of the present appellant, was not only wrong, but also arbitrarily. Above all, when the appellant had been enjoying the settlement of the said fishery for the last more than 19 years, the Government was bound to settle the said fishery by way of tender process, unless a case of exercise of discretion under Rule 8(b) could have been made out. Since no case for extension could be made out by the appellant, the judgment and order, under appeal, needs, to our mind, no interference.

6. It has been sought to be contended, on behalf of the appellant, that the settlement of the lease has been set side in the writ application being made by non-existent society. Apart from the fact that such a plea cannot be belatedly taken, we have examined, on the request of the learned Counsel for the appellant, the registration certificate, dated 9.4.2008, issued by the District Fishery Development Officer, Morigaon, which shows that the writ petitioner is a registered co-operative society under the Assam Co-operative Societies Act, 1949, and all the members of the said society are actual fishermen by profession. Moreover, a copy of the said certificate has been addressed to Shri Dhiren Das as President, Ougury Katahguri Bhurbandha Matshyajibi Samabai Samity Ltd., Morigaon. It is necessary to point out that the petition was filed by Oujari Kataguri Bhurbandha Matshyajibi Samabai Samity Ltd. as the writ petitioner No. 1 with Shri Dhiren Das aforementioned as No. 2, as its President. We do not, therefore, find any force in the submissions, made on behalf of the appellant, that the writ petitioner No. 1 is a non-existent co-operative society.

7. Because of what have been pointed out above, we find no reason to interfere with the findings, contained in the judgment and order under appeal and/or the directions given therein.

8. In view of the above, this appeal fails and the same shall accordingly stand

dismissed.

9. No order as to costs.