

(2024) 05 GAU CK 0079

In the Gauhati High Court

Case No : Writ Appeal No.348, 349, 366, 8169 Of 2022

Nisar Ahmed

APPELLANT

Vs

Assam Fisheries Development Corporation Ltd.

RESPONDENT

Date of Decision : 06-05-2024

Acts Referred:

Constitution Of India, 1950 — Article 12, 14
Assam Fisheries Rules, 1953 — Rule 8, 8(c)(ii), 12

Citation : (2024) 05 GAU CK 0079

Hon'ble Judges : Vijay Bishnoi, Cj;Suman Shyam, J

Bench : Division Bench

Advocate : S. Khound, M.K. Choudhury, D.J. Medhi, P. Sharmah, K. Bhattacharyya, B.D. Das, R. Dekha

Final Decision : Dismissed

Judgement

Vijay Bishnoi, CJ

1. The instant writ appeals, i.e. WA No.366/2022, WA No.348/2022 and WA No.349/2022 are filed by the appellants/writ petitioners assailing the judgment and order dated 21.09.2022, passed by the learned Single Judge in WP(C) No.2192/2022 and other connected writ petitions, whereby the learned Single Judge has dismissed the writ petitions.

2. WP(C) 8169/2022 has been tagged with the present appeals pursuant to the order dated 19.12.2022 passed by the learned Single Judge in the said writ petition, which reads as under:

" After hearing the submission of learned counsel for both sides, this Court is of the prima facie opinion that the central issue involved in this proceeding has already been decided by a coordinate Bench in favour of the AFDC and the writ appeal preferred against the judgment of the learned Single Judge is pending before the Division Bench. Therefore, it would be improper for this Court to proceed in the matter and adjudicate upon the same issue.

Under the circumstances, the only recourse that appears to be available to this Court would be to direct this writ petition to be tagged with W.A. No. 348/2022.

Ordered accordingly.

Registry to list the matters together.”

Accordingly, WP(C) 8169/2022 is taken up for consideration along with the present appeals.

3. The brief facts of these appeals are that the Assam Fisheries Development Corporation Limited (in short, AFDC) has settled various beels/ fisheries in the State of Assam with the appellants in the year 2020 and 2021. However, on 08.04.2022, all those settlements made by the AFDC with the appellants have been cancelled.

4. Being aggrieved with the same, the appellants have approached this Court by way of filing separate writ petitions which came to be dismissed by the learned Single Judge vide impugned judgment dated 21.09.2022. Hence, these writ appeals.

5. The question which comes for consideration before the learned Single Judge was whether the settlement of fisheries in favour of the appellants by the AFDC was in accordance with law or not. The learned Single Judge, while relying on the decision of the Full Bench of this Court rendered in M/s.129 Haria Dablong Min Mahal Samabai Samity Ltd & etc. Vs. Assam Fisheries Development Corporation Ltd. & Ors., AIR 2001 Gau 139 has held that the AFDC has no authority to settle the fisheries in favour of the appellants and therefore, the cancellation of the said settlements cannot be said to be arbitrary and illegal. The learned Single Judge has held that the action of the AFDC of settling the fisheries in favour of the appellants was in gross violation of Article 14 of the Constitution of India. Relying on the provisions of Rule 8 as well as Rule 12 of the Assam Fisheries Rules, 1953, the learned Single Judge has held that the AFDC has no authority to settle the fisheries in favour of the appellants and as such, the settlements made in favour of the appellants of the various fisheries have rightly been cancelled.

Rejecting the arguments made on behalf of the appellants that before cancellation of the settlement, no opportunity of hearing was provided to them, the learned Single Judge has held that providing an opportunity of hearing to the appellants would be a useless formality.

6. Learned counsel appearing for the appellants has argued that the learned Single Judge has erred in dismissing the writ petitions filed by the appellants without taking into consideration the fact that the AFDC has settled the various fisheries in favour of the appellants by executing a contract and they have invested huge amounts in operating the fisheries.

7. It is contended that before cancellation of the settlement, no opportunity of hearing was provided to the appellants and as such, the principle of natural

justice has not been followed. It is further contended that the AFDC has full authority to settle the fisheries in favour of the appellants without inviting tenders as per the provisions of Assam Fisheries Rules. It is, therefore, prayed that the impugned judgment passed by the learned Single Judge is liable to be set aside and the writ petitions filed by the appellants are liable to be allowed.

8. Per contra, learned counsel appearing for the respondent State as well as the private respondents have opposed the writ appeals and have argued that there is no illegality in the judgment passed by the learned Single Judge and as no case for interference is made out and accordingly, the writ appeals are liable to be dismissed.

9. Heard the learned counsel appearing for the parties and also perused the material available on record.

10. It is not in dispute that the fisheries which were settled in favour of the appellants by the AFDC were vested in it. However, the issue that whether the AFDC has the power to make any direct settlement of fisheries with the individuals is no more res integra and has already been answered by the Full Bench of this Court in *Haria Dablong Min Mahal Samabai Samity Ltd.* (supra).

The Full Bench of this Court in *Haria Dablong Min Mahal Samabai Samity Ltd.* (supra) has held as under:

"The question that needs for determination is whether by virtue of Rule 8(ii) whether any powers have been conferred on the AFDC to settle the Fisheries which were transferred to it. Referring to Rule 8(i) it is submitted that the Director of Fisheries have been merely empowered to call tenders and submit their recommendations to the Govt. for approval. Admittedly under the above rule no power has been vested with the Director of Fisheries to make any settlement. He has been given the power to invite tenders and submit his recommendation only."

.....

"15. Now regarding the application of the fishery Rules in the matter of settlement by AFDC, we hold that although AFDC is a State under Article 12 of the Constitution and it is 100% Govt. enterprises, the provisions of the Assam Fishery Rules are not applicable in the matter of settlement to be made by the AFDC. Thus the AFDC does not have the power to make any direct settlement of fisheries as the state has got in view of the proviso to Rule 12 of the Assam Fishery Rules."

After observing as such, the Full Bench has answered the question referred to it as under:

"1) Assam Fisheries Development Corporation has the sole authority and jurisdiction to lease out/settle the fisheries which have been transferred or vested with them under Rule 8(c)(ii) if the Assam Fishery Rules;

2) The AFDC shall have no power to make any direct settlement as per the proviso to Rule 12 of the Assam Fishery Rules. The Director of the AFDC shall have the authority to make settlement and for that purpose definite guidelines may be laid down so that there is transparency in the matter of settlement. The need for transparency, need not be reemphasized in view of the catena of decisions of the Apex Court on the point.

3) While laying down the guidelines or resolutions the spirit of the Fishery Rules may be given due weightage/consideration. Fishery Rules were enacted to provide stimulus the fish production and help the population which is engaged with the occupation of fishing. Under the Fishery Rules preference is given to the co-operative societies formed by 100% fisherman belonging to Scheduled Caste community and Mainao Community of Cachar. Hence the AFDC is directed to lay down the definite guidelines in the matter so that there is no ambiguity.

4) As the AFDC has been found to have powers to make settlement in respect of the fisheries vested with them they have implied power to pass orders regarding extension of the settlement. We may however like to add here that extension of fisheries creates unnecessary problems and as such definite criteria or parameter may be laid down or some alternative may be found out to give relief to the lessee in proper and suitable cases.

5) During the course of hearing copies of the resolutions adopted by the AFDC in its meeting dated 3-1-1994 were produced before us and the said resolution provided that the settlement is to be made for a period of ranging from 5 to 10 years and it should be by way of tender only and that too, to the highest bidder."

11. In view of the authoritative pronouncement of the Full Bench of this Court in *Haria Dablong Min Mahal Samabai Samity Ltd.* (supra), we have no hesitation in holding that the AFDC has no power of direct settlement of fisheries and therefore, the settlement of the fisheries in favour of the appellants, without calling for the tenders, was illegal.

12. So far as the question of cancellation of the fisheries settled in favour of the appellants without providing an opportunity of hearing to them is concerned, we find it as a futile exercise because the appellants have failed to make out a case before this Court that the AFDC has rightly settled the fisheries in their favour and we are of the firm opinion that the settlement of the fisheries in their favour was illegal and void ab initio. Providing an opportunity of hearing to the appellants would be nothing but a futile exercise.

13. In view of the above discussion, we do not find any merit in these writ appeals (WA No.366/2022, WA No.348/2022 & WA No.349/2022) and the same are, therefore, dismissed.

14. Resultantly, the instant writ petition [WP(C) No.8169/2022] also stands dismissed.