

(2001) 09 GAU CK 0006
In the Gauhati High Court
Case No : WP (C) No. 741 of 2000

No. 29 Nekera/Nekeri Meen Samabai Samity Ltd. and Another APPELLANT
Vs
State of Assam and Others RESPONDENT

Date of Decision : 24-09-2001

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2001) 09 GAU CK 0006

Hon'ble Judges : B. Biswas, J

Bench : Single Bench

Advocate : A.K. Majumdar and J. Ahmed, for the Appellant; A.K. Goswami, A. Talukdar and A.K. Thakur, for the Respondent

Final Decision : Dismissed

Judgement

D. Biswas, J.—This petition under Article 226 of the Constitution has been tiled for issue of a writ of mandamus directing the respondent-State to settle the No. 29 Nekera Nekeri Fishery with the petitioner society. It appears that no interim order was passed by this Court while issuing notice of motion or at any time thereafter.

2. I have heard Mr. A.M. Majumdar, the learned senior counsel for the petitioner society; Mr. A.K. Goswami, the learned counsel for the respondent Nos. 4 and 5 and Mr. A.K. Thakur, the learned State counsel.

3. The fishery in question was settled with the petitioner-society for the period between 5.2.1997 and 4.2.2000 at an annual revenue of Rs. 39,952. The petitioner society sustained loss due to natural calamities and on 1.11.1999 submitted an application before the authority concerned for settlement/extension of the said fishery for the period upto 4.7.2007. The Deputy Commissioner, Morigaon also submitted report to the Secretary to the Govt. of Assam in the Fishery Department indicating that the petitioner-society sustained loss to the tune of Rs. 51,758.52 paise. The petitioner-society, in view of the report

submitted by the Deputy Commissioner, Morigaon, was under the expectation that the petitioner-society would be settled with the said fishery. But, eventually the State respondents settled the fishery with respondent No. 4 for a period between 5.2.2000 to 4.2.2003 at an annual revenue of Rs. 45,945. The petitioner-society camp to know that in view of innumerable complaints and alleged engagement of outsiders to fish, the State decided not to settle the fishery with the petitioner-society.

4. The Respondents No. 4 and 5 in their affidavit submitted that it is a registered society based on 100 per cent actual fisherman belonging to Scheduled Caste community and there is nothing adverse against that. According to them, the decision of the State was obviously taken in view of the violation of the Fishery Rules by the petitioner-society.

5. The impugned order dated 7.2.2000 (Annexure-3) shows that the authority concerned took into consideration of the factual background before the order of settlement was passed with regard to the petitioner-society it is observed that the alleged loss sustained by the petitioner-society does not tally with the annual revenue for the year 1998-99. That apart, some members of the society had lodged complaints alleging that they were deprived of their fishing right in their fishery by some non-fishermen engaged by the President and Secretary of the society. The Government, after due consideration was satisfied that the society had engaged outsiders to the deprivation of the members of the society. Besides, the Government also considered the recommendation given by the Deputy Commissioner in favour of respondent No. 4. The settlement was, therefore, made directly as per provisions of rule 12 of the Assam Fishery Rules. The Deputy Commissioner has clearly indicated that the respondent No. 4-society is not a defaulter and no Bakijai case is pending against the society. It is a society with 100 per cent actual fishermen belonging to S/C community. Hence, after a comparative assessment between two contenders, the State passed the impugned order.

6. Mr. Majumdar, the learned senior counsel submitted that there is also complaint against the private respondent and the members of the society are not the residents of the neighbourhood of the concerned fishery. In para-3 of the impugned order, the Deputy Commissioner indicated that the members of the society reside in the neighbourhood of the fishery in question. This is, however, a matter of fact and this Court in exercise of its extraordinary jurisdiction under Article 226 has no option but to rely on the report submitted by a responsible officer of the rank of Deputy Commissioner.

7. On perusal of the impugned order and other documents on record it would be impermissible to conclude that the State has not taken into consideration all the relevant factors before the impugned order was passed. Moreover, the order of settlement was passed on 7.2.2000 and the order dated 15.2.2000 passed by this Court shows that a certificate was produced by Mr. Lahiri, the learned senior counsel to the effect that the respondents No. 4 and 5 have already taken

possession of the disputed fishery on 14.2.2000. No stay order was passed in the instant case and, therefore, it is the respondents No. 4 and 5 who are as on date operating the fishery. In the absence of any overwhelming reasons, I am of the opinion that the discretionary powers of the Court should not be exercised. The State has acted within the jurisdiction vested with it under the provisions of the Assam Fishery Rules and the decision making shows that they have taken into consideration all the relevant factors before the settlement order was issued.

8. In view of the facts and circumstances discussed above, the writ petition is devoid of any merit and the same is hereby dismissed.

9. The Registry is directed to send the LCR forthwith to the authority concerned.