

(2021) 06 GAU CK 0113

In the Gauhati High Court

Case No : Writ Petition (Civil) No. 3098 Of 2021

Nurul Hoque And 2 Ors.

APPELLANT

Vs

State Of Assam And 6 Ors

RESPONDENT

Date of Decision : 22-06-2021

Acts Referred:

Constitution Of India, 1950 — Article 226

Assam Panchayat (Financial) Rules, 2002 — Rule 49

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

Citation : (2021) 06 GAU CK 0113

Hon'ble Judges : Kalyan Rai Surana, J

Bench : Single Bench

Advocate : H R A Choudhury

Final Decision : Disposed Of

Judgement

1) Heard Mr. H.R.A. Choudhury, learned senior counsel, assisted by Mr. A.M. Ahmed, learned counsel for the petitioners. Also heard Mr. A. Roy,

learned standing counsel for respondent nos.1, 2, 4, 5 and 6 and Ms. M. Barman, learned Junior Govt. Advocate appearing for respondent no.3.

2) By filing this writ petition under Article 226 of the Constitution of India, the petitioners, who are the sitting lessees of Kalgachia Hat, Langla Hat

and Haldhiya Dharmapur Hat under Rupsi Anchalik Panchayat for period valid up to 30.06.2020, extended from time to time to 30.06.2021, claiming

common cause of action have jointly filed this writ petition, inter-alia, seeking intervention by his Court in respect of tender notice no.RAP/

(Hat/Ghat)/02/2021-22/1-5 dated 11.05.2021; and for a direction upon the respondent authorities to extend the term of the present lease up to

30.06.2022 to enable the petitioners to recover their respective losses.

3) The learned senior counsel for the petitioners has submitted that during the tenure of their 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, Barpeta (respondent no.3) had

closed their respective hats/ markets from time to time. It is submitted that the petitioners had deposited their 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 senior learned

counsel for the petitioners has submitted that in view of their 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 P&RD Department 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 by invoking the provisions of Rule 49 of the Assam Panchayat (Financial)

Rules, 2002. In support of his submissions the learned standing counsel has relied on the decision of this Court dated 02.06.2020 rendered in WP(C)

2246/2020 (Mustafa Kamal vs. State of Assam & 7 Ors.), wherein this Court had permitted the petitioner therein to submit representation to the

Commissioner to the Govt. of Assam, Panchayat & Rural Development Department, Assam with a direction to the said authority to dispose of the

same within four weeks.

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 they were 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 have 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 Panchyat 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 Panchyat to compensate Safiquil 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 Sofiquil 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, Safiquil 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 Safiquil 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

petitioner to submit their respective representation before the respondent no.2 along with such documents on which they intent to rely upon and on receipt of such representations, the respondent no.2 shall dispose of the representations within a period of 4 (four) weeks from the date of receipt of such representations along with copy of this order. It is made clear that while considering the representations, the respondent no.2 shall have due regard to the provisions of Rule 49 of the Assam Panchayat (Financial) Rules, 2002. The petitioner is granted liberty to produce a downloaded copy of this order before the competent authority, who would be at liberty to verify the correctness of the order from the website of the Court.

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.