
(2005) 12 GAU CK 0021
In the Gauhati High Court
Case No : Writ Appeal No. 363 of 2003

Pakaria-Duba Matshyajibi Samabaya Samity Ltd.	APPELLANT
Vs	
Nekara Nekeri Samabaya Samity Ltd and Others	RESPONDENT

Date of Decision : 13-12-2005

Acts Referred:

Assam Fisheries Rules, 1953 — Rule 12, 8

Citation : (2006) 2 GLT 252

Hon'ble Judges : B. Sudershan Reddy, C.J;D. Biswas, J

Bench : Division Bench

Advocate : A.K. Goswami, S. Banik and N. Borah, for the Appellant; B. Goyal and I. Choudhury, for the Respondent

Final Decision : Allowed

Judgement

D. Biswas, J.—The Appellant M/s. Pakari-Duba Matshyajibi Samabaya Samiti Ltd. was the sitting lessee of No. 33 Nekara Nekeri fishery in the Morigaon District. The term of lease was for a period of three years i.e from 5.2.2000 to 4.2.2003. The Appellant sought for extension of the lease as per provisions of Rule 8(b)(1) of the Assam Fishery Rules, 1953 on the ground that it had sustained loss to the tune of Rs. 61,718/-. The Government by the order dated 24.2.2003, in consideration of the prayer made and after taking note of the recommendation of the Deputy Commissioner, extended the term of settlement for a further period of two years with effect from 5.2.2003 to 4.2.2005 at an enhanced rate of 10% over the last annual revenue. The extension order was rescinded by an order passed on 26.2.2003 on consideration that the Appellant Society was operating another fishery, namely, Dighal Narayan Beel. On recall of the order dated 24.2.2003, the Respondent authority settled the fishery in question with M/s. No. 29 Nekara Min S.S. Ltd. and M/s. Kusumpur Pakaria Matshyajibi S.S. Ltd., Respondent Nos. 1 and 2 respectively. Again on 27.2.2003, the Joint Secretary to the Govt, of Assam, Fishery Department issued a W.T. message to the concerned Deputy Commissioner informing him that the order dated 26.2.2003 stands

cancelled and the settlement of the fishery in favour of the Appellant by way of extension be treated as valid. Accordingly, the concerned Deputy Commissioner directed the Circle Officer not to hand over possession of the fishery to the Respondent Nos. 1 and 2 until further orders. This order was passed by the Deputy Commissioner on 28.2.2003.

2. The order communicated vide WT message dated 27.2.2003 sets at rest all controversy with regard to the settlement of the fishery. By this order the settlement in favour of the Respondent Nos. 1 and 2 was recalled, thus, reviving the settlement in favour of the Appellant Society. The WT message shows that on an after 27.2.2003 the Respondent Nos. 2 and 3 had no legal right to insist for handing over possession of the fishery to them. Despite that, they took the defence that they were given possession on 28.2.2003 and the settlement made in their favour by order dated 26.2.2003 could not have been disturbed unilaterally without hearing them.

3. Being aggrieved, they approached this Court in W.P. (C) No. 1708/2003 challenging the order communicated vide WT message dated 27.2.2003 and for stay thereof. On 7.3.2003, argument was advanced on behalf of Respondent Nos. 1 and 2 that they were put in possession of the fishery on 28.2.2003. A certificate of delivery of possession was also produced before the Court. In the same breath, another certificate was also produced to show that the Appellant was put in possession on 1.3.2003. In view of this submission, the learned Single Judge directed that the possession of the Respondent shall not be disturbed and the other submission that the Appellant was put in possession on 1.3.2003 went unattended.

4. Strangely, a few days prior to the above submission made before the learned Single Judge on 3.3.2003, the Respondents moved an appeal (Case No. 23RD (Mori)/2003) before the Board of Revenue praying for stay of the order dated 28.2.2003 passed by the Deputy Commissioner. This means, till 3.2.2003 the Respondents were not in possession of the fishery, yet on 7.3.2003 they dared to make submission before the learned Single Judge that they were given possession of the fishery on 28.2.2003. Apart from this inconsistency with regard to their stand in respect of the possession, the Respondents have deliberately withheld the information from the Court that they had also approached the Board of Revenue for identical reliefs. Suppression of this vital information and misleading submission with regard to possession led the learned Single Judge to pass the interim order on 7.3.2003 allowing the Respondents to continue with the possession. Since then the Respondents are in possession on the strength of the interim direction though they have no right created in their favour by any existing order of settlement issued by the Government. Therefore, the writ petition deserved summary dismissal at the threshold for suppression of material information.

5. The dismissal of the writ petition as such does not render the Appellant eligible to get back possession since the extended period of lease is also by now over.

That apart, the extension order was cancelled by the order dated 26.2.2003 on the ground that the Appellant was also operating another fishery. This fact has not been denied by the Appellant at any point of time, either before the learned Single Judge or before this Court. The WT message shows that the order of extension was restored as because the Appellant had deposited the arrear revenue, as it does not speak anything about the possession of the other fishery, namely, Dighal Narayan Beel for which the order of extension was cancelled.

6. Mr. Goswami, learned senior counsel relied upon the decision of the Hon'ble Supreme Court in Beg Raj Singh Vs. State of U.P. and Others, Mr. Goswami submitted that the ratio available therein may be invoked in the instant case to restore possession of the fishery to the Appellant. The ratio available in Beg Raj Singh (supra), in our considered opinion, cannot salvage the situation for the Appellant for the reason that the period of settlement, as extended, has expired long back. It is not the case that the extended period is still available and the Appellant can be compensated by placing them in possession. We have also taken into consideration the decision in M/s. Luhit Erasuti Mach Mahal Samabaya Samity Ltd. v. State of Assam and Ors. 1997 (1) GLT 276. No dispute is raised in this case with regard to the constitutional validity of the proviso to Rule 12 of the Fishery Rules which are in conformity with the principles of distributive justice. This decision is of no consequences so far the question of restoration of possession is concerned. The Appellant cannot get back possession of the disputed fishery. Likewise, the private Respondents who are in possession on the strength of an interim order passed by this Court are also not entitled to continue with such possession and to operate the fishery as the order of settlement dated 26.2.2003 made in their favour was recalled on 27.2.2003. Mrs. Goyal, learned State counsel has produced the relevant office file. The file contains the orders dated 24.2.2003, 26.2.2003 and the WT message dated 27.2.2003 in original. But it does not contain any notesheet. Therefore, it is very difficult to ascertain the reason as to why the order of extension in favour of the Appellant was cancelled and again revived. Situated thus, we have no option but to conclude that neither the Appellant is entitled to get possession of the fishery at this belated stage nor the Respondents are entitled to continue with the possession of the fishery any longer.

7. In the result, the appeal is allowed and the judgment and order passed by the learned Single Judge in W.P. (C)No. 1708/2003 is hereby set aside. The writ petition is dismissed. The Respondent authority is directed to take appropriate steps for settlement of the fishery afresh strictly in compliance with the provisions of law within a period of two months from today. Till expiry of this period, the Respondent State may make necessary arrangement for operating the fishery.