

(2021) 07 GAU CK 0004

In the Gauhati High Court

Case No : Writ Petition (Civil) No. 3200 Of 2021

Santosh Malo

APPELLANT

Vs

Assam Fishery Development Corporation Ltd. And 3 Ors.

RESPONDENT

Date of Decision : 01-07-2021

Acts Referred:

Constitution Of India, 1950 — Article 226

Citation : (2021) 07 GAU CK 0004

Hon'ble Judges : Kalyan Rai Surana, J

Bench : Single Bench

Advocate : K N Choudhury

Judgement

1. Heard Mr. K.N. Choudhury, learned Senior counsel assisted by Mr. R.M. Deka, learned counsel for the petitioner as well as Mr. A. Sarma,

learned Standing counsel for the respondent nos.1, 2 and 3.

2. By filing this writ petition under Article 226 of the Constitution of India, the petitioner has assailed the order under Memo no.AFDC-367/2013/666

dated 14.06.2021, thereby granting extension of the lease period of Sonduva Pabhakati Beel of Morigaon district to the private respondent no.4 for a

period of 1 year with effect from 15.06.2021 with provision for further extension of 2 years on satisfactory completion of one year extension.

3. The learned Senior counsel for the petitioner has submitted that the petitioner is a fisherman and is interested in the said fishery in question. It is

submitted that the private respondent no.4 was initially settled with the said fishery by order dated 22.08.2015 for period of 7 years till 31.03.2020 at an

annual revenue of Rs.2251555/- amounting to Rs.1,57,60,885/- for the 7 year period. The learned Senior counsel for the petitioner has also referred to

the report on the demands for the Grant no.54 for the year 2021 which was placed before the 14th Assam Legislative Assembly, inter-alia, containing observation by the Standing Committee, recommending that the department should take which is extracted below:

8. The Committee has observed that beels under AFDC Ltd, are leased out for a particular period followed by extension of the leasing period, which is not healthy practice from development perspectives.

The Committee has strongly recommended that department should take necessary action in respect of leasing of beels under AFDC and

collect a report from AFDC Ltd on list of all beels where lease period has been extended with the ground on which extension was given. The

Committee further recommended that based on the report the Department should initiate an enquiry on the issue and submit the enquiry

report in due course of time.

The Committee recommends that henceforth there shall not be any further extension of time period of leased/ to be leased out beels under

AFDC under any circumstances once settled for a definite period. The claims of the lease in this regard shall not be entertained

under any circumstances and no further extension of time shall be entertained to the said lease and the beels will be settled in a fresh

manner as per procedure.

The Committee also recommended that the Department should arrange a combined visit along with the district administration, local MLA,

Panchayat representatives and other concerned, as deemed fit, to Kapla Beel, Barpeta District at the earliest to examine the present

situation of beel development and the issues related to encroachment and conflicts aroused therein.

4. It is further submitted that in a similar case of Atul Chandra Das Vs. State of Assam and 2 ors, WP(C) 2368/2021, the Standing counsel for the

respondent no.1 has placed the same report before the Court and this Court by order dated 31.03.2021, after referring to the said order, merely issued

a notice. Accordingly, it is submitted that based on the said recommendations, interim prayer for extension of the said fishery after 31.03.2021 was not

considered.

5. By again referring to the settlement order dated 22.08.2013 and juxtapose

the same with the present impugned order dated 14.06.2021, it is submitted that the initial revenue was fixed at Rs.22,51,555/- which has been reduced in the impugned order to an annual revenue of Rs.10,35,188/- and it is submitted that from the said reduction of annual revenue, it prima-facie appears to him that the government in the respondent no.1 had granted remission to the petitioner and accordingly it is submitted that having granted remission in the matter of revenue, the further relief of extension of lease could not have been granted, thereby giving two reliefs.

6. It is also submitted that tenure of the original lease having been expired on 31.03.2021, the respondent nos.1, 2 and 3 by virtue of the impugned order have extended a dead lease, which not have been done.

7. Vehemently opposing the prayer for interim relief, the learned Standing counsel for the respondent nos.1, 2 and 3 submits that in the present case in hand, the order of extension of the fishery has already been passed on 14.06.2021 and accordingly, as the private respondent no.4 has already acted in accordance with the order of extension, if any interim order is passed at this stage it would affect the revenue of the respondent nos.1, 2 and 3 and would also cause loss to the respondent no.4.

8. In view of the nature of grievance raised in the present writ petition, let a notice returnable on 30.07.2021 be issued. As learned Standing counsel accepts notice on behalf of respondent nos.1, 2 and 3, requisite extra copies of the writ petition be furnished within 2(two) days. Steps be taken within 2(two) days for service of notice on the respondent no.4 by registered post with A/D. Liberty is granted to the learned counsel for the applicants to collect the postal receipt number from the Registry so as to track service through the postal website of India Post and to submit the track report before the Registry prior to the next date fixed.

9. Considered the prayer for interim relief. In the present case in hand, the learned Senior counsel for the petitioner has been able to prima-facie satisfy this Court by placing reliance on the para-8 of the report of the Standing Committee.

10. It is further seen that while passing the impugned extension order dated 14.06.2021, consideration of the respondent no.2 was that the order of extension was passed to honor the order dated 04.08.2020 passed by this Court in WP(C) 2943/2020. On a perusal of the said order available at

Annxure-7, it is seen that this Court had merely directed the respondent no.2 for a fresh consideration for the matter by taking relevant materials on record. And therefore, the Court is unable to accept that the said order contained any direction to extend the period of lease.

11. It is further observed that by the impugned order, the respondent no.1 has not got any advantage in so far the revenue is concerned, rather the annual revenue which was earlier fixed at Rs.22,51,555/- has been reduced to Rs.10,35,188/-. Under such circumstances, as an ad-interim measure the Court is inclined to stay the operation of the order under Memo No.AFDC-367/2013/666 dated 14.06.2021 till the next returnable date.

12. This order of interim stay would not be a bar for the respondent no.1 to carry on fishing through weekly, by-weekly and/or daily basis settlement which may be done by giving wide publicity as provided in the rules, giving opportunity to all the participants.

13. List the matter on 30.07.2021.