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**(2006) 10 GAU CK 0017**  
**In the Gauhati High Court**

Shillong Municipal Board

APPELLANT

Vs

Upstar Lyngdoh

RESPONDENT

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**Date of Decision :** 31-10-2006

**Acts Referred:**

Civil Procedure Code, 1908 (CPC) — Section 151, 94

**Citation :** (2007) 1 GLT 234

**Hon'ble Judges :** T. Vaiphei, J

**Bench :** Single Bench

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**Judgement**

T. Vaiphei, J.—With the consent of both the parties, these revision petitions were heard together and are being disposed of by this common judgment at the admission stage.

2. The Revision Petition No. 16(SH) 2006 is directed against the order dated 01.08.2006 passed by the learned Addl. Deputy Commissioner, Shillong in Civil Misc. Application No. 29(T) 2006 arising out of Revision Petition No. 1(T) 2006. While the Revision Petition No. 17(SH) 2006 is directed against the order dated 29.06.2006 passed by the learned Deputy Commissioner, East Khasi Hills District, Shillong in Misc. Civil Appeal No. 4(T) 2006 arising out of FAO No. 2006, as the facts involved in the revision petitions are inter connected, for the sake of convenience, it will suffice if the facts of Civil Revision Petition 16(SH) 2006 are noticed at the outset.

3. The Shillong Municipal Board, which is the petitioner, by the notice dated 12.08.2003 had invited tenders from interested parties to submit their bids for the lease of the Laitkor Toll gate for the period commencing from 18.03.2002 to 03.03.2004. The respondent, who is the petitioner in CR (P) No. 17 (SH) 2006, being the highest bidder, was selected by the petitioner for settlement of the toll gate, but due to the disruption in its operation, it was only on 28.10.2005 that an agreement was executed between the parties for collection of tolls for a period of 9 months with effect from 1.11.2005 to 31.07.2006 and that following this, the work order dated 03.11.2005 was issued in favour of the respondent. The

agreement dated 28.10.2005 and the letter dated 03.11.2005 are annexed to the revision petition, which are marked as Annexure 1 & 2 respectively. When the respondent defaulted in making payment of the rent amounting to Rs. 7,33,400/- (Rupees Seven lacs Thirty Three thousand Four hundred) only and also expressed his inability to run the Toll gate unless the contractual amount was reduced, the petitioner vide letter dated 01.06.2006 terminated the contract and directed the respondent to stop the collection of the tolls with immediate effect and also directed him to deposit the said rent arrears due on or before 07.06.2006. This prompted the respondent to file Title Suit 23(T) 2006 before the learned Assistant to the Deputy Commissioner, Shillong for a declaration that the letter dated 01.06.2006 is null and void and for specific performance of the said agreement dated 28.10.2005. The respondent also simultaneously filed an application for interim injunction, which was registered as Misc. case No. 63(T)2006. A copy of the plaint and the application for injunction are also annexed to the revision petition and marked as Annexure 4 & 5 respectively. On receipt of notice/summons from the learned Trial Court, the petitioner filed its written statement as well as written objection showing cause against the prayer for interim injunction on 16.06.2006 whereupon the Trial Court fixed 20.06.2006 as the date for hearing of the interim injunction. It appears that when the interim petition came up for hearing on 20.06.2006, the petitioner sought adjournment on the ground that its counsel was indisposed. The trial court rejected the prayer for adjournment and granted ad-interim injunction restraining the petitioner from giving effect to the said letter dated 01.06.2006 or from interfering in any manner with the running of the toll gate by the respondent at Laitkor. The Trial Court also on the same date made the interim injunction absolute.

4. It would also appear that the petitioner filed an appeal from the said order dated 20.06.2006 before the learned Addl. Deputy Commissioner, Shillong contending that the trial court completely overlooked the vital fact that the contractual period for the Toll Gate in question was only for nine months and could be ending on 31.07.2006, which could not be extended beyond the aforesaid period and also ignored the show cause reply filed by it. The said appeal is stated to be pending for disposal. However, in the meantime, taking the view that the said agreement of lease was to expire on 31.07.2006, the petitioner issued a Notice inviting Tender (in short NIT), which was published in the daily. The Shillong Times, in its issue dated 11.06.2006 calling for fresh tender for running the said Laitkor Toll Gate. The respondent then promptly filed an application u/s 94 read with Section 151 CPC before the trial Court for suspending the operation of the said NIT and to allow him to run the Toll Gate as per the interim injunction order dated 20.06.2006. It appears that no order was passed by the trial Court on this application whereupon the respondent filed a revision petition being (C) Revision Petition No. 1 (T) before the court of the Additional Deputy Commissioner, Shillong which vide Order dated 30.06.2006 suspended the said NIT until further orders. In the meantime, the petitioner vide the letter dated 31.07.2006 (Annexure 12) informed the respondent that since

the term of the contractual agreement had expired, he should hand over operation of the Toll Gate on 01.08.2006. This again prompted the respondent to file another application u/s 94 CPC, being (C) Misc. Application No. 29(T) 2006 before the Court of the Additional Deputy Commissioner, Shillong who vide the impugned order dated 01.08.2006 directed the petitioner to immediately stop the operation of the notice dated 31.07.2006 till the matter of operation of the Toll gate in question was resolved by due process of law. It is this order which is now under challenge in CR(P)No. 16 (SH) 2006.

5. Mr. TT Diengdoh, the learned Counsel for the petitioner submits that the learned Additional Deputy Commissioner has completely erred in law in staying the NIT dated 31.07.2006 when the contractual agreement between the petitioner and the respondent executed on 28.10.2006 had already expired by efflux of time on 31.07.2006 thereby denuding the right of the respondent to continue collection of the tolls thereafter. According to the learned Counsel for the petitioner, the net effect of the impugned order is that the respondent is virtually giving the respondent a free hand in the collection of tolls in terms of the said agreement which had expired by efflux of time. It is also contended by the learned Counsel for the petitioner that when the agreement in question had already expired on 31.07.2006, no court or authority could have granted specific performance of such an agreement which was no longer in vogue. Contending that the learned Additional Deputy Commissioner acted without jurisdiction in suspending the NIT and the letter dated 01.08.2006, the learned Counsel for the petitioner, therefore, prays that the impugned order is liable to be interfered with by this Court in exercise of its revisionary jurisdiction. It is, however, the contention of Mr. S. Sen, the learned Counsel for the respondent that the term of the agreement in question has not expired and in any case the question whether the said agreement has expired or not is a matter yet to be decided by the trial court in TS No. 23(T) 2006 and as such it cannot be said that the learned Additional Deputy Commissioner has acted without jurisdiction in passing the impugned order. Vehemently supporting the impugned order, the learned Counsel for the respondent submits that the impugned order was passed by the learned Additional Deputy Commissioner after satisfying himself that the respondent made out a prima facie case, that the balance of convenience was in favour of the respondent and further that irreparable damage would be caused to him if no interim injunction was issued. Since the learned Additional Deputy Commissioner was exercising his dictreetary power in granting the interim inunction, maintains the learned Counsel for the respondent, such discretionary jurisdiction exercised by the Subordinate Court is not liable to be interfered with in a revision petition, more so, when the petitioner could not show that the discretionary power was exercised capriciously or arbitrarily. Contending that the impugned order does not suffer from any jurisdictional error, the learned Counsel for the respondent prays for upholding the impugned order and dismissal of the revision petition.

6. After hearing the counsel for the rival parties and after going through the

materials on record including the agreement dated 28.10.2005 which is at Annexure-1 as modified by the letter dated 03.11.2005 at Annexure 2. It is quite apparent that the agreement was for a period of nine months commencing from 01.11.2005 to 31.07.2006. Though the agreement at Annexure 1 seems to convey the idea that the Toll gate was for a period of one year from 18.03.2003 to 03.03.2004, it appears that the agreement was not carried out immediately due to disruption of the operation of the toll gate in question. What actually happened appears to be that the letter dated 03.11.2005 issued by the Chief Executive Officer, Shillong Municipal Board (Annexure 2) had modified the earlier agreement and allowed the respondent to operate the Toll Gate for a period of nine months with effect from 03.11.2005. The net effect of Annexures-1 and 2 appears to be that the original agreement executed between the petitioner and the respondent was subsequently modified and that the period of the agreement was now limited to nine months as stipulated in the said letter i.e. the agreement was to expire on 31.07.2006 when the period of nine months in the agreement got expired. Prima facie, when the agreement got expired on 31.07.2006 by efflux of time, the question of carrying out the agreement beyond 31.07.2006 does not arise. In other words, when the contract period was over by 31.07.2006, the respondent could not have any right to demand specific performance of such contract. In the light of the agreement at Annexure 1 and the letter at Annexure 2, the validity whereof has not been challenged, the burden of proof that the period of agreement is beyond 31.07.2006 is upon the respondent. May be, in the course of trial and after adduction of evidence by both the parties, the trial court may eventually come to a finding that the period of agreement is indeed beyond 31.07.2006 in which case the suit may be decreed in favour of the respondent and that even if no specific performance of contract can be decreed, the petitioner may be held liable to pay damages/compensation for a breach of contract. But the fact remains that at this stage, no clinching evidence, documentary or otherwise, could be produced by the respondent to show that the agreement was for a period beyond 31.07.2006.

7. Under the aforesaid circumstances, any interim injunction order having the effect of extending the period of agreement would be contrary to law and would amount to granting fresh right to the respondent to continue collection of tolls, which is neither sanctioned by law nor by the agreement in question. Once it is prima facie found that the agreement in question has already expired by efflux of time, the petitioner is apparently well within its authority to float a fresh tender to invite bids from interested parties for settlement of the Toll Gate. The respondent in such a case cannot have any right or grievance to make a complaint that the petitioner is barred by law or otherwise to issue the NIT in question or the letter dated 01.08.2006 extending the period for submitting the tender. In my judgment, the learned Additional Deputy Commissioner, Shillong has completely gone astray and overreached himself by passing the impugned order which has the effect of allowing the respondent to collect tolls at the check gate in question beyond the contracted period. In this connection, the case of

Ranbir Singh Vs. Satbiro Devi and Others, , which is a decision rendered by Three Judge Bench of the Apex Court is quite instructive. In that case, the term of office of Panchayats and Zilla Parishads had ended on 15.01.2000. The Sarpanch holding the office had challenged her removal from the office prior to the expiry of the term on the ground that the removal was arbitrary and illegal. The High Court apparently granted an order staying the order of removal pending the decision of the writ petition. On the basis of the stay order, the Sarpanch continued to hold the office. The Apex Court, in an appeal, held that the stay granted by the High Court was operative only till the day on which her term came to an end and that the stay order could not have extended the term of any elected office. In the instant case also, the agreement in question which, prima facie, was found to be operative only till 31.07.2006, could not be held to be operative beyond such period. In other words, the injunction order could not have been operative beyond 31.07.2006 and the same must be held co extensive or co-terminus with the term of the agreement. In the result, the learned Additional Deputy Commissioner has improperly exercised his jurisdiction by staying the NIT as well as the letter extending the period for submission of the tender in connection therewith when the very basis of the case of the respondent, namely, the agreement in question has prima facie been found to have expired by efflux of time on 31.07.2006.

8. For the reasons stated in the foregoing, this revision petition is allowed. The impugned order dated 01.08.2006 passed by the learned Additional Deputy Commissioner, Shillong be and is hereby set aside. However, on the facts and circumstances of the case, there shall be no order as to costs.

CR(P)No. 17(SH) 2006

9. On carefully perusing the revision petition, it is distressing to note that the petitioner did not even bother to state the case number of FAO and the connected Misc. Case. These are material omissions. The petitioner is expected to and must, mention the exact/correct case number of the connected cases in the revision petition. The revision petition is thus conspicuous by these defects. Such defective revision petition cannot be entertained. It is not the duty of this Court to make up the deficiency in the pleadings of the parties. Consequently, this revision petition is dismissed at the very threshold for defective pleadings.