(2020) 08 GAU CK 0001

In the Gauhati High Court

Case No : Writ Petition (C) No. 2943 Of 2020

Sudhindra Das APPELLANT

Vs

Assam Fisheries Development Corporation Ltd. And 2 Ors RESPONDENT

Date of Decision : 05-08-2020

Acts Referred:

Citation : (2020) 08 GAU CK 0001

Hon'ble Judges : Achintya Malla Bujor Barua, J

Bench : Single Bench

Advocate : D Das

Final Decision : Allowed

Judgement

1. Heard Mr. D. Das, learned counsel for the petitioner. Also heard Mr. A. Sarma, learned standing counsel for the respondent AFDC.

2. The petitioner was settled with the Sonduba Pavakati Beel of Morigaon District. As per the order of the Managing Director of AFDC dated

22.08.2013, the settlement was for a period of 7(seven) years for a total revenue of rs.1,57,60,885/- (Rupees One Crore Fifty Seven Lakh Sixt

Thousand and Eight Hundred Eighty Five) and was to have its effect up-to 31.03.2020. Before the expiry of the term of the settlement, the petitioner

made an application before the Managing Director of AFDC, seeking extension on the ground that the operation of the Fishery became unworkable

because of siltation and other factors.

3. In this respect, reports were called for and the report of the Project Manager dated 28.03.2019 provides as under:

â??It is true at present about more than 120 bigha from the western part of Chanduba beel under Bhuragaon Revenue Circle has become shallow as the said portion has been filed with sand coming with the flood water of the river bramhaputra. During inspection I have come to learn from the local

people that the aforesaid portion that has been filed up by sand there used to be huge production of fish in the past but recently the lessee has been

deprived of the production and revenue from the said portion of the beel. Thus, request is being made to grant remission of revenue in respect of the

said part of the fishery.

The Chanduba Meen Mahal falls under Revenue Circle of Bhuragaon and Lahorighat. Since there was no demarcation of the boundary of the fishery

during flood season the local people used to carry on illegal fishing causing loss of revenue of the fishery. Thus, request is being made to fix the

boundary of the fishery with the help of the aforesaid Revenue Circles.â??

4. Further, the report of the Circle Officer dated 30.01.2020, amongst others, also contains the following:

â??It is to be mentioned here that the above cited sand filling has been done by the flood water of river Brahmaputra in the year 2017. In this regard

the trace maps of the above mentioned 9 (Nine) villages are enclosed herewith.â??

5. As the respondents in the AFC had not done the needful, the petitioner approached the Court by way of WP(C) No. 2175/2020 and a final

consideration was given by the judgment dated 09.06.2020.

6. The operative portion of the judgment dated 09.06.2020 is as under:

â??22. From the records it is seen that the lease agreement between the petitioner and the respondent AFDCL pertaining to the said Beel contains

relevant provisions for extension of period of its lease and also for increase of revenue for the said Beel due to such extension payable to the

respondent AFDCL. It is already noted above that the petitioner is in possession of the said Beel and is also fishing on it. The petitioner shall continue

to possess the said Sonduba Pavakati beel of Morigaon District of AFDCl till disposal of his said representations by the respondents in the AFDCL.

But the petitioner shall pay the necessary revenue etc. to the respondent AFDCL for being in possession of the said Beel and for fishing on the same

for the period from 01.04.2020 till his authorized possession of the said Beel. The rate of revenue for the said period, the mode of payment and the

time period for payment, payable by the petitioner shall be determined and prescribed by the respondent AFDCL, in accordance with law, intimating

him in advance.â??

7. The requirement of the judgment dated 09.06.2020 is apparently that the lease agreement between the petitioner and the AFDC contains relevant

provisions for extension of the period of lease and also for increase of revenue for the fishery due to such extension. Further, the petitioner would

continue to remain in possession of the fishery in question till disposal of his representation and for the purpose, the petitioner shall pay the necessary

revenue etc. for being in possession for the period onwards of 01.04.2020.

8. In the judgment dated 09.06.2020, it was also taken note of that the Circle Officer, Bhuragaon Revenue Circle, Morigaon had submitted a report

dated 30.01.2020, meaning thereby that such report is also to be given due consideration in the order to be passed by the Managing Director of AFDC

pursuant to the requirement of the judgment dated 09.06.2020.

9. In the circumstance, the order dated 13.07.2020 has been passed by the Managing Director, AFDC. In the order dated 13.07.2020, the Managing

Director although takes into account the report of the Project Manager dated 28.03.2019 and the report of the Circle Officer dated 30.01.2020, but it

is noticeable that the report of the Project Manager dated 28.03.2019 has not been discussed at all, other than, a mere sentence that â??the Report of

the Project Manager dated 28.03.2019 is seenâ??.

10. As regards the report of the Circle Officer, the Managing Director has noticed that the report contains that erosion in the concerned fishery took

place in the year 2004-2005, but no notice was taken of the other provision of the report that the erosion had also taken place in the year 2017.

11. The Managing Director also takes the view that apart from Clause 36(kha) of the agreement, there is no other provision for grant of any extension

and Clause 36(kha) relates to an extension to be given in a circumstance where some development had been made by the settlement holder by taking

loans from financial institutions.

12. We have perused the view of the Managing Director pertaining to Clause 36(kha) but we are unable to accept the same to be the only basis to

reject the representation for extension, in as much as, by the judgment dated 09.06.2020, this Court had given a direction to the Managing Director to consider the representation for extension, meaning thereby that the consideration on a merit of the claim of the extension has to be decided by the

Managing Director. If any such plea was available, that no extension can be granted beyond Clause 36(kha) of the agreement, the same ought to have

been raised in earlier proceeding in WP(C) No. 2175/2020 and the same having not been done, it would be impermissible for the Managing Director to

now rely on the said provision to reject the claim of the writ petition.

13. In the above, particularly the reason that the entire materials before the Managing Director being the report of the Project Manager dated

28.03.2019 and the report of the Circle Officer dated 30.01.2020 were not taken into consideration while issuing the order dated 13.07.2020, we

interfere with the order dated 13.07.2020 and remand the matter back to the Managing Director for a fresh consideration by taking into consideration

of the relevant materials on record.

14. The same be done within a period of 14(fourteen) days from today. The period of 14(fourteen) days from today is as per the submission of Mr. A.

Sarma, learned who shall inform the Managing Director about the requirement of this Order.

15. Till such final consideration is given, the earlier interim arrangements provided in the judgment dated 09.06.2020 shall continue.

16. The writ petition stands allowed in the above terms.

17. We are disposing of the writ petition at the stage of motion itself for the reason that as a prima facie case has been made out which requires an

interim order to be passed, but the same may affect the balance of convenience between the parties. Further the law of mandamus also provides that

if any relevant matter had not been taken into consideration, the appropriate remedy is to send the matter back to the authority for a fresh

consideration.

18. Considering both the aspects, it is deemed appropriate that a direction to pass a fresh order would be more purposeful, rather than issuing notice

and pass an interim order, which would serve the interest of both the parties.