
(2018) 04 GAU CK 0030
In the Gauhati High Court
Case No : WP(C) 7867, 6731 of 2016

TALIMUL RAHMAN,

APPELLANT

Vs

THE STATE OF ASSAM,

RESPONDENT

Date of Decision : 05-04-2018

Acts Referred:

Assam Municipal Act, 1956 — Section 148(2)

Citation : (2018) 04 GAU CK 0030

Hon'ble Judges : ARUP KUMAR GOSWAMI

Bench : Single Bench

Final Decision : Disposed Of

Judgement

1. Heard Mr. A.I. Uddin, learned counsel for the petitioners in WP(C) No.7867/2016 and for the respondent Nos.5 to 8 in WP(C) No.6731/2016. Also

heard Mr. D.K. Sarmah, learned counsel for the petitioner in WP(C) No.6731/2016, who is the respondent No.6 in WP(C) No.7867/2016. I have also

heard Mr. T.C. Chutia, learned State counsel, appearing for the respondent Nos.1, 2 & 3 in WP(C) No.7867/2016 and for the respondent Nos.1 & 2

in WP(C) No.6731/2016, Mr. P.S. Bhattacharyya, learned counsel, appearing for the respondent Nos.4 & 5 in WP(C) No.7867/2016 and for the

respondent Nos.3 & 4 in WP(C) No.3731/2016.

2. The petitioner Nos.1 & 2 in WP(C) No.7867/2016 are brothers and the petitioner Nos.3 & 4 are the wife and daughter, respectively, of petitioner

No.2. Their case is that there was a vacant space in the New Market under Dhubri Municipal Board (for short, "Board") and coming to know

that with a view to raise fund, the Board decided to allot the said vacant space to extend the New Market area, the petitioners submitted applications

on 28.09.2015 requesting the Board to allot the vacant space to them. Further case of the petitioners is that the Board had entrusted the Ward

Commissioners of Ward Nos.5 & 7 to examine feasibility of allotment of the stalls and to submit a report and accordingly, a report was submitted by

them, which was considered in the meeting of the Board on 06.02.2016 and vide resolution No.4(C), the Board had resolved to allot vacant space for

stalls. Accordingly, stall Nos.B(III)/11, B(III)/12, B(III)/13 and B(III)/14 were allotted to the petitioner Nos.3, 4, 2 & 1, respectively, by an office

order dated 21.04.2016. After taking physical possession, the petitioners had filed an application on 28.10.2016 before the Board requesting them to

provide security for the purpose of construction of stalls and thereafter, a foundation stone was laid on 29.10.2016. However, on 10.11.2016, the

respondent No.4 instructed the petitioners to stop construction in view of a writ petition filed by the present respondent No.6 in WP(C) No.6731/2016

and accordingly, they had stopped construction of the works.

3. In WP(C) No.6731/2016, the case projected by the petitioner is that pursuant to a tender notice dated 13.03.2015, New Market was settled with

him by an order dated 31.03.2015 for a period of 1(one) year w.e.f. 01.04.2015 to 31.03.2016 and thereafter, the said period was extended up to

31.03.2017 at an enhanced rate of 5%. During pendency of the writ petition, the term was again extended up to 31.03.2018 by order dated

01.04.2017. It is pleaded in the petition that the vacant space in the Fish Market area of New Market is a part of the lease granted to the petitioner,

which was allotted to the respondent Nos.5 to 8 of WP(C) No.6731/2016 and in the said area, Fish Traders are doing their business. It is also pleaded

that while allotting the space to the respondent Nos.5 to 8 in WP(C) No.6731/2016, no Notice Inviting Tender (NIT) was issued proposing to make

any allotment and that the same has been allotted in a most illegal and arbitrary manner to the members of only one family.

4. Mr. D.K. Sarmah, learned counsel for the petitioner in WP(C) No.6731/2016, has submitted that even assuming that the Board had any authority to

allot space of a Municipal Market to any private person for construction of stalls, the same has to be done only by a transparent process by issuing

NIT and in the instant case, no such NIT was issued. It is further submitted by him that during the currency of settlement period with the petitioner in

WP(C) No.7867/2016 [respondent No.5 to 8 in WP(C) No.6731/2016], even otherwise, such allotment could not have been given depriving the lessee of collecting tolls.

5. Though not pleaded in the writ petition, Mr. A.I. Uddin, learned counsel for the petitioner in WP(C) No.7867/2016, has submitted that there was

beating of drum based on which the petitioners in WP(C) No.7867/2016 [respondent Nos.5 to 8 in WP(C) No.6731/2016] had responded and,

therefore, there is no illegality in allotment of stalls. It is submitted by him that even if stalls are erected, the lessee can certainly collect tolls from such

stall owners and, therefore, the plea put forward by Mr. Sarmah that the lessee will suffer loss, cannot be countenanced. He has also submitted that

each of the allottees of stalls had deposited ` 10,000/- (Rupees Ten Thousand) to the Board and, therefore, they may be permitted to carry on with the

construction activities and to set up their own stalls. He has further submitted that in terms of Section 148(2) of the Assam Municipal Act, 1956 (for

short, '1956 Act'), the Board is empowered to allot space for setting up of stalls. He also submits that Rules for Procedure for the Sale of

Pounds and Markets by Municipal Boards and Town Committees in Assam (for short, 'the Rules') does not prescribe issuance of NIT in respect

of allotment of stalls.

6. Though no affidavit has been filed by the Board in both the writ petitions, Mr. Bhattacharyya, learned counsel, appearing for the Board has candidly

submitted that no NIT, which is the norm, was followed while passing the order dated 21.04.2016 allotting stalls in favour of the petitioners in WP(C)

No.7867/2016, who are the respondent Nos.5 to 8 in WP(C) No.6731/2016. He has also submitted that the Board will reconsider its resolution

No.4(C) adopted in its meeting dated 06.02.2016 in the light of the provisions contained in the 1956 Act.

7. The report submitted by the Ward Commissioners of Ward Nos.5 & 7, based on which resolution dated 06.02.2016 was adopted, has not been

placed before the Court by the Board. The resolution does not indicate the source of power to allot vacant space and it also does not indicate that

private parties could be allotted vacant space for construction to be raised by them. The impugned order dated 21.04.2016, on the other hand, shows

that the allottees would have to construct stalls on their own. What is the rent

has also not been mentioned in the said allotment order and it is vaguely stated that the decision of the Municipal Board regarding rent of the stalls shall be final.

8. The petitioners in WP(C) No.7867/2016 have not brought on record any document to indicate that the Board had fixed any particular sum of money as the amount of rent but have only annexed 4(four) receipts showing payment of ` 10,000/-(Rupees Ten Thousand) each by each of the allottees. On what basis ` 10,000/-(Rupees Ten Thousand) was paid is not discernible.

9. Section 148(2) of the 1946 Act does not authorize allotment of vacant space as is sought to be argued by Mr. Uddin but the same only empowers the Board to levy rent, tolls and fees at such rates as it may think proper for the right to expose goods for sale in a Municipal Market and for the use of shops, stalls standing thereon and also in respect of market place and parking lots. The Rules do not envisage allotment of vacant space for the purpose of construction of stalls and the said Rules deal with only sale of pounds and markets. Therefore, reliance placed on the Rules is misconceived.

10. It is too late in the day to contend that distribution of public largesse can be resorted to without some form of notice being issued for the awareness of the public to participate in the process. Not only that, the process has to be open, clear and transparent, which admittedly is not so in the instant case. What is evident from record is that no NIT was issued for allotment of stalls and members of one family had been allotted 4(four) stalls and, therefore, on this count alone, the allotment order dated 21.04.2016 is liable to be interfered with.

11. Accordingly, the impugned order dated 21.04.2016 in WP(C) No.6713/2013 issued by the Executive Officer, Dhubri Municipal Board is set aside.

For the same reason, the prayer for a writ of mandamus as sought for by Mr. Uddin in WP(C) No.7867/2016, directing the respondents to permit the petitioners to raise construction and to allow the petitioners to start their business is rejected. As submitted by Mr. Bhattachyia, Board may give a relook to the resolution Nos.4(C) as adopted in the meeting dated 06.03.2016 and no final expression is recorded on the validity of the said resolution.

However, the Board is directed to refund ` 10,000/- (Rupees Ten Thousand) paid by each of the petitioners within a period of 2(two) months from the

date of receipt of a certified copy of the order.

12. With the above observations and directions, both the writ petitions stand disposed of.