

GAHC010137442024



THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/3512/2024

THE BRAHMAPUTRA PART III MACH MAHAL SAMABAI SAMITTEE LTD
REPRESENTED BY ITS CHIEF EXECUTIVE, SRI PADMADHAR DAS, VILL-
BHITORKOKILA, P.O.-NEAMATIGHAT, DIST-JORHAT, ASSAM

VERSUS

THE STATE OF ASSAM AND 9 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE
GOVERNMENT OF ASSAM, FISHERY DEPARTMENT, DISPUR, GUWAHATI-
06

2:THE PRINCIPAL SECRETARY TO THE GOVERNMENT OF ASSAM
FISHERY DEPARTMENT
DISPUR
GUWAHATI-6
DIST-KAMRUP
ASSAM

3:THE JOINT SECRETARY TO THE GOVERNMENT OF ASSAM
FISHERY DEPARTMENT
DISPUR
GUWAHATI-6
DIST- KAMRUP
ASSAM

4:THE DEPUTY SECRETARY TO THE GOVERNMENT OF ASSAM
FISHERY DEPARTMENT
DISPUR
GUWAHATI-6
KAMRUP
ASSAM

5:THE DEPUTY COMMISSIONER
JORHAT
ASSAM
PIN-785001

6:THE DEPUTY COMMISSIONER
MAJULI
ASSAM
PIN-785110

7:THE CIRCLE OFFICER
TEOK REVENUE CIRCLE
DIST-JORHAT
ASSAM
PIN-785112

8:THE CIRCLE OFFICER
KAMALABARI REVENUE CIRCLE
MAJULI
ASSAM
PIN-785110

9:THE DISTRICT FISHERY DEVELOPMENT OFFICER
GARMUR
JORHAT
ASSAM
PIN-785001

10:THE DISTRICT FISHERY DEVELOPMENT OFFICER
GARAMUR
MAJULI
ASSAM
PIN-78510

For the Petitioner(s) : Mr. P. Pathak, Sr. Advocate
: Ms. P. Barman, Advocate
: Ms. N. Banikya, Advocate

For the Respondent(s) : Mr. K. Gogoi, Government Advocate
: Mr. P. Sarmah, Standing Counsel

**BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH**

ORDER

Date : 15.07.2024

Issue notice making it returnable by 09.08.2024.

2. Mr. P. Sarmah, the learned Standing Counsel appears on behalf of the Respondent Nos. 1, 2, 3, 4 & 9 and Mr. K. Gogoi, the learned Government Advocate appears on behalf of the Respondent Nos. 5, 6, 7 and 8.

3. As the Respondent Nos. 1 to 9 are duly represented by their respective learned counsels, extra copies of the writ petition be served upon them during the course of the day.

4. The case of the Petitioner herein is that the Petitioner was earlier settled with the No.19, Brahmaputra Part-III (A) Fishery for a period of 7 years from 2008-2015. However, the said fishery would not be operated on account of various difficulties and the same appears to have been admitted by the Respondent Authorities in the various orders including the order dated 17.06.2022.

5. Vide the order dated 17.06.2022, the Respondent Authorities taking into account that an amount of Rs.7,76,666/- have been duly paid, allowed the petitioner to run the fishery for another two years from the date of expiry of the current extended period on 30.10.2022 @ 25% above existing revenue of fishery of Rs.3,88,333/- subject to various conditions. Subsequently, this order was modified vide another order dated 02.06.2023 whereby it was categorically observed that the Petitioner society shall operate the fishery in terms with the order dated

17.06.2022 @ Rs.1350/- per day for Rs.4,85,416/- per annum at 25% above existing revenue of Rs.3,88,333/-. It was also observed that the extended tenure shall be counted from the date of handing over the possession in terms with the order dated 17.06.2022. It was also mentioned that it appeared that the Deputy Commissioner had not formally handed over the possession in terms with the earlier order dated 17.06.2022. In Clause-4 of the said order dated 02.06.2023, it has been categorically mentioned that as soon as the period in terms with the number of days is over during which the amount of Rs.7,76,666/- shall be deemed to be recouped by the lessee society @ Rs.1350/- per day, the possession of the fishery shall be taken over without waiting for any further Government instructions and keep it as Khas.

6. Mr. P. Pathak, the learned Senior counsel appearing on behalf of the Petitioner submitted that taking into account the Clause-4, the Petitioner would have been entitled to run the fishery for 575 days taking into account Rs.1350/- per day as against Rs.7,76,666/-. The learned Senior counsel further drew the attention of this Court to the Certificate of Handing over possession of the fishery boundary dated 22.02.2024 which categorically shows that the boundary of the fishery was handed over to the petitioner society only on 22.02.2024. However, it appears thereafter that on 11.06.2024, the Commissioner and Secretary to the Government of Assam, Fishery Department had issued the impugned order whereby it was observed that the Petitioner has already recouped the loses. The said order prima facie appears to be contrary to the earlier order dated 02.06.2023 issued by the Commissioner and Secretary, Government of Assam, Fishery Department inasmuch as taking into account Rs.1350/-

per day and the date of handing over the possession on 22.02.2024, the amount of Rs.7,76,666/- could not have been recouped.

7. This Court has also taken note of the submission of Mr. P. Sarmah, the learned Standing counsel for the Fishery Department who submits that this has been done in view of the fact that the Petitioner was settled on daily basis and in view of certain orders being passed by the Co-ordinate Bench of this Court in WP(C) No.1911/2024. In the prima facie opinion of this Court, the said order passed by the Co-ordinate Bench of this Court dated 09.04.2024 in WP(C) No.1911/2024 would not be applicable in view of the fact that the said order relates to allowing running of fishery on daily basis which is completely different in the instant case taking into account that the instant fishery is being run on the basis of an extension being granted in exercise of powers conferred under the Fishery Rules.

8. In view of the above, this Court is of the opinion that the impugned order dated 11.06.2024 may require interference and as such this Court stays the order dated 11.06.2024. This Court further takes note of that pursuant to the impugned order dated 11.06.2024, there is another order dated 25.06.2024 has been passed by the Deputy Commissioner, Jorhat. The said consequential order dated 25.06.2024 shall also remain stayed till the next returnable date.

9. List accordingly.

JUDGE

Comparing Assistant