GAHC010165892021



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

Case No.: WP(C)/5463/2021

PARTHA PROTIM BORA S/O- RAJEN BORA, R/O- JONAKI NAGAR, NEAR FOREST COLONY, P.O. P.S. GOLAGHAT, DIST.- GOLAGHAT, ASSAM, PIN- 785621

VERSUS

THE STATE OF ASSAM AND 5 ORS REP. BY THE COMM. AND SECY. TO THE GOVT. OF ASSAM, ENVIRONMENT AND FOREST DEPTT., DISPUR, GHY-6

2:THE PRINCIPAL CHIEF CONSERVATOR OF FORESTS AND HEAD OF FOREST FORCE ASSAM PANJABARI GHY-37

3:THE ADDL. PRINCIPAL CHIEF CONSERVATOR OF FORESTS (T) UPPER ASSAM ZONE KACHARIGHAT GHY-1

4:THE CONSERVATOR OF FORESTS EASTERN ASSAM CIRCLE JORHAT

5:THE DIVISIONAL FOREST OFFICER GOLAGHAT DIVISION GOLAGHAT

6:THE MEMBER SECRETARY STATE LEVEL ENVIRONMENT IMPACT ASSESSMENT AUTHORITY ASSAM BAMUNIMAIDAM GHY-2

Advocate for the Petitioner : MR F U BARBHUIYA

Advocate for the Respondent : SC, FOREST

BEFORE HON'BLE MR. JUSTICE MANASH RANJAN PATHAK

ORDER

02-03-2022

Heard Mr. F. U. Barbhuiya, learned counsel for the petitioner and Mr. D. Gogoi, learned Standing counsel, Forest Department for all the official respondent Nos. 1 to 6.

With regard to lease/minor mineral concession pertaining to Kanaighat Sand Mahal No.2/3 under Golaghat Division, the Conservator of Forests, Eastern Assam Circle, Jorhat on 05.12.2016 issued a Letter of Intent (LOI) in favour of the petitioner being the successful bidder with regard to re-sale Notice of the said Minor Mineral Concession pertaining to Kanaighat Sand Mahal No.2/3 dated 31.08.2016 issued by the Divisional Forest Officer, Golaghat Division. However, the required Environmental Impact Assessment Clearance Certificate with regard to said Kanaighat Sand Mahal No.2/3 was issued by the State Environment Impact Assessment Authority (SEIAA), Assam only on 08.09.2021 and by that time, the period of lease of Minor Mineral Concession pertaining to said Kanaighat Sand Mahal No.2/3 is already over and the petitioner could not extract such minor mineral (sand) from the said Sand Mahal.

As such, the petitioner approached the respondent Forest Department for extension of lease of said Kanaighat Sand Mahal No.2/3 to extract the amount of sand for which he had already deposited the requisite kist and other deposits.

The petitioner after obtaining such Impact Assessment Clearance Certificate for the lease of said Kanaighat Sand Mahal No.2/3 on 08.09.2021, he approached the Divisional Forest Officer, respondent No.5 for extension of the LOI with regard to said Kanaighat Sand Mahal No.2/3, but the said Divisional Forest Officer by order under Memo No.B/Mahal/GD/2021/2843-53 dated 03.04.2021 terminated the LOI issued in favour of the petitioner relating to said Kanaighat Sand Mahal No.2/3 on 05.12.2016 as per the provisions of Rule 38 (20), Chapter 7 Part-III of the Assam Minor Mineral Concession Rules, 2013 w.e.f., the date of issuance of the said order, forfeiting the earnest money amounting to Rs.27,525/deposited by the petitioner with his tender to the Government of Assam which has to be

credited to the State exchequer.

As the respondents in the Forest Department did not consider the prayer of the petitioner, he approached this Court by preferring WP(C) No.3010/2021, which was disposed of on 10.06.2021 directing the petitioner to approach the Principal Chief Conservator of Forest and Head of Forests Forces, Assam, respondent No.2, the authority concerned in the Forest Department by submitting appropriate representation.

Accordingly, the petitioner submitted a representation on 14.06.2021 before the Principal Chief Conservator of Forests and Head of Forests Forces, Assam, respondent No.2 and by the impugned Speaking Order O.O.No.774(B) under Memo No. FG.58/WP(C) No.3010/2021 dated 20.09.2021 rejected the said representation of the petitioner and further rejected the prayer of the petitioner to return the amount of Rs.2,00,000/-, which he allegedly invested in the said Sand Mahal for its development.

Being aggrieved with the same, the petitioner has preferred this writ petition, praying amongst others, for setting aside the order dated 03.04.2021, passed by the Divisional Forest Officer, Golaghat Division respondent No.5 as well as the impugned order dated 20.09.2021, passed by the Principal Chief Conservator of Forests and Head of Forest Forces, Assam, respondent No.5 rejecting the representation of the petitioner and to direct the respondents in the Forest Department for issuance of final settlement order in his favour to collect the requisite amount of minor mineral (Sand) with regard to said Kanaighat Sand Mahal No.2/3 in terms of the earlier settlement of the same with the petitioner and Re-Sale Notice dated 31.08.2016 issued earlier.

Rule 68 (2) of the Assam Minor Mineral Concession Rules, 2013 provides for appeal against an order passed by the Director/Principal Chief Conservator of Forests and Head of Forest Forces, Assam, where such appeal needs to be filed before the Government in the Power (E) Mines and Minerals Department in respect of minerals under Schedule – 'X', and the Environment and Forest Department in respect of minerals under Schedule – 'Y'. It is to be noted herein that the present mineral concession pertaining to Kanaighat Sand Mahal No.2/3 under Golaghat Division being 'Sand' falls under the Schedule – 'Y'.

In view of the above, this writ petition is disposed of at the motion stage itself, without

entering into the merit of the case, directing the petitioner to approach the appropriate forum i.e., the State Government against the said order under Memo No.B/Mahal/GD/2021/2843-53 dated 03.04.2021, passed by the Divisional Forest Officer, Golaghat Division as well as Speaking Order O.O.No.774(B) under Memo No. FG.58/WP(C) No.3010/2021 dated 20.09.2021, passed by the Principal Chief Conservator of Forests and Head of Forest Forces, Assam in terms of Rule 68(2) of the Assam Minor Mineral Concession Rules, 2013.

In the event of any such approach by the petitioner before the State Government, it shall consider the same in accordance with law following the provisions of the relevant Rules and Order in force intimating him about the outcome of the same.

With the above observation and direction, this writ petition stands disposed of.

JUDGE

Comparing Assistant