

GAHC010014512022



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

Case No. : WP(C)/1169/2022

MD. JIYAUR PASA
S/O LATE SALIM PASA, NALBARI TOWN, WARD NO-8, P.S. AND P.O.-
NALBARI, DIST-NALBARI, ASSAM-781335

VERSUS

THE ASSAM FINANCIAL CORPORATION AND 3 ORS
(INCORPORATED UNDER STATE FINANCIAL ACT, 1951) HAVING ITS HEAD
OFFICE AT VITTIYA BHAVAN, MD SHAH ROAD, PALTAN BAZAR,
GUWAHATI, ASSAM-781008, REPRESENTED BY ITS MANAGING DIRECTOR

2:THE MANAGING DIRECTOR
ASSAM FINANCIAL CORPORATION
VITTIYA BHAVAN
MD SHAH ROAD
PALTAN BAZAR
GUWAHATI
ASSAM-781008

3:THE DEPUTY GENERAL MANAGER (P AND A)
ASSAM FINANCIAL CORPORATION
VITTIYA BHAWAN
MD SHAH ROAD
PALTAN BAZAR
GUWAHATI
ASSAM-781008

4:THE BRANCH MANAGER
ASSAM FINANCIAL CORPORATION
NALBARI BRANCH
DIST-NALBARI
ASSAM-78133

Advocate for the Petitioner : MR S HOQUE, MR S JAFRI,MR. M DEKA

Advocate for the Respondent : SC, AFC,

**BEFORE
HONOURABLE MR. JUSTICE MICHAEL ZOTHANKHUMA**

ORDER

07.08.2024

- 1.** Heard Mr. S. Hoque, learned counsel for the petitioner and Mr. S. Bora, learned counsel appearing for the Assam Financial Corporation (AFC).
- 2.** The petitioner's case is that pursuant to a "Notice for Sale" dated 09.11.2021 issued by the Assam Financial Corporation, in respect of land in the name of M/s Bhupendra Rai Baruah, bearing 3B-0K-0L Dag No.1689, Patta No. 184, Village Balikuria, Mouza- Batahghila, District- Nalbari for the minimum offset price of Rs.75 lakhs, the petitioner took part in the public auction dated 25.11.2024. As the petitioner's offered price of Rs.75,51,000/- was the highest, the petitioner's bid price was accepted by the respondent authorities. The petitioner had also deposited the earnest money of Rs.7,55,100/- vide banker's cheque dated on 22.11.2022. However, in pursuance to a negotiation held by the petitioner with the respondent authorities, the petitioner agreed to enhance his bid by another Rs.9000/-, thereby rounding off the accepted bid of the petitioner from Rs.75,51,000/- to 75,60,000/- on 24.12.2022.
- 3.** The respondent AFC however, vide it's communication dated 13.01.2022, cancelled the public auction, informing the petitioner about the same and returned the earnest money of Rs.7,55,100/-, vide Cheque No.803096 dated

13.01.2023. However, the said amount was not encashed by the petitioner.

4. The contents of the communication dated 13.01.2022 issued by the respondents cancelling the auction is reproduced below as follows:-

“Sub: Cancellation of Auction.

This has a reference to the "Notice for Sale" published by the Corporation in The Assam Tribune & Asomiya Pratidin dice for 2 published you had participated in the in the auction process for purchase of the mortgaged property of the unit mentioned at serial no, 1 of the said notice on 25,11.2021. We are to inform you that, public auction of the asset of the above mentioned unit has been cancelled for technical grounds and fresh sale notice shall be published shortly after due cancelled on hic invite you to participate in the next auction process if you desire so.

Now, as the process has been cancelled I am directed by our Head Office of the Corporation to refund the Earnest Money deposited by you against the said auction process.

Accordingly, we are forwarding herewith a cheque bearing No.803096 dated 13.01.2022 drawn on State Bank of India, Nalbari Branch amounting to Rs.7,55,100.00 (Rupees seven lakh fifty five thousand one hundred) only.

Please acknowledge receipt of the above.”

5. Being aggrieved with the action of the respondent AFC, the petitioner has preferred this writ petition, praying for a direction to be issued to the respondents authorities, to accept the remaining bid amount of Rs.68,04,900/- for the auctioned land.

6. The petitioner's counsel submits that when the petitioner's bid in the auction was the highest and he had further enhanced his bid amount after negotiations, there was no ground for the respondent authorities to cancel the auction.

7. Mr. S. Bora, learned counsel for the AFC submits that the reason for

cancelling the auction by the AFC is clarified in Para 7(i) and 7(ii) as follows-

“7. That as regard to the statements made in paragraph 9, 10 and 11 of the writ petition, the answering deponent categorically denies the baseless allegations hurled on the answering deponent. The answering deponent states that the sale notice dated 09.11.21 includes a condition that decision of the Corporation shall be final and binding on all concerned. The answering deponent begs to state that at the time of final approval by the Managing Director, AFC it was observed that the sale notice dated 09.11.21 at Sl. No.1 contains two mistakes, which are as follows:

(i) The name of the borrower Sri Bhupendra Ray Baruah was mistakenly published as Sri Bhupendra Rai Baruah.

(ii) In the details of the mortgage land published in the notice for sale dag No. 1918 was omitted due to clerical mistake.”

The counsel for the respondents thus submits that the writ petition should be dismissed and the respondents should be allowed to re-auction the said land after the respondents are allowed to issue a “Notice for Sale”, by incorporating both the Dag Nos.1918 & 1689 in the “Notice for Sale”.

8. I have heard the learned counsels for the parties.

9. The issues to be decided is whether the reason for the respondents to cancel the auction due to the mistake in the spelling the name of the owner of the land and the omission to include the words “Dag No.1918” in the “Notice for Sale” dated 09.11.2021 would be justifiable reasons for cancelling the public auction. Further, whether the respondents subsequent explanations in their affidavit for cancelling the auction can be accepted, when the impugned “cancellation of auction” letter only stated that the public auction had been cancelled due to “technical grounds”.

10. As can be seen from the communication dated 13.01.2022, the public auction had been cancelled on "technical grounds". Nothing more was elaborated as to what was the "technical grounds" by the respondents. However, paragraph 7 of the affidavit filed by the respondents has given two reasons for cancelling the public auction, i.e. wrong spelling of the name of Sri Bhupendra Ray Baruah as Bhupendra Rai Baruah and omitting to mention 'Dag No. 1918' in the "Notice for Sale".

In this regard, it would be profitable to refer to the judgment of the Supreme Court in the case of ***Commissioner of Police, Bombay vs. Gordhanadas Bhanji***, reported in ***1952 SC 16(9)***, wherein the Supreme Court has held that public orders, publicly made, in exercise of a statutory authority cannot be construed in the light of explanation subsequently given by the officer making the order of what he meant or of what was in his mind, or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect the actings and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself.

11. In view of the decision of the Supreme Court in the above mentioned case, the subsequent explanation given by the respondents for cancelling the public auction in their affidavit cannot be accepted, especially when they have given a vague explanation for cancelling the public auction on "technical grounds" in the impugned "cancellation of auction" communication dated 13.01.2022.

12. Para 2 of the additional affidavit-reply filed by the petitioner on 05.03.2024

in respect of the plot of the land which the petitioner had brought in public auction, has been reproduced as follows :

“2. That the deponent respectfully begs to state that he had obtained a copy of “Jamabandi” in respect of the said plot of land wherein it has been recorded as –“In pursuant to the Assam Financial Corporation Nalbari Branch Manager NBO/N-23/2016-17/194 dated 20-07-2026 and Circle Officer’s letter 751/25-7-162, the plot of land measuring 3 Bigha covered by K.M. Patta No.184 and Dag Nos.1689 & 1918 of Sri Bhupendra Ray Baruah S/o Lt. Devananda Ray Baruah has been kept reserved under AFC.”

The above averment has not controverted by the counsel for the respondents.

13. The contents of the Jamabandi, as reproduced above, shows that land measuring 3 Bighas was covered by Patta No.184 and Dag Nos.1689 & 1918. When the area of the land has been clearly marked out as 3 Bighas in the Jamabandi in relation to Patta No.184, which is in Dag Nos.1689 & 1918 and there is nothing to the effect that the said area has been encroached upon or the said land is overlapping some other land or there is any litigation in respect of the said land, this Court is unable to understand as to what prejudice would be caused to anybody, if the petitioner is handed over the possession of the land and the documents to the land covered by Patta No.184, which is under Dag Nos.1689 & 1918 is mutated in the petitioner’s name.

14. It is not the case of the respondents that the land measuring 3 bighas is not identifiable or that the defect in the auction notice is not a curable defect. When the Jamabandi has clearly defined the area of the land and has recorded

the fact that the 3 bighas land is covered by Patta No.184 in Dag Nos.1689 & 1918, which has not been controverted by any person, this Court is of the view that there is no justification for the respondents to cancel the auction, only because the respondents had forgotten to add Dag No. 1918 in the auction notice.

15. In respect of the spelling mistake made by the respondents in the "Notice for Sale" with regard to the name of the owner of the land, wherein Bhupendra Rai Baruah has been shown to be Bhupendra Ray Baruah, this Court does not find the said mistake to be a justifiable reason for cancelling the auction, especially when there is no issue raised by any person that Bhupendra Rai Baruah @ Bhupendra Ray Baruah is not the owner of land covered by Patta No.184 in Dag Nos.1689 & 1918. The reasons for cancelling the auction, in the view of this Court, is not reasonable, given the fact that the State respondents have not taken a stand that 3 Bighas of land had not been auctioned in the public auction held on 25.11.2024, in pursuant to the "Notice for Sale" dated 09.11.2021. The alleged clerical mistake made by the respondents in omitting to put Dag No.1918 in the "Notice for Sale", in the view of this Court, is also a curable defect, as the same can always be made right in the Sale Deed, which is to be made subsequently.

16. In view of the reasons stated above, this Court is of the view that the impugned "cancellation of auction" letter dated 13.01.2022 issued by the AFC is arbitrary and unreasonable. The same is set aside. The respondents are directed to complete the formalities required for transfer of the land in question in the name of the petitioner, pursuant to the public auction held on 25.11.2024. In this respect, the respondents shall immediately issue a communication to the

petitioner, within a period of 1 (one) month from today, fixing a date for completion of all formalities, for transfer of the land covered by Patta No.184 in Dag Nos.1689 & 1918 measuring 3 Bighas @ Rs.75,60,000/-, in the name of the petitioner, after the petitioner is given time to pay the balance amount of the auction price.

17. The writ petition is accordingly allowed and disposed of.

JUDGE

Comparing Assistant