

GAHC010013512014



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

Case No. : WP(C)/4002/2014

CHANDAN PAUL
S/O LT. BALARAM PAUL DR. SHYAMAPRASAD PALLY P.O. BADARPUR, -
788806, DIST. KARIMGANJ, ASSAM.

VERSUS

THE STATE OF ASSAM AND 8 ORS
REP. BY THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM,
MUNICIPAL ADMINISTRATION DEPARTMENT, DISPUR, GUWAHATI-6.

2:THE COMMISSIONER AND SECRETARY TO THE GOVT. OF ASSAM
MUNICIPAL ADMINISTRATION DEPARTMENT
DISPUR
GUWAHATI-6.

3:THE DEPUTY COMMISSIONER
KARIMGANJ DISTRICT
P.O. and DIST. KARIMGANJ
ASSAM.

4:THE BADARPUR TOWN COMMITTEE
REP. BY THE CHAIRMAN
I/C OF THE SAID TOWN COMMITTEE
BADARPUR
P.O. BADARPUR-788806
DIS.T KARIMGANJ
ASSAM.

5:SMTI. BABLI DAS
THE CHAIRPERSON
I/C BADARPUR TOWN COMMITTEE
P.O. BADARPUR- 788806
DIST. KARIMGANJ
ASSAM.

6:THE DIAMOND JYME
REP. BY THE PRESIDENT OF SAID JYME
NAMELY
NASIM AHMED S/O MOULANA ABDUL RAZZAK
VILL- KUNAPARA
BADARPUR
P.O. BADARPUR- 788806
DIST. KARIMGANJ
ASSAM.

7:THE MOTOR DRIVRS ASSOCIATION
BADARPUR
REP. BY PRESIDENT OF THE SAID ASSOCIATION
NAMELY
DR. NILOY PAUL
S/O LT. NIBARAN CHANDRA PAUL
VILL and P.O. SRIGOURI BAZAR
- 788702
DIST. KARIMGANJ
ASSAM.

8:ABDUL BASIT
S/O RASID ALI VILL- SARAPUR
BHANGA P.O. BHANGA- 788701
DIST. KARIMGANJ
ASSAM.

9:FAKAR UDDIN
S/O MAKKADAS ALI VILL- SOUTH KANDIRGRAM P.O. MALUA
788702
DIST. KAMRUP
ASSAM

Advocate for the Petitioner : MR. T U LASKAR

Advocate for the Respondent : GA, ASSAM

**BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH**

JUDGMENT (ORAL)

Date : 09-01-2024

Heard Mr. B. Malakar, learned counsel appearing on behalf of the

petitioner. Mr. S.R. Baruah, learned Government Advocate appears on behalf of the respondent Nos.1 to 3 and Mr. N.H. Rajbarbhuiyan, learned counsel appears on behalf of the respondent Nos.8 & 9. None have chosen to appear on behalf of the respondent Nos.4 to 7.

(2) The instant Writ Petition has been filed seeking a writ in the nature of Certiorari for setting aside and quashing the impugned letters dated 10.07.2014, issued by the Chairman In-Charge of the respondent No.4 of the Badarpur Town Committee, Badarpur whereby the market place was leased out to the private respondent Nos.6—9. The petitioners have also sought for a writ in the nature of Mandamus directing the Chairman of the Badarpur Town Committee, Badarpur not to proceed for settlement of the Badarpur Town Committee Market Complex, without following the statutory Rules, laid under the Assam Municipal Act, 1956 (for short 'the Act of 1956').

(3) The fact as is discernable from the perusal of the pleadings is that the Badarpur Town Committee had constructed a two storied building, having approximately 3400 sq. ft. on each floor, for its office purpose and for Municipal Market on the land owned and possessed by Badarpur Town Committee. After construction of the said building, the Badarpur Town Committee had let out the ground floor of the said building measuring around 3400 sq. ft. to some individuals for their shop in the said market building complex. The office of the Badarpur Town Committee was proposed to be accommodated over 1400 sq. ft. in the first floor of the said building and the remaining 2000 sq. ft. in the first floor of the said building Complex was proposed to be leased out for their trade/organizational purpose of various organizations.

(4) The petitioner came to learn that the respondent No.5, who was the Chairman In-Charge of the Badarpur Town Committee then had carried out

certain illegal activities of allotment of the remaining space of 2000 sq. ft. in the first floor of the Market Complex, without following the mandate as per the Act of 1956 and the Rules framed therein under. Under such circumstances, the petitioner submitted a representation before the Deputy Commissioner, Karimganj District on 05.07.2014. The Deputy Commissioner, Karimganj thereupon directed the Circle Officer, Badarpur Circle to conduct an enquiry by the communication dated 09.07.2014 and to submit the report. Immediately thereupon, on 10.07.2014, the private respondent Nos.6—9 were issued the allotment letters, which have been enclosed as Annexure-4 series. These letters have been put to challenge by way of the instant Writ Petition.

(5) The record reveals that the instant Writ Petition was filed on 13.08.2014 and by the order dated 22.08.2014, this Court had issued notice and in the interim, directed that the allotment of the space on the first floor of the Badarpur Town Committee Market Complex by the In-Charge Chairman of the Badarpur Town Committee made on 10.07.2014 (Annexure-4 series) shall remain stayed. The record reveals that the said interim order had been extended from time to time.

(6) It is relevant to note that in spite of receipt notice, the Badarpur Town Committee had not chosen to appear nor filed their affidavit-in-opposition. The private respondent Nos.6 & 7 had also not filed their affidavit-in-opposition. The respondent No.3 had filed an affidavit-in-opposition through the Circle Officer of Badarpur Revenue Circle on 23.01.2015. It has been mentioned in the said affidavit that pursuant to the direction passed by the Deputy Commissioner, Karimganj District, the Circle Officer of Badarpur Revenue Circle had conducted an enquiry and found out that some of the so called lessee had started construction in the first floor of the Badarpur Town Committee building and

some RCC pillars were constructed. It was also mentioned that the earlier lease agreements with some private parties and NGO's are not in accordance with the statutory provisions of Municipal Rules.

(7) The respondent Nos.8 & 9 have filed a common affidavit-in-opposition on 18.07.2018. From a perusal of the said affidavit-in-opposition, it reveals that after construction of the building as a market complex, the Badarpur Town Committee proposed to let out different rooms in the first floor of the building to the interested parties agreeing with the terms and conditions and accordingly the Town Committee which was then being run by the In-Charge Chairman who is the respondent No.5, in the instant proceeding, invited applications following the due procedure of law, asking different persons to apply. It was further mentioned that in the month of November, 2011, the Badarpur Town Committee notified in the local dailies about the decision of construction of the Market Complex, consisting of 28 number of rooms. The respondent No.9 along with many others applied for such rooms and the respondent Nos.8 & 9 were selected along with many others. The said respondents, thereupon, deposited Rs.1 lakh as required by signing the agreement. Though the said agreement is not a part of the record, Mr. N.H. Rajbarbhuiyan, learned counsel appearing on behalf of the respondent Nos.8 & 9, during the course of hearing has placed before this Court, the two agreements entered into with the respondent Nos.8 & 9. The said agreements were entered on 16.07.2014.

(8) From the perusal of the agreements, both dated 16.07.2014, it reveals that the respondent No.8 was leased out four (4) numbers of shop rooms on the Northern side of the first floor of the building with the condition that the respondent No.8 shall construct the building of the aforesaid portion with their own costs and shall pay the monthly rent of the aforesaid portion of first floor of

the building, on the various terms and conditions set out in the said lease agreement. This Court have also perused the other terms and conditions of the agreements which shows that the respondent No.8 was to pay Rs.50,000/- (Rupees fifty thousands) only as security and the period of lease was for 99 (ninety nine) years w.e.f. 1st of July, 2014, subject to renewal with enhancement @15% of the existing rent, after expiry of each five years. It is also relevant to mention that the said agreement is not a registered instrument. The agreement with the respondent No.9 is also similar in content and for the sake of brevity, this Court is not again repeating the same. Be that as it may, in both the agreements there is a sketch map enclosed showing the indicated area of the shop rooms in question. Both the agreement with the respondent Nos.8 & 9 are kept on record and marked with the letter 'X' and 'Y' respectively.

(9) This Court further finds it relevant to take note that after the decision which was taken in the year 2011, to allot the rooms to the respondent Nos.8 & 9 and though they paid the security amount, but they were not given the possession of the shop rooms, for which the respondent Nos.8 & 9 had approached this Court by filing a Writ Petition which was registered and numbered as WP(C) No.4351/2013. The record reveals that this Court vide order dated 14.02.2014, had disposed of the said Writ Petition directing the Badarpur Town Committee as well as its officials to consider allotment of the rooms to the petitioners therein i.e. the respondent Nos.8 & 9 herein, in terms of the order dated 07.02.2012.

(10) In the backdrop of the above pleadings, this Court also heard the learned counsel appearing on behalf of the parties. This Court had put a specific query upon the learned counsel appearing for the respondent Nos.8 & 9, as to whether prior to issuance of the allotment order as well as entering into the

agreements for 99 years, any permission was taken from the Director of Municipal Administration, in as much as nothing appears from the allotment orders as well as also from the lease agreements as to whether such permission was duly taken. The learned counsel for the respondent Nos.8 & 9, however with all fairness submitted that he has no knowledge about the same.

(11) This Court finds it relevant to consider that Section 62 of the Act of 1956, stipulates that all the properties mentioned in the said Section situated within the Municipality vests and belong to the Board. Further the properties of whatever nature or kind, which may become vested in the Board, be under its direction, management and control. Amongst the various properties, it includes markets, slaughter houses, public buildings of every description which has been constructed or are maintained out of the municipal funds.

(12) Section 64 of the Act of 1956 empowers the Board to enter into and perform any contract necessary for the purpose of the Act. It stipulates that every contract made on behalf of the Municipal Board in respect of any sum exceeding five hundreds rupees or which shall involve a value exceeding five hundreds rupees, shall be sanctioned by the Board at a meeting in writing and signed by at-least two of their members, one of which shall be the Chairman or the Vice Chairman and Executive Officer and shall be sealed with the common seal of the Board.

(13) Section 63 of the Act of 1956 further stipulates that no Board shall have the power to sale, let, exchange or otherwise dispose of any land vested in it under Section 62, except with the sanction of the State Government. This Court also finds it relevant to take note of provision of Section 148 of the Act of 1956, which empowers the Board to let out the municipal markets as well as shops, stalls and standings therein. In terms of Sub-section (3) of Section 148, the

Board has the power to grant lease according to the Rules framed under this Section for a period not exceeding three years for the collection of rent, toll and fees in the municipal markets and the parking lots at the rates prescribed by the Board under Sub-section (2) of Section 148.

(14) In the above background, this Court also finds it relevant to take note of the Rules for procedure for sale of pounds and markets by the Municipal Boards and Town Committees, so framed in exercise of the powers under Sections 147, 148 and 301 of the Act of 1956. From a perusal of the said Rules, it is apparent that all pounds and markets shall be farmed out by a tender, subject to observance of the Rules and procedure for inviting the tender. It further stipulates that the period of lease for a pound or market shall be for one year, provided the Board may, if it deems fit, with the previous approval of the Director of Municipal Administration, extend the period of lease for a total period of two years, but not exceeding one year at a time.

(15) At this stage, this Court also finds it relevant to take note of the judgment passed by the Division Bench of this Court, in the case of *Sarat Kumar Neog vs. State of Assam*, reported in 1992 (1) GLR 152, wherein it was categorically observed by the Division Bench that if the period of lease for one year, the Board has the absolute power to grant the lease of the market. But if the period of lease is for more than one year, it is to be made by the Board with the previous approval of the Director of Municipal Administration. Para 5 of the said judgment being relevant, is quoted herein under:

“As already stated, if the period of lease is for one year, the Board has absolute power to grant the lease of a market. But if the period of lease is for more than a year, it is to be made by the Board with the previous approval of the Director. The questing which arises now is, - what the expression “with previous approval” signifies? The word ‘approval’ means an act of

confirming, ratifying assenting, sanctioning or consenting to some act or thing done by another, (see Black's Law Dictionary). Therefore, the expression "with the previous approval" signifies that there must be an act or thing which is done by one and that act or thing which is to be consented or ratified or confirmed by another. Therefore, if the lease is to be made for a period more than one year, the Board shall decide at lease the period and rent which would invite Director to say that the proposal to lease is approved".

(16) In the backdrop of the above, if this Court takes note of the facts of the instant case, there is nothing which have been placed on record that any public auction was initiated prior to leasing out the Municipal Market of the Badarpur Town Committee. This Court is further shocked and surprised upon perusal of the agreements which have been kept on record and marked with the letters 'X' and 'Y' as well as also the agreements entered into with the respondent Nos.6 & 7, which are part of the instant proceedings. In the said agreements entered into with the respondent Nos.8 & 9, the lease is granted for 99 years whereas in respect to the lease granted to the respondent Nos.6 & 7, it is for ten (10) years.

(17) Under such circumstances, it is the opinion of this Court that the allotment which have been made in favour of the private respondent Nos.6—9, are in total and flagrant violation to the provisions of the Act of 1956, it's Rules as well as the law laid down by the Division Bench of this Court, in the case of *Sarat Kumar Neog (Supra)*.

(18) Under such circumstances, the allotment letters dated 10.07.2014, issued in favour of respondent Nos.6—9 (Annexure-4 series) to the Writ Petition are all set aside and quashed. The consequential effect of the quashing the allotment letters (Annexure-4 series) is that the agreements which have been entered into with the respondent Nos.6—9 are also set aside and quashed.

(19) This Court cannot be unmindful of the fact that the respondent Nos.6—9 have paid certain amounts as security. In view of setting aside and quashing of the allotment letters, they would be entitled to refund of the said amounts which have been paid by them as security. The Badarpur Town Committee shall refund the same on production of all the necessary documents within a period of six (6) weeks from the submission of the instant certified copy along with the documents.

(20) This Court however observes that the respondent authorities, more particularly the Badarpur Town Committee shall be at liberty to take appropriate decision(s), if deems fit, for leasing out the Badarpur Town Committee Market Complex in accordance with the provisions of the Act of 1956 and the Rules, framed therein under.

(21) With the above observations and directions, the Writ Petition stands allowed. No costs.

JUDGE

Comparing Assistant