

GAHC010177802023



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

Case No: WP(C)/930/2023

ASHOK GUPTA
S/O LT. KULDIP GUPTA PROPRIETOR OF M/S JAI LAKSHMI ENTERPRISE A
PROPRIETORSHIP FIRM HAVING ITS OFFICE SITUATED NEAR MEMBER
HOSTEL KST ROAD DIPHU KARBI ANGLONG ASSAM

VERSUS

THE STATE OF ASSAM AND 2 ORS.
REP BY THE COMMISSIONER SECRETARY TO THE GOVT. OF ASSAM HILLS
AREA DEPTT. DISPUR ASSAM

2:THE DEPUTY COMMISSIONER

DIPHU

KARBI ANGLONG ASSAM

3:ASSAM HILLS SMALL INDUSTRIES DEVELOPMENT CORPORATION LTD.
A GOVT

. OF ASSAM UNDERTAKING UNDER COMPANIES ACT

1956 HAVING ITS REGISTERED OFFICE AT DIPHU MANJA ROAD MANJA
KARBI ANGLONG ASSAM PIN-782461 REP BY ITS MANAGING DIRECTOR
SRI DHANSING LEKTHE

Advocate for : MR. B D DEKA

Advocate for : GA

ASSAM appearing for THE STATE OF ASSAM AND 2 ORS.

**BEFORE
HONOURABLE MR. JUSTICE KALYAN RAI SURANA**

ORDER

Date : 22.04.2024

Heard Mr. B. D. Deka, learned counsel for the petitioner as well as Ms. S. Baruah, learned Govt. Advocate for the respondent nos.1 and 2; Mr. B. K. Bhagawati, learned counsel for the respondent no.3.

2. In this writ petition filed under Article 226 of the Constitution of India, the petitioner projects that he has entered into a Public Private Partnership Agreement with Assam Hills Small Industries Development Corporation Ltd. (Respondent no.3) by which the petitioner was permitted to start the business of Hotel and Resort. The said agreement was for the initial period of 10 years commencing from 01.06.2017 to 30.12.2027. The sharing of profit and loss was agreed to the ratio of 65:35 between the respondent no.3 and the petitioner.

3. The petitioner projects that from time to time he has extended service of providing food and lodging to the guests of the respondent no.3 for which a huge dues is receivable and request was also made to the respondent no.3 to make an audit of the business from 01.06.2017 onwards on several occasions but audit was not conducted by the respondent no.3 who was bound by the said PPP Agreement to do it. However, the respondent no.3, by letter dated 31.10.2022 addressed to the petitioner, sought for unilateral review of their agreement and proposed to alter clause nos.1, 3, 4, 5, 6, 12, 13, 16, 17, 20 and 25 of the said agreement dated 01.12.2017. The learned counsel for the petitioner submits that it amounts to novation of contract which is sought to be unilaterally done without involving the petitioner in the negotiation process. This

was followed by issuance of a notice dated 12.01.2023 by the Managing Director of the respondent no.3. By the said notice dated 12.01.2023, the petitioner was informed that the respondents had proposed for cancellation of the agreement and for eviction of the petitioner, and the respondent no.3 had also threatened to take over the premises on the expiry of the time provided in the said notice. Accordingly, this writ petition has been filed with the prayer for setting aside the notice dated 12.01.2023 and for a direction to the respondent no.3 to carry out audit in terms of Clause 17 of the agreement dated 01.12.2017.

4. The respondent no.3 has contested this writ petition by filing an affidavit-in-opposition. Similarly, the District Commissioner, Diphu (Respondent no.2) through his Sub-Divisional Officer (Sadar) has also filed an affidavit-in-opposition.

5. The learned counsel for the respondent no.3 has submitted that a huge dues receivable from the petitioner has accumulated and according to their calculation, from 01.01.2018 to 13.09.2023, they are to receive dues of Rs.55,47,600/-, which is on the account of rent and 35 percent share of Kanch Hotel and Resort as per agreement dated 01.12.1017. Accordingly, it is projected that the Board of respondent no.3, vide resolution dated 16.12.2022, had decided to fix a minimum rent of Rs.60,000/- per month with increase of 10 percent after every 3 years.

6. Referring to the statements made in interlocutory application being I.A. (Civil)/2386/2023 filed by the respondent no.3, this projected that the agreement between the parties contain Clause 15 which gives right to the respondent no.3 to cancel the agreement and to take over, if the performance

of the petitioner is not found satisfactory. It is also submitted that the vacating of the premises by the petitioner is in the interest of revival of the respondent no.3 Corporation as it is suffering great losses and are unable to pay the salary of staffs and officers.

7. In this regard, it is projected that during the pendency of the agreement, the respondent no.3 Corporation had to take loan of Rs.7.00 lakh from the petitioner, which is subjected to return or adjustment and it is also projected that the respondent no.3 Corporation has already written letter to the District Commissioner, Karbi Anglong, Diphu requesting eviction of the petitioner from the property of the said business.

8. From the documents annexed to the writ petition as well as affidavit-in-opposition filed by the petitioner in I.A.(Civil)/2386/2023, it is seen that on receipt of the complaint letter dated 04.02.2023, an Executive Magistrate at Diphu, Karbi Anglong has passed an order dated 02.03.2023, issuing direction to the Board of respondent no.3 to call a review meeting with the members and parties to discuss the relating issues and to strictly complied with the agreement and to ensure the presence of every Board member.

9. Although the said order is not under challenge, but from the contents of the said order is not discernible that which provision of law was invoked by the learned Executive Magistrate, Diphu to pass such an order. Therefore, no comment is made as regards the correctness and/ or enforceability of the said order.

10. Essentially a dispute has arisen between the parties out of the said Agreement of MOU dated 01.12.2017, which envisaged participation of the

petitioner and the respondent no.3 in a public private partnership model for opening and running of a Hotel and Resort. The said agreement is for a period of 10 years. On a query of the Court, the learned counsel for the respondent no.3 has submitted that as a lot of rent has become due, the petitioner is required to be treated as a defaulter tenant. Be that as it may, in so far as the respondent no.3 is concerned, their grievance is regarding non-payment of the 65 percent share in the profit and loss by the petitioner. Notwithstanding that clause 15 of this said agreement envisages that the respondent no.3 has reserved the right to cancel the said agreement including take over, if not found satisfactory with 3 months notice from either side, however, the power to take over has to be exercised in accordance with law. As the tone and tenor of the impugned notice dated 12.01.2023 being no. KANCH/Dev/279/Hotel & Resort/2016-17/121, threatening the petitioner of taking over of the Kanch Hotel and Resort by giving a notice to vacate within 45 days, the power to take over can only be exercised in accordance with law, and in no other manner.

11. Under such circumstances, when a notice of cancellation of agreement and taking of the premises has already been issued on 12.01.2023, it would not be open to writ Court to set aside the said notice as the respondent no.3 is exercising its right as envisaged in law. Only anxiety that the petitioner can lawfully have is to have protection from eviction without due process of law. Insofar as notice dated 12.01.2023 is concerned no case is made out by the petitioner for quashing of the said notice. However, at the same time, although there is no prayer in the writ petition to protect the petitioner from eviction, but as the notice dated 12.01.2023 envisages taking over the premises on expiry of the time given in the said notice, and the manner of the taking over has not been prescribed in the agreement nor spelt out in the notice dated 12.01.2023,

the Court is inclined to provide that the eviction of the petitioner can only be in accordance with law and no other way.

12. Accordingly, in view of the discussion above this writ petition stands partly allowed to the extent as indicated above.

13. The interim order passed on 22.02.2023 is made absolute with modification by providing that the eviction of the petitioner should be in accordance with law.

JUDGE

Comparing Assistant