

GAHC010036382024



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

Case No. : WP(C)/1022/2024

MANASH RADU KAKOTY
S/O- NARAYAN RADU KAKATI, VILLAGE- PALAHGURI, P.O. KILLING
VALLEY, P.S. JAGIROAD, DISTRICT- MORIGAON (ASSAM)

VERSUS

THE STATE OF ASSAM AND 2 ORS
REPRESENTED BY THE COMMISSIONER AND SECRETARY TO THE GOVT.
OF ASSAM, FOREST DEPARTMENT, DISPUR, GUWAHATI-6

2:THE DIVISIONAL FOREST OFFICER
NAGAON DIVISION NAGAON

3:THE RANGE FOREST OFFICER
WESTERN RANGE DHARAMTUL MORIZAO

Advocate for the Petitioner : MR. M P SARMA

Advocate for the Respondent : SC, FOREST

**BEFORE
HONOURABLE MR. JUSTICE MICHAEL ZOTHANKHUMA**

ORDER

Date : 28.02.2024

Heard Mr. M. P. Sharma, learned counsel for the petitioner, who submits that the impugned speaking order dated 22.10.2021, which was received by the petitioner on 30.10.2021, by which the settlement of the Nakhula Beat Sand Permit Area No. 2 of 2018-20 under Western Range, Dharamtul was terminated

and security money forfeited to the Government should be set aside.

2. The brief facts of the case are that the petitioner was awarded the settlement of the Nakhula Beat Sand Permit Area No. 2 for extracting sand for a period of two years. However, due to the petitioner finding it difficult to operate the sand permit area during Covid-19 pandemic and as the Divisional Forest Officer, Nagaon Division was insisting on the deposit of the 7th kist amount from the petitioner, the petitioner filed WP(C) 4392/2021 before this Court. The prayer of the petitioner in WP(C) 4392/2021 was that the petitioner's representation dated 31.08.2021 should be considered and he should be allowed to operate the sand permit area for at least a month, whereafter, he would be ready to pay the 7th kist amount.

3. WP(C) 4392/2021 was disposed of, with the consent of the Standing Counsel for the Forest Department, by directing the Divisional Forest Officer, Nagaon Division to consider the petitioner's representation dated 31.08.2021, to allow him to operate the sand permit area for at least a month. Subsequent to the order dated 04.09.2021 passed in WP(C) 4392/2021, the Divisional Forest Officer, Nagaon Division passed a speaking order dated 22.10.2021, allowing the petitioner to operate the sand permit area for a month from 22.10.2021 to 21.11.2021. The petitioner was also directed to deposit the 7th kist money with the fine on or before 04.11.2021.

4. Subsequent to the speaking order dated 22.10.2021, the petitioner submitted representations dated 08.11.2021 and 28.01.2021 to the Divisional Forest Officer, Nagaon Division, stating that illegal mining was going on in the

sand permit area by some other persons and as such, it was not possible for him to extract sand from the said area. As it was the responsibility of the Government to allow the petitioner to work in the sand permit area, the Divisional Forest Officer, Nagaon Division was asked to take legal action against the wrongdoers and hand over the sand permit area to the petitioner.

5. The Divisional Forest Officer, Nagaon Division, thereafter, issued a notice dated 11.02.2022, directing the petitioner to deposit 7th & 8th kist money, with other taxes and interest immediately, failing which the sand permit area would be terminated without further notice and security money would be forfeited. No reply was made by the petitioner to the notice dated 11.02.2022.

6. Thereafter, the Divisional Forest Officer, Nagaon Division issued the impugned letter dated 01.03.2022 to the petitioner, terminating the sand permit area, stating that inspite of repeated instructions given to him, the petitioner had failed to deposit the 7th and 8th kist money and other relevant taxes. Hence, the settlement was terminated with immediate effect. Vide another letter dated 18.06.2022 issued by the Divisional Forest Officer, Nagaon Division, the petitioner was informed that the security money deposited against the sand permit area was forfeited to the Government, as he had failed to deposit the 7th and 8th kist money. Further, he was debarred from participating in any subsequent sale for a period of five years.

7. The petitioner's counsel submits that the impugned orders terminating the settlement of the sand permit area and forfeiture of the security deposit should be set aside, inasmuch as, he had not been able to extract any sand from the

mining area due to the illegal mining being done by some other persons. The responsibility of the State respondents to ensure that the petitioner was able to mine the said area not having been done, the termination of the settlement and forfeiture of the security money was arbitrary and had to be set aside.

8. Ms. M. Kalita, learned counsel for the Forest Department submits that the petitioner has approached this Court two years after the issuance of the impugned orders and as such, the writ petition is hit by delay and laches. She further submits that the representations made by the petitioner with regard to the encroachment of his sand permit area is only an afterthought, as the petitioner could have easily approached the police or this Court with regard to the said issue. She also submits that there is no illegality in the termination of the settlement of the sand permit area and forfeiture of the security deposit, in terms of Rule 38(7)(VI) of the Assam Minor Mineral Concession Rules, 2013 (in short, 'the 2013 Rules'). She also submits that the petitioner has an alternative remedy available, inasmuch as, an appeal against the impugned orders passed by the Divisional Forest Officer lies before the Director/Principal Chief Conservator of Forest and Head of Forest Force, Assam, in terms of Rule 68 of the 2013 Rules. She submits that the limitation period for filing an appeal has also expired and if the petitioner was having real problems, he could have easily availed of the statutory alternative remedy available within the prescribed time limit.

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

10. The facts of the case make it clear that the petitioner had earlier

approached this Court, for allowing him to operate the sand permit area for at least a month, with the condition that he would pay the 7th kist money, if allowed to do so. This is clear from the order dated 04.03.2021 passed in WP(C) 4392/2021. The speaking order dated 22.10.2021 passed by the Divisional Forest Officer, Nagaon Division shows that the petitioner had then been given an extension period of one month, as had been prayed for by him in WP(C) 4392/2021 and he was asked to pay the 7th kist money. The petitioner has however now taken a stand that he had submitted two representations dated 08.11.2021 and 28.01.2022, to the effect that he was not allowed to continue mining in the sand permit area, as the said mining area was being encroached by some other person. It appears to this Court that the said stand taken by the petitioner in the above two representations are an afterthought, inasmuch as, he could have easily approached this Court or the police, besides the Forest Department, in respect of the said allegation. Further, though the petitioner had been given notice dated 11.02.2022 by the DFO, Nagaon Division, which stated that if the petitioner failed to deposit the 7th and 8th kist money, the settlement of the sand permit area would be terminated and security deposit forfeited, the petitioner chose not to make any reply to the notice dated 11.02.2022, thereby giving rise to an inference that the stand taken by the petitioner in his earlier representations were only an afterthought, i.e., there was no encroachment on the petitioner's sand permit area at the relevant point of time.

11. In any event, the issue raised in this writ petition regarding encroachment, being a disputed question of fact, this Court is of the view that the same cannot be decided in a writ Court. Accordingly, the petitioner may avail of other alternative remedy, which is available to him, if so advised. If the

petitioner submits an appeal, in terms of the 2013 Rules, the appellate authority shall also examine whether the delay in filing the appeal should be condoned.

12. Rule 38(7)(vi) and Rule 68 of the 2013 Rules states as follows:-

“38.(7)(vi) *The competent authority may terminate the mineral concession, with or without forfeiture of the whole the security deposit or part thereof, as deemed appropriate, in such cases without any further opportunity.*

.....

68. Appeals. - (1) *Unless otherwise provided, an appeal against an order passed by any Sub-ordinate Officer shall lie with the Director / Principal Chief Conservator of Forest and Head of forest Force, Assam as the case may be.*

2) *An appeal against the order passed by the Director/Principal Chief Conservator of Forest and Head of Forest force, Assam shall lie 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'.*

(3) *No order under these rules shall be passed by the competent authority against any person unless he has been issued a show cause and given a reasonable opportunity to make a representation”*

13. On considering the reasons stated above, this Court is of the view that there is no infirmity with the decision of the respondents in terminating the sand permit area of the petitioner and directing forfeiture of the security money, as the petitioner was a defaulter.

14. This writ petition is accordingly dismissed.

JUDGE

Comparing Assistant