

GAHC010035572024



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

Case No. : WP(C)/954/2024

JOYNAL ABEDIN
S/O MD. HANIF ALI,
VILL.- KIRAKARA, P.O.- DHOLPUR, DIST.- DARRANG, ASSAM.

VERSUS

THE STATE OF ASSAM AND 3 ORS.
REP. BY THE PRINCIPAL SECRETARY TO THE GOVT. OF ASSAM,
PANCHAYAT AND RURAL DEVELOPMENT DEPTT., DISPUR, GUWAHATI-
781006.

2:THE CHIEF EXECUTIVE OFFICER
DARRANG ZILLA PARISHAD
MANGALDAI
P.O.- MANGALDIA
DIST.- DARRANG
ASSAM
PIN- 784148.

3:THE DARRANG ZILLA PARISHAD
REP. BY THE CHIEF EXECUTIVE OFFICER
DARRANG ZILLA PARISHAD
MANGALDAI
P.O.- MANGALDIA
DIST.- DARRANG
ASSAM
PIN- 784148.

4:THE SIPAJHAR ANCHALIK PANCHAYAT
REP. BY THE EXECUTIVE OFFICER
P.O.- SIPAJHAR
DIST.- DARRANG

ASSAM
PIN- 784145

Advocate for the Petitioner : MR. D A KAIYUM

Advocate for the Respondent : SC, P AND R.D.

BEFORE
HONOURABLE MR. JUSTICE MICHAEL ZOTHANKHUMA

ORDER

04.04.2024

Heard Mr. D.A. Kaiyum, learned counsel for the petitioner. Also heard Mr. S. Dutta, learned Standing Counsel for the P&RD Department.

2. Pursuant to NIT dated 04.11.2023 issued by the Sipajhar Anchalik Panchayat in Darrang District, the petitioner was settled with Kirakara Cattle Market (hereinafter referred to as 'the market') for the year 2023-24, with effect from 01.07.2023 to 30.06.2024. The said settlement so made has been cancelled by the respondent Darrang Zilla Parishad under resolution No. 1 dated 29.12.2023, on the purported ground that the petitioner has handed over the market to some other persons and accordingly he has violated clause No. 25 of the tender conditions. It is a further ground that the petitioner has not deposited the entire kist money.

3. Mr. D.A. Kaiyum, learned counsel for the petitioner submits that the cancellation of the settlement of the market has been made, without giving any opportunity of hearing to the petitioner. Further, in terms of clause 20 of the tender conditions, the kist money is to be deposited monthly and within seven days of each month.

4. Mr. S. Dutta, learned Standing Counsel for the P&RD Department has brought the official records. He submits that the petitioner had executed a Power of Attorney dated 15.09.2023, in favour of one Lutfur Rahman, S/o Late Khairuddin Ahmed, for running the market. Lutfur Rahman subsequently handed over management of the market to one Sairuddin Ali, S/o Kajimuddin vide Deed of Agreement dated 11.12.2023. He submits that that as the petitioner could not have sublet the market to any other person in terms of Clause 25 of the NIT dated 04.11.2023, there was no infirmity with the cancellation of the settlement of the market with the petitioner, in terms of Resolution No. 1 dated 29.12.2023 made by the Meeting of the General Standing Committee of the Darrang Zilla Parishad.

5. At this stage, Mr. D.A. Kaiyum, learned counsel for the petitioner submits that the Power of Attorney dated 15.09.2023 has been revoked by the petitioner vide the revocation letter dated 20.12.2023.

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

7. As can be seen from Clause 25 of the NIT dated 04.11.2023, the lessee of a market cannot sublet the market to any person or institution. On the other hand, the petitioner, vide Power of Attorney dated 15.09.2023, has appointed one Lutfur Rahman as his attorney holder to collect the toll from the market and to pay all dues to the authorities concerned. Para 2 of the Power of Attorney dated 15.09.2023 states that due to financial hardship, the petitioner is not in position to properly manage the market and as such, he has appointed Lutfur Rahman to do all things necessary to run the bazaar and obey all the terms and conditions of the concerned authority. Subsequent to the above, the official

records that have been brought before this Court, show that Lutfur Rahman had made a Deed of Agreement dated 11.12.2023 with one Sairuddin Ali, to collect the toll from the market and to carry on the rules and regulations of the said market. In the Deed of Agreement dated 11.12.2023, Lutfur Rahman has also stated that due to financial hardship and illness, he was not in a position to properly manage the market and as such, had appointed the said Sairuddin Ali to look after the market.

8. The petitioner herein has categorically stated in the Power of Attorney dated 15.09.2023 that he was not able to manage the market due to the financial hardship and as such, had left the management of the entire bazaar to the said Lutfur Rahman, who was to have direct dealings with the concerned authorities for running the market including collecting all the tolls for the market. The above clearly goes to show that the petitioner had handed over the running of the market to another person in violation of Clause 25 of the NIT dated 04.11.2023.

9. With regard to the petitioner's contention that he has not received any notice, prior to the cancellation of the settlement of the market by the authorities, this Court finds the said submission to be true. However, in view of the documents on record, i.e., the Power of Attorney made by the petitioner to Lutfur Rahman and the Deed of Agreement made by Lutfur Rahman with one Sairuddin Ali, this Court is of the view that no prejudice can be said to have been caused to the petitioner regarding no notice being issued to the petitioner, prior to cancellation of the settlement of the market, as the facts speak for themselves.

10. In the case of ***M.C. Mehta Vs. Union of India***, reported in **(1999) 6**

SCC 237, the Supreme Court has held that it is not always necessary for a Court to issue a writ and strike down an order, merely because such order has been passed in violation of the principles of natural justice. It has held that if on the admitted or indisputable factual position, only one conclusion is possible and permissible, the Court need not issue a writ merely because there has been violation of the principles of natural justice. In the present case, the execution of Power of Attorney by the petitioner and the subsequent Deed of Agreement made by the Power of Attorney holder Lutfur Rahman, allowing one Sairuddin Ali to look after the market with full responsibility of managing the same, including collecting the toll of the market is indisputable. Thus, the question of subletting of the market by the petitioner cannot be denied and as such, it is the discretion of this Court to interfere in the cancellation of the settlement of the market with the petitioner, if it appears to this Court that prejudice has been caused to the petitioner, by the respondents in issuing a notice prior to the cancellation of the settlement of the market.

11. The petitioner has not made any mention of the fact that Lutfur Rahman had made an Agreement dated 11.12.2023 with Sairuddin Ali handing over the running of the market to Sairuddin Ali, which may amount to hiding facts before this Court. However, the said fact may not have been known to the petitioner, though it is expected that the power of attorney holder would have first consulted the petitioner, with regard to the execution of the Deed of Agreement dated 11.12.2023, executed by Lutfur Rahman with Sairuddin Ali.

12. The very fact that Lutfur Rahman had made a Deed of Agreement dated 11.12.2023, handing over the running of the market to one Sairuddin Ali, allegedly without the knowledge of the petitioner, goes to show that the running

of the market had been handed over by the petitioner to Lutfur Rahman, fully and exclusively, in violation of Clause 25 of the NIT. If, on the other hand, the market had been handed over by Lutfur Rahman to Sairuddin Ali with the knowledge of the petitioner, the same also shows that the execution of the Deed of Agreement dated 11.12.2023 was in violation of Clause 25 of the NIT. Thus, the above facts go to show that the petitioner had sublet the market to Lutfur Rahman, by allowing him to run the market exclusively. Thus, the subletting of the market had been done by way of proxy. Consequently, the revocation of the power of attorney by the petitioner on 20.12.2023 is only an afterthought by the petitioner, who in any event, cannot run the market due to financial hardship, as stated by the petitioner in the Power of Attorney dated 15.09.2023.

13. Paragraph Nos. 2 to 6 of the Power of Attorney dated 15.09.2023 are reproduced hereinbelow as follows:-

“2) Due to financial hardship I am not in position to proper management of the said Bazar mentioned in schedule below, though I have selected as the lessee of the aforesaid bazaar so I appoint the above named person as my lawful attorney who is my friend and lived adjacent to the said Bazar.

3) The attorney shall collect toll on the said Bazar and carry on the rules & regulation of the said Bazar.

4) The attorney is authorized to continue to get all the facilities and obey the all terms and conditions according to rules and regulation of concern authority.

5) That all the revenue which will be paid to the Bazar Authority, must be paid by the authorized person. The lessee will not be responsible to pay

any revenue to the concern authority.

6) The attorney shall take all necessary measure to defend the Said Bazar and sue or to be sued and appoint advocate on behalf of us to protect the said Bazar if any incident arise.”

14. The above being said, even if the respondents had issued a notice to the petitioner, prior to the cancellation of the settlement of the market with the petitioner, the reply, if any, to be made by the petitioner, would have not changed the facts of the case, keeping in view the contents of the Power of Attorney dated 15.09.2023 and the Deed of Agreement dated 11.12.2023. As such, this Court holds that no prejudice is caused to the petitioner, due to the petitioner not being given a notice, prior to cancellation of the settlement of the market. Consequently, this Court does not find any infirmity with the action of the respondents in cancelling the settlement of the market with the petitioner.

15. The writ petition is accordingly dismissed.

JUDGE

Comparing Assistant