

WP(C) 3305/2008
BEFORE
HON'BLE MR. JUSTICE B.K. SHARMA

Both the writ petitions raising same dispute have been taken together and are being disposed of this common order.

The short issue for consideration of this Court is as to whether it is the Govt. value fixed in respect of the Par Ghat is the determining factor for making settlement or it is the bid value offered by the tenderers which is the determining factor so far as the jurisdiction of the authority is concerned. As per Section 109 (6) of the Assam Panchayat Act, 1994 in case of huts, ferries and fisheries falling under any Anchalik Panchayat, yearly sale value of which is more than Rs. 1 lakh, shall be settled by the Zila Parishad. In other words, in respect of huts, fisheries etc. the yearly sale value of which is less than Rs. 1 lakh, will be settled by Anchalik Panchayat. In the instant case, there is no dispute that the yearly sale value of the concerned Par Ghats fixed by the Govt. is less than Rs. 1 lakh and the same are valued at Rs. 25,500/- and Rs. 26,000/- respectively.

In view of the above, the respective Anchalik Panchayat issued the NIT in response to which the petitioners and others submitted their tender. On conclusion of the tender process, the Par Ghats were settled with the two petitioners. The period of settlement is from 01.07.08 to 30.06.09. The petitioners deposited the kist money for running the Par Ghats. It was at that stage, the Zila Parishad intervened in the matter and cancelled the settlement made in favour of the petitioners and instead settled the Par Ghats with the private respondents on the plea that the bids offered by them were more than Rs. 1 lakh. Since the bid value offered by the private respondents was more than Rs. 1 lakh, the Zila Parishad was of the opinion that in terms of Section 109 (6) of the Act, it is the Zila Parishad which is vested with the power and jurisdiction to make settlement.

The records produced by Ms. R. Chokraborty, learned Addl. Sr. G.A. depict that the Govt. yearly sale value of the said two Par Ghats is Rs. 25,500/- and 26,000/- respectively. If that be so, the jurisdiction to make settlement of the Par Ghats is with the Anchalik Panchayat. The Zila Parishad cannot have jurisdiction in the matter merely because some of the tenderers offered bid value of more than Rs. 1 lakh.

The issue is no longer res integra and has been decided by the Division Bench of this Court in Nagaon Zila Parishad vs. Razia Begum in WA No. 325/03 and others and a batch of writ petitions decided on 01.10.03. By the said decision the Division Bench interpreting the provision of Section 109 (6) of the Assam Panchayat Act dealt with the distribution of power and jurisdiction of Anchalik Panchayat and Zila Parishad.

In the instant case since the Govt. annual sale value in respect of two Part Ghats is below Rs. 1 lakh, it is the Anchalik Panchayat which is within its competence and jurisdiction to make the settlement which they accordingly did and the petitioner are the beneficiaries of such settlement. That being the position, Zila Parishad could not have assumed jurisdiction over the Anchalik Panchayat so as to make the impugned settlement with the private respondents.

In view of the above, both the writ petitions are allowed and the impugned orders of settlement both dated 23.07.08 (Annexure-4) are set aside and quashed. Consequently it is the petitioners who will run the Par Ghats as per the orders of settlement made by the respective Anchalik Panchayat..

With the above directions, the writ petitions are allowed, without, however, any order as to costs.