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**AIR 2002 Guw 126 : (2003) 3 GLR 322 : (2002) 1 GLT 361**

**Gauhati High Court**

**Case No:** Writ Appeal No. 57 of 2002

Basudev Barman

APPELLANT

Vs

Secretary, Bechamari  
Gaon Matshyajibi  
Samabai Samity Ltd.  
and Others

RESPONDENT

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**Date of Decision:** Feb. 8, 2002

**Acts Referred:**

- Constitution of India, 1950 - Article 226

**Citation:** AIR 2002 Guw 126 : (2003) 3 GLR 322 : (2002) 1 GLT 361

**Hon'ble Judges:** R.S. Mongia, C.J; Amitava Roy, J

**Bench:** Division Bench

**Advocate:** A.B. Choudhury, A. Abedin, A. Ahmed and M. Syreen, for the Appellant; A. Hazarika, Addl. Sr. Govt. Advocate, R.C. Saikia, J. Borthakur and K. Dahkar, for the Respondent

**Final Decision:** Dismissed

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### **Judgement**

R.S. Mongia, C.J.

Heard Mr. A.B. Choudhury, learned counsel for the appellant and Mr. R.C. Saikia, learned counsel for respondent No.1 as well as Mrs. A. Hazarika, learned Addl. Sr. Govt. Advocate, Assam, appearing for respondent No. 3.

2. This appeal has arisen out of the judgment of a learned single Judge, dated 29-1-2002, given in WP (C) No. 2845 of 2001.

3. The respondent No.2. Assam Fisheries Development Corporation Ltd. (hereinafter referred to as the Corporation), by its order dated 20-8-1998, had settled the Pavakati Sondoba fishery for a period of three years from 1998-99 till 31-3-2001 in favour of the appellant, Bordulatap Matshyajibi Samabai Samity Ltd.. will Buragaon, who was the

respondent No.3 in the writ petition. The settlement was for Rs.4,27,967/- and the yearly kist was as follows :-

|           |     |     |                |
|-----------|-----|-----|----------------|
| "1998-99  | ... | ... | Rs.1,20,216.00 |
|           |     |     | Rs.            |
| 1999-2000 | ... | ... | 1.4            |
|           |     |     | 1,698.00       |
|           |     |     | Rs.            |
| 2000-2001 | ... | ... | 1,62,953.00"   |

4. By an order dated 4-4-2001, the Managing Director of the Corporation settled by way of extension the aforesaid fishery again in favour of the appellant at a total revenue of Rs.7,06,374.00, and the yearly kist was fixed) as follows :--

|          |     |     |              |
|----------|-----|-----|--------------|
| "2001-02 | ... | ... | Rs.          |
|          |     |     | 1,17,860.00  |
|          |     |     | Rs.          |
| 2002-03  | ... | ... | 1,17,860.00  |
|          |     |     | Rs.          |
| 2003-04  | ... | ... | 1,05,507.00  |
|          |     |     | Rs.          |
| 2004-05  | ... | ... | 1,55,867.00  |
|          |     |     | Rs.          |
| 2005-06  | ... | ... | 1,79,250.00" |

5. Bechamari Gaon Matshyajibi Samabai Samity Ltd. Morigaon, through its Secretary, challenged the aforesaid settlement by way of WP (C) No. 2845 of 2001, primarily on the ground that as per the Full Bench judgment of this Court, reported as [M/s 129 Haria Dablong Min Mahal Samabat Samity Ltd. Vs. Assam Fisheries Development Corporation Ltd. and Others](#), Haria Dablong Min Mahal Samabai samity Ltd. v. Assam Fisheries Dev. Corporation Ltd., the settlement has to be by inviting open tenders and not by negotiations. However, it may be observed here that, that very Full Bench did lay down that in exceptional cases for justifiable reasons extension to the sitting settlor can be given regarding the fisheries. It was the case of the appellant (respondent No.3 before the learned single Judge) that in fact the settlement in its favour was an exception to the general rule, i.e. the extension had been granted without inviting open tenders inasmuch as the appellant had suffered losses in its previous tenure of settlement because of erosion and other problems. According to the counsel, the case of the appellant

(respondent No3 before the learned single Judge) fell within the exception carved out by the Full Bench in its Judgment (supra).

6. The learned single Judge dealt with this point by making the following observations :-

"Mrs. Anima Hazarika, learned counsel produces before me the record and fairly submits that the record does not show any such assessment, but it is simply, stated that there was loss due to erosion and other problems. That itself will not give such a wide power to the authority to give extension and also for a period of 5 years as indicated above. This does not come within the exception carved out by the Full Bench decision of this Court to give extension "in proper and suitable cases". Accordingly, the order quoted shall stand quashed and the matter shall go to the authority to give fresh settlement by inviting necessary tender. This shall be done within a period of one month from today. The petitioner shall furnish the certified copy of this order and the authority shall do the needful in terms of this order."

7. The learned counsel for the appellant argued that the entire record was before the authority wherein the application of the appellant mentioning that it had suffered losses because of erosion and other problems, was very much there and it should be deemed that the appropriate authority had applied his mind before granting extension to the appellant.

8. The learned single Judge has already dealt with this point, as has been extracted above. Apart from that, we do not find that any Justification was made out as to why the extension should be for a period of five years, whereas the initial settlement was only for a period of three years and secondly, what was the loss that was suffered by the appellant justifying the extension, and that too, for a period of five years. We also find that the yearly revenue is lesser in the extension than it was in the earlier settlement for three years. Even for that, no justification is forthcoming. These are the aspects which are to be borne in mind if an exception is to be carved out giving extension. We find nothing wrong in the view expressed by the learned single Judge.

9. The Writ Appeal is hereby dismissed.

10. The appellant has already deposited the first kists for the year ending 31 -3-2002. The learned single Judge has granted one month"s time to the Corporation to settle the fishery by way of open tenders. We modify those directions to the extent that the process of settling the fishery, as directed by the learned single Judge, be undertaken by the Corporation, but the fresh settlement would take effect from 1-4-2002, and the appellant would be allowed to continue upto 31-3-2002.

11. Copy of this judgment and order, attested by the Bench Assistant, be given to the learned Addl. Sr. Govt. Advocate, Assam, Mrs. A. Hazarika, for onward transmission to the Corporation.