Harez Ali and anr. Etc. Vs. State of Assam and ors. Etc.

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SooperKanoon Citation : sooperkanoon.com/894340

Court : Guwahati

Decided On : Mar-16-2009

Reported in : AIR2009Gau132

Judge : J. Chelameswar, C.J., ;I.A. Ansari and ;A.C. Upadhyay, JJ.

Appellant : Harez Ali and anr. Etc.

Respondent : State of Assam and ors. Etc.

Judgement :

A.C. Upadhyay, J.

1. This Full Bench has been constituted to resolve the controversy arising from divergent views expressed by this High Court on construction and interpretation of Sub-section (6) of Section 109 of the Assam Panchayat Act, 1994 (hereinafter referred to as 'the Act'). Though the controversy falls within a very narrow compass of interpretation of expression 'yearly sale value', in 'the Act', nonetheless, it entails a question of public importance in view of the confusion produced by conflicting observations of different Benches of this High Court. The expression, 'yearly sale value' is not defined expression in 'the Act', however, Sub-section (6) of Section 109 of the Act provides that if the 'yearly sale value' of the Hats, Ferries and Fisheries, falling under any Anchalik Panchayat, within the jurisdiction of Zilla Parishad exceeds Rs. 1 lakh, it shall be settled by the Zilla Parishad. The moot question which arises for consideration of this Court in this

reference are as follows (i) whether yearly sale value would mean the minimum value fixed by the Panchayat while offering the property for settlement by tender or it is the highest value offered by the prospective settlee i.e. eligible highest bidder and (ii) Whether Zilla Parishad is empowered to invite tenders in respect of Hats, Ferries and Fisheries having yearly sale value of rupees more than a lakh.

2. While hearing WA No. 314 of 2008 (Harej Ali and Anr. v. State of Assam and Ors. a Division Bench of this Court presided over by the Chief Justice, being confronted with conflicting views of a Division Bench of this Court in Nagaon Zilla Parishad v. Rezia Begum and Ors. 2006 (Supp) 1 GLT 585, disagreed with the views on the construction of Section 109 of 'the Act', so expressed by the Division Bench and therefore, with utmost respect to the members of the Division Bench, decided to refer the matter to a Bench of appropriate strength in order to resolve the controversy in question once for all. The order of the Division Bench referring the matter to a larger Bench of appropriate strength, reads as follows:

19-11-08. The issue in the appeal is regarding the construction of Section 109 Subsection (6) of the Assam Panchayat Act, 1994.

Chapter VII of the said enactment deals with the settlement of Hats, Ghats, Ferries etc. and distribution of proceeds and maintenance and regulation thereof. Section 105 deals with the settlement of Hats. Section 106 deals with the settlement of public Ferries other than Government Ferries. Section 107 deals with the settlement of private Hats, Ghats and fisheries. While Sections 105 and 106 deal with Hats and public Ferries respectively within the territorial jurisdiction of the Anchalik Panchayat Section 107 deals with Private Hats, Ghats and Fisheries within the jurisdiction of the Gaon Panchayat.

Section 109 deals with settlement of Fisheries of the Anchalik Panchayat. Sections 105, 106 and 109 respectively provide for the process by which the settlements contemplated under each one of those provisions are to be made. Those provisions also deal with the manner in which the proceeds are to be appropriated.

However, Sub-section (6) of Section 109 makes a special provision which reads as follows:

109(6). The Hats, Ferries and fisheries falling under any Anchalik Panchayat within the jurisdiction of Zilla Parishad, the yearly sale value of which is more than rupees one lakh shall be settled by the Zilla Parishad concerned for a period coinciding with and not exceeding one Panchayat Financial year as under Sections 105, 106 and 109 in the manner prescribed. The powers of examination and final acceptance of such tenders shall be vested in the Standing Committee as under Section 81(1)(a). The distribution of sale proceeds shall be in the manner as prescribed in the foregoing sections.Though the above mentioned Sub-section (6) occurs in Section 109 which essentially deals with the settlement of Fisheries of an Anchalik Parishad, Sub-section (6) not only deals with Fisheries but also Hats and Ferries falling under any of the Anchalik Panchayats. In substance in our view subsection (6) creates an exception to the procedure prescribed under Sections 105, 106 and 109 prescribing for the settlement of various properties of the Anchalik Parishad. Under the scheme of Sections 105, 106 and 109 properties of the Anchalik Parishad are required to be settled by initiating a process of inviting tenders, the idea being to secure the best financial advantage while disposing of such properties. Normally such tendering process is required to be initiated and finalized by the concerned Anchalik Parishad. Sub-section (6) of Section 109 departs from the above mentioned normal rule in a limited class of cases, that is, where the value of the property which is sought to be settled by the Anchalik Parishad exceeds rupees one lakh. Such a settlement is required Sub-section (6) to be made by the Zilla Parishad which is the next higher level Panchayat institution to the Anchalik Panchayat functioning under the Assam Panchayat Act, 1994.

Whether the clause under Section 109 (6) quoted above in the context and scheme of the aim and provisions referred to above mean the minimum value fixed by the Panchayat while offering the property for settlement or the highest value offered by the prospective settlee.

Sub-section (6) of Section 109 employs the expression 'yearly sale value of which is more than rupees one lakh'. The expression 'yearly sale value' is not a defined expression under the Act.

When Sub-section (6) stipulates that if the 'sale value' of the property exceeds more than rupees one lakh the same is required to be settled by the Zilla Parishad, whether it is the value which is likely to fetch in the tender process or is it the value initially fixed by the Anchalik Parishad which the Anchalik Parishad expects to be the minimum value which is likely to be fetched by disposal of the property.

A learned Judge of this Court in a judgement reported in 2004 (2) GLT 578 (Khalilur Rahman v. State of Assam and Ors.) took the view that the expression 'yearly sale value' is to be given the meaning with the minimum value which the Anchalik Parishad expects out of the transfer of the property is the 'yearly sale value'. At Para 20 the learned Judge held as follows:

This leads us to the final submission made on behalf of the petitioner that the bid value being above Rs. 1,00,000/-, the Anchalik Panchayat did not have jurisdiction. In this connection learned Counsel for the petitioner referred to the Division Bench decision of this Court in W.A. No. 325/2003 wherein on an interpretation of the provisions of the Assam Panchayat Act, 1994, it has been held that the jurisdiction in respect of Hats whose yearly sale value is more than Rs. 1,00,000/- vests with the Zilla Parishad. In the instant case the sale value was Rs. 31,000/-. Although the bid amount at which the settlement made was above Rs. 1,00,000/-, same will not be the decisive factor. The decisive factor will be the bid value of Rs. 31,000/-. Otherwise the question of jurisdiction between Zilla Parishad and Anchalik Parishad will always remain indecisive till submission and opening of tender. On being pointed out this aspect of the matter, the learned Counsel for the petitioner fairly admitted the position.A Division Bench of this Court in a case reported in 2006 (Supp) 1 GLT 585 (Nagaon Zilla Parishad and Ors. v. Rezia Begum and Ors.) appears to have taken more or less the same view as the one taken by the learned Single Judge. We hasten to add that though there is no such expressed declaration in the said judgment but the substance of the judgment appears to be so. At any rate both the learned Counsel appearing on the either side in this matter are of the opinion that the Division Bench also took the similar view as the one taken by the learned Single Judge whereas in a judgment reported in (2004) 1 GLR 31, Zakir Hussain and Ors. v. State of Assam and Ors. a learned Judge of this Court took a contrary view.

With utmost respect to the Members of the Division Bench which decided the case in Nagaon Zilla Parishad (supra) we are unable to agree with the view purportedly taken in the said judgment on the construction of Section 109(6) of the Act. We, therefore, deem it appropriate that the issue be resolved once for all by a Bench of appropriate strength.

The Registry is, therefore, directed to take appropriate steps in this regard. We are also informed that similar matters where the same question is involved are pending in this Court. The learned Counsel for the parties agree to furnish a list of such cases which are not listed today. The Registry shall identify the similar cases and list all the case together along with this appeal.

3. This reference under consideration can be resolved only by deciding whether the yearly sale value will mean the minimum value fixed by the Anchalik Panchayat for Hats, Ferries and Fisheries, offered for settlement by inviting tender, or it is the highest bid value offered by the prospective settlee i.e. eligible bidder. It is also required to be examined whether yearly sale value fixed at the time of inviting tender is the minimum value, which is expected to be derived in the tender process or it is so fixed in order to decide the jurisdiction of Zilla Parishad, for the purpose of settlement of the tender process.

4. We have heard, Mr. A.M. Mazumdar, learned Sr. Advocate, Mr. A.S. Choudhury, learned Sr. Advocate, Mr. HRA Choudhury, learned Sr. Advocate and also Mrs. B. Goyal, learned Addl. Sr. Govt. Advocate and Mr. K. Das, learned Standing Counsel, Bodoland Territorial Council.

5. In order to discuss all relevant issues relating to the question under reference, it would be pertinent to point out facts of the leading case, which triggered this reference.

6. In W.A. No. 314 of 2008 (Harej All and Anr. v. State of Assam and Ors.), the appellants were the respondents of WP (C) No. 3305 of 2008 and WP (C) No. 3306 of 2008. Pursuant to the NIT dated 3-5-2008 issued by the Executive Officer-cum-Secretary of Mandia Anchalik Panchayat, for settlement of two Ghats at Government fixed value of Rs. 25,500/- and 26,000/- respectively, the appellants

along with others including the respondent Nos. 7 and 8 submitted their tender papers by putting different bid values. The appellant Nos. 1 and 2 had offered their bid value at Rs. 1,05,000/- and Rs. 1,05,005/- and respondent Nos. 7 and 8 in turn offered their bid value at Rs. 35,000/-and Rs. 26,722/- respectively.

7. The Anchalik Panchayat without assigning reasons cancelled the tenders of the appellants and settled the Parghats in favour of the petitioners whose bid values were Rs. 35,000/- and Rs. 26,722/- respectively, which was far lesser than the bid value offered by the appellants.

8. On receipt of complaint lodged by the highest bidders, i.e. the appellants, the Chief Executive Officer, Barpetta Zilla Parishad, in order to examine the anomaly on the issue, called for documents from Anchalik Panchayat. Having failed to obtain all tender papers from the Anchalik Panchayat concerned by sending letter of request, finally resorted to coercive method by issuing search warrant and thus seized all the documents from the possession of the Anchalik Panchayat, relating to the settlement made by Anchalik Panchayat, where it was discovered that bid value of rupees more than one lakh offered by the appellants were cancelled by the Anchalik Panchayat. The Zilla Parishad placed the matter before its Standing Committee, which after due consideration, having found the appellants to the highest bidders allowed them to run the Par Ghats by its order dated 23-7-2008.

9. The respondents in this appeal challenged the order of settlement dated 23-7-2008 issued by the Zilla Parishad, Barpeta, whereby the appellants were allowed to run their respective Parghats for being the highest bidders. The Hon'ble Single Judge set aside and quashed the settlement order dated 29-8-2008 and allowed the writ petitioners to run the aforesaid two Ghats.

10. The learned single Judge, relying on the decision of this High Court in Nagaon Zilla Parishad v. Rezia Begum in W.A. 325/ 2003, held that as the Government yearly sale value in respect of the Parghats is below rupees one lakh it will be within the competence and jurisdiction of the Anchalik Panchayat to make the settlement and accordingly, set aside the order passed by the Zilla Parishad. The relevant portion of the decision of the learned single Judge may be quoted below:

The records produced by Ms. R. Chokraborty, learned Addl. Sr. G.A. depict that the Government 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 Zilla 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 Zilla Parishad v. Razia Begum in W.A. No. 325/03 and Ors. and a batch of writ petitions decided on 1-10-03. 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 Government annual sale value in respect of two Par 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, Zilla 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 23-7-2008 (Annex-ure-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.

11. This reference got triggered before the Division Bench when the appellant/respondent approached appellate forum against the above order of the single Bench.

12. In order to answer the above referred issues on the construction of Sub-section (6) of Section 109, and to analyze other related provisions of 'the Act', it would be essential to discuss the Division Bench judgment reported in Nagaon Zilla Parisad v. Rezia Begum and Ors. 2006 (Suppl) 1 GLT 585, the decisions of single Benches in Khalilur Rahman v. State of Assam and Ors. 2004 (2) GLT 578

and Jakir Hussain v. State of Assam (2004) 1 GLR31.

13. In Nagaon Zilla Parisad v. Rezia Begum and Ors., (supra) Division Bench of this Court, deciding a batch of writ petitions examined the powers of the Anchalik Panchayat and that of the Zilla Parishad in respect of settlement of Hats, yearly sale value of which was more than, one lakh. The learned single Judge held in the impugned order that the primary responsibility of inviting tenders for settlement of Hats was that of the Anchalik Panchayat, even if yearly sale value was more than rupees one lakh and only on receipt of the tender papers from Anchalik Panchayat, the Zilla Parishad would get it examined by the General Standing Committee to issue final order of settlement. Therefore, the question for examination and decision by the Division Bench was whether it was the primary duty of the Anchalik Panchayat to issue notice inviting tender and forward the tender papers with the recommendations to the Zilla Parishad for confirmation as provided under Sub-section (4) of Section 105, Sub-section (4) of Section 106 and Sub-section (4) of Section 109 of the Act of 1994, if the yearly sale value was less than rupees one lakh. Further, in case the yearly sale value of Hat was less than rupees one lakh, whether the Zilla Parishad's power will be only confined to confirmation of the recommendations made by the Anchalik Panchayat after acceptance of the settlement. The Division Bench reflected its opinion as follows:

5. On plain reading of Sub-section (6) it is obvious that power to settle hats of value of more than one lakh vests in Zilla Parishad. The power is conferred on Zilla Parishad in unequivocal terms when Section says that Hats mentioned therein shall be settled by the Zilla Parishad concerned, the manner to settle would be as provided in Section 105 of the Act of 1994. The manner prescribed under Section 105 is by inviting tenders under Rule 47 of the Assam Panchayat (Financial) Rules, 2002.

6. Reference to said Section 105 in subsection (6) of Section 109 is only for the purpose of providing mode of settlement. It has no reference to authority which shall exercise that power. When Sub-section (6) of Section 109 gives complete powers to Zilla Parishad to examine the tenders, scrutinize them and then to finally accept them and then to settle the Hats in favour of successful tenderers, it will be

out of place to read merely on the basis of reference of Section 105 in Sub-section (6) that power to invite tender shall be that of Anchalik Panchayat and thereafter entire tender process is to be handled by Zilla Parishad till settlement of a Hat. We are of the view that settlement of Hats, sale value of which is more than one lakh shall be made by respective Zilla Parishad. The Zilla Parishad shall invite tenders for settlement of Hats of value more than one lakh and proceed with the process of selection as required under Sub-section (6) of Section 109 of the Act read with Rule 47 of the Rules of 2002.

14. The Division Bench in Nagaon Zilla Parisad v. Rezia Begum and Ors. (supra) by interpreting provisions of Sub-section (6) of Section 109, effectively decided that the Zilla Parishad has complete authority to invite tender for settlement of a Hat, where annual sale proceeds is more than one lakh, in the following words:

(8) It is the case of the petitioner that the highest bid submitted is of Rs. 9,15,517/- by one Sri Dulu Bora. The petitioner also submitted bid of Rs. 6,11,211/, whereas the bid of respondent No. 6 tendering Rs. 3,99,853/- has been accepted without prior and formal approval of the Government and, therefore, the acceptance of the bid Is illegal. So far the first question raised by the petitioner, we have already decided that the Zilla Parishad has a complete authority to invite tender for a hat, annual sale proceeds of which is more than appears one lakh and thus invitation of tender by the Nagaon Zilla Parishad in accordance with law and does not require any interference.

15. Before embarking on the scrutiny of the relevant provision of the Act relating to power of Zilla Parishad to invite tenders for Hats, Ferries and Fisheries falling under any Anchalik Panchayat having yearly sale value of more than one lakh, vis-a-vis other pertinent facts in controversy, it will be useful to quote Section 109 of 'the Act', which runs as follows:

109. Settlement of Fisheries and distribution of proceed, thereof.-- (1) Save as otherwise provided in this Act or Rules framed under, all fisheries of an Anchalik Panchayat shall be settled by the Anchalik Panchayat in the manner prescribed for a period coinciding with or not exceeding one Panchayat financial year by inviting tender at the office of the Anchalik Panchayat by its President.

(2) Detailed procedure for inviting and submission of such tenders shall be such as may be prescribed.

(3) The powers of examination and final acceptance of such tenders shall be vested in the Standing Committee referred to in Section 52(i)(a).

(4) All Settlement made under Sub-section (3) shall be subject to the confirmation of the Zilla Parishad:

Provided that in case of any dispute, the Anchalik Panchayat may refer such cases to the Government and the aggrieved party may appeal before Government whose decision in this regard shall be final:

Provided further that as and when deemed necessary, the Government may intervene in the matter of a particular settlement and its decision on this regard shall be final.

(5) All sale proceeds, of public fisheries shall be deposited in the Anchalik Panchayat fund and shall be distributed in the manner hereinafter provided-

(a) twenty per cent of the total sale proceeds of Anchalik Panchayat fisheries shall be made over to the Zilla Parishad fund;

(b) forty per cent of the total sale proceeds of Anchalik Panchayat fisheries shall be retained with the Anchalik Panchayat Fund;

(c) Forty per cent of the total sale proceeds of Anchalik Panchayat fisheries shall be distributed equally among the Gaon Panchayats falling within the jurisdiction of the Anchalik Panchayat.

(6) The Hats, Ferries and Fisheries falling under any Anchalik Panchayat within the jurisdiction of Zilla Parishad, the yearly sale value of which is more than rupees one lakh (***) shall be settled by the Zilla Parishad concerned for a period coinciding with and not exceeding one Panchayat Financial year as under Sections 105, 106 and 109 in the manner prescribed. The powers of examination and final acceptance of such tenders shall be vested in the Standing Committee as under Section 81(i)(a). The distribution of sale proceeds shall be in the manner

as prescribed in the foregoing sections.

16. In Khalilur v. State of Assam reported in 2004 (2) GLT 578, the learned single Judge took a view that expression, yearly sale value' would mean maximum value which the Anchalik Panchayat accepted out of the transfer of property. The learned single Judge at para 20 of the judgment decided as follows:

(20) As regards the approval of the State Government as was urged by the learned Counsel for the petitioner in his submission No. (iv), such a plea is wholly untenable. The requirement of the aforesaid Rules cannot be said to be attracted even in case of an invalid highest bid. The Rules may have an application in case of preferring a valid lower bid over a valid higher bid, but certainly not in case of an invalid higher bid. This position was fairly accepted by the learned Counsel for the petitioner during the course of hearing. This leads us to the final submission made on behalf of the petitioner that the bid value being above Rs. 1,00,000/-, the Anchalik Panchayat did not have jurisdiction. In this connection learned Counsel for the petitioner the Division Bench decision of this Court in W.A. No. 325/2003 wherein on an interpretation of the provisions of the Assam Panchayat Act, 1994, it has been held that the jurisdiction in respect of Hats whose yearly sale value is more than Rs. 1,00,000/- vests with the Zila Parishad. In the instant case the sale value was Rs. 31,000/-. Although the bid amount at which the settlement made was above Rs. 1.00.000/-. same will not be the decisive factor. The decisive factor will be the bid value of Rs. 31.000/-. Otherwise the ques^ tion of jurisdiction between Zila Parishad and Anchalik Parishad will always remain indecisive till submission and opening of tender. On being pointed out this aspect of the matter, the learned Counsel for the petitioner fairly admitted the position.

17. In (2004) 1 GLR 31, Zakir Hussain v. State of Assam, Single Bench of this Court, while deciding the jurisdiction of Anchalik Panchayat and Zilla Parishad in respect of settlement of Hats, Ferries and Fisheries, held that the power of settlement of Hats, Public Ferries and Fisheries vests with the Anchalik Panchayat irrespective of its sale value. It was further held in Zakir Hussain v. State of Assam, (supra) that in case the bid value offered by eligible highest bidder is more than rupees one lakh, the Anchalik Panchayat concerned will have to forward all

such necessary tender documents to the Zilla Parishad for the purpose of settlement. The Zilla Parishad after receipt of the tender papers from the Anchalik Panchayat shall get the same examined by the General Standing Committee and, thereafter, issue the final order of settlement. The relevant part of the above decision reads as follows:

11. A careful scrutiny of the above provisions clearly indicates that the Anchalik Panchayat has the absolute powers in respect of settlement of hats, public ferries and fisheries as provided in Sections 105, 106 and 109. Sub-section (6) of Section 109 is an exception to the above Sections which scuttles the powers of Anchalik Panchayat and restrict it to the settlement of hats, ferries and fisheries having the annual sale value of Rs. One lakh and less. The final orders of settlement in respect of hats, ferries and fisheries will have to be made by the Anchalik Panchayat. Nowhere in Chapter VII, the Zilla Parishad has been vested with the powers of issuing settlement order in respect of such hats, ferries and fisheries.

The Act vests powers of initiating the process of settlement by inviting tenders with the Anchalik Panchayat only. It is primarily the duty of the Anchalik Panchayat to issue notice inviting tenders, and to forward the tender papers with its recommendation to the Zilla Parishad for confirmation as provided under Sub-section (4) of Section 105, Sub-section (4) of Section 106 and Sub-section (4) of Section 109 of the Act. If the value of the hats, ferries and fisheries of Rs. One lakh or less, the Zilla Parishad shall confine its exercise according the confirmation only. The final order of settlement in respect of such hats, ferries and fisheries will be issued by the Anchalik Panchayat. In respect of hats, ferries and. fisheries the value of which is more than Rs. One lakh, the Zilla Parishad after receipt of the tender papers from the Anchalik Panchayat shall get the same examined by the General Standing Committee and, thereafter, issue the final order of settlement. The only power under the scheme of the Act available to the Zilla Parishad is that the final order of settlement shall be issued by it after examination and scrutiny as provided in Sub-section (6) of Section 109 only in respect of hats, ferries and fisheries valued above Rs. One lakh.

18. Sub-sections 105(2), 106(2) and 109(2) of 'the Act' provide for settlement of all Hats, Ferries and Fisheries under the Anchalik Panchayat in the manner prescribed. Rule 47 of the Assam Panchayat (Financial) Rules, 2002 prescribes the procedures regarding sale and settlement of Market, Ferry and Fishery and Ponds. Sub-rule (4) of Rule 47 clearly portrays that the tenders shall be submitted by the intending tenderers either by registered post or personally, under sealed cover and Sub-rule (5) of Rule 47 reveals that tenders shall be opened, processed and settled by the Committee as provided in section (1) of Section 22 or Sub-section (i) (a) of Section 52 or Sub-section (a) of Section 81 of the Act, as may be applicable. Sub-rule (7) of Rule 47 requires the members present in the committees constituted under Sub-section (l)(i) of Section 22 or Sub-section (1) (a) of Section 52 or Sub-section (1)(a) of Section 81 of the Act, to sign all papers in a tender and cause to prepare a comparative statement setting forth full details of the tenders and to obtain dated signatures of the members.

19. Having pondered over the scheme and the object of 'the Act', it appears to us that save and except what is provided in Sections 105(1), 106(1) and 109(1), of 'the Act' or in the Rules prescribed in this regard there is no provision to allow and/or permit any other authority, except the office of the Anchalik Panchayat by its President, the power to invite tenders for settlement of Hats, Ferries and Fisheries, falling within it's territorial jurisdiction. Accordingly, this power of the President of the Anchalik Panchayat to issue N. I. T. being a power specifically conferred by the Act, there is no scope to interpret that Sub-section (6) of Section 109 gives absolute powers to Zilla Parishad to invite tenders, examine and scrutinize them and then finally to accept and approve the highest eligible bidder to issue settlement order.

20. As per the scheme of 'the Act', settlement of a property, by introducing tender system, imply wish and aspirations of the legislature to secure maximum financial advantage for the Panchayats. As matter of fact, fixing highest bid value in a tender process for settlement of a property of the Panchayat would scuttle a fair competition and diminish the actual value of the property on tender and the Panchayats will obviously plummet financial advantage. The purpose of entrusting the President of the Anchalik Panchayat to invite tenders is very specific as clearly

reflected in Sections 105(1), 106(1) and 109(1) of 'the Act'. In terms of Sub-section (4) of Section 105, sub-section(4) of Section 106, Sub-section (4) of Section 109, Zilla Parisad, a highest body in the hierarchy of Panchayats in a district, is having overall jurisdiction over all the Anchalik Panchayats, is empowered to confirm settlement Hats, Ferries and Fisheries, accepted by the Anchalik Panchayat. As per the scheme of the Act, Zilla Parishad is not expected to perform a preliminary work of issuing N. I. T., which is specifically entrusted by the statute to the Anchalik Panchayat. At the cost of repetition, we pronounce that procedures prescribed in Sub-rule (5) and Sub-rule (7) of Rule 47 of the Assam Panchayat (Financial) Rules, 2002, for opening, processing and settling of the tenders cannot vest the Zilla Parishad with the power to invite tenders, for settlement of Hats, Ferries and Fisheries, within its territorial jurisdiction.

21. Hon'ble Supreme Court of India in Karnataka State Financial Corporation v. N. Narasimahaiah and Ors. reported in : 2008 AIOL 348 : 2008 (4) Scale 473 : AIR 2008 SC 1797 held that interpretation of a statute would not depend upon a contingency. It has to be interpreted on its own. It is a trite law that the Court would ordinarily take recourse to the golden rule of literal interpretation. It was further observed that the object of the Act would be a relevant factor, for interpretation, only when the language is not clear and when two meanings are possible and not in a case, where the plain language leads to only one conclusion. In Karnataka State Financial Corporation v. N. Narasimahaiah and Ors. (supra), Hon'ble Supreme Court referring a decision of S. Sundaram Pillai, etc. v. V.R. Pattabiraman : AIR 1985 SC 582 observed as follows:

33. Even if the legislation is beneficent, the same by itself would not be held to be extendable to a situation which the statute does not contemplate. (S. Sundaram Pillai, etc: v. V.R. Pattabiraman : AIR 1985 SC 582)

22. Taking cue from the above discussion, we resort to literal construction of Sections 105(1), 106(1) and 109(1) of 'the Act', to hold that it is the President of the Anchalik Panchayat, who has been entrusted by the legislature to invite tenders for settlement of all Hats, Ferries and Fisheries falling under the Anchalik Panchayat in the manner prescribed.

23. In our view, Sub-section (6) of Section 109 only empowers the Zilla Parishad to examine and finally accept such tenders, if the yearly sale value is more than rupees one lakh.

23A. In the circumstances, we respectfully disagree with the view that 'the Zilla Parishad will have complete authority to invite tender for settlement of Hat, yearly sale value of which is more than rupees one lakh', taken by the Division Bench in Nagaon Zilla Parishad v. Rezia Begum and Ors. (supra). In ultimate analysis, we hold that in view of definite provision of law in 'the Act', there is no scope to extinguish the statutory power of the President of an Anchalik Panchayat to invite tenders, irrespective of any fixed yearly sale value, for settlement of Hats, Ferries and Fisheries, within its territorial jurisdiction.

24. As a matter of fact, in case of a consumer commodity or product for sale in the open market, a price which is fixed by the seller is displayed on the product. However, unlike consumer commodity, in a process of settlement by tender system, sale value can be finalized only after bids of respective bidders are opened and the highest eligible bidder is selected and accepted. Therefore, in a sale, value would always mean the amount of money, which would be received after some asset is sold and it would imply the market value of the asset. And market value of an asset is the amount expected from the open market. Therefore, 'yearly sale value' of a property put on sale through a tender system, for one year, would be the amount of money which would be received after the highest bid value offered by the eligible bidder, is accepted by the authority concerned.

25. As stated e,arlier 'yearly sale value' is not a defined expression in 'the Act'. The 'yearly sale value' of all Ghats, Hats and Fisheries, under the jurisdiction of the Anchalik Panchayat, which are settled by way of tender system, for a period one Panchayat year, is dependent upon the highest bid value offered by the eligible bidder. Thus, yearly sale value of any property settled by way of tender system may differ, each year. When a property such as Ghats, Hats and Fisheries under the Anchalik Panchayat is put in tender by issuing NIT, for the purpose of settlement, for one year, it's yearly sale value cannot be fixed by the Anchalik Panchayat or any other authority in question as because it is dependent on

highest bid value, offered by eligible bidder, which is finally accepted for settlement by the concerned authority. Nevertheless, in a system of settlement by inviting tender, it is the choice of the authority inviting tender to indicate a minimum value of the property put in tender for settlement, which the authority inviting tender expects it to fetch. Therefore, yearly sale value of all Ghats, Hats and Fisheries under the Anchalik Panchayat put in tender for settlement would mean the highest bid amount that is offered by the eligible bidder, in terms of the provision of the Act.

26. Provisions of Sections 105(1), 106(1) and 109(1) of the Act, in respect of inviting tenders of property under the control of Anchalik Panchayat, make it clear and specific that irrespective of price-tag or bid value fixed by the authority concerned in respect of Hats, Ferries and Fisheries, N. I. T. is issued by the President of the Anchalik Panchayat. After having floated the tenders, if the bid value of the eligible highest bidder is less than Rs. 1 lakh, the Standing Committee of Anchalik Panchayat will examine and accept the tenders of the highest eligible bidder and forward it to the Zilla Parishad, for confirmation, in terms of the Sub-section (4) of Section 105 Sub-section (4) of Section 106 Sub-section (4) of Section 109, as the case may be. It may be clarified that irrespective of yearly sale value being less than rupees one lakh, it is mandatory on the Anchalik Panchayats to forward all such tender papers, comparative chart and other related papers to the Zilla Parishad, for confirmation of settlement made by Anchalik Panchayat. It may be pointed out that any settlement made in respect of Hats, Ferries and Fisheries without such confirmation by the Zilla Parishad, will not be a legally valid settlement.

27. In view of the above interpretation, without lingering the discussion any more, we respectfully disagree with the views that the value fixed by the Panchayat with regard to Ghat, Hats and Fisheries, prior to issuance of NIT, would be 'the yearly sale value' of the property in question, for the purpose of deciding jurisdiction of Anchalik Panchayats and Zilla Parishad to invite tenders.

28. Further, we also respectfully disagree with the view taken by the Single Bench in Khalllur Rahman v. State of Assam (supra), to the effect that 'the question of

jurisdiction between Zilla Parishad and Anchalik Panchayat would remain indecisive till the 'submission and opening of the tender papers', as because the procedure laid by 'the Act', is precisely clear that all N.I.Ts. in respect of Ghats, Hats and Fisheries, Irrespective of the 'yearly sale value' of such property in question, are required to be floated by the Anchalik Panchayat. However, after submission of all tender papers before the Anchalik Panchayat, if the bid value offered by the eligible highest bidder is found to be more than rupees one lakh, the Standing Committee of Anchalik Panchayat, constituted under Section 52 of the Act, shall immediately forward all such tender papers submitted by the bidders together with comparative chart prepared and processed as per procedure prescribed, to the Zilla Parishad concerned, for doing needful at their end, in accordance with law. However, in case the bid value offered by eligible highest bidder is less than rupees one lakh, the Standing Committee of the Anchalik Panchayat shall accept tender value offered by eligible highest bidder and forward such recommendations for confirmation by the Zilla Parishad. We hasten to add here that if in any given case, the highest bidder is not found suitable, law prescribed, for such eventuality will have to be followed.

29. The aforesaid discussion answers the question posed to us by the Division Bench in this reference. We hasten to clarify that save and except answering the reference on the point of law referred to us, we have not; examined any further question regarding applicability of the said principle to the writ appeals and the writ petitions placed before us together with this reference.

30. In the result, the writ appeals and writ petitions placed before us together with this reference are hereby sent back to the learned Courts for disposal in accordance with law.

31. Registry is directed to do the needful to send back the case records to the respective Benches for disposal.