

(2001) 09 PAT CK 0079
In the Patna High Court
Case No : C.W.J.C. No. 9153 of 2001

Basant Mukhiya

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 18-09-2001

Acts Referred:

Citation : (2002) 1 PLJR 80

Hon'ble Judges : S.K. Katriar, J

Bench : Single Bench

Advocate : Kamal Naian Chaubey and Mukesh, for the Appellant; A.K. Choudhary and Rajesh Kumar, for the Respondent

Final Decision : Dismissed

Judgement

S.K. Katriar, J.—Heard the learned Counsel for the Petitioner, learned G.R 8, and learned Counsel for the intervenor Respondents. This writ petition is directed against the general notice bearing Memo No. 469-2/ dated 14.7.2001 (Annexure-6), issued under the signature of the Anchal Adhikari, Supaul, whereby it has been notified that the three Sairats for Makhana Cultivation, namely, Bariya pokhar, Karihar pokhar, and Khasmahal in Ward No. 7 will be settled for makhana cultivation auction, cutting short the fishery rights of the Petitioner for the period 1.4.1999 to 31.3.2002.

2. This writ petition relates to three jalkars, namely, Bariya Pokhar, Kariho Pokhar and Khasmahal Ward No. 7. The nature, objects and purpose of settlement is an important aspect of the present controversy which shall be discussed later on. The Petitioner had obtained settlement of the three jalkars for fishing purpose for the period 1.4.1999 to 31.3.2002. He peacefully worked for the three jalkars up to March, 2001. In so far as the current period is from 1.4.2001 to 31.3.2002 is concerned the authorities of the Fisheries Department executed the three different agreements dated 2.7.2001 (Annexure-8 series), followed by the Parwana dated 7.7.2000 (Annexure-2 series). It is relevant, to state that the total settlement amount for the three Jalkars for fishing rights for the period

1.4.1999 to 31.3.2002, as is manifest from Annexure-2 series, was Rs. 9572/-. The Petitioner continued to work for the three Jalkars till such time he was visited with the notice that he had violated the terms and conditions of the agreement, namely, the Petitioner had been given fishing rights by Annexure-8 series whereas he had converted it Makhana cultivation. This led to an enquiry with notice to the Petitioner. It appears from the Petitioner's statement (Annexure-E to the counter affidavit of the State Government) before the Enquiry. Officer being the Collector of the District that he admitted that he had converted the user of the Jalkars from fishing to Makhana cultivation which is in violation of the agreement, and he promised not to repeat it and the Jalkars will be restored to the user of fishing. This does not seem to have satisfied the Respondent authorities who issued the order dated 11.7.2001 (Annexure-C to the counter affidavit), issued under the signature of the Collector of the District, recording the finding that the Petitioner has violated the terms of settlement, as he has converted the user from fishing to makhana cultivation. It is further stated in the order that Makhana cultivation is more profitable than fishing and, therefore, agreement in favour of the Petitioner was terminated. Copy of the order was forwarded to the Petitioner also. This was followed by the impugned order dated 14.7.2001 (Annexure-1), issued under the signature of the Anchal Adhikari, Supaul, whereby 23.7.2001 was fixed for auction of the three Jalkars for makhana cultivation.

3. The joint application of the three intervenors must be noticed who are Shital Mukhiya, Sahdeo Mukhiya and Barun Kumar. According to them, the auction took place on 23.7.2001, as per Schedule (Annexure-6). It appears from the documents marked Annexure-A series to the intervention application that Bariya Pokhar has been settled in favour of Shital Mukhiya for a sum of Rs. 5040/-, Kariho Pokhar has been settled in favour of Barun Kumar for a sum of Rs. 8525/- and the Khasmahal sairat (Ward No. 7) has been settled in favour of Sahdeo Mukhiya for a sum of Rs. 17,600/-. In other words, the three settlement for the three Jalkars have for the remainder of the period being settled for a total sum of Rs. 31,165/-.

4. While assailing the validity of the impugned order, learned Counsel for the Petitioner submits that after the parties have entered into the agreement (Annexure-8 series), followed by the Parwana (Annexure-2 series), the authorities have acted arbitrarily and illegally in cutting short the period of settlement. He next submits that the three Jalkars belonged to the Fisheries Department, but the auction has been held by the Anchal Adhikari, Supaul, and at the behest of Revenue Department which is impermissible. This transfer of responsibility could have been ordered for by the State Government. He has lastly submitted that the Petitioner's statement dated 11.7.2000 (Annexure-E to the counter affidavit) made before the Enquiry Officer was obtained under duress.

5. Learned Government Pleader No. VIII has stated that there had been persistent complaints against the Petitioner for converting the user of the three

Jalkars. The Makhana cultivation is far more profitable than the fishing Jalkar. The Petitioner was doing makhana cultivation by paying the charges for fishing only. He next submits that this has been established in a proper enquiry after due notice to the Petitioner and the enquiry officer reached the conclusion, inter alia, on the basis of the admission of the Petitioner.

6. Learned Counsel for the three intervenors submits that pursuant to the impugned order (Annexure-6), auction took place on 23.7.2001, the Petitioner did not participate in it, they did participate, offered the highest bid and, in fact, have already deposited the entire amount than being paid by the Petitioner.

7. Having considered the rival submission, I am of the view that this writ petition is fit to be dismissed. Learned Government Pleader is right in his submission that there was complaint against the Petitioner for violating the terms and conditions of the agreement which has been established during course of inquiry. In fact Enquiry Officer found the violation of the agreement, inter alia, on the basis of admission of the Petitioner himself. Learned Counsel for the intervenors is equally right in submission that the Petitioner did not participate in the auction that took place on 23.7.2001. Learned Counsel for the Respondent is further right in his submission that makhana cultivation is more profitable than the fishing right. Allowing the Petitioner to continue with the Makhana cultivation, although the agreement is for fishing, is depriving the State Government of its lawful revenue. In that view of the matter, the irresistible conclusion is that the Respondent authorities were justified in revoking the agree merit and putting it to auction.

8. In the result, the writ petition is hereby dismissed. The Respondent authorities as well as the three intervenors are "entitled to go upon the three Jalkars with a view to do makhana cultivation. The Petitioner would be entitled to refund of the amount deposited by them, if found in excess by the Respondent authorities.