

(2003) 12 OHC CK 0029

In the Orissa High Court

Case No : Writ Petition (C) No"s. 10454 and 11178 of 2003

Bhuban Gochhayat

APPELLANT

Vs

The Collector and Others
 Basanta Kumar Sutar Vs
The Sub-Collector and Others

RESPONDENT

Date of Decision : 10-12-2003

Acts Referred:

Orissa Grama Panchayat Rules, 1968 — Rule 87

Citation : (2004) 1 OLR 155

Hon'ble Judges : C.J.MANUOR03532003.htm, J;A.S. Naidu, J

Bench : Division Bench

Advocate : S.K. Das, S.K. Mishra, B. Mohapatra, S. Dash and A. Dhalsamanta in W.P. C No. 11178/03 and H.M. Dhal and P.K. Tripathy in W.P. C No. 10454/03, for the Appellant; Additional Government Advocate, for the Respondent

Judgement

A.S. Naidu, J.—Both these Writ Petitions relate to auction of a fishery shairat commonly known as "Charigharia Jaripata" situated near Banki in the district of Cuttack. Admittedly the aforesaid fishery shairat is managed by Pathapur Grama Panchayat and the fishery shairat is settled by auction year after year by the said Grama Panchayat.

2. Petitioner in W.P. (C) No. 11178 of 2003, namely, Bhuban Gochhayat, claims that in consonance with an Auction Notice issued by the Pathapur Grama Panchayat on 10.9.2003 inviting interested bidders to take part in the auction of the fishery shairat, he appeared and quoted his bid. A copy of the said Auction Notice is annexed as Annexure-1 to the Writ Petition. It is submitted that in consonance with the aforesaid Notice the auction was held and Bhuban Gochhayat being the highest bidder having quoted a sum of Rs. 20, 600.00 his bid was accepted by the concerned authorities and vide Annexure-3 dated 1.10.2003 the auction was confirmed by the B.D.O., Banki, Damapara. It is further alleged that some of the villagers being instigated by the unsuccessful bidders with an avowed oblique motive of harassing the petitioner filed an

application before the Sub-Collector, Banki and also created disturbance over the fishery shairat. The Sub-Collector, after taking stock of the situation, in order to avoid law and order problems in the village, directed the B.D.O., Banki, opposite party No. 3, to issue direction to the Grama Panchayat as well as petitioner Bhuban Gochhayat not to catch fish from the aforesaid fishery shairat and to maintain status quo ante until further orders. The said order dated 17.10.2003 has been filed as Annexure-6 and is impugned in the Writ Petition. The petitioner Bhuban Gochhayat inter alia prays to quash the orders Annexures-5 and 6 and to issue direction to the opposite parties to provide adequate security to the petitioner for smooth operation of the fishery shairat in question.

3. W.P. (C) No. 10454 of 2003, at the other hand has been filed by one Basanta Kumar Sutar for self and on behalf of other villagers inter alia alleging that the authorities in a clandestine manner and without following the mandatory provisions stipulated in Rule 87 of the Orissa Grama Panchayat Rules settled the fishery shairat, i.e. Charigaria Jaripata, in favour of Bhuban Gochhayat, opposite party No. 4, for a paltry sum of Rs. 20, 600.00. It is submitted that the Notice for auction was neither published in a conspicuous place nor any of the intending bidders were aware of such auction. It is also submitted that the provision of Sub-rule (d) of Rule 87 of the Orissa Grama Panchayat Rules were observed more in its breach. According to the said petitioner, Charigharia Jaripata, the disputed fishery shairat, is over an area of Ac. 68.13 decimals and is one of the biggest fishery shairats under the Grama Panchayat. Settlement of such a huge fishery shairat for a sum of Rs. 20, 600. 00 itself reveals that the authorities had some nexus in the clandestine deal. On the basis of the aforesaid pleadings, it is prayed to quash the order of settlement of the fishery shairat made in favour of opposite party No. 4 Bhuban Gochhayat and to direct the authorities to re-auction the fishery shairat once again for the year 2003-2004.

4. In view of the fact that both the Writ Petitions relate to same dispute, with consent of learned counsel for the parties, the same were heard together.

5. After hearing the learned counsel for the respective petitioners and the learned Addl.Govt. Advocate for the State, we were satisfied that settlement of the fishery shairat in question which is over an area of Ac. 68.13 decimals for a paltry sum of Rs. 20,600.00 is not just and proper. In order to avoid unnecessary delay and to protect the State larges as also to test the bona fide of the respective petitioners, we directed them to quote the highest amount they intend to offer for taking lease of Charigharia Jaripata fishery shairat. In consonance with the said direction, two Memoranda were filed on 3.12.2003, one by the petitioner in W.P. (C) No. 11178/03, namely, Bhuban Gochhayat in whose favour the fishery shairat has been settled, and the other by Basanta Kumar Suta, the petitioner in W.P. (C) No. 10454/03, quoting their maximum price for taking lease of the fishery shairat, in sealed cover. On opening the sealed covers, we find that Basanta Kumar Sutar, the petitioner in W.P. (C) No. 10454/03 has offered an amount of Rs. 50. 000.00 only ; whereas Bhuban Gochhayat, the petitioner in

W.P. (C) No. 11178/03 has offered to pay Rs. 71, 111.00. After perusing the aforesaid two Memoranda, we have no hesitation to accept the offer of Rs. 71,111.00 made by Bhuban Gochhayat. Accordingly, we allow W.P. (C) No. 11178/03 with direction that the fishery-right in respect of Charigharia Jaripata shairat be granted in favour of Bhuban Gochhayat for the year 2003-2004 subject to enhancement of the bid amount to Rs. 71, 111.00 in place of Rs. 20,600.00. We also direct that Bhuban Gochhayat shall deposit the balance amount of Rs. 50,511.00 (i.e. Rs. 71, 111.00-Rs. 20, 600.00) within fifteen days from today, failing which the settlement of the fishery shairat in his favour shall stand cancelled and he shall also be liable to face a proceeding for violating the undertaking/offer made before this Court. We further direct that if Bhuban Gochhayat fails to deposit the amount offered by him, offer shall be made to Basanta Kumar Sutar, the petitioner in W.P. (C) No. 10454/03 either in person or by registered post, to pay a sum of Rs. 71,111.00, i.e. the amount offered by Bhuban Gochhayat, within fifteen days from the date of receipt of the offer if he is interested in the fishery shairat. It is needless to say that if Basanta Kumar Sutar will pay the sum of Rs. 71,111.00 within the time stipulated above, the fishery shairat would be settled in his favour. If both the petitioners of the two Writ Petitions fail to deposit the aforesaid amount, the authorities shall take steps to re-auction the fishery shairat fixing the appropriate upset value keeping in view the amounts offered in Court.

6. Before parting, we are tempted to express our dissatisfaction over the manner in which public properties are settled in throw- away price and we direct the concerned authorities to be ore vigilant in such matter so as to protect the State larges. A copy of this order be communicated to the Secretary to Government of Orissa, Panchayati Raj Dgpartment.

7. Both the Writ Petitions are disposed of with the aforesaid observations/ directions The Memoranda filed by the respective petitioners be kept on record. Parties to bear their own costs.