(2009) 07 PAT CK 0113

In the Patna High Court

Case No : CWJC No. 15439 of 2007

Binod Kumar APPELLANT

Vs

The State of Bihar and Others RESPONDENT

Date of Decision : 20-07-2009

Acts Referred:

Citation : (2009) 4 PLJR 842

Hon'ble Judges : Ravi Ranjan, J

Bench : Single Bench

Advocate : Pasupati Prasad Sinha and Deepak Kumar, for the Appellant; Dhananjay Kumar for the State, for the Respondent

Judgement

Dr. Ravi Ranjan, J.—Heard learned counsel for the petitioner and the State. The writ petitioner is aggrieved by Annexures-1 and 2, whereby his request for return of 50% bid amount to the tune of Rs. 2,83,500/- was refused by the authorities.

2. Learned counsel for the petitioner submits that 43.90 acres of Jalkar of Pansokhar Tank, Surajpur appertaining to Khata No. 190, C.S. Plot No. 682 was being settled by the Collector, Nalanda, for the year 2004-2005. Open bid was held and petitioner offered a sum of Rs. 5,76,000/- for settlement for the aforesaid period starting from 1.4.2004 to 31.3.2005. He was declared highest bidder and pursuant to that, and on offer, the petitioner deposited the requisite 50% of the bid amount in the District Najarat. However, neither any parwana was issued in favour of the petitioner nor was any agreement entered into in accordance with the law by the State Government. Thus, according to the petitioner, despite the aforesaid offer and deposit of a sum of Rs. 5,76,000/-, the petitioner was not given possession of the Jalkar. After the expiry of settlement, the petitioner made a request for refund of his amount as neither any parwana was issued in favour of the petitioner nor was any agreement made between the State Government and the petitioner for fishing rights. The District Fishery Officer then directed him, by order dated 3.12.2005 as contained in Annexure-2, to deposit the rest of bid amount calculated as Rs. 2,83,500/- for doing the

needful.

3. Learned counsel for the petitioner submits that this order itself was erroneous as the period of settlement having already ended on 31 of March 2005, there was no occasion for the petitioner to deposit the rest amount. The question which remained was only of refund of the amount already deposited by the petitioner. Thereafter, the petitioner again moved before the Director, Fisheries, Bihar, Patna, in Appeal No. 13/07 which was disposed of on 23.8.2007 by an order as contained in Annexure-1. In the aforesaid order it had been noticed that Rs. 2,83,500/- had been deposited by the petitioner and necessary parwana was also not issued. However, authority concerned was of the opinion that there was no question of returning the money already deposited for the reason that at that particular period authority of settlement of fishery was lying with the Collector. Thus, the appeal was dismissed.

4. Learned counsel for the petitioner submits that once the dispute was raised before the Fisheries Department and it was admitted by the authorities that such amount has been deposited by him and no parwana putting him in possession was issued then there was no question of dismissal of the appeal. If the authorities of fishery department were of the opinion that the Revenue Authorities were required to refund the amount, the matter should have been referred by it to the Revenue Authorities. In support of his submission learned counsel for the petitioner has placed reliance upon two decisions of this Court as contained in Annexures-7 and 8 which was passed in CWJC No. 488 of 1992 as well as 3898 of 1986. In both the cases it has been held that since the petitioner therein had deposited the amount and admittedly parwana was not given, the amount should either be adjusted or refunded.

5. The State of Bihar has filed counter affidavit. Learned counsel for the State submits that no representation as contained in Annexures-3 and 4 were filed by the petitioner as no such representation is on record of the State. They are totally created documents. Second submission is that the Fisheries Department has not settled Jalkar in question, thus, his request was rejected by the authorities. Further, contention is that after the petitioner has filed his application for refund of the amount, an enquiry was conducted by the Circle Officer concerned and report has been annexed as Annexure-D. It is manifest therefrom that the petitioner has indulged himself in fishing during the aforesaid period of settlement. The petitioner has refuted the allegation by filing reply and he has also annexed certain documents.

6. However, learned counsel for the State could not demonstrate that the enquiry was done in the presence of the petitioner after issuing notice upon him. That having not been done and the enquiry itself having been made in the year 2009, i.e., after filing of petition for refund of the amount and this writ petition, that too without observing of the principles of natural justice, is nullity.

7. This Court is of the opinion that since it is admitted fact that neither parwana

was issued putting the petitioner in possession of the Jalkar concerned nor any agreement was executed, the amount has to be refunded to the petitioner. The authorities of Fisheries Department could have simply referred the matter to the Collector concerned for taking proper steps for refund of that amount in place of dismissing the application of the petitioner.

8. In view of the aforesaid decisions of this court in similar matters as contained in Annexures-7 and 8, the respondent Nos. 4 and 5 are directed to send the concerned file to the respondent No. 2, Collector, Nalanda who shall take a decision thereupon immediately taking into consideration the admitted position and the finding of this court that the money of petitioner is liable to be refunded to him. So far, the question as to whether petitioner has indulged himself in fishing illegally in the Jalkar concerned or not, the matter can be inquired into by the appropriate authority, who after making a proper inquiry in this regard, but not without issuing notices upon the petitioner as well as other concerned parties, shall be free to take action subsequently in accordance with law. The appropriate authority is also expected to fix responsibility upon the officials due to whom the State Government has been put to loss of revenue. Accordingly, with the aforesaid directions this writ application stands disposed of.

