

(2017) 09 PAT CK 0002

In the Patna High Court

Case No : 20547 of 2012

Bithan Prakhand Matasyajeevi Sahyog Samiti Ltd.

APPELLANT

Vs

The State Of Bihar

RESPONDENT

Date of Decision : 01-09-2017

Acts Referred:

[3998](#) Constitution of India, [3998-226](#) Article 226 -
Power of High Courts to Issue certain writs
[8051](#) Bihar Co-operative Societies Act, 1935, [8051-11B](#) Section 11B

Citation : (2017) 09 PAT CK 0002

Hon'ble Judges : Hemant Kumar Srivastava

Bench : SINGLE BENCH

Advocate : MAHASWETA CHATTERJEE, ANIL KR UAPDHYAY

Final Decision : Disposed off

Judgement

1. This writ petition has been filed under Article 226 of the Constitution of India for quashing letter no. 757 -758 both dated 11.7.2012, as contained in annexure 3 series, by which respondent no.5, District Fisheries officer, Samastipur directed the petitioners to deposit Rs. 4, 20,000/- as return of the loan and furthermore, for quashing letter no. 1006 dated 29.9.2012 dated 29.9.2012, as contained in annexure 4, by which respondent no.5, District Fisheries officer, Samastipur directed the petitioners to deposit amount involved in letter no. 645 dated 16.6.2012 and letter no. 757 dated 11.7.2012, and furthermore, for issuance of direction to respondent no.5 not to take any step

treating the petitioners" society as defaulter and also for issuance of direction to respondent no.5 to settle all Jalkars situated in block Bithan with petitioners" society.

2. The brief fact, which lies to file this writ petition, is that there were two Fishermen Cooperative Societies operating in Bithan block district Samastipur namely, Bithan Prakhand Matasyajeevi Sahyog Samiti Ltd registered under the Bihar Cooperative Societies Act, 1935 and Bithan Prakhand Matasyajeevi Swalambi Sahakari Samiti Ltd registered under the Bihar Self Supporting Cooperative Societies Act, 1966.

3. The State Government decided to restore existing ox bow lakes to tap immense potentiality for increasing fish production and for that purpose issued letter no.561 in which name of Sondhar Jheel and name of Bharthua Jheel were mentioned at serial nos. 21 and 24 respectively which has been annexed as annexure 1 to this petition.

4. According to the aforesaid letter, a provision was made for cooperative societies to take interest free loan. In the year 2008 the above stated Sondhar Jheel and Bharthua Jheel as well as several other Jalkars were settled with Bithan Prakhand Matasyajeevi Swalambi Sahakari Samiti Ltd and the aforesaid society was selected for implementation of the scheme of the above stated two ox bow lakes and for that purpose, an agreement was executed between District Fisheries officer and respondent no.6 who was chief executive of the aforesaid society on 28.4.2008. Accordingly, Rs. 4, 20,000/- loan was given to the above stated society. The respondent no.6 being chief executive of the aforesaid society was required to return loan amount in five instalments but respondent no.6 even after receipt of loan amount did not start any development work nor

paid any instalment of the loan. The District Fisheries officer, Samastipur was required to initiate a certificate case against respondent no.6 in the year 2008-09 itself, but he did not initiate any certificate case and kept mum for near about four years. However, in the meantime, a new section 11B was inserted in Bihar Cooperative Societies Act, 1935 by amendment Act 22 of 2010 as a result whereof all block levels fishermen cooperative societies merged in one society registered under the Bihar Cooperative Societies Act, 1935. Accordingly, the above stated two societies namely, Bithan Prakhand Matasyajeevi Sahyog Samiti Ltd and Bithan Prakhand Matasyajeevi Swalambi Sahakari Samiti Ltd merged and a new society i.e. petitioner no.1 was registered under the Bihar Cooperative Societies Act, 1935 on 18.12.2010.

5. Furthermore, case of the petitioners is that the petitioners received two letters being letter no. 757 and 758 both dated 11.7.2012 which have been annexed as annexure 3 series to this petition, by which District Fisheries officer, Samastipur directed the petitioners to deposit loan amount of Rs. 4, 20,000/- by 16.7.2012, failing which certificate case shall be initiated against the petitioners. Furthermore, by letter no. 645 dated 16.6.2012, District Fisheries officer, Samastipur directed the petitioners to deposit dues revenue of Rs. 1, 51,570/- and vide letter no. 1006 dated 29.9.2012, District Fisheries officer, Samastipur, again, directed the petitioners to deposit the amount as mentioned in letter no. 645 dated 16.6.2012, failing which claim of petitioners" society will be rejected and settlement of Jalkar will be made through bid. However, petitioners" society deposited dues revenue of the year 2011-12 amounting to Rs. 1, 51,570/- on 19.9.2012 which is evident from perusal of annexure

6 to the petition and also deposited loan amount of Rs. 4, 20,000/- under protest which is evident from perusal of annexure A to the counter affidavit.

6. The main grievance of the petitioners is that loan was taken by respondent no.6 while he was chief executive of erstwhile Bithan Prakhand Matasyajeevi Swalambi Sahakari Samiti Ltd but District Fisheries officer, Samastipur did not take any step for realization of the aforesaid loan amount from respondent no.6 rather illegally and in arbitrary manner issued notices to the petitioners for realization of the aforesaid loan amount from them and under compulsion and pressure of cancellation of settlement of their society, petitioners deposited the aforesaid loan amount.

7. Counter affidavit has been filed on behalf of the respondent nos.1 to 5 with specific pleadings that loan amount has already been deposited by the petitioners and after deposit of the loan, order of settlement of all Jalkars situated within the area of petitioners' society has already been issued and similarly, dues of Rs. 1, 55,300/- has also been deposited and, therefore, all grievances of petitioners' society has already been redressed.

8. Respondent no.6 did not appear in spite of service of notice.

9. Learned counsel appearing for the petitioners submitted that it is admitted position that loan of Rs. 4, 20,000/- was taken by respondent no.6 being chief executive of erstwhile Bithan Prakhand Matasyajeevi Swalambi Sahakari Samiti Ltd and it was respondent no.6 who executed an agreement and also gave guarantee of the aforesaid loan amount. Learned counsel for the petitioners further submitted that for the above stated

loan amount, members of the present society can not be held responsible and no recovery can be made from them as respondent no.6 is not member of the present society. She further submitted that there is nothing in the relevant provision of the Bihar Cooperative Societies Act, 1935 that new society is liable for dues of old society. She further submitted that District Fisheries officer, Samastipur ought to have lodged certificate case against respondent no.6 as well as the then society for realization of loan amount but in stead of that District Fisheries officer, Samastipur issued notices to the present society for realization of the above stated amount and the petitioners under compulsion and pressure deposited the said loan amount with protest and, therefore, the aforesaid deposited amount should be returned to the petitioners.

10. On the other hand, learned counsel for the respondent nos. 1 to 5 refuted the above stated submissions arguing that erstwhile Bithan Prakhand Matasyajeevi Swalambi Sahakari Samiti Ltd merged with the present society with all liabilities and, therefore, District Fisheries officer, Samastipur rightly issued notices to the petitioners for realization of loan amount. He further submitted admittedly, settlement of Jalkars has already been made to the petitioners after depositing loan amount as well as dues and, therefore, this writ petition has become infructuous and is liable to be dismissed being infructuous.

11. It is admitted position that prior to insertion of section 11B of the Bihar Cooperative Societies Act, 1935, two societies i.e. Bithan Prakhand Matasyajeevi Sahyog Samiti Ltd as well as Bithan Prakhand Matasyajeevi Swalambi Sahakari Samiti Ltd were functional in Bathan block of Samatsipur district and after insertion of section 11B of the Bihar

Cooperative Societies Act, 1935, both the above stated societies stand merged and in view of the aforesaid section 11B of the Act, petitioner no.1 was registered as a new cooperative society. The aforesaid amendment in the Bihar Cooperative Societies Act, 1935 was made by amendment Act 22 of 2010. It is also admitted position that loan amount was taken by erstwhile Bithan Prakhand Matasyajeevi Swalambi Sahakari Samiti Ltd on 28.4.2008 and petitioner no.1 was recognized as new society under section 11B of the Act on 18.12.2010. The erstwhile Bithan Prakhand Matasyajeevi Swalambi Sahakari Samiti Ltd was required to refund the amount of loan after 12 months in five equal instalment within the period of five years which is evident from clause IV of annexure 2, the agreement executed by respondent no.6. The aforesaid clause IV of the agreement also goes to show that respondent no.6 conceded to be guarantor of the aforesaid loan and clause VI of the aforesaid agreement goes to show that on default of deposit of instalment amount, settlement was liable to be cancelled after issuance of show cause notice and a certificate case was to be lodged for realization of dues amount. However, it is admitted position that neither any show cause was issued to respondent no.6 nor any certificate case was lodged against him. However, it is pertinent to be noted here that before expiry of period of settlement, erstwhile Bithan Prakhand Matasyajeevi Swalambi Sahakari Samiti Ltd had already lost its existence and merged into new society in view of new section 11B of the Bihar Cooperative Societies Act, 1935 and, therefore, it is obvious from the aforesaid facts that after taking loan amount, erstwhile Bithan Prakhand Matasyajeevi Swalambi Sahakari Samiti Ltd was in existence only for near about two and half years.

12. Here, I would like to refer section 11B of the Bihar

Cooperative Societies Act, 1935 which was inserted by Act 22 of 2010 and runs as follows:

" Notwithstanding anything contrary contained in any provision of Bihar Act VI of 1935 or any other Act, Rules made thereunder and Bye-laws of a registered Cooperative Society or class of Cooperative Societies, any order issued by the State Government or Registrar, Cooperative Societies, all existing Fishermen Cooperative Societies at block level, area of operation being confined to the Geographical limit of the Block shall stand merged in one Cooperative Society and shall be deemed to be registered as a new Cooperative Society under Bihar Act VI of 1935, and the Registrar, Cooperative Societies shall issue registration certificate : Provided that on such registration, all members of the existing Co-operative Society or Societies registered under Bihar Act VI of 1935 or Bihar Self Supporting Co- operative Societies Act, 1966 shall be deemed to have become members of such recognized Society and shall have all rights and liabilities as members of the said Society : Provided further that on such reorganization, for managing the affairs of the new Society and all such affiliating Societies of which the Fishermen Co-operative Society is a member, the Registrar/Government shall constitute and ad hoc Managing Committee for a period not exceeding one year, within which the new Managing Committee shall be constituted after elections."

13. From bare perusal of the aforesaid provision, it is obvious that after merger of two or more societies, members of

the aforesaid societies shall be deemed to have become members

of new recognized society and members of erstwhile society

shall have all rights and liabilities as members of the said

Society. Therefore, it is clear that members of erstwhile society

shall have not only their previous rights but also their previous

liabilities after merger in view of section 11B of the Bihar

Cooperative Societies Act, 1935. Furthermore, aforesaid

provision goes to show that after coming into force of new

section 11B, members of erstwhile society shall automatically be

made members to recognized society under section 11B of the

Act. Therefore, in the aforesaid circumstances, if any loan had

been taken by erstwhile Bithan Prakhand Matasyajeevi

Swalambi Sahakari Samiti Ltd prior to its merger with new

society, all members of new society recognized under section 11B of the Act shall be liable to return the aforesaid loan amount because they have become members of new society not only with their previous rights but also with their previous liabilities and so, in my view, District Fisheries officer, Samastipur rightly issued notices to the petitioners for recovery of the aforesaid loan amount.

14. It has been argued on behalf of the petitioners that respondent no.6 had taken the above stated loan on behalf of erstwhile Bithan Prakhand Matasyajeevi Swalambi Sahakari Samiti Ltd but misappropriated the aforesaid amount and even then District Fisheries officer, Samastipur neither issued any notice to him nor initiated any certificate case against him but, in my view, even if it assumed that District Fisheries officer, Samastipur did not issue any notice nor initiated any certificate proceeding against respondent no.6, then also, the aforesaid laches on the part of the District Fisheries officer, Samastipur shall not absolve the petitioners from their liability and, at best, petitioners may take steps in accordance with law for initiation of criminal case against respondent no.6.

15. In view of the aforesaid discussions, this petition stands disposed of giving liberty to the petitioners that the petitioners may take action in accordance with law against respondent no.6.