

(2012) 12 OHC CK 0014

In the Orissa High Court

Case No : Writ Petition (C) No's. 8083 and 8850 of 2012

Braja Behera and Others

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 11-12-2012

Acts Referred:

Citation : (2013) 115 CLT 482

Hon'ble Judges : V. Gopala Gowda, C.J;S.K. Mishra, J

Bench : Division Bench

Advocate : Sukanta K. Dalai and Ors, for the Appellant; D. Panda, Addl. Government Advocate and Ors., for the Respondent

Final Decision : Dismissed

Judgement

S.K. Mishra, J.—The Petitioner in his capacity as the President of Uttarayani PFCS has filed W.P.(C) No. 8083 of 2012 seeking directions from this Court for eviction of unauthorized encroachment and handing over the possession of the source in question for " catching of fish in the Chilika lagoon. The Uttarayani PFCS has been registered since 1962 and is affiliated to FISHFED, Bhubaneswar. The society consists of traditional fishermen. Their livelihood depends on traditional fishing inside Chilika. The Petitioner claims that the society has taken the lease from the FISHFED as per recommendation of the District Collector, Puri for catching fish. There are three sources for catching fish, namely, Chatelkonajano and Banana, Sorangi Jano, Aanlakuda and Kurupala Bahara Chilika. These are the traditional sources of catching fish which the society has taken on lease. These three sources have been affiliated to the society by the FISHFED and possession has also been given to the society. It is pleaded that as per the agreement and allotment of sources for the Year, 2010-2011, the Opp. Party No. 2 issued letter on 07.07.2010 for deposit of lease amount for execution of agreement. The Opp. Party No. 2 issued notice and, accordingly, the Petitioner's society on 17.07.2010 deposited the lease amount of Rs. 78.954 which is in respect of the above three sources. In W.P.(C) No. 8850 of 2012, the Petitioner

being the Secretary of Gundicharani Matshya Samabaya Samiti (Primary Fishermen Co-operative Society) has prayed for quashing of Annexure-4, i.e. order passed by the Collector, Puri, whereby his application for settling the Analakuda Bahar Chilika (Sorangi) has been rejected.

2. In W.P.(C) No. 8083, the Petitioner alleges that, in view of the direction of the Hon''ble Supreme Court and after prohibition of prawn culture in Chilika, the non-fisherman community has forcibly occupied the traditional fishery sources. Since the District Administration had not taken any initiative in this matter, the Petitioner approached this Court by filing W.P.(C) No, 14911 of 2011, which was disposed of on 25.10.2011 directing the Opp. Party No. 3, i.e. Collector, Puri to give necessary instruction to the FISHFED, Bhubaneswar to take further necessary action in the matter so as to award leasehold right in favour of the Petitioner''s society and execute the document in that regard.

3. In view of the above order, the Fishery Misc. Case bearing No. 112 of 2010 has been disposed of and the Petitioner''s society was found to be entitled to the sources in question. Accordingly, the Collector, Puri passed the orders on 18.08.2011. Even despite of the Court''s order and after recommendation of the sources in question, the Opp. Party No. 2 took five months to execute the agreement between the parties and, on 07.03.2012, the agreement has been executed for the aforesaid sources. The Petitioner claims that the agreement starts from 1st July, 2011 and ending on 30th June, 2012, subject to payment of leased value. The Petitioner alleges that the Tahasildar, Krushnaprasad with a malafide intention sat over the matter and took one month''s time for issuance of notice to the Petitioner''s society for handing over the possession and, accordingly, it was noticed that the Petitioner has to be'' present for handing over the possession on 27.04.2011 at 10 A.M.

The Petitioner further claims that the villagers of Aanlakuda headed by one Maguni Jena, who is the President of that village, have taken forcible possession over the said sources and doing prawn culture, which is contrary to the direction issued by the Supreme Court. On such allegations, the Petitioner has filed this Writ Petition praying for necessary directions be given to the Tahasildar, Krushnaprasad for handing over possession of the sources in question to the Petitioner''s society.

4. The Tahasildar, Krushnaprasad has submitted his counter affidavit. In the counter affidavit dated 16.08.2012 he has stated that on 27.04.2012 notice has given to the President of Uttarayani PFCS to take over possession of the two sources. However, on arrival at the spot along with President, Uttarayani PFCS and IIC, Krushnaprasad Police Station, the deponent found around 200 villagers, of Aanlakuda already present there, who obstructed entry into the Aanlakuda Sorangi source. The people of Aanlakuda stood determined to create law and order situation, if the possession was handed over to the society. They gave representation claiming that the High Court had given directions to hand over Nuapada Sorangi but the society executed agreement with respect to the

Aanlakuda Bahar Chilika Sorangi, which is a different source with different location areas.

5. One Dhanurjaya Behera representing Gundicharani Prathamika Matshya Samabaya Samiti (Primary Fishermen Cooperative Society) has filed an intervention petition alleging that the Petitioner-Braja Behera being former President of Uttarayani PFCS was granted sub-lease for fishing source of Nuapada Bahar Chilika Bahani (Sorangi) for the period 2006-2007 till 2010-2011. But during the period 2011-2012 the Collector, Puri have sub-leased. 150 acres from Analakuda Bahar Chilika (Sorangi) basing on the report of the Tahasildar, Krushnaprasad instead of Nuapada Bahar Chilika Bahani (Sorangi). The aforesaid two sources are different mouzas under the Krushnaprasad Tahasil. It is claimed that the Petitioner has never allotted fishing source in Analakuda Bahar Chilika (Sorangi) at any point of time.

6. Ultimately on 05.09.2012 the Tahasildar, Krushnaprasad filed an additional affidavit stating that on 21.05.2012 on arrival of the Petitioner to take possession, he was opposed by the members of Uttarayani PFCS and his own villagers of village Gabapadar, which is situated within Khurda district. It is further pleaded that taking over possession by the Petitioner throughout was opposed by his society members and co-villagers on the dates fixed for handing over possession of the source and it was due to the dispute and law and order situation occasioned thereby possession could not be handed on the dates fixed. The Petitioner was manhandled by the women members of the society and his own villagers. The opposing members were rigid on their stand that the Petitioner alone should not be given possession and they and other members would also accompany him in the boat alleging that the Petitioner was bypassing society members and villagers during taking over possession and was bringing people from Balugaon side including anti-socials. After taking over possession the Petitioner was subleasing the source to prawn mafias and appropriating all the incomes derived from the sources. One Baikuntha Nath Behera, Secretary, Chilika Mastchayajibi Mahasangha had accompanied the Petitioner. He attempted to intervene between the two groups to bring about settlement. During such process of handing over possession of the source to the Petitioner in his capacity as the President of Uttarayani PFCS, further disputes arose and he was taken to the Police Jeep near the shore, which was one of the source's boundary and Sri B.N. Behera along with two members accompanied deponent during demarcation when flags at four corners were posted. After fixing red flag the signature of the Petitioner was taken in the handing over possession of the document. Thereafter, Budhia Behera, Lingaraj Behera, Madan Jalley, Tuni Behera, Suresh Jalli, Babu Behera and Mita Behera, who are members of Uttarayani PFCS have affixed their signatures thereon. Subsequently other officials including the Tahasildar, Krushnaprasad and IIC, Krushnaprasad Police Station, Revenue Inspector, Baikunthanath Behera and other members of the society affixed their signatures on the document.

7. Thus, in course of hearing of the case even after filing of the latest affidavit by the Tahasildar, Krushnaprasad, the Learned Counsel for the Petitioner submitted that he can produce a video recording to prove that the affidavit filed by the Tahasildar, Krushnaprasad is not correct. Accordingly, this Court viewed the video CD produced by the Petitioner on 30.08.2012 in presence of Learned Additional Government Advocate, Learned Counsel for the Petitioner, Senior Advocate Mr. R.K. Mohanty and Learned Counsel for the interveners. The matter was taken up again on 11.09.2012 for further hearing.

8. The Petitioner in W.P.(C) No. 8083/2012 claims that though lease has been granted in favour of the society represented by him, possession has not been handed over to the Petitioner and, therefore, writ should be issued against the Opp. Parties directing them to give him the possession of the source. The Opp. Party No. 4. on the other hand, submitted that on different occasion he has made an attempt to give possession of the source in question to the Petitioner, but due to difficulties and law and order, he could not do it. Finally, on 21.05.2012 possession has been handed over to the Petitioner representing the society. During the course of viewing the video CDs. it came to the notice of this Court that there was a law and order problem on that date and ultimately, the Tahasildar, Krushnaprasad had affixed/posted the flags on four corners of the source and the document of possession has been executed and possession has been given to different members of the society by the Tahasildar.

9. In that view of the matter, no further directions can be given to the Tahasildar, Krushnaprasad for handing over possession of source in question. However; it is observed that since possession could only be handed over to the society on 21.05.2012, the lease period should be reckoned from that date. It is further directed that the authorities including the police should give adequate protection to the Petitioner's society for peaceful possession of the source in question. This direction is given because it is noted that the video recording showed that there is law and order situation with respect to the possession of source in question. With such observations, the Writ Petition (c) No. 8083 of 2012 is disposed of. So far as W.P.(C) No. 8850 of 2012 is concerned, the Petitioner has not made out that such a source has been leased out in his favour. The order passed by the Learned Collector, Puri, as at Annexure-4, is a reasoned order, who has taken into consideration the relevant records. Therefore, there is no scope of interfering with the order passed by the Collector, Puri.

Accordingly, W.P.(C) No. 8850 of 2012 is dismissed being devoid of any merit.