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**(2007) 02 PAT CK 0165**  
**In the Patna High Court**  
**Case No : CWJC No. 10671 of 2005**

Bulla Sahni and Another

APPELLANT

Vs

The State and Others

RESPONDENT

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**Date of Decision :** 07-02-2007

**Acts Referred:**

**Citation :** (2009) 2 PLJR 347

**Hon'ble Judges :** Navaniti Pd. Singh, J

**Bench :** Single Bench

**Final Decision :** Allowed

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## Judgement

Navaniti Pd. Singh, J.—Heard. The present writ application has been filed for quashing of an order dated 31.5.2005 passed in Misc. Case No. 5/ 1998-99 by the Additional Collector, Darbhanga, by which he has purported to set aside the settlement of fishery jalkar made in favour of the petitioners.

2. Various State officials have filed counter affidavits and supplementary counter affidavits. Private-respondent No. 7, at whose instance impugned order was passed, has filed a counter affidavit.

3. Having heard the parties and with their consent this writ application is being disposed of at the admission stage itself.

4. It appears that certain fishery jalkar, which was hitherto under the control of district administration, was transferred to Fisheries Department with effect from 21.9.1992. Thereafter in 1997 the same was settled in favour of the petitioners on basis of long term settlement for a period of ten years and thus effectively which is to come for an end on 31st March, 2007. This settlement was made in favour of the petitioners by the Fisheries Department pursuant to recommendation of the Selection Committee of the Managing Committee of the Fish Farmer Development Agency, Darbhanga, which was then headed by the Collector of the district.

5. This settlement having been made, an objection was raised by the private respondent No. 7 that, in fact, this is a jalkar on his own raiyati land and is covered under his zamindari. Such a petition was filed before the Collector of the district not before the Fish Farmer Development Agency, who transferred the same for disposal to Additional Collector. Notwithstanding the fact that the settlement had neither been made by the Collector of the district nor the Additional Collector but had been made by the Department of Fisheries through Fish Farmer Development Agency, a separate body. The Additional Collector after hearing the parties, by the impugned order dated 31.5.2005, cancelled the settlement so made.

6. Learned counsel for the State points out that now in terms of new act which has come in force in 2006. Anchal Adhikari on behalf of the State has filed a revision application before the Commissioner of the division and in that proceeding the impugned order has already been stayed.

7. On behalf of the petitioners it is submitted that the settlement having been made by the Fish Farmer Development Agency which could not have been cancelled or interfered with by the Collector or for that matter the Additional Collector of the District.

8. Settlement having been made it amounts to a contract between the settlee and settler. The Collector of the district and the Additional Collector are foreigners to that contract. They have no power to rescind that contract, more so when Fishery Jalkar stood transferred to the Fisheries Department as far back as in 1992 itself.

9. Having heard the parties I am satisfied that the contention raised on behalf of the petitioners is just, proper and legal. It is not in dispute that the settlement has been made by the Fish Farmer Development Agency on proper recommendation. The agency is headed by the Collector. The Collector is an ex officio Chairman of the Agency but he is not the agency. The agency having made the settlement it is only the agency that could have cancelled the settlement. If the private respondent had any grievance in this regard then it was for him to move a court of competent civil jurisdiction to challenge the right of State and in particular Department of Fisheries who made such settlement and get his right declared. The Collector of the district or for that matter the Additional Collector had no jurisdiction in the matter, more so, in respect of an agreement as entered into between the agency and the petitioners.

10. In that view of the matter there being no authority on the respondents to cancel the settlement, the impugned order (Annexure-1) being order of Additional Collector dated 31.5.2005, the objection whereof is virtually stayed by this court earlier is quashed. This writ application is accordingly allowed.