
(2009) 07 PAT CK 0095
In the Patna High Court
Case No : CWJC No. 15106 of 2008

Dukhan Sahni

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 21-07-2009

Acts Referred:

Bihar Fish Jalkar Management Act, 2006 — Section 7

Citation : (2009) 4 PLJR 342

Hon'ble Judges : Sheema Ali Khan, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Sheema Ali Khan, J.—The petitioner has challenged the order dated 12.8.2008 passed by the District Fisheries Officer, Sitamarhi, which was issued in compliance of letter No. 2045 dated 28.7.2008 issued by the Director, Fisheries, Bihar. By the impugned order, the settlement made vide letter No. 429 dated 7.9.2006 in favour of the petitioner society for the period 2006-07 to 2010-11 has been modified and it is ordered that 22 Jalkars situated in Purnahia Block should be settled with the newly constituted society known as Newly Constituted Fishermen Cooperative Society, Purnahia Block, District-Sheohar. There are 44 Jalkars situated in Pipardhi and Purnahia Blocks. 22 of the Jalkars belong to each of the blocks which were functioning in both the Block together. As such, the petitioner society was settled with all the 44 Jalkars on 7.9.2006 for the period 2006-07 to 2010-11. The agreement was executed on 24.11.2006 which indicates as follows:-

2. It is also a fact that the District Fisheries Officer issue parwana for each settlement year in favour of the society and the society in its turn deposits the reserve jama year-wise on issuance of parwana, but in fact the settlement is made for a period of five years.

3. Section 7 of Bihar Fish Jalkar Management Act relates to the procedure to be

followed for settlement of Jalkars for a "short term". Clause (i) provides that Jalkars should be settled for a short term on Deposit amount to non-defaulter-Societies operating in the geographical area of the Block or to the members of disqualified fishermen cooperative societies. Sub-clause (VIII) of Clause (III) of Section 7 of the Act that if there are more than one cooperative societies in a Block, it will be settled to them in proportion of the number of all classes of Jalkars. Sub-clause (ix) of Clause 3 provides the share of the disqualified societies shall be settled for five years by a limited bid with non-defaulter members of that society by limited bid sub-clause (x)- bid (xi).

4. Therefore Section 7 of the Act provides the manner and procedure in cases of settlement of Jalkars for a short term. On many occasions even after the settlement is made in favour of one society, the share of Jalkars of the other societies are reserved. In a particular case after the authorities have exercised the power to make settlement by limited bid, there are several Jalkars which are left unsettled. In such circumstances it would be open to settle the Jalkars to the society which is qualified and fulfils the conditions laid down for settlement of Jalkars.

5. The agreement as well as the Act provides that once the Jalkars are settled for a period of five years, then the society in question will continue to enjoy the benefits of reaping the fruits of such settlement for five years unless the society is a defaulter or has acted in any manner contrary to the Bihar Fish Jalkar Management Act, 2006.

6. Recently, this Court has come across cases in which the Jalkars which are settled for five years for a short term period are unsettled because of one reason or the other. Mostly because some other society who was earlier a defaulter has paid up the defaulted amount and therefore claims that it has now become eligible to take settlement for the remaining years.

7. In my view, once a settlement is made for a period of five years, parwana issued and there is no violation of the terms and conditions of the Act, such settlement should not be ordinarily disturbed except for extraordinary reasons. Merely because any other society which is a defaulter has now paid up its dues or as in the instant case, a society has come into the existence during the pendency of the five years of the agreement, such a society would not become eligible to take settlement for the remaining settlement period if all the Jalkars have been settled. It would in fact mean that the agreement has no meaning and sanctity and as such it would appear that no meaning would be attached to the fact that settlements of Jalkars are made for a period of five years with one or the other society. It is not that for each of the five years of the short term settlement period that a separate notice or procedure is adopted for making fresh settlement rather the parwanas are issued in pursuance of the agreement with the society in question. Therefore, disturbing the society in the middle of the settlement period would actually lead to a great loss to the Society in question, as each society naturally builds up a Jalkar so that it can enjoy fishing and use of

the Jalkar for five years without being disturbed by intervening circumstances unless there is violation of the provisions of the Act which govern the field.

8. Learned Counsel appearing on behalf of respondent No. 8, on the other hand, submits that his society come into existence on 12.11.2007 in the Purnahia Block and, therefore, the society would be entitled to get settlement of the Jalkars in the Purnahia Block as it is the only society in the said Block.

9. Undoubtedly, the respondent-society would be entitled to take settlement for the Purnahia Block in view of the fact that it is the only society in the said Block. However, the date on which the procedure started for the settlement and till the actual date when the agreement was made, the respondent-society had not come into existence and, therefore, it would not be proper for the authorities to pass an order for settlement of the Jalkars in favour of the respondent-society in the middle of the settlement period.

10. Learned Counsel for the respondent society further submits that the petitioner ought to have filed an appeal before the Director, Fisheries, Bihar, Patna whereas learned Counsel for the petitioner submits that the entire order (Annexure-6) is passed on the letter of the Director, and, therefore, the filing of the appeal before the Director is non est Referring to the letter No. 2045 dated 28th July, 2008. It is submitted that the Director has not issued an order to the District Fisheries Officer to make settlement but in fact has said

11. In somewhat similar circumstances, this Court in L.P.A. No. 704/03 by order dated 11.8.2003 quashed the order granting settlement to a society which was made on the basis of the fact that society had paid up after the settlement was finalized. The matter travelled up to the Supreme Court and was dismissed on 7.11.2003 vide SLP No. 18672/2003. In effect the District Fisheries Officer on the behest of the Director has cancelled the settlement of 22 out of 44 Jalkars made to the petitioner's-society and asked the persons who are resident of Purnahia Block to join the newly constituted society, so that the settlement made in their favour could continue.

12. In the opinion of this Court the order of the District Fisheries Officer based on the order of the Director cannot be upheld for the reasons mentioned in this order and as such this Court quashes Annexure-6 dated 12.8.2008. This writ application is allowed.