
(2007) 03 PAT CK 0008
In the Patna High Court
Case No : CWJC No. 10727/06

Ghanshyam Mandal and Another

APPELLANT

Vs

State of Bihar and Others

RESPONDENT

Date of Decision : 13-03-2007

Acts Referred:

Citation : (2007) 2 PLJR 729

Hon'ble Judges : Navaniti Pd. Singh, J

Bench : Single Bench

Advocate : Pashupati Pd. Singh and Deepak Kumar, for the Appellant; Nazeeb Ahmad for Respondent No. 7 and None, for the Respondent

Final Decision : Allowed

Judgement

Navaniti Pd. Singh, J.—Heard the petitioners, State and the respondent no. 7, who has appeared and also filed a counter affidavit and with their consent this application is being disposed of at the stage of admission itself. The present application relates to dispute of a Fishery Jalkar appertaining to Khata no. 150, measuring about 14.62 acres commonly referred to Sugail Chatra Jalkar at Bhelwa in the district of Katihar. All fishery jalkars of the district of Katihar, which were hitherto with the Revenue Department of the Government, were transferred to the Fishery Department of the Government with effect from 4.9.2004 and the transfers were accordingly entered into Sairat Panji maintained by the department concerned.

2. The District Fishery Officer made a settlement for a period of three years i.e. 2005-2006 to 2007-2008 in respect of the said jalkar with the petitioner i.e. Dandkhora Prakhand Matsyajivi Sahyog Samiti Limited on 4.4.2005. Apart from other settlements, in the Parwana issued to the petitioners, plot number was shown as 620 appertaining to khata no. 150.

3. The grievance of the petitioners is that notwithstanding such settlements having been made in favour of the petitioners, the Additional Collector on

27.4.2005 settled the same jalkar with private respondent no. 7, which was bad for the reason that all jalkars stood transferred to the Fishery Department in the Year 2004 itself and thus leaving the Additional Collector with no jurisdiction to settle the same and secondly, the said jalkar having been settled by the District Fishery Officer in favour of the petitioners it could not be resettled by the Additional Collector with respondent no. 7, the jalkar being same and one only.

4. The respondents submit that before making settlement the Additional Collector made enquiry from the Fishery Department whether plot nos. 6 and 20 appertaining to khata no. 150 was transferred as a fishery jalkar to the Fishery Department or not. Fishery Department responded that it was not so transferred. This was apparent so because in their records what, stood transferred was plot no. 620 and no mention of plot nos. 6 and 20 appertaining to khata no. 150 was there. The Additional Collector accordingly made a settlement which was valid and in fact the settlement as made with the petitioner by the District Fishery Officer was without jurisdiction and invalid.

5. Having considered the matter, to me, it is clear that there has been a mistake in the document informing transfer of Fishery jalkars to the Department of Fishery. Instead of showing transfer of fishery jalkars appertaining to khata no. 150 plot nos. 6 and 20, it was by mistake written 620. Thus even though all fishery jalkars were intended to be transferred with effect from 4.9.2004 to the Fishery Department, plot nos. 6 and 20 appertaining to khata no. 150 were not shown as received by the Fishery Department on transfer. Instead what was recorded in it was plot no. 620. The State has now clarified this position and agreed to it. There is one more reason for this court to hold so. The fishery jalkars are not two, they are same and only one. If that be so then it is to be found on which plot it is situated. It is no body's case, it is situated on plot no. 620 appertaining to khata no. 150.

6. It is well settled principle or interpretation that where the identity of a particular property is ascertainable by description then mere mistake in mentioning plot number cannot change its identity or place. Yet one more important reason is that the Additional Collector should have realised that what was intended to be transferred on 4.9.2004, was all fishery jalkars of the district from the Revenue account to the Fishery account.

7. There was no intention to retain any with the Revenue Department If he had kept this fact in mind then whether or not a particular fishery jalkar reflects in the books of the Fishery Department or not did not matter as all fishery jalkars stood transferred to Fishery Department, leaving the Additional Collector any authority to deal with any jalkar, a position which ought to have been appreciated by the Additional Collector himself.

8. In view of the stand taken by the State it is clear that the settlement as made by the Additional Collector in favour of respondent no. 7 is void ab initio as the jalkar for which settlement was made was not available to the Additional

Collector. Consequently follows from it that jalkar not being available to the Additional Collector the respondent no. 7 did not acquire any right whatsoever in respect thereof and the sole person to whom settlement was validly made was the petitioner.

9. I order accordingly.

10. Settlement purported to have been made in favour of respondent no. 7 is accordingly declared void ab initio and unenforceable. Consequently all money deposited by the respondent no. 7 would have to be refunded by the State as a consequence of settlement being declared void ab initio, within a period of fifteen days from the date of receipt of a copy of this order and all liabilities in relation to the said jalkar would now be met by petitioner no. 1, in whose favour settlement was initially made, who is in possession thereof. This writ application is allowed with the aforesaid observation and direction.