
(2008) 04 JH CK 0059
In the Jharkhand High Court

Kailash Nishad

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 11-04-2008

Acts Referred:

Citation : (2008) 3 JCR 35

Hon'ble Judges : R.K. Merathia, J

Bench : Single Bench

Final Decision : Allowed

Judgement

R.K. Merathia, J.—Heard the parties finally.

2. Mr. Afaq Ahmad, appearing for the petitioner, submitted that initially, petitioner had challenged the settlement of Charwa Dam, PS Katkamsani, District Hazaribagh having an area of about 50 Acres, made in favour of Ashok Kumar Nishad-Respondent No. 7 (R-7) for three years w.e.f. from 1.4.2002 by the Hazaribagh Municipality. But when in the counter affidavit filed on behalf of R-7, it was said that the settlement was for 10 years, then the petitioner challenged the same also. He further submitted that from 1996, Charwa Dam is being settled with R-7 in complete violation of the procedure of the settlement. He further submitted that as per the circular dated 18.1.1992, wide publication of notice of settlement is required, which has never been done in this case. He also submitted that as per the said Circular dated 18.1.1992 only under certain circumstances long term settlement of 10 years can be made, but none of such circumstances exists in this case. He further submitted that antedated documents have been annexed in the counter affidavit.

3. Counter for R-7 submitted that the dam is being settled in his favour after following the procedure of settlement, as the notice used to be pasted on the Notice board of Municipality and other offices.

4. After hearing the parties I am satisfied that in settling the Charwa Dam, the respondents have been acting arbitrarily and in violation of the procedure of

settlement. In the first counter affidavit filed on behalf of the Hazaribagh Municipality, it was specially said that Charwa Dam was settled to R-7 on 26.3.2002, for 3 years up to March, 2005 but in the counter affidavit filed by R-7, he annexed a purported Notice dated 2.2.2002 to show that it was for settlement of Charwa Dam for 10 years. Such notice was to be pasted only in the Notice Board of Municipality. R-7 has then annexed an agreement to show that on 26.3.2002 Charwa Dam has been settled for 10 years with him. But long term settlement of 10 years can be made only in certain circumstances mentioned in the said circular dated 18.1.2002, but the respondents could not show that such circumstances existed in this case. It further appears that the documents annexed by the Municipality are with regard to another - Harwa Dam and not of Charwa Dam. It further appears that the date of auction/settlement was extended by a purported Notice dated 21.2.2002 but it was served only on R-7 and that too on a prior date i.e. on 3.2.2007. Again a purported Notice of settlement dated 20.3.2002 was served only on R-7. It is clear from the said Circular No. 115 dated 18.1.2002 that wide publication is required to be made and thereafter settlement is to be made by open bid but even according to the respondents the purported notices were only pasted in the office of Municipality and other offices and they were served only on R-7. Thus it is clear that the procedures of settlement has been violated by the respondents and they have been acting in arbitrary and mala fide manner in settling the Charwa Dam to R-7 from 1996 having an area of about 50 acres.

5. Accordingly, the purported settlement in favour of R-7 said to have been made on 26.3.2002 for 10 years is cancelled. R-7 is hereby restrained from rearing fish from Charwa Dam. The Deputy commissioner will see that a fresh notice is published widely by the Hazaribagh Municipality for settlement of Charwa Dam and it is settled in accordance with law as early as possible and preferably within two months from the date of receipt/production of a copy of the order.

6. With these observations and direction's, this writ petition is allowed with cost of Rs. 5,000/- payable by R-7 to the petitioner within one month. Petition allowed.