
(2015) 07 PAT CK 0086

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 18098 of 2014

Kishore Sahni and Others

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 17-07-2015

Acts Referred:

Bihar Co-operative Societies Act, 1935 — Section 48

Citation : (2015) 07 PAT CK 0086

Hon'ble Judges : Jyoti Saran, J

Bench : Single Bench

Advocate : Pashupati Prasad Sinha and Deepak Kumar, for the Appellant; Ajay Bihari Sinha, SC-19, Advocates for the Respondent

Final Decision : Disposed off

Judgement

Jyoti Saran, J.

1. The petitioners by way of this writ petition have questioned the proposals/pattas issued by the respondent No. 6, the Acting Secretary of Katra Prakhanda Matasyajivi Sahyog Samiti Limited, District-Muzaffarpur (hereinafter referred to as "the Society") in favour of respondent Nos. 7 to 13 which, according to the petitioners, is contrary to the settlement made by the District Fisheries Officer, Muzaffarpur vide order bearing Memo No. 418 dated 5.9.2012 placed at Annexure-2 to the writ petition as well as to the earlier proposal/pattas executed by the respondent No. 5 as the Secretary of "the Society" in favour of these petitioners in respect of eight jalkars situated in Tehwara and Badhpura Panchayats within Katra Block in the district of Muzaffarpur as contained in Annexure-4 series. The proposal issued in favour of the private respondents is impugned at Annexure-1 series to the writ petition.

2. The short issue raised by the petitioners to question the proposals of respondent No. 6, the Acting Secretary impugned at Annexure-1 series is that it has been issued without notice or information to the petitioners and without

giving them opportunity of hearing as well as without cancelling the earlier settlements.

3. Although the facts leading to the impugned proposals have a chequered history but in the nature of the order which this Court proposes to pass in the backdrop of the relief claimed, it would not be required to enter into the merits of the case for it would only prejudice the claims of the contesting parties.

4. Whereas the jalkars in question was settled by the Secretary of "the Society" vide proposals/pattas placed at Annexure-4 series for a period of seven years i.e. from 1.7.2012 to 30.6.2019 vide Annexure-4 series consequent upon the settlement of the jalkars in favour of "the Society" by the District Fisheries Officer -cum- Chief Executive Officer, Muzaffarpur vide settlement order bearing Memo No. 418 dated 5.9.2012 placed at Annexure-2 and which settlement order has not been cancelled by any appropriate authority under the Bihar Jalkar Management Act, 2006 (hereinafter referred to as "the Act") as amended from time to time but this very settlement has been sought to be superseded by the Acting Secretary of "the Society" while issuing settlement order impugned at Annexure-1 series in favour of the private respondent Nos. 7 to 13. It is this action of the Acting Secretary which has been put to question before this Court.

5. Mr. Pashupati Prasad Sinha has appeared for the petitioners while the State is represented by the State Counsel and the Acting Secretary i.e. the respondent No. 6 is represented by Mr. Rajesh Kumar Singh.

6. I have heard learned counsel for the parties and I have perused the records.

7. It is the contention of Mr. Sinha appearing for the petitioners that until such time that the settlement orders issued by the erstwhile Secretary of "the Society" i.e. Respondent No. 5 herein in favour of the petitioners present at Annexure-4 series, is set aside by a competent authority under "the Act", no fresh settlement order can be issued by the respondent No. 6 in the capacity of an Acting Secretary of "the Society" and thus settlement orders impugned at Annexure-1 series would have no force of law. He further submits that the settlement orders are also not sustainable in absence of opportunity of hearing to the petitioners.

8. Contesting the arguments of Mr. Sinha, it is argued by Mr. Rajesh Kumar Singh standing for the Acting Secretary that since the erstwhile Secretary, Subansh Sahni who issued the settlement orders in favour of the writ petitioners had no locus to issue any settlement on the date they were issued since he was ousted from the primary membership of "the Society" hence those settlement orders are non est in the eyes of law and the petitioners can neither claim privy on the basis of illegal settlement orders nor do they have any right to question the settlement orders issued by the respondent No. 6 in favour of the respondent Nos. 7 to 13.

9. Both learned counsel have relied upon various orders of this Court passed in

the earlier round of litigation in between these contesting parties in support of their submissions.

10. It is well settled that no writ lies against a cooperative society and it would not require this Court to refer to the catena of judgments rendered on this issue. In view of the settled legal position and in the circumstances that what the petitioners have chosen to question is a settlement order passed by the Acting Secretary of "the Society", the remedy for the petitioners would not lie by way of a writ petition rather the settlement order would have to be assailed before the appropriate statutory authority under "the Act".

11. A complete mechanism is provided under sections 7, 10 and 14 of "the Act" for settlement of jalkars and for questioning the orders of settlement. In so far as the present contest is concerned, in my opinion, the remedy for the petitioners to question the settlement order issued by the Acting Secretary of "the Society" would be before the District Fisheries Officer, Muzaffarpur in view of the provisions underlying section 7 more particularly sub-sections (ii), (xii)(d), (e), (f) and (i) thereof read with section 10 of the Act which invests wholesome powers in the District Fisheries Officer to approve the settlement/proposal of the society, to enter into an agreement with them and also to cancel the settlement.

12. Section 10 of "the Act" deals with the issue of distribution of jalkars by the society who is required to enlist the applications of its members willing to take settlement of jalkars along with the details, before submitting any such application for settlement of jalkars by the appropriate authority mentioned in section 7(ii) of "the Act". Section 7(iii) of "the Act" enlists the documents which are required to accompany the application filed by the Fishermen Co-operative Societies to the District Fisheries Officer for settlement. Section 7(xii) of "the Act" mandates the condition for settlement and clause (e) thereof requires the society to submit the Parwana so issued after settlement before the District Fisheries Officer with a rider that any settlement found to be in contravention of section 10 of "the Act" would be subject to correction. Section 7(xii)(f) puts a responsibility on the District Fisheries Officer to enter into a registered agreement with the society within two weeks of issuance of Parwana with a proviso that any lapse in completion of the formality within the stipulated period could only be condoned by the Collector after seeking explanation. It further provides that where the agreement is yet not executed even after extension, the settlement would be cancelled with approval of the Collector after asking show cause from the society. Clause 7(xii)(i) empowers the District Fisheries Officer to cancel a settlement in case of violation of terms, with the prior approval of the Collector and after opportunity to the society to defend its case.

13. Section 14 of "the Act" provides for the forum of appeal against the short term settlement orders issued by the statutory authorities and section 16 of "the Act" ousts the jurisdiction of the Civil Court, the Court of Cooperative Registrar and the Revenue Court to adjudicate in respect of any dispute concerning settlement of jalkars.

14. "The Act" is thus a complete code on the subject of settlement of jalkars. In fact a similar issue came up for consideration before this Court in CWJC No. 909 of 2013 (Sunil Sahni vs. The State of Bihar) and a Bench of this Court while discussing the powers vested in the statutory authority under the Jalkar Management Act, 2006 and the Registrar under the Bihar Co-operative Societies Act, 1935 has held that in so far as the issue of management and settlement of jalkar is concerned, the jurisdiction of the Registrar, Co-operative Societies vested under section 48 of the Bihar Co-operative Societies Act to adjudicate on a transaction relatable to a cooperative society stands ousted in view of the clear prohibition provided under section 16 of the Jalkar Management Act, 2006.

15. Although Mr. Rajesh Kumar Singh, learned counsel appearing on behalf of the respondent No. 6 sought to question the very locus of the petitioners to challenge the settlement impugned at Annexure-1 series inter alia on grounds that since the ouster of the erstwhile Secretary, Subansh Sahani who had issued the settlement orders in favour of the petitioners stood confirmed by the statutory authority under the Cooperative Societies Act up to this Court, hence the settlement was non est in the eyes of law and the petitioners thus would have no locus to assail the fresh settlement order but even while making such submission Mr. Singh could not place on record either any order of "the Society" cancelling the settlement made in favour of the petitioners placed at Annexure-4 series or could place on record the approval granted by the District Fisheries Officer to the settlement order issued by the respondent No. 6 as an Acting Secretary of "the Society" which has been impugned in this writ petition.

16. Since this Court is not entering into the merits of this case at its present stage, it would not be proper for me to express any opinion on the rival contentions. However, the petitioners are not remediless rather they have their remedy under the Jalkar Management Act, 2006 and these petitioners would be at liberty to question the settlement orders made by the Acting Secretary, respondent No. 6 in favour of respondent Nos. 7 to 13 impugned at Annexure-1 series by filing an appropriate application before the District Fisheries Officer, Muzaffarpur.

17. The writ petition is accordingly disposed of with a liberty to the petitioners to take recourse to the remedy so available to them under "the Act" and any such application being filed by the petitioners would be considered and disposed of by the authority concerned in accordance with law and after hearing the contesting parties including "the Society", the Acting Secretary and the respondent Nos. 7 to 13 expeditiously and preferably within three months from the date of receipt/production of a copy of this order.