

(2016) 07 PAT CK 0043

In the Patna High Court

Case No : Letters Patent Appeal No. 283 of 2014, (Arising out of Civil Writ Jurisdiction Case No. 5162 of 2013)

Kunal Nishad

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 19-07-2016

Acts Referred:

Bihar Fish Jalkar Management Act, 2006 — Section 10, Section 14, Section 7

Citation : (2017) 1 PLJR 663

Hon'ble Judges : Mr. Hemant Gupta and Mr. Ahsanuddin Amanullah, JJ.

Bench : Division Bench

Advocate : Mr. Binodanand Mishra, and Mr. Alok Kumar, Advocates, for the Appellants; Mr. Sharad Kr. Sinha, GP-15, for the State; Mrs. Mahasweta Chatterjee, Advocate, for the Private Respondents

Final Decision : Dismissed

Judgement

Mr. Ahsanuddin Amanullah, J. (CAV) - Heard learned counsel for the parties.

2. The challenge in the present appeal under Clause-X of the Letters Patent of Patna High Court is to the order of the learned Single Bench dated 24.09.2013 by which C.W.J.C. No. 5162 of 2013 filed by the appellants has been dismissed.

3. The appellants on the basis of being members of Pranpur Matsyajivi Shoyog Samiti Ltd. (hereinafter referred to as the "Society") were given settlement of Kakedah Jalkar-cum-Makhana Mahal which was one of such Jalkars settled with the Society for the period 2012-13. Upon depositing half of the amount, they were issued settlement paper by the Secretary of the Society on 29.09.2012. Thereafter, the respondent no. 6 along with others, who had also filed application before the Secretary for settlement of the said Jalkar, in view of the same being made in favour of the appellants, moved before the Divisional Commissioner by filing appeal on 11.12.2012. After hearing the parties, the Commissioner by order dated 31.01.2013/06.02.2013, held such settlement to be contrary to law and directed the District Fishery Officer-cum-Chief Executive Officer, Katihar to

ensure proportionate distribution of Jalkars between the members of the Society so that the interest of fishermen members could be protected. Pursuant to the same, the District Fishery Officer-cum-Chief Executive Officer, Katihar, by order dated 26.02.2012, restrained the appellants from making any investment or taking out anything from the said Jalkars. The appellants had moved in C.W.J.C. No. 5162 of 2013 against the said order and dismissal of the writ petition has led to filing of the present appeal.

4. Learned counsel for the appellants submitted that the challenge before the Divisional Commissioner was misconceived since the matter related to the internal functioning of the Co-operative Society and thus, the competent forum was the Registrar, Co-operative Societies. It was submitted that the challenge by the respondent no. 6, was not to the settlement of the Jalkar with the Society and in that view of the matter, the appeal under Section 14(i) of the Bihar Fish Jalkar Management Act, 2006 (hereinafter referred to as the "Act") was misconceived. It was further submitted that the said appeal was also barred in view of the limitation prescribed of 30 days for filing of the appeal from the date of the order, which according to him, was the settlement of the Jalkars with the Society on 14.09.2012, whereas the appeal was filed on 11.12.2012 i.e., much beyond the stipulated 30 days. Learned counsel submitted that the appellant no. 1 was the only person impleaded before the Divisional Commissioner and the settlement being in favour of all the 7 appellants, the appellants no. 2 to 7 not being made party and heard was clearly in breach of the principles of natural justice and on this ground alone the order passed by the Divisional Commissioner is fit to be quashed. Learned counsel submitted that the appellant no. 1, though being son of the Secretary of the Society, was not included in the definition of "family" with whom there could not have been any settlement and, thus, being a member of the Society in his own right, was competent for settlement to be made in his favour.

5. Learned counsel for the respondent no. 6 submitted that the challenge being to the settlement of the Jalkars crystallized with issuance of Parwana issued in favour of the Society by the District Fishery Officer on 21.12.2012 and, thus, as per the provision of Section 14(iv) of the Act, the appeal could have been filed within 30 days from 21.12.2012, and that too not being a mandatory time frame since the word used is "may" and not "shall", the appeal has rightly been heard on merits by the Divisional Commissioner. She submitted that the respondent no. 6 and others were pursuing the matter before the Secretary asking for settlement, but getting no response, moved before the Divisional Commissioner. Learned counsel submitted that in any view of the matter, the issue relating to the settlement of the Jalkars, which were under the order of the District Fishery Officer, clearly made the appeal competent, for Section 14 itself provides for such an appeal against all decisions regarding short term settlement taken by the District Fishery Officer. Learned counsel further submitted that now fresh settlement has been made in favour of the respondent no. 6 and others and the total beneficiaries numbered about 100.

6. Having heard learned counsel for the parties, we do not find any merit in the present appeal. As per the provision of Section 7(xii)(e) of the Act, a duty is cast on the District Fishery Officer to ensure that Parwana is issued only after correction is made, if the proposed settlement by the Society is in contravention of Section 10 of the Act, the relevant being quoted herein below :

"S.7(xii)(e)- Within twenty one days of settlement, the society shall make available to the District Fisheries Officer, Parwana issued along with a village-wise and panchayat-wise list of amount received for settlement from its fisherman/fishermen members, issuance of a provisional Parwana shall be prohibited:

Provided that if the settlement is in contravention of the provisions of Section 10 of this Act, the parwana shall be issued only after due correction of that settlement of that particular Jalkar as per provision of Section 10.

"S.10.- Distribution of Jalkars :- (i) Before submitting an application for settlement of Jalkars, the society shall enlist all the applications of its members willing to take settlement of Jalkars. The name of Jalkars, members along with their villages and panchayats should be mentioned in the applications received.

(ii) After consideration of the enlisted applications by the Managing Committee of the Society, a list of proposed distribution of Jalkars among its members shall be prepared considering the following points :-

(a) Generally distribution of Jalkar will be proposed among members of the village in which the Jalkar is situated. If members in desired number are not available in that village then the distribution of Jalkar may be proposed with the members of nearest village or other villages of the Panchayat. Even after this, member in desired number are not available then distribution of Jalkars may be proposed among members of the neighbouring Panchayats;

(b) As far as possible, the distribution of Jalkars shall be made to a group of members. Chairman/Secretary of the society will select a group leader after calling a meeting of members of the group and information will be given to all members of their rights and share;

(c) While preparing a proposal for distribution of Jalkar with a group the number of members shall be fixed keeping in mind the reserve deposit and water area of Jalkars."

7. Section 10 of the Act, inter alia, provides for the mode and manner of distribution among the members. Thus, the present issue relating directly to the settlement of the Jalkars, in the considered opinion of this Court, is a subject matter of appeal under Section 14 of the Act which reads as under :

"S. 14. Appeal and Revision :- (i) An appeal against all decisions regarding short term settlement taken by District Fisheries Officer and Deputy Director may be filed before the Director Fisheries. (ii) An appeal against of all decisions taken by Collector and Director Fisheries may be filed in the Court of Departmental

Commissioner. (iii) An appeal against all decisions regarding short term settlement taken by the Government may be filed in the court of Member, Board of Revenue. (iv) Appeal may be filed within thirty days from the date of the original order. The appeal shall be disposed of within two months essentially after giving an opportunity of hearing to the parties concerned under the process fixed by the Government. In the disposal of appeal, no interim order/stay order shall be passed. No investment shall be made in the disputed Jalkars by any party in any period on an appeal."

8. A plain reading of the same clearly indicates that any order of the District Fishery Officer is amenable to appeal under Section 14 and in the present case, the initial order of settlement with the Society was on 14.08.2012 but the authority to use the Jalkar is only upon issuance of Parwana which is also to be done by the District Fishery Officer and which had not been done. The same having been done a few days after filing of the appeal i.e., on 21.12.2012, the appeal was clearly maintainable as the natural corollary of the provision for an appeal against an order of the District Fishery Officer would also entail an appeal against non passing of any order by the District Fishery Officer, since the ultimate right of use of the jalkar accrues only upon a Parwana being issued by the District Fishery Officer. The objection of the appellants on this score is, thus, rejected.

9. Coming to the question of the appellants no. 2 to 7 not being made party, Section 10(ii)(b) provides that when the distribution of Jalkar is made to a group of members, the Chairman/Secretary of the Society will select a group leader and admittedly the appellant no. 1, being the group leader was representing the interest and cause of his group before the Divisional Commissioner and having been heard, we do not find that there has been breach of the principles of natural justice. Furthermore, the facts are also quite telling, inasmuch as, a Jalkar of the size of 97.75 acres was settled only in favour of 9 members of the Society headed by the appellant no. 1, who was the son of the Secretary coupled with the fact that the settlement of the said Jalkar for the last 20 years was with the family members of the Secretary clearly leaves no doubt in the mind of the Court that there was undue favour shown in such settlement, which was also not equitable and contrary to the mode and distribution as stipulated in Section 10 of the Act. Since the said Jalkar has now been settled in favour of about 100 members of the Society, which fact has not been controverted by learned counsel for the appellants, also persuade us not to interfere in the matter under the extraordinary prerogative writ jurisdiction of the Court.

10. Further, we are in agreement with the reasoning given by the learned Single Bench in the order dated 24.09.2013 dismissing the writ application.

11. In view of the aforesaid, the Letters Patent Appeal stands dismissed.

Hemant Gupta, J.—I agree.