
(1994) 04 PAT CK 0010
In the Patna High Court
Case No : C.W.J.C. No. 11739 of 1993

Maresh Choudhary

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 19-04-1994

Acts Referred:

Citation : (1994) 04 PAT CK 0010

Final Decision : Dismissed

Judgement

Radha Mohan Prasad, J.—The Petitioner the present writ application has prayed for quashing of the order and direction of Respondent Nos. 1 to 3 contained in letter dated 5.11.1993 at annexure-6 as also the follow up action at the level of Respondent No. 4 besides for a direction commanding (sic) Respondents to forbear from interfering with the Petitioner's possession over the (sic)alkar in question and to execute the deed of lease in his favour in respect of the settlement of the said Jalkar.

2. The relevant facts in short are that here is one Kasaraia Jalkar (hereinafter referred to as "Jalkar") in Chautham Prakashchand in the district of Khagaria and the same falls, within the area of operation of chautham Thana Fishermen's Co-operative society (Respondent No. 5). It is undisputed that in the manner of settlement of Jalkars the local Fishermen's Co-operative Societies are given preference and it is only in case of refusal by the Society to take settlement on the reserve jama that the settlement has to be made by open auction after publishing notice in wide circulation. In other words, according to the circular of the state Govt. only if the Society expresses its unwillingness for taking settlement on the reserve jama, then the settlement of Jalkar shall be made by open bid after wide publication of notice in detail. The Government instructions in this regard are contained in annexure "1" and "1/1" to the writ applicant Further, according to the said circulars, in case the society is in default and if no petition is made in accordance with law (sic) depositing the requisite fee for remission then the society would be disentitled (sic) claim settlement in their favour.

However, such petition is filed and the matter is pending before the remission committee, (sic) society is to be given opportunity to (sic) settlement of the Jalkar It further provides that such Jalkars in which the annual reserve jama are above Rs. 10,000/- the bid notice shall be given after publication of the same in the important newspapers of the State and with the publication of the said notice, the Mukhia of the Panchayat Fishermen's Co-operative Society State level Fishermen's Co-operative Association shall be informed about the same by registered post fifteen days in advance.

3. The settlement of the Jalkar for the year 1993-94 fell due with effect from 1-7-93 and that the reserve jama of the said Jalkar was fixed at Rs. 75,000/-. It is asserted that Respondent No. 5 was in default of the Government revenue to the tune of Rs. 70,468/- and did not qualify for settlement as per the Government instructions contained in annexure 1 and 1/1. Yet the District Fisheries Officer, Khagaria (Respondent No. 4) gave offer for settlement with them which was not accepted by the Society (Respondent No. 5). It is further asserted that the Secretary of the society put conditions for settlement that the Jalkar should be cleaned by the departmental agency and that the reserve jama be reduced. However when Respondent No. 4 found that the society was avoiding to take the settlement on one ground or the other, he having left with no opinion, fixed 22-7-93 for bid by circulating notice in that regard. The bid held on the said date and the highest offer that came was Rs. 15,000/- only which was not accepted being lower than the reserve jama. Therefore, when Respondent No. 4 failed to fetch offer at least to the tune of reserve jama by holding bids twice, he lastly fixed 5th September, 1993 for holding of, bid. However, on the claim being made by the Secretary of the society he allowed him time to deposit the required amount and suspended the bid for two hours. The Respondent No. 4 however, on failure of the Society to deposit the required amount held the bid in presence of the Dy. Director, Kosi Range, Saharsa in which the Petitioner offered Rs. 76,000/- i.e. half of the said amount was deposited and for the same a receipt was granted to him on 25.9.93, a copy whereof has been annexed as annexure 3 to the writ application. Therefore, Respondent No. 4 referred the matter to the competent authority for their approval and in the meantime, issued provisional Parwana with respect to the said Jalkar in favour of the Petitioner. The Petitioner claims that on the basis of the said Parwana he came in possession and invested about Rs. 45,000/- for cleaning the Jalkar and also claims to have spent a huge amount in purchasing Jira and spreading the same in the Jalkar. In the meantime Respondent No. 5 filed an application before the Collector Khagaria who called for a report from Respondent No. 4 which was submitted by him on 14-10-93. A copy of the said report has been annexed as annexure 5 to the writ application. In the said report all the aforementioned facts have been stated besides stating that no irregularity either in holding the bid or finalising the settlement with the Petitioner was committed. It is stated on behalf of the Petitioner that the matter before the Collector Khagaria is still pending, but in the meantime, the society through its

Secretary approached the Respondent No. 2 Director Fisheries, Bihar, Patna (Respondent No. 2) who referred the matter to the Minister to finally issue direction to cancel the settlement of the Jalkar with the Petitioner and to settle the same with the society (Respondent No. 5) which decision was communicated by the Special Works Officer-cum-Dy. Secretary (Respondent No. 3) vide impugned order (annexure-6).

4. A counter affidavit as also a supplement affidavit to that have been filed on behalf of Respondent No. 5 and reply thereto have been filed on behalf of the Petitioner. The State and its officials Respondent No. 1 to 3 have also filed a counter affidavit in reply to which the Petitioner filed an affidavit.

5. In the counter affidavit of the State It is stated that in view of the preferential claim for settlement of the Jalkar with the society which was undermined by the Respondent No. 4 and as the Society was not defaulter and the Secretary of the society had expressed their willingness to the District Fishery Officer, Khagaria to settle the Jalkar with them and further, as Respondent No. 4 settled the Jalkar in contravention of Government instructions (annexure 1 and 1/1) with the Petitioner, (sic) same was disapproved on the representation made by the society after due consideration and by order impugned a direction was issued to settle the said Jalkar with the society at the highest bid of Rs. 76,000/-. In paragraph 5 of the said counter affidavit it is stated that society is not a defaulter.

6. Mr. Yogendra Mishra, learned Counsel appearing for the Petitioner submitted that the very report of the District Fisheries Officer contained in annexure 5 above the society was defaulter by 66,462/-. This the society (Respondent No. 5) did not have any preferential right for settlement of the Jalkar in question. Accordingly the settlement was made by open bid. He submitted in this regard that the statement made paragraph 5 of the counter affidavit of State stands falsified from the a forced report of the District Fisheries Officer.

7. Mr. Pashupati Pd. Sinha appears for Respondent No. 5 on the other, (sic) submitted that there cannot be any (sic)tion of the society being defaulter (sic)leged, as the matter admittedly is pending (sic) before the Remission Committee which (sic) would appear from the same report of (sic) District Fisheries Officer, as contained in annexure-5 which states that society (sic) claimed remission which he, without (sic) authority rejected. In reply Mr. Mishra (sic)ned Counsel appearing for the petition submitted that there is no dispute that (sic) society had claimed remission but the same being time barred as also having not been filed in accordance with law the District Fisheries Officer held that the question of consideration of the same does not arise. In my opinion it is difficult to accept the submission of Mr. Mishra that the Respondent No. 5 was a defaulter and not qualified for consideration of his case for settlement of the Jalkar. In fact the very report relied upon by him shows that the all other Jalkars except the Jalkar in question were settled with the society. Had he been the defaulter the other Jalkars could not have been settled with him. Moreover the District. Fisheries Officer had no power to say in the report that the question of

remission claimed by the Respondent society did not arise. From Government instructions contained in annexure "1" it appears that the application for remission of the dues filed by the society is to be considered by the Remission Committee and not by the District Fisheries Officer alone who is merely Secretary of the said Committee. Thus I find that the application for remission filed by the society was pending consideration before the Remission Committee.

8. Other submission, advanced on behalf of the Petitioner was that if the society abandoned its own right at the appropriate stage than in had no locus standi to claim It he settlement In his favour when the settlement was almost finalised in favour of the Petitioner.

9. In reply learned Counsel for the Respondent No. 5 submitted that the said submission of Mr. Mishra is solely based on the report of the District Fisheries Officer as contained in annexure 5 which contains false statement and the same is collusive. In fact, Respondent No. 5 never wrote any such letter. In this regard he referred to the letter written by the society to the District Fisheries Officer a copy whereof has been annexed as annexure 5 to the supplementary affidavit to the reply to the counter affidavit filed on behalf of the Petitioner from perusal where of it would appear that the Petitioner never abandoned his claim for settlement. In the said latter the Secretary of the society only explained the condition of the Jalkar which according to him had reduced its capacity and thus requested for settlement of the said Jalkar with the society after re-determination of the reserve jama for the same. Except the report (Annexure. 5) of Respondent 4 which also referred to the said letter (annexure 5) nothing has been shown from where even inference can be drawn that the society had. declined to take the settlement of the Jalkar.

10. Thus in my opinion, there was no occasion for the settlement of the Jalkar in question by open bid ignoring the preferential claim of the Respondent society.

11. Learned Counsel ventured to submit that the action of the Respondent No. 5 as enumerated in the report contained in annexure 5 attract the principle of estoppel waiver and acquiescence and in this regard he placed reliance on the decision of the Full Bench of this Court in the case of Ganesh Ram Vs. Smt. Ramlakhan Devi and Another, and in the case of Basheshar Nath Vs. The Commissioner of Income Tax, Delhi and Rajasthan and Another, In my opinion in the facts and circumstances already stated above none of the said principle is attracted and thus the said decisions relied upon by the learned Counsel for the Petitioner are of no avail.

12. Mr. Mishra further submitted that the impugned order is bad in law, because the matter is required to be processed through the Collector and on his recommendation the Government is to act, but in the present case even though a petition which was filed by the society before the Collector was registered as Misc. No. 59/93-94 claiming the settlement and in which the Collector had called for a report from the District Fisheries Officer pursuant to which the report

(annexure 5) was sent and the matter was pending before the Collector yet the impugned order was passed by the Government without even awaiting the recommendation of the Collector. According to the learned Counsel there was no occasion for the Government to have interfered. I am unable to accept this submission as there is nothing in either of the Government circulars contained in annexure 1 and 1/1 which provide that the Government is to act only after the matter is processed through Collector and recommendation is made by him. On the other hand from annexure 1 it appears that the Jalkar of which the reserve jama exceeds Rs. 10,000/- the settlement has to be made at the Government level. Further, from the circular (annexure 1/1) it appears that the Government also comes in picture if any of the conditions for settlement of the Jalkar with the society is absent in which case no settlement can be made with the society without the Government approval. Moreover it is not in dispute that the impugned order was issued by the Government and thereafter the society deposited the amount required and after execution of the agreement Parwana was also issued as contained in annexure F and G of the counter affidavit filed on behalf of Respondent No. 5 respectively.

13. Thus, I find it difficult to hold that the action of the Government was not justified and proper. It was contended by the learned Counsel for the Petitioner that the Petitioner being the highest bidder deposited half of the amount in terms of annexure 1 and provisional Parwana was also issued putting the Petitioner in possession by virtue of which the Petitioner acquired the right to hold and possess the Jalkar in question till the finalisation of the matter by the Collector and the State Government. Mr. Sinha appearing for Respondent No. 5 in his reply submitted that the entire process of settlement with the Petitioner was illegal and contrary to the Government instructions, inasmuch as according to the Government instructions the requirement is for wide publication of notice in important newspapers published in the State which has undisputedly not been done. In that view of the matter the so called auction was bad and did not create any right in the Petitioner. Moreover he contended that the alleged settlement with the Petitioner was not approved by the competent authority. Thus also no right was created on the basis of the all provisional Parwana issued in his favour. In this regard he placed reliance on the decision of this Court in the case of Hari Shankar Singh v. State of Bihar and Ors. reported in 1983 BLJR 149 para 6, which reads as follows:

Whether a person who is the highest bidder at a public auction acquires a right to get the settlement has been subject matter of controversy from time to time. However, there is no scope for controversy in cases where the acceptance of the highest bid is subject to the approval of another competent authority. In the instant case, I have already pointed out that it is an admitted position that settlement in favour of the Petitioner could have been made only if his highest offer and settlement in his favour had been approved by the Conservator of Forest. At no stage the Conservator of Forest has passed any order approving the settlement in favour of the Petitioner who was the highest bidder at the auction

aforesaid is also not is dispute. In such a situation, in my view it is difficult to hold that the Petitioner is entitled to a writ of mandamus on the Respondent Conservator of Forest directing to approve the proposal of the settlement in favour of the Petitioner. It is was settled by series of judgments of this Court as well as of the Supreme Court that the right which the bidder at a public auction acquires in respect of a settlement which is subject to the approval of some higher authority cannot enforce any such right in k Court of law for getting the settlement in question because in eye of law there can be no settlement unless there is an approval by the competent authority.

14. On the other hand, Mr. Mishra submitted that earlier, the view was that until the settlement is finally approved by the competent authority, no right is created in the settle But according to the recent decision of this Court in the case of Satrudhau Sahani and Others Vs. The State of Bihar and Others, the right is created the moment the bid is held and the amount is accepted. He further submitted that if on the basis of the aforementioned submission it is held that the settlement with the Petitioner is bad on the ground that there was no wide publication made as required in annexure I then in that case the settlement with the Society is also bad.

15. In regard to the aforementioned submission the very so-called Parwana issued in favour of the Petitioner contained in annexure 4 shows that the settlement was in anticipation of the approval which was not granted by the State Government which is the competent authority. Thus the Petitioner in my opinion cannot claim any right. I am unable to appreciate the other submission of Mr. Mishra as to how the settlement with the Respondent No. 5 will be bad for want of wide publication when the Government instruction contained in annexure 1 provides that only in case the society expresses unwillingness to take the settlement that the wide publication shall be made.

16. Lastly Mr. Mishra submitted that the impugned order has been issued in violation of the principle of natural justice as the same has been passed behind the back of Petitioner adversely affecting his right of Settlement created by annexure 4. In my opinion the said submission has got no force in view of my finding that the Petitioner cannot claim any right. If the approval was not accorded by the competent authority then the question of creation of any right or interest did not arise which would attract the principle of natural justice to be followed. In any view of the matter as it cannot be disputed that the impugned order has been passed by the competent authority namely the State Government and that the required amount was also deposited by the society where after the agreement was executed and Parwana was also issued vide annexure F and G respectively as also the fact that now only two months are left for the period of settlement and no fruitful purpose is going to be served, I do not find any justifiable reason to interfere with the impugned order.

17. Accordingly the writ application is dismissed but in the facts and circumstance of this case, there shall be no order as to costs.