

(2017) 11 PAT CK 0060

In the Patna High Court

Case No : Letters Patent Appeal No. 363 Of 2014, Civil Writ Jurisdiction Case
No.909 Of 2013

Mahesh Sahani

APPELLANT

Vs

State Of Bihar And Ors

RESPONDENT

Date of Decision : 24-11-2017

Acts Referred:

Bihar Fish Jalkar Management Act, 2006 — Section 7, 7(iii), 10, 14, 16

Citation : (2018) 2 PLJR 465

Hon'ble Judges : Ajay Kumar Tripathi, J;Rajeev Ranjan Prasad, J

Bench : Division Bench

Advocate : Mahasweta Chatterjee, Sushil Kumar Singh

Final Decision : Dismissed

Judgement

Rajeev Ranjan Prasad, J

Heard learned counsel for the parties.

The present appeal raises a short question for consideration. The original writ petitioners-respondents moved this Court by filing the writ application

for quashing of the order dated 09.11.2012 passed by the Registrar, Co-operative Societies, Bihar, in Misc. Case No.232/2012 by which the Registrar,

Co-operative Societies, had stayed execution of Patta in respect of Chansar Pokhar, Simari, Khesra Nos. 9322 and 594 admeasuring area 5.63 acres

and 8.25 acres executed in favour of the petitioners. The Registrar, Co-operative Societies, further directed the managing committee to make a fresh

distribution of Patta within 21 days in the presence of the Co-operative Extension Officer to be deputed by the District Co-operative Officer,

Darbhanga, under Section 73 of the Bihar Co-operative Societies Rules, 1959.

The petitioners were the members of the Singhwara Prakhand Matasyajivi Sahyog Samiti Ltd., Bhagwati Asthan, Manikauli within Singhwara Anchal

in the district of Darbhanga, which is a Fishermen Co-operative Society and the said Co-operative Society was made respondent No.6 in the writ

application. The present appellant was respondent No.7 in the writ petition.

The learned single Judge accepted the plea of the petitioners that the Registrar, Co-operative Societies had wrongly exercised his jurisdiction by

stepping into the matter. According to the petitioners the whole issue would be governed by the provisions of the Bihar Fish Jalkar Management Act,

2006 ((hereinafter referred to as "the Act")) and in view of the bar created under Section 16 of the said Act, the Registrar, Co-operative

Societies, shall have no jurisdiction in respect of the dispute concerning settlement of jalkars. Since the learned single Judge allowed the writ

application on the point of jurisdiction itself and set aside the impugned orders, the respondent No.7-appellant has moved in appeal for setting aside the

order passed by the learned single Judge.

Learned counsel for the appellant has taken us to the provisions of Section 7, particularly sub-clause (e) of Clause (xii), of the Act. It is the contention

of the learned counsel representing the appellant that the learned single Judge was not correct in taking the view that the Registrar, Co-operative

Societies, would have no jurisdiction in the matter because the case of the petitioners before the Registrar, Co-operative Societies, was not with

respect to the settlement of jalkar rather the grievance of the petitioners were with respect to distribution of the jalkar made by the Co-operative

Society. The submission is that in fact it is the decision of the managing committee of the Co-operative society which was sought to be challenged by

the petitioners because by virtue of the said decision of the managing committee the name of these petitioners were not empanelled in the list of the

proposed members with whom the settlement was to take place. The submission is that so far as Section 14 of the Act is concerned, it provides an

appeal and revision only against the decisions regarding short term settlements taken by the District Fisheries Officer and the Director, since in the

present case the petitioners had no grievance against the short term settlement done by the District Fisheries Officer, therefore, there was no reason

for them to prefer an appeal before the appellate authority.

Learned counsel submits that a bare perusal of sub-clause (e) of Clause (xii) of Section 7 of the Act would show that the proviso to the said sub-

clause clearly stipulates that if the settlement is in contravention of the provisions of Section 10 of the Act, the parwana shall be issued only after due

correction of that settlement of particular jalkar as per provision of Section 10 of the Act. Thus, according to learned counsel for the appellant, the

grievance of the petitioners could have been taken care of only by bringing necessary correction in the parwana.

On the other hand learned counsel representing State submits that the grievance of the writ petitioners cannot be seen as a separate cause of action

and in fact the enlistment of the members by the Co-operative society based on the decision of the managing committee is an integral part of the

decision making process of the District Fisheries Officer while considering a case of settlement of jalkar in favour of a Co-operative society. Learned

counsel has taken us through Section 7 of the Act to show that before making an application for settlement of a jalkar, the Co-operative society has to

prepare a list of its members to whom the settlements are proposed. Not only that even sub-clause (e) of Clause (xii) of Section 7 would show that

once the settlements are made by the Co-operative society in favour of its members and the settlement fee etc. are received from the members, the

same has to be brought to the knowledge of the District Fisheries Officer with complete information and accounts.

Submission is that the Act is in itself a complete code and if the grievance of the petitioners are allowed to be raised before a different forum, then the

District Fisheries Officer would not be in a position to take a complete view of the matter with regard to settlement of jalkar. It is his further

submission that by giving a narrow interpretation to the scheme of the Act, the authority of the District Fisheries Officer would be virtually narrowed

down and made redundant inasmuch as the two different forums with regard to the same set of transactions may have two different opinions and the

whole purpose of regulating and managing the jalkars by the statute such as the Act referred above would be rendered futile,

CONSIDERATION

We have considered the rival submissions at the bar and have perused the impugned judgment of the learned single Judge.

A perusal of Section 7(iii) of the Act would show that while making an application for settlement of a jalkar, it has been made compulsory for the

fishermen Co-operative Society to enclose certain documents with their application to the District Fisheries Officer for settlement of jalkars. One of

the requirements mentioned under sub-clause (d) of Clause (iii) is as under:

â??Section 7 - Short Term Settlement:

xxx xxx xxx

(iii) It will be compulsory for the Fishermen Co-operative Societies to enclose following documents with their application to the District

Fisheries Officer for settlement of Jalkars.

xxx xxxxxx

(d) With the approval of the Managing Committee of the society, a village wise and Panchayat wise list of jalkars along with the names

of the applicant fishermen member/members with whom the settlement is proposed. If the settlement of any Jalkar is proposed with

more than one member, then the name of the group leader.â??

Sub-Clause (e) of Clause (xii) of Section 7 is also quoted hereunder for ready reference:

â??Section 7 - Short Term Settlement

xxx xxx xxx

(xii)The settlement shall be made on the following conditions:-

xxx xxx xxx

(e) Within twenty one days f settlement, the society shall make available to the District Fisheries Officer, Parwana issued along with a

village-wise and panchayatwise 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 the this Act, the Parwana shall be issued only after

due correction of that settlement of that particular Jalkar as per provision of section 10.â??

Section 10 of the Act talks of distribution of jalkars, which reads as under:

â??Section 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 a mind the reserve

deposit and water area of Jalkars.â??

Then comes Section 14, which provides statutory remedy of appeal and revision against the order of the District Fisheries Officer and Deputy

Director in the following terms:

â??Section 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 the period

of an appeal.â??

Section 16, which provides bar of jurisdiction of the Court, is reproduced hereinbelow for ready reference:

â??Section 16 - Bar of Jurisdiction of Court Save in so far as expressly provided in this Act, no any Civil Court, Court of Co-operative

Registrar and Revenue Court shall have any jurisdiction in respect of dispute concerning settlement of Jalkars.â??

If the contention of the learned counsel for the appellant is considered as it is, we find that the grievance of the petitioners is that while taking a

decision the managing committee of the co-operative society has wrongly prepared the panel/list of members and the name of these petitioners were

either not considered or the list was wrongly prepared in violation of Section 10 of the Act. Assuming for discussion sake the contention to be correct,

it would lead us to a conclusion that in fact the very empanellment of the members, which was made pursuant to the decision taken by the managing

committee and which was placed before the District Fisheries Officer in terms of one of the requirements envisaged under sub-clause (iii) of Section

7 of the Act was according to the appellant not a correct decision and the settlement which has taken place based on the said empanellment would

come in question. If this is the conclusion which we would reach then, we have no hesitation in accepting what the learned single Judge has rightly

held that the Act being a code in itself, provides for the mechanism to deal with the grievance with respect to any issue relating to settlement.

In our view, the grievance raised by the petitioners in the writ application are certainly integral part of the decision making of the District Fisheries

Officer and, therefore, if the petitioners have any grievance with respect to the said empanellment, the forum provided under the Act would only be

available to them.

Before parting with this judgment since we have considered the scheme of the Act and the nature of the decision making by the District Fisheries

Officer in the matter of settlement of jalkars, we would like to say that the Registrar, Co-operative Societies, or the Revenue would have no

jurisdiction at all in view of the bar created under Section 16 of the Act to deal with these matters which have an ultimate effect on the settlement of

jalkars.

The appeal has no merit. It is dismissed.