

(2019) 12 PAT CK 0062

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 23776 Of 2019

Mahnar Prakhand Matsyajivi Sahyog Samiti Ltd And Anr

APPELLANT

Vs

State Of Bihar Through The Principal Secretary And Ors

RESPONDENT

Date of Decision : 02-12-2019

Acts Referred:

Citation : (2019) 12 PAT CK 0062

Hon'ble Judges : Ahsanuddin Amanullah, J

Bench : Single Bench

Advocate : Ram Nibash Prasad, Mukesh Kumar, Raj Kishore Roy

Final Decision : Disposed Of

Judgement

1. Heard learned counsel for the petitioners and learned GP 18 for the State.

2. The petitioners have moved the Court for the following reliefs:

"I. That an appropriate writ may be issued quashing the last portion of the order issued vide Memo no.521 dated 20.08.2019 as contained in Annexure-17 issued under the signature of the District Fisheries Officer, Vaishali, Respondent No.4 whereby and whereunder the Respondent No.4 the District Fisheries Officer, Vaishali after deleting those three jalkars namely (1)Palbaiya Dhab, (2) Paharpur Bishunpur Pain, and (3) Labapur Kachhahari Ditch which were not at all in existence from 2012 and the petitioner society exempted from payment of the revenue of those three jalkars for the settlement year 2012-2013 to 2018-2019 and further directed the petitioner society to pay the dues amount off 11 jalkars for the year 2015-2016 to 2018-2019 within three days from the date of receiving the order.

II. That an appropriate writ may be issued quashing the Letter No.540 dated 24.08.2019 issued under the signature of the District Fisheries Officer, Vaishali, Respondent No.4 as contained in Annexure-18 whereby and whereunder the Respondent No.4, the District Fisheries Officer, Vaishali has directed the

petitioner no. 2 to deposit the dues amount of Rs.78013/- which were due of the jalkars settled with the petitioner society for the year 2015-2016 to 2018-19, so that fresh settlement can be made with the society for the year 2019-2020 to 2021-2022, otherwise after 30.08.2019 the jalkars situated within Block will be settled through limited/open bid.

III. That an appropriate writ may be issued commanding upon the Respondent Authority to charge the revenue of only 8 jalkars from the petitioner society.

IV. That an appropriate writ may be issued commanding upon the Respondent Authority not to take any coercive steps against the petitioner society or the petitioner society may not be declared defaulter pursuant to Annexure-17 and 18 during the pendency of this writ application.

V. That any other relief/reliefs for which the petitioners are entitled to."

3. The grievance of the petitioners is that though fourteen Jalkars was settled with him for the period 01.07.2012 to 30.06.2019, but three Jalkars were non-functional and three had lost their identity due to merging with river Ganges. Thus, they represented before the authorities not to take reserve Jama with regard to six Jalkars, but only with regard to three non functional Jalkars prayer has been allowed, but with regard to three Jalkars, which have merged with river Ganges, the prayer has not been allowed.

4. Learned counsel for the petitioners submitted that after taking the settlement, they had represented to the authorities concerned with regard to six Jalkars to be removed from the settlement and no charge be taken with regard to the same, but it has not resulted in any appropriate order. Learned counsel submitted that the authorities have accepted in various reports with regard to the contention of the petitioners that three Jalkars are non-functional, whereas, three have merged with river Ganges, but still they have given benefit of only three non-functional Jalkars, whereas, with regard to the remaining three Jalkars, which have merged with river Ganges, no relief has been granted. Learned counsel submitted that twice earlier the petitioners had moved the Court, in CWJC No.5464 of 2017 in which by order dated 21.06.2017, the matter was remanded to the District Fisheries Officer-cum-Chief Executive Officer, Vaishali, to pass appropriate order and thereafter again, by order dated 28.09.2019 passed in CWJC No.4713 of 2019, the matter was sent to the District Fisheries Officer to consider the petitioners' claim. It was submitted that in the aforesaid background, the authorities insisting the petitioners to pay the total amount for eleven Jalkars for the period 2012-2019, is fit to be interfered with.

5. Learned counsel for the State submitted that the petitioners had applied to the authorities for settlement of the Jalkars in question, and were settled the Jalkars. It was submitted that the society under Rule 7(xi) of the Settlement Rules can refuse to take settlement of any Jalkar, which is then required to be settled by way of bidding. It was submitted that once the petitioners have themselves accepted the settlement for all the Jalkars, being fourteen in number, they were

bound to pay the reserve Jama which, as it is, very less, no relief is due to them. It was further submitted that the petitioners have got relief with regard to three Jalkars, but with regard to the remaining three Jalkars also the area is open to fishing for which the petitioners are liable to pay the reserve jama.

6. Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, the Court does not find any occasion to interfere in the matter.

7. As has rightly been submitted by learned for the State, it was the petitioners themselves, who had applied for all fourteen Jalkars and if they knew from before that out of those, six Jalkars were not operational, it was incumbent upon them either not to apply for the same or not to take the settlement for the same, to which they were entitled in law. They having proceeded with opting for bidding for settlement of all the fourteen Jalkars, later on cannot turn around and take a stand that with regard to six Jalkars, they should not be asked to pay any reserve amount.

8. Having regard to the aforesaid and also the fact that reserve Jama is always far less than what the government could get as revenue by open bidding, the Court finds that once the parties have agreed to the settlement and the petitioners have accepted settlement for the period 2012-2019, for all the fourteen Jalkars, they are liable, in law, to pay for the same.

9. In the present case, the petitioners have already got the benefit with regard to three Jalkars. Thus, without going into the merits of such decision, as far as remaining three Jalkars are concerned, the Court does not find that they deserve any relief by this Court in its extraordinary prerogative writ jurisdiction. As the matter is contractual in nature and the petitioners having accepted settlement for all the Jalkars for the period in question, and having availed of the same, they are liable to pay the originally fixed reserve Jama of the Jalkars in question.

10. Accordingly, the application stands disposed off in light of the discussions made hereinabove.