

(2023) 09 PAT CK 0023

In the Patna High Court

Case No : Civil Writ Jurisdiction Case No. 12135 Of 2023

Ramesh Turha

APPELLANT

Vs

State Of Bihar

RESPONDENT

Date of Decision : 11-09-2023

Acts Referred:

Bihar Fish Jalkar Management Act, 2006 — Section 7(ix), 8, 14

Citation : (2023) 09 PAT CK 0023

Hon'ble Judges : Dr. Anshuman, J

Bench : Single Bench

Advocate : Mahasweta Chatterji, Ram Nibash Prasad, Sajid Salim Khan

Final Decision : Disposed Of

Judgement

1. Heard learned counsel for the petitioner and learned counsel for the State.
2. The present writ petition has been filed for quashing the Bid Notice dated 24.07.2023 issued vide Memo No. 1592 by respondent No.5, namely, the District Fisheries Officer-cum-Chief Executive Officer, West Champaran, Bettiah, as contained in Annexure-P/1 to the writ petition.
3. Learned counsel for the petitioner submits that issuance of the said notice of Bid has been made in gross violation of law. According to the petitioner, the said Bid notice has been issued under Section 8 of the Bihar Fish Jalkar Management Act, 2006 (Bihar Act 13, 2006) (hereinafter referred to as the Act of 2006'). She further submits that Section 8 of the Act of 2006 talks about the settlement of Jalkar by limited Bid. According to the petitioner, applicability of Section 8 of the Act of 2006 shall arise only in a situation of applicability of Section 7 (ix) of the Act of 2006 which talks about the share of the Jalkars of disqualified societies of a block shall be settled for five years by limited bid with the non – defaulter members of that society residing in the same block where the Jalkar is situated. But only one Jalkar shall be settled with one person. Learned counsel for the petitioner further submits that the petitioner is not a defaulter. In this regard, a

categorical statement has been made in paragraph 16 of the petition in which it has also been stated that Jalkar situated within the operational area of the society is to be settled with a non-defaulter society and as such issuance of bid under Section 8 of the Act of 2006 is bad in law.

4. Learned counsel for the petitioner further placed Annexure P/5 which is a letter issued by the Secretary, Bihar State Election Authority (Annexure P/5 to the writ petition)(page -33 of the writ petition) and submits that during the election period, the decision with respect to the settlement of Jalkar shall affect the election and, therefore, a restriction has been imposed for taking a decision on the settlement of Jalkar. Learned counsel for the petitioner also submits that about 23 Jalkars have already been allotted during the pendency of the writ petition.

5. Learned counsel for the State submits that the decision of issuance of Bid notice has been made by the Fisheries officials and under Section 14 of the Act of 2006, an appeal should have been preferred against the decision regarding the continuation of settlement by the District Fisheries Officer before the Divisional Commissioner.

6. In view of this Court, the issuance of notice subsequently, resulted in settlement of the Jalkars ought to have been challenged by the petitioner before the Divisional Commissioner itself.

7. But considering the question raised by the petitioner, i.e. applicability of Section 8 of the Act of 2006 ignoring the provision of Section 7(ix) of the Act of 2006 as well as ignoring the letter issued by the Secretary, Bihar State Election Authority (Annexure P/5 to the writ petition), this Court hereby stayed the process of Bid Notice dated 24.07.2023 issued vide Memo No. 1592 by respondent No.5, namely, the District Fisheries Officer-cum-Chief Executive Officer, West Champaran, Bettiah, as contained in Annexure-P/1 and directs the petitioner to prefer appeal against the order under challenge before the Divisional Commissioner, Tirhut Division, within two weeks whereupon the Divisional Commissioner is directed to decide the same within 30 days from the date of appearance of all the concerned.

8. This Court, in view of the submission made by learned counsel for the petitioner to the effect that during the pendency of this writ petition, about 23 Jalkars have already been allotted, holds that no further settlement shall be made till final decision taken by the appellate authority in this matter.

9. With this direction, the writ petition stands disposed of.