
(2001) 08 OHC CK 0003

In the Orissa High Court

Case No : Original Jurisdiction Case No. 6522 of 2001

Sania Patra

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 29-08-2001

Acts Referred:

Orissa Grama Panchayat Rules, 1968 — Rule 87

Citation : (2001) 2 OLR 410

Hon'ble Judges : L. Mohapatra, J

Bench : Single Bench

Advocate : L. Samantray and H.S. Satapathy, for the Appellant; H.P. Rath, for Opp. party No. 7, for the Respondent

Judgement

L. Mohapatra, J.—This writ application has been filed for quashing the settlement of Fishery Sairat, namely, Purunagada Bandha located under Badngada Grama Panchayat, in favour of opposite party No. 7 and for further direction to settle the Sairat in favour of the petitioner.

2. Case of the petitioner is that for the year 2000-2001 a notice was given by the Grama Panchayat authorities for settlement of Purunagada Bandha and bids were invited. The petitioner along with others participated in the said bid and the amount offered by the petitioner was the second highest. The petitioner offered Rs. 25,000/-, whereas one Surya Narayan Panigrahi offered Rs. 25,050/- Since the highest bidder Surya Narayan Panigrahi expressed his inability to deposit the entire amount at a time and his prayer for instalment was refused, a second auction was conducted. In the second auction the Sairat has been settled in favour of opposite party No. 7 for consecutively three years starting from 2000-2001 till 2002-2003 for an amount, of Rs. 25,050/-, whereas the petitioner had offered Rs. 25,000/- for one year, i.e. 2000-2001 and being the second highest bidder, the Sairat should have been settled in his favour without going in for a second auction. The further grievance of the petitioner is that the notice period as prescribed under law was not allowed at the time of second auction and

opposite party No. 7 managed to get the Sairat settled in his favour and has also been allowed to pay the amount in instalments.

3. Shri L. Samantray, appearing for the petitioner, submitted that since the petitioner had offered Rs. 25,000/- for one year, there was no reason for the Grama Panchayat to settle the Sairat for the same amount in favour of opposite party No. 7 for a period of three years. He further submitted that the second auction notice having not been issued in terms of the provisions contained in the Orissa Grama Panchayats Rules, 1968, the settlement in favour of opposite party No. 7 is liable to be quashed.

4. A counter affidavit has been filed by opposite party No. 7 wherein it is stated that in the second auction the petitioner never participated and opposite party No. 7 being the highest bidder was settled with the Sairat on 8.11.2000. Opposite party No. 7 has further stated the huge amount of money has been spent by him for development of the Sairat and if at this stage the Court interferes with the settlement of the Sairat, he shall be put to great financial loss.

5. Learned counsel for the State submitted that there is no bar in law to ignore the first auction and go in for a second auction. He further submitted that the petitioner having not participated in the second auction, the highest bidder in the second auction was settled with the Sairat.

6. From the averments made by the parties, it appears that the following facts remain undisputed : There was an auction notice for the year 2000-2001 in respect of the Sairat in question and the petitioner had participated in the said auction. The offer of the petitioner was Rs. 25,000/- and one Surya Narayan Panigrahi had offered Rs. 25,050/-. Surya Narayan Panigrahi having failed to deposit the amount at a time, the second highest bidder should have been settled with the Sairat, However, the opposite parties decided to go in for a second auction and it is admitted by both the parties that there is no bar under law to hold a second auction. Therefore the right of the petitioner accruing from the first auction is no more available to be enforced. The contention of the petitioner that he being the second highest bidder in the first auction, should have been settled with the Sairat has no force in view of the decision of the opposite parties to hold the second auction.

7. The second question that has been raised is that the second notice was published on 25th October, 2000 and the auction was conducted on 8th November, 2000. Rule 87 (d) of the Orissa Grama Panchayats Rules, 1968 states that the Subdivisional Officer shall send a list of properties, that are to be leased out by public auction indicating the period of lease and upset price, to the respective Block Development Officer who shall thereupon fix the date for auction of all or any such properties and issue notice for auction sale. It is further provided that the notice for auction shall be issued before fifteen clear days of the date fixed for auction and shall be published in the notice board of the Panchayat. In the present case the notice was published on 25th October, 2000

and the auction took place on 8th November, 2000. Therefore, it is clear that the auction was held on the 15th day itself. The rule specifically provides that there shall be notice for clear fifteen days,-whereas in the present case the auction was conducted on the 15th day itself. Apart from that, it further appears that in the previous bid there was an offer of Rs. 25,050/- for one year, whereas the Sairat has been settled for a period of three years in favour of opposite party No. 7 for an amount of Rs. 25,050/-. Had clear fifteen days notice been given, the petitioner could have participated in the auction and keeping in view the offer made by him earlier, the Panchayat could have earned at least Rs. 75,000/- in place of Rs. 25,050/-. The authorities conducting the auction were aware of the fact that in the previous auction, for one year only the highest bid was Rs. 25,050/- and therefore, they should have fixed the upset price accordingly instead of leasing out the Sairat in favour of opposite party No. 7 for a period of three years for an amount of Rs. 25,050/-.

8. Learned counsel appearing for opposite party No. 7 submitted that, the opposite party No. 7. has spent a huge amount in developing the Sairat and almost one year has passed in the meantime and if the Court interferes at this stage, opposite party No. 7 shall be put to great financial loss. This Court at the initial stage had directed the parties to appear in Court to place their bids afresh, However, the opposite party No. 7 did not appear and the learned counsel Shri Rath appearing for opposite party No. 7 expressed his inability to participate in the bid. By order dated 13.7.2001 opposite party No. 7 was restrained from operating the Sairat till disposal of the writ application . By order dated 27.7.2001 the learned Additional Government Advocate was also directed to obtain instruction as to what extent opposite party No. 7 has developed after settlement of the Sairat in his favour in the month of November, 2000. Learned Additional Government Advocate has not produced record indicating the development work undertaken by opposite party No. 7 between November, 2000 and July, 2001 nor an affidavit has been filed in support thereof. Therefore, any development work undertaken by opposite party No. 7 after the interim order was passed by this Court has been done at his risk. Ordinarily I would have refrained from interfering since the Sairat was settled in favour of opposite party No. 7 in the month of November, 2000. In view of the circumstances stated above and keeping in view the loss likely to be sustained by the Grama Panchayat because of the conduct of the officials involved in the process of settlement of the Sairat, I am constrained to set aside the settlement of the Sairat made in favour of opposite party No. 7.

9. I therefore, direct opposite parties 3 to 6 to either confine the settlement of the Sairat in favour of opposite party No. 7 to the year 2000-2001 and put the Sairat to fresh auction for the balance two years, or settle the Sairat in favour of opposite party No. 7 for an amount of Rs. 75,000/- at the rate of Rs. 25,000/- per annum which should have been the upset price, or hold a fresh auction fixing the upset price at Rs. 25,000/-. This direction be carried out within a period of one month from the date of receipt of the order.

With the above observations and directions, the writ application is disposed of.