
(2008) 06 PAT CK 0004
In the Patna High Court
Case No : CWJC No. 16416 of 2007

Sunil Sahni and Another

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 25-06-2008

Acts Referred:

Bihar Fish Jalkar Management Act, 2006 — Section 7(v)

Citation : (2009) 1 PLJR 691

Hon'ble Judges : Navaniti Pd. Singh, J

Bench : Single Bench

Advocate : Pashupati Pd. Sinha and Deepak Kumar, for the Appellant; Nilu Agrawal and Manoj Kumar, for the Respondent

Final Decision : Allowed

Judgement

Navaniti Pd. Singh, J.—Petitioner is aggrieved by the order of the Director, Fisheries, Bihar, Patna, passed in Appeal Case No. 36 of 2007, dated 29.11.2007, as contained in Annexure -1 to the writ application. By the said appellate order the appeal as preferred by the private respondent No. -4 was allowed and the settlement of 14 Fishery Jalkars in favour of the petitioner, who was respondent No. 2 in the appeal was set aside. Respondent No. 4 has appeared and filed a counter affidavit. State has also filed a counter affidavit.

2. Parties have been heard and with their consent this application is being disposed of at the stage of admission itself.

3. In Goraul Block of District Vaishali there are several Fishery Jalkars. Petitioner was the only Fishery Co-operative duly registered for Goraul block. It had already 27 Jalkars with it out of 41 Jalkars in the block. For the year 2007-08 onwards 14 out of 41 Jalkars were opened for settlement. This came to be settled with the petitioner also. This settlement was challenged by respondent No. 4 in appeal successfully. This has brought the petitioner to this Court.

4. The settlement of 14 Jalkars, which are exclusively Fishery Jalkars, was

challenged on the ground that on the day when the settlement was made i.e. on 15.6.2007 respondent No. 4 had been duly registered as a Co-operative and as such should have been considered. Respondent No. 4 had 206 Fishermen as its members as against the petitioners, who had only 86 members and as such proportionate division should have been made and not only the 14 Jalkars but respondents were entitled to more. This was not accepted by the District Fisheries Officer. These views were reversed in appeal.

5. The admitted fact is that respondent No. 4 came into existence by registration under the Bihar Self-Supporting Cooperative Societies Act, 1996 on 31.5.2007. For the first time, it made an application to the District Fisheries Officer for settlement on 10.6.2007 in respect of 14 Fishery Jalkars exclusively. As noticed above, the District Fisheries Officer found the claim of respondent No. 4 unentertainable and to the contrary the Director, Fisheries, Bihar, relying on a judgment of this Court (delivered earlier by me) in the case of Nokha Prakhhand Matasyajivi Swawlambi Sahakari Samiti Limited Vs. State of Bihar and Others, disposed of on 7.3.2007 (Annexure-C/4 of the counter affidavit of respondent No. 4) held that the relevant date for consideration is the date when settlement is actually made. The appellate authority was of the view that as the settlement was made on 15.6.07 and application by respondent No. 4 had been made on 10.6.2007, on the relevant date i.e. 15.6.07 respondent No. 4 had a right to be considered. He accordingly relying on the said judgment set aside the settlement in favour of the petitioner and pursuant thereto by Annexure-7 (of the amendment application) settlement was made in favour of respondent No. 4. In the Amendment Application, which is allowed, prayer has been made to quash the settlement as made in favour of the respondent No. 4 (Annexure-7 as well).

6. It will be necessary to quote Section 7(v) of the Bihar Fish Jalkar Management Act, 2006:-

"(v) It shall be compulsory for Fishermen Co-operative Societies to submit their applications in the office of District Fisheries Officer with all enclosures before 30th April for short term settlement. But in special circumstances, for reasons to be recorded in writing, the Collector may give a direction to District Fisheries Officer to receive application from the society by 31st May. The last date of submitting application for the settlement of Singhara & Makhana-cum-fish jalkar, shall be 31st July. In special circumstances, for reasons to be recorded in writing the Collector may give direction to District Fisheries Officers to receive application from the society by 31st August."

7. A reference to that provision would show that normally all applications for settlement of Jalkar have to be made by 30th of April. Admittedly, in the present case on 30th of April, respondent No. 4 was not even in existence. Then it is provided that the Collector may direct extension of time upto 31st of May in special circumstances. Therefore, the cut-off date is lastly 31st of May in respect of Fishery Jalkar exclusively. The provision further goes and provides yet another exception as would be seen by extending the date to 31st July and lastly 23rd

August but these are in relation to Singhara and Makhana-cum-fish jalkar. Admittedly, the present case, deals with Fishery Jalkar exclusively and would not fall in the later part of Section 7(v) of the Act. Thus, the last date permissible for filing application was 31st of May, 2007. Undoubtedly, it is on that date respondent No. 4 was incorporated but his application was filed on 10th of June i.e. ten days beyond the last extendable date provided by statute. If that be kept in mind, then it may be seen that his application on the day when settlement was to be made was not entertainable and no settlement could be made in his favour. Authorities under the Act had to act in accordance with the provision of the Act. They are not permitted to alter the provision of the Act much less the time Schedule fixed thereunder. In my view, the order of the appellate Court cannot thus be sustained and the settlement made in favour of respondent No. 4 also cannot be sustained and both are accordingly quashed.

8. I may mention that pursuant to settlement made in favour of petitioner, petitioner had been given possession, which was sought to be taken away by" subsequent settlement in favour of respondent no, 4.

9. In fairness to the learned counsel for respondent No. 4, I must notice the decision of this Court as relied. This Court in the judgment aforesaid held that the relevant date would be the date on which settlement is made and that was after incorporation of the Society. Prima facie, this finding of the Court supports the respondents on all counts but it is well settled principle that a judgment is an authority for what is decided on the facts obtaining in the case. This was settled in the case of *Quinn vs. Leathern* as far back as in 1901 and has since been followed by the Apex Court in the case of *The State of Orissa Vs. Sudhansu Sekhar Misra and Others*, and the relevant consideration is to be found in para 13 of the reports wherein noticing the case of *Quinn vs. Leathern* and quoting from it their Lordships have clearly laid down that every judgment must be read as applicable to the particular facts proved, or assumed to be proved, since the generality of the expressions which may be found they are not intended to be expositions of the whole law, but governed and qualified by the particular facts of the case in which such expressions are to be found. Their Lordships further held that a case is only an authority for what it actually decides. It cannot be quoted for a proposition that may be seem to follow logically from it.

10. Applying the said principle as laid down by the Apex Court it would be found that in that case Society was incorporated on 26th of April, 2005, which was even before 30th of April, the first cut-off date as provided u/s 7(v) of the Act. The fact of that case further reveals that the ground for rejection of the society"s claim was that as the period of settlement was to commence from 1st of April even though settlement was being made much later, on 1st April, the society not having been incorporated its claim could not be entertained. That was negated by this Court. If those facts are kept in mind then the general observation made by this Court stand fully explained. That judgment is of no assistance to the respondents. In the result the writ application is allowed and Annexures-1 and 7

are quashed and the settlement as made in favour of the petitioner on 15.6.07 would accordingly operate.