
(2015) 07 OHC CK 0022

In the Orissa High Court

Case No : Writ Petition (C) No. 8327 of 2015

Trinath Dev Primary F.C.S. Ltd.

APPELLANT

Vs

State of Orissa and Others

RESPONDENT

Date of Decision : 07-07-2015

Acts Referred:

Citation : (2015) 07 OHC CK 0022

Hon'ble Judges : Akshaya Kumar Rath, J

Bench : Single Bench

Advocate : S.R. Patnaik, for the Appellant

Final Decision : Disposed off

Judgement

Dr. Akshaya Kumar Rath, J.

1. Aggrieved by and dissatisfied with the order dated 10.04.2015 passed by the Collector, Puri, opposite party No. 3, in Fishery Misc. Case No. 167/2014, vide Annexure-7, more particularly, the directions made in paragraph (e), (f) and (h) of the said order, the petitioner has filed the present writ petition. By the said order, the opposite party No. 3 held that the petitioner is liable to pay Government Revenue of Rs. 8,00,000/- as calculated by the Tahasildar, Krushnaprasad, opposite party No. 4 prior to take possession of the sairat. It was further directed that after completion of lease period on 30.06.2015, the petitioner and opposite party No. 5 may approach for sub-lease of the source.

2. Sans details the short facts of the case of the petitioner is that the petitioner-society is a registered cooperative society. The members of the society are poor fishermen. They eke out their livelihood by fishing. The members of the petitioner-society consists of 117 fishermen, who are permanent resident of village Srirampur, Balinasi and Maleswari. From 1959, the Talarihuda Jano Sairat (hereinafter referred to as "Sairat") is in possession of the fishermen of villagers of Srirampur. During the period of 2014-15, the Collector, Puri, opposite party No. 3 recommended the name of the petitioner to the Orissa State Fishermen's

Cooperative Federation Ltd. (hereinafter referred to as "FISHFED"), opposite party No. 2 for sub-leasing the Sairat in favour of the petitioner-society. Thereafter, the opposite party No. 2 directed the petitioner-society to deposit an amount of Rs. 38,533/-. The Secretary of the Society deposited the said amount on 5.9.2014 and 24.09.2014 respectively. An agreement was executed on 24.11.2014 for an area of Ac.229.78 decimal in favour of the petitioner, vide Annexure-4. Thereafter, the opposite party No. 2 sent a letter to the Tahasildar, Krushnaprasad, opposite party No. 4 to handover the possession of the Sairat to the petitioner-society. But then, the Sairat was not handed over to the petitioner-society by the opposite party No. 4. The Secretary of the petitioner-society approached the opposite party No. 3, whereafter a letter was sent on 02.01.2015 to the Sub-Collector, Puri to complete the process and handover the possession of the Sairat to the petitioner. While the matter stood thus, the petitioner received a notice in Fishery Misc. Case No. 167 of 2014 filed before the Collector, Puri by the opposite party No. 5, another fishermen co-operative Society. Opposite party No. 5 is a newly formed society, which has no locus standi to interfere in the matter. The name of opposite party No. 5 has not been recommended by the competent authority for the period of 2014-15. However, the opposite party No. 5 initiated the case with an oblique motive of obstructing delivery of possession to the petitioner-society. Further case of the petitioner is that it filed a writ petition, i.e., W.P.(C) No. 990 of 2015 before this Court for a direction to the Tahasildar, Krushnaprasad to handover the possession of Sairat. The said writ petition was disposed of on 13.02.2015 with a direction to the opposite party No. 3 to dispose of Fishery Misc. Case No. 167 of 2014 within ten days. Since the matter was not disposed of within the stipulated time, the petitioner has filed an application for Contempt of Court for violation of the order of this Court. But then, the case was not disposed of. Again the petitioner filed another writ petition, i.e., W.P.(C) No. 6174 of 2015. During pendency of the writ petition, the Fishery Misc. Case No. 167 of 2014 was disposed of by the Collector, Puri on 10.04.2015. Thus the aforesaid writ petition has become infructuous. By order dated 10.04.2015, the Collector, Puri directed the petitioner to deposit Rs. 8,00,000/- or more as calculated by the Tahasildar, Krushnaprasad prior to handover the possession of the Sairat in question to the petitioner-society. Further direction was made that after completion of lease period on 30.06.2015, the parties may approach for sub-lease of the sairat source. With this factual scenario, the present writ petition is filed.

3. Pursuant to issuance of notice, the opposite party No. 5 has entered appearance, but no counter affidavit has been filed. Also no counter affidavit has been filed by the opposite party Nos. 1 to 4.

4. Heard Mr. S.R. Patnaik, learned counsel for the petitioner, learned Additional Government Advocate for the opposite party Nos. 1 to 4 and Mr. K.B. Kar, learned counsel for the opposite party No. 5.

5. Mr. Patnaik, learned counsel for the petitioner argued with vehemence that the

name of the petitioner-society was recommended by the authority for the year 2014-15 to the FISHFED. Pursuant to the direction of the Managing Director, FISHFED, opposite party No. 2, the Secretary of the petitioner-society deposited an amount of Rs. 38,533/- on 5.9.2014 and 24.09.2014 respectively. Thereafter an agreement was executed on 24.11.2014 in respect of the Sairat for an area of Ac.229.78 decimals in favour of the petitioner-society, vide Annexure-4. The opposite party No. 2 issued a letter to the opposite party No. 4 to handover the Sairat to the petitioner-society and also sent a copy to the Collector, Puri. Since the Sairat was not handed over to the petitioner, the petitioner has approached this Court in W.P.(C) No. 990 of 2015. Though a direction was made by this Court on 13.02.2015 to dispose of the Fishery Misc. Case No. 167 of 2014 to the Collector, Puri, but the same was not disposed of. Thereafter, the petitioner filed an application for contempt. Again the petitioner filed another writ petition, i.e., W.P.(C) No. 6174 of 2015. At this juncture, the Fishery Misc. Case No. 167 of 2014 was disposed of by the Collector, Puri, opposite party No. 3 on 10.04.2015 and as such W.P.(C) No. 6174 of 2015 has become infructuous. He further submitted that at no point of time any letter was issued to the petitioner-society to pay an amount of Rs. 8,00,000/-. The petitioner-society is not aware of any outstanding dues. He further submitted that since the case of the petitioner was duly recommended by the opposite party No. 3 to the opposite party No. 2 and thereafter the petitioner-society has deposited an amount of Rs. 38,533/-, agreement was executed, the opposite party No. 3 committed an illegality in holding that the petitioner-society is liable to pay Government Revenue of Rs. 8,00,000/- as calculated by opposite party No. 4. He further submitted that the opposite party No. 3 committed manifest illegality and impropriety in observing that after completion of lease period on 30.06.2015, the parties may approach for sub-lease of the source within the provisions. He further submitted that the opposite party No. 5-Society does not represent the villagers of Srirampur. Opposite party No. 5-Society consists of 11 numbers of villagers of Srirampur along with the villagers of Naba. The members of opposite party No. 5 are not traditional fishermen.

6. Per contra, learned Additional Government Advocate supports the order dated 10.04.2015 passed by the Collector, Puri in Fishery Misc. Case No. 167/2014.

7. Mr. K.B. Kar, learned counsel for the opposite party No. 5 submitted that all the members of the petitioner-society are not permanent resident of village Srirampur. The members of the opposite party No. 5-society have no alternative livelihood. The Sairat belongs to them and if sub-lease is granted in favour of the petitioner-society, the members of the opposite party No. 5 will be deprived of their livelihood. He further submitted that some members of the petitioner-society are minors and dead persons.

8. In course of hearing, when a query be made by this Court as to whether the petitioner-society would deposit an amount of Rs. 8,00,000/- before the opposite party No. 4, Mr. Patnaik, learned counsel for the petitioner submitted that the

petitioner-society is ready and willing to deposit the said amount. In the aforesaid context, this Court is required to examine the rival claims of petitioner vis-?-vis opposite party No. 5. The name of the petitioner-society was recommended by the opposite party No. 3 to the opposite party No. 2. Pursuant to the direction of the opposite party No. 2, the petitioner-society deposited an amount of Rs. 38,533/- on 5.9.2014 and 29.09.2014 respectively. An agreement was entered into between the parties on 24.11.2014. The opposite party No. 3 by letter dated 2.1.2015 directed the Sub-Collector, Puri to handover the possession of the Sairat source to the petitioner-society. But then, the opposite party No. 5 initiated Fishery Misc. Case No. 167/2014. By an elaborate order dated 10.04.2015 vide Annexure-7, the opposite party No. 3 held as follows:--

" xxx xxx xxx

In view of the above forgoing discussions it is views as:--

- a) O.P. No. 1 is the original society and due to some disagreements among the original members, the petitioner is newly formed.
- b) O.P. No. 1 has already deposited the dues and agreement is already signed with FISHFED for lease, and only formal handing over is required.
- c) Lease period is about to expire.
- d) An order has already been passed since end of 2002 in the Court of Collector, Puri for proposed lease of the suit source in favour of O.P. No. 1 Srirampur and due to dismissal in appellate forum this order is uphold.
- e) There is more than eight lakhs of rupees relating to Govt. Revenue is pending with O.P. No. 1 is a clear instance that the source was legally enjoyed by O.P. No. 1 earlier.
- f) O.P. No. 1 is liable to pay the Govt. Revenue of rupees eight lakhs or more as calculated by Tahasildar, Krushnaprasad prior to take possession of the land.
- g) After realization of the amount Tahasildar, Krushnaprasad shall hand over the source to O.P. No. 1.
- h) After completion of lease period on 30.06.2015 the parties may approach for sub-lease of the source within the provisions.

Hence the petition is devoid of merit and the case is disposed of accordingly."

It is pertinent to mention here that the aforesaid order has not been challenged by the opposite party No. 5.

9. On taking a holistic view of the matter, this Court disposes of the writ petition with a direction to the petitioner-society to deposit an amount of Rs. 8,00,000/- (rupees eight lakhs) within a period of fifteen days before the Tahasildar, Krushnaprasad, opposite party No. 4. Thereafter the opposite party No. 4 shall handover the Sairat to the petitioner-society forthwith. So far as the observation

made by the opposite party No. 3 in paragraph (h) of the order, this Court is of the opinion that since the petitioner-society has not taken over the possession of the Sairat till yet, after depositing the necessary amount as directed by the Collector, Puri, opposite party No. 3 vide order dated 10.04.2015 under Annexure-7 before the opposite party No. 4, the petitioner-society will operate the Sairat till end of June, 2016. Thereafter, the Collector, Puri, opposite party No. 3 shall consider the rival claims of the respective parties and take a decision to lease out the Sairat.