

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.13465 of 2013

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1. Kashi Lal Kewat S/O Late Sundar Kewat R/O Vill.- Jhogiya Tolla, P.S.-
Dandkhora, Dist.- Katihar

2. Bindeshwar Kewat S/O Late Raghu Kewat R/O Vill.- Jhogiya Tolla,
P.S.- Dandkhora, Dist.- Katihar

3. Hitesh Mandal S/O Ghanshyam Mandal R/O Vill.- Sauriya, P.S.-
Dandkhora, Dist.- Katihar

.... Petitioner/s

Versus

1. The State of Bihar

2. The Divisional Commissioner, Purnia Division Purnia

3. The District Fisheries Officer-cum-Chief Executive Officer, Katihar

4. Dandkhora Prakhanda Matasyajivi Sahyog Samiti Ltd. Dandkhora
through its Secretary Ghanshyam Mandal S/O Late Madhusudan Mandal
R/O Vill.- Sauriya, P.S.- Dandkhora, Dist.- Katihar

5. Prakash Sharma S/O Jyotish Sharma R/O Vill.- Balwa Tolla, P.S.-
Dandkhora, Dist.- Katihar

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Pashupati Pd. Sinha, Advocate
Mr. Deepak Kumar, Advocate

For the Respondent Nos. 1 to 3: Mr. Md. N. Hoda Khan, SC 18
Mr. Md. Naushaduzzoha, AC to SC 18

For the Respondent No.5 : Mr. Vasudeo Ram, Advocate
Mr. Gajendra Prasad Yadav, Advocate

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA PRASAD VERMA
ORAL ORDER

4 27-11-2015

Heard the parties.

2. The petitioners have filed the present writ petition under Article 226 of the Constitution of India assailing the validity and correctness of the order dated 18.04.2013 passed in Misc. Appeal No. 109 of 2013 by the respondent Commissioner, Purnea Division, Purnea, as contained in Annexure-1, whereby the aforesaid appeal filed on behalf of the respondent no.5 under Section 14 (i) of The Bihar Fish Jalkar Management Act, 2006 (in short Act, 2006) has been allowed and direction has been issued for settlement of Jalkars in question in favour of the respondent

no.5 and his associates.

3. Learned counsel appearing on behalf of the petitioners submits that the petitioners were issued Pattas with respect to Jalkars in question on 25.09.2012, which all have been brought on record as Annexure-3 series. According to him, against such order of settlement or issuance of pattas under the provisions of Act, 2006 appeal before the respondent Commissioner was not maintainable. Apart from merits, it is further contended that before passing the impugned final order, opportunity of hearing was not given to the petitioners and, in fact, they were not even impleaded as party respondents in the aforesaid appeal. It is next contended that on the ground of violation of principles of natural justice alone besides merits, the impugned appellate order is liable to be set aside and quashed by this Court.

4. Learned SC 18, appearing on behalf of the respondent nos. 1 to 3 and the learned counsel appearing on behalf of the respondent no.5, though have opposed the prayer made on behalf of the petitioners, but have not been able to show that an opportunity of hearing was given to the petitioners before passing the impugned final order by the appellate authority.

5. In the aforesaid factual matrix, this Court is of the opinion that the matter requires re-consideration and a fresh decision by the respondent Divisional Commissioner, Purnea.

6. For the reasons recorded above, the impugned order dated 18.04.2013 passed in Misc.Appeal No. 109 of 2013 by the respondent Commissioner, Purnea Division, Purnea, as contained in annexure-1, is set aside and quashed and the matter is remitted back to the respondent Commissioner with a direction to him to decide the aforesaid appeal afresh, after giving an

opportunity of hearing to the petitioners, respondent no.5, and all other concerned person (s).

7. In order to expedite the matter, the petitioners as also the respondent no.5 are hereby directed to appear before the respondent Commissioner, Purnea Division, Purnea within a period of one month from today with a certified copy of the present order, whereafter the respondent Commissioner shall proceed further for deciding the aforesaid Misc.Appeal No. 109 of 2013 afresh strictly in accordance with law, but before passing any final order, an opportunity of hearing must be given to all concerned including the concerned Fisheries Co-operative Society.

8. It is made clear that the parties shall be at liberty to raise all the issues of facts and law, which may be available to them with respect to the aforesaid Misc.Appeal No. 109 of 1993 before the respondent Commissioner, Purnea Division, Purnea.

9. The writ petition stands allowed to the extent indicated, but with the observations and directions made above. No costs.

(Birendra Prasad Verma, J)

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