

HIGH COURT OF CHHATTISGARH, BILASPUR

WPC No. 1911 of 2015

1. Jai Bajrang Machhua Cooperative Society Gram Panchayat Sambalpur, Tahsil Dondilohara, Dist. Balod (Chhattisgarh)
2. Sarpunch, Gram Panchayat Sambalpur, Tahsil Dondilohara, Dist. Balod (Chhattisgarh)

---- Petitioner

Versus

1. Banrajhia S/o Kanhai President Nav Sakshar Jai Ambe Machhua Sahkari Samiti Village Sambalpur, Tahsil Dondilohara, Dist. Balod (Chhattisgarh)
2. State of Chhattisgarh, Through The Secretary, Department Of Panchayat & Rural Development, New Raipur, Capital Complex, Raipur (Chhattisgarh)

---- Respondent

For Petitioners	Shri Sudeep Johri, Advocate
For Respondent/State	Shri Avinash Singh, Panel Lawyer

Hon'ble Shri Justice Prashant Kumar Mishra

Order On Board

28/10/2015

1. With the consent of learned counsel for the parties, the petition is heard finally.
2. Petitioner has assailed the legality and validity of the appellate order passed by the State Government dismissing the petitioner's appeal, which, in turn, was against the order passed

by the Commissioner, Durg Division, Durg, on 12-6-2014 by which the Commissioner had allowed the revision preferred by the respondent No.1 and set aside the order passed by the Collector, Balod on 15-3-2012 and maintained the order passed by the Sub Divisional Officer (Revenue), Dondi Lohara on 13-4-2011.

3. Facts of the case, briefly stated, are that the Gram Panchayat, Sambalpur, Tahsil Dondi Lohara, passed a resolution on 1-7-2010 to grant lease of fishing rights of Bade Bandha Talab to Jai Ambe Machhua Sahakari Samiti. The Chief Executive Officer, Fish Farmers Development Agency, Durg (for short 'the CEO, FFDA') opined that under the Government instructions dated 23-1-2010 lease should always be granted for a period of 7 years, therefore, the Gram Panchayat should re-consider the issue to grant lease for 7 years. The Gram Panchayat, thereafter, passed fresh resolution on 6-9-2010 to grant lease in favour of Jai Bajrang Machhua Co-operative Society, the petitioner.
4. The respondent No.1 challenged the said resolution before the SDO (R), Dondi Lohara, on the ground that the area of operation of the petitioner's society is not with Gram Panchayat, Sambalpur, therefore, the resolution dated 6-9-2010 is illegal. The SDO found that once a resolution was passed by the Gram

Panchayat granting lease in favour of the respondent No.1 and the said order having not been challenged, a fresh resolution on the same issue cannot be passed. It was held that the petitioner society is not registered for Sambalpur village area. The SDO, thus, set aside the resolution dated 6-9-2010. Against this order of SDO, the petitioner No.2 preferred an appeal before the Collector, Balod, which was allowed on 15-3-2012. The order passed by the Collector was assailed by the respondent No.1 before the Commissioner, Durg Division. The Commissioner allowed the revision application of the respondent No.1, *inter alia*, holding that for reconsidering any resolution under Section 45 of the Chhattisgarh Panchayat Raj Adhiniyam, 1993 at least 3/4th members of the Panchayat should accord consent for such reconsideration, however, there is no material on record of the Gram Panchayat to establish that such consent was accorded by 3/4th members of the Panchayat. The State Government has also maintained the order passed by the Commissioner.

5. It is argued that the second resolution of the Gram Panchayat was legal and justified. Therefore, the Collector rightly interfered with the order passed by the SDO which should not have been set aside by the Commissioner and the State Government.

6. Having heard learned counsel for the petitioner and learned counsel for the State, it would appear that the petitioners had not preferred any appeal or any other proceeding against the first resolution of the Gram Panchayat, which was passed on 1-7-2010 recommending grant of lease in favour of respondent No.1. The CEO, FFDA, only directed for grant of lease for 7 years instead of 3 years, however, it never raised any objection to the eligibility or otherwise of respondent No.1 in obtaining the lease. Moreover, the petitioner No.1 Cooperative Society is working in a different village area, therefore, under the Government instructions it was not eligible for grant of fishing lease in the area where a different cooperative society i.e. respondent No.1 is already registered and operating.
7. For the foregoing, this Court does not find any substance to interfere in the matter. Accordingly, the writ petition is dismissed.

Sd/-

Judge

Prashant Kumar Mishra

Gowri