

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.13558 of 2011

1. Raghubir Prasad Agarwala S/O Shri Ram Chandra Agarwala R/O Mohalla-Gulabbag, Purnia Police Station Sadar, Distt.- Purnia - Director, Savitri Reational Tea Estate Pvt. Ltd., A Company Incorporated Under The Indian Companies Act, 1956, Having Their Registered Office At 9, India Exchange Place, Calcutta Now Kolkata And Having Administrative Office At Kishanganj - Tea Garden Dheksara Police Station And Distt.- Kishanganj.

.... Petitioner/s

Versus

1. The State Of Bihar
2. The District Magistrate-Cum-Collector, Kishanganj
3. The Additional Collector, Kishanganj
4. Shri Bhoot Nath Goshala, Kishanganj, Represented Through Its Ex-Officio President - The Sub-Divisional Officer Kishanganj, Within The District Of Kishanganj.

.... Respondent/s

with

Civil Writ Jurisdiction Case No. 13475 of 2011

1. Raghubir Prasad Agarwala S/O Shri Ram Chandra Agarwala R/O Mohalla-Gulabbag, Purnia Police Station Sadar, Distt.- Purnia - Director, Ruchi Tea Estate Pvt. Ltd., A Company Incorporated Under The Indian Companies Act, 1956, Having Their Registered Office At 9, India Exchange Place, Calcutta Ow Kolkata And Having Administrative Office At Kishanganj - Tea Garden Dheksara Police Station And Distt.- Kishanganj.

.... Petitioner/s

Versus

1. The State Of Bihar
2. The District Magistrate-Cum-Collector, Kishanganj
3. The Additional Collector, Kishanganj
4. Shri Bhoot Nath Goshala, Kishanganj, Represented Through Its Ex-Officio President - The Sub-Divisional Officer Kishanganj Within The District Of Kishanganj.

.... Respondent/s

Appearance :

(In CWJC No. 13558 of 2011)

For the Petitioner/s : Mr. Arun Prasad Ambastha

For the Respondent/s : Mr. Anil Kumar Sinha, G.A.-9

(In CWJC No. 13475 of 2011)

For the Petitioner/s : Mr. Rajeev Kumar Verma, Sr. Advocate

Mr. Arun Prasad Ambastha

For the Respondent/s : Mr. Ravi Bhardwaj, A.C. to G.A.-5

Mr. Aakash Keshav

CORAM: HONOURABLE MR. JUSTICE KISHORE KUMAR MANDAL
ORAL JUDGMENT

Date: 21-01-2016

Both the applications raise common issue inasmuch the foundational facts are common. The impugned communication made in both the writ applications(Annexure-5) are the notice(s) issued to the petitioners by the District Magistrate, Kishanganj. With the consent of the parties, they have been heard together.

Relevant facts shall be noticed from C.W.J.C. No. 13475 of 2011. Impugned in the writ petition is the notice dated 21.7.2011 (Annexure-5) issued by the District Magistrate calling upon the petitioner to explain against cancellation of lease made by the respondent Sri Bhooth Nath Goshala in favour of the petitioner or his firm.

Sri Bhooth Nath Goshala at Kishanganj (for short 'the Goshala') was established long before. It had acquired large area of land at different places within the State of Bihar and the neighbouring State. With a view to relieve the Goshala from the financial strain with which it was facing, the Managing Committee of the Goshala of which the Sub-Divisional is the Ex-officio President took a decision to lease out land to petitioner for developing tea plantation for longer period of time. After holding different meetings, it was decided to invite applications from intending parties. Out of 18 persons who were initially respondents, only six submitted the documents/tender.



Petitioner claims to have offered the highest amount @ Rs. 3,251/- per year per acre. However, some other parties offered higher rate but no security money was deposited. The offer was again made to the petitioner to agree for taking the land on lease @ Rs. 3,551/- per acre per year and to deposit advance amount of 15 months as security. The Petitioner subsequently represented that the lease be executed in favour of two different plantation companies namely Ruchi Tea Estate Pvt. Ltd and Savitri Tea Plantation Pvt. Ltd. Accordingly, on getting approval from the Development Officer-cum-Registrar, Goshala, Bihar, the matter was placed in the meeting of the Managing Committee held under the Presidentship of the District Magistrate and the proposal for executing the lease for longer period of time was approved. Again the matter relating to proposal for execution of lease of land was considered by the Managing Committee presided over by the District Magistrate on 15.10.1999 in which the grant of lease for 120 acres of land (70 acres in favour of Ruchi Tea Estate Pvt. Ltd. and 50 acres in favour of Savitri Plantation Pvt. Ltd.) was approved. Accordingly, the Sub-Divisional Officer-cum-President of the Committee executed the lease deeds (Annexure-4) and possession was given. The petitioner claiming himself to be the promoter of the two tea companies claims to have developed the land for tea plantation. The respondent District Magistrate under the impugned

communication issued notice calling upon the petitioner to submit his response against the different infirmities/illegalities committed in the matter of grant of such privilege to him as also seeking his response against the proposed cancellation of lease document and the penal action to be initiated against him.

I have heard Mr. Rajeev Kumar Verma, appearing for the petitioner assisted by Mr. Arun Kumar Ambastha, Mr. Anil Kumar Sinha assisted by Ravi Bhardwaj for the State and Mr. Akash Keshav on behalf of respondent no. 4.

Parties have exchanged pleadings.

Before I deal with the rival contention, the relevant provisions of the Bihar Goshala Act, 1950 (for short 'the Act') and the Bihar Goshala Regulations, 1954 (for short 'the Regulations') framed thereunder may be noticed. Section 2(d) states Goshala means a charitable institution established for the purpose of keeping, breeding, rearing and maintaining cattle or for the purposes of reception, protection and treatment of infirm, aged or deceased cattle and includes a "Pinjrapole" where such cattle are kept. Section 2(g) defines 'Registrar' to mean the Registrar of Goshala appointed by the State Government. The functions of the Registrar of Goshala have been set out in Section 6 of the Act. Section 8 provides amendment of entries in Register of Goshala by the Registrar upon enquiry. Power of



inspection of Goshala vests in the Director of the Animal Husbandry Department of the Government as per Section 13 of the Act. Section 16 gives protection by providing that no prosecution under the Act shall be instituted except on the complaint of the Registrar. Section 17 vests the Director of the Agriculture Department to make regulations with the previous sanction of the State Government in respect of the items enumerated therein. Section 18 gives power to the State to frame rules for the purpose of carrying into effect the provisions of this Act.

The State Government formulated the Rules called the Bihar Goshala Rules 1953. Since, arguments have not been made with reference to the rules, this Court is not noticing them. The regulation called the Bihar Goshala Regulation 1954 was made and notified.

Counsel for the petitioner has referred to the definition part of the Act (vide Section 2(b)) in order to submit that in the matter of administration of the Goshala, the Director of Animal Husbandry Department, Government of Bihar and the Registrar of Goshalas appointed by the State (vide Section 2(g) of the Act) have been assigned roles to play. The Sub-Divisional Officer in whose jurisdiction the Goshala is located is the Ex-officio President of the Managing Committee or the Trustee. The order impugned has been challenged pristinely on the ground that the District Magistrate has no

jurisdiction in the matter and yet the impugned notice was issued. The said notice having been issued without authority of law merits to be set aside.

Conversely, the respondents have contended that although the District Magistrate in the scheme of the Act and the Regulations framed thereunder has no role to play but in the case at hand, the decision to lease the land of the Goshala was taken by the Managing Committee presided over by the District Magistrate. Mr. Anil Kumar Sinha has taken this Court to the relevant pleadings in order to submit that the Committee for the Goshala in question was in office between 6.5.1993 to 6.5.1998. The next election of the Committee was held on 3.12.2000. In between a decision was taken by the Committee as asserted by the petitioner. It is also submitted that one of the trustees or member of the erstwhile Committee instrumental in securing privilege in favour of the petitioner was his close relative. Finding it to be blameful acts of then members of the Committee, a vigilance enquiry has been instituted against them including the officers of the State who afforded undue privilege to the petitioner by leasing out the land of Goshala causing monetary loss to the Goshala and undue gain to the petitioner. The Managing Committee itself was not constituted when the decision was taken to lease out the land of the Goshala in favour of the petitioner who had

earlier not represented himself as owners of M/S Ruchi Tea Estate Pvt. Ltd. and Savitri Plantation Pvt. Ltd. It may be noted that 70 acres of Goshala land was leased out under such decision to M/S Ruchi Tea Estate Pvt. Ltd. whereas 50 acres in favour of Savitri Plantation Pvt. Ltd.

Combating the said submission, Mr. Verma has submitted that even the new Managing Committee or the Trustees of the Goshala after their election and reconstitution approved the decision of the ad-hoc Committee permitting lease/settlement of the Goshala land in favour of the two tea plantation companies.

On a consideration of rival submissions, it appears the District Magistrate as an office or authority is assigned no role in the matter of management of the Goshala either under the Act or the Regulation. He may have presided over the meeting of the Committee or ad-hoc Committee but the decision was of the Committee or the adhoc Committee. By merely presiding over it, it cannot be said that the decision to lease the property of the Goshala was of the District Magistrate. By the impugned notice, it is the District Magistrate who alone chose to issue notice. It is not the case of the petitioner or the respondents that any such decision was taken by the Managing Committee of the Goshala which was being enforced by the District Magistrate. It is thus the individual act of the

District Magistrate who as seen above is assigned no role or authority under the Act or the Regulation. The writ petition on this short question is bound to succeed.

Consequently, the writ application(s) is allowed. The notice dated 21.7.2011 issued by the District Magistrate-cum-Collector, Kishanganj (Annexure-5 in both the writ applications) are set aside.

Since I have decided the case on one point only, the other contentions advanced by the parties are left open to be agitated in case the competent/appropriate authority of respondent Goshala proceed against the petitioners afresh in accordance with law.

No order as to cost(s).

(Kishore Kumar Mandal, J)

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