# IN THE HIGH COURT OF JUDICATURE AT PATNA

**Civil Writ Jurisdiction Case No.6429 of 2009**

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1. Hanuman Nagar Prakhand Matyshyajivi Swablambi Sahkari Samitte Limited at Tisidih, Post Office and Police Station Moro Basuar,District- Darbhanga through its Chief Executive, namely, Angeshwar Sahani.
2. Angeshwar Sahani son of lateLaxmi Sahni, resident of village Tisidih, Police Station Moro Basuara, District- Darbhanga.

.... .... Petitioner/s

Versus

1.The State of Bihar through Principal Secretary,Animal Husbandary and Fisheries Department, Bihar, Patna.
2. The Director, Fisheries, Bihar, Patna.
3. The Collector, District Darbhanga.
4. Fish Farmer Development Agency through its Chairman, the Collector, Darbhanga.
5. The District Fisheries Officer-cum-Chief Executive Officer, Darbhanbga.

.... .... Respondent/s

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**Appearance :**

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| For the Petitioner/s | : | Mrs. M.Chatterjee<br>Mr. Samir Kumar Sinha |
| For the State | : | Mr. Jai Prabhat Kishsore, A.C.to S.C.13 |

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**CORAM: HONOURABLE MR. JUSTICE HEMANT KUMAR SRIVASTAVA**

ORAL JUDGMENT

**Date: 10-04-2017**

1. Heard learned counsel for the petitioners and learned counsel appearing on behalf of the respondents.

2. Petitioner is a registered Society and petitioner no.2 is the Chief Executive of the aforesaid Society.

3.The grievance of the petitioners is that in the year 2005, Makhana -cum- Fish Jalkars were settled with the petitioner-society with effect from 2005 to 2008 and the revenue was Rs.1,42,099/- for the year 2005-06 but due to severe drought in Darbhanga district, the petitioner- society filed an application along with all documents on 31.08.2006 under Section 12 of the Bihar Fish Jalkar Management Act, 2006 for remission and subsequently, the District Fisheries Officer communicated petitioner- society that the remission petition was rejected and also asked to pay the revenue for the year 2005-07. Petitioner preferred C.W.J.C. No. 14472 of 2006 for quashing the aforesaid communication dated 04.11.2006 as well as the order dated 30.10.2007.The learned Single Judge of this Court quashed the letter (communication) dated 04.11.2006 and remitted the matter back to take fresh decision by the Managing Committee within two weeks. The grievance of the petitioner is that up till now the Managing Committee has not taken any decision and without taking any decision by the Managing Committee, the District Fisheries Officer again issued notice directing the society to pay revenue, which is evident from Annexures 14, 16 and 17 of the writ petition. The further grievance of the petitioner- society is that during the pendency of the writ petition, 57 Jalkars were settled with the petitioner- society with effect from 01.07.2007 by order dated 25.09.2007 but later on, the aforesaid order was recalled and 28 Jalkars were settled with the petitioner- society by order dated 02.11.2007 with effect from 01.07.2007. The petitioner further states in the writ petition that 29 Jalkars , which were earlier settled with another society, were, later on, settled with the petitioner- society vide memo no. 854 dated

03.12.2007 after cancelling the previous settlement of another society. However, Parwana for 28 Jalkars was issued on 5.12.2007 and 29 Jalkars on 14.12.2007. The petitioner- society came in possession of the aforesaid Jalkars after issuance of the Parwana. However, for the year 2008, no Parwana was issued and the petitioner society could not come in possession of the aforesaid Jalkars. The grievance of the petitioner is that the District Fisheries Officer issued notice for realization of the revenue for the period in which the petitioner-society was not in possession of the settled Jalkars.

4. In the aforesaid backgrounds, the petitioner has prayed for quashing of letter no. 679 dated 09.07.2008 by which the District Fisheries Officer has directed the petitioner- society to deposit Rs. 1,30,125/- for the settlement year 2006-07. The petitioner has also prayed for quashing of letter no. 165 dated 10.04.2009 issued by the District Fisheries Officer, Darbhanga directing the petitioner- society to deposit the due amount of Rs.5,05,913/-.Furthermore, the petitioner has prayed for quashing of letter no. 190 dated 09.05.2009 by which the District Fisheries Officer again, issued the aforesaid directions asking the petitioner – society as to why a proceeding for cancellation of settlement of Jalkars be not initiated against the society because the society has failed to deposit the due revenue.

5. A counter affidavit has been filed on behalf of

respondent no.5 in which it has been mentioned that the Managing Committee considered the claim of remission of the society and took a decision in its meeting held on 14.06.2008, which is evident from Annexure A to the counter affidavit. It has also been mentioned in the counter affidavit that the remission was granted to the society in accordance with law and rule and after decision of remission by the Managing Committee the notices were sent to the petitioner- society for depositing the dues revenue and, therefore, this writ petition does not appear to be maintainable.

6. Having heard contentions of both the partiers and having gone through the records, I find that according to Section 12 of Bihar Fish Jalkar Management Act, 2006, the claim for remission may be made only in the case of damage by natural calamity and the Managing Committee is competent to consider the claim of remission only after receipt of the concerned certificate of natural calamity by the Collector. However, sub-section (v) of Section 12 of the aforesaid Act says that the society shall not be deemed to be a debtor till the final decision of the government on the claim of legal remission.

7.The combined reading of all the sub sections of Section 12 of the Act goes to show that it is the Managing Committee who shall consider the claim of remission but the final decision of remission shall be taken by the government. The aforesaid fact is clear from perusal of Section 12 of the Act itself because in sub section (iii) of Section 12 of the Act, the word “consider” has been used whereas in Section 12 (v) of the Act, the word “ decision” has been used and therefore the use of word “ decision” clearly indicates that it is the State Government whose decision is final in respect of remission. In the present case, admittedly, the State Government has not taken any decision uptil now and only the Managing Committee has considered the claim of remission of the petitioner- society. Although learned counsel appearing for the petitioner submits that Annexure A to the counter affidavit goes to show that the decision regarding the claim of remission has not been taken by the Managing Committee rather the aforesaid decision has been taken by the Fishery Development Agency, which cannot be treated as Managing Committee but with due respect I am not in agreement with the learned counsel appearing for the petitioner on the aforesaid point because Section 2 (xiv) of the Bihar Fish Jalkar Management Act, 2006 defines the Managing Committee and the aforesaid Section says that the Managing Committee shall be constituted by the members, whose names have been given in the aforesaid Section. Annexure A to the counter affidavit goes to show that almost all officials, which have been shown in the aforesaid section, were the members of the aforesaid Agency and therefore even it is assumed that the word “Agency” has been mentioned in the resolution dated 14.06.2008, then also the above resolution shall be deemed to be taken by the Managing Committee. However, as I have already stated that it is an admitted position that uptil now the recommendation of the Managing Committee has not been sent to the State Government for final decision and therefore, in my view, without final decision, the District Fisheries Officer or any other officials has got no right to treat the society as debtor and to direct the society to deposit the amount.

8. Learned counsel appearing for the State submits that the remission cannot be granted for more than 20% of the amount and therefore, even if the claim of remission of the society has not been decided as yet, then also, the society should be directed to deposit the dues after deducting 20% as remission amount. As a matter of fact, the District Fisheries Officer directed the society to deposit the dues amount after deducting the amount of remission but I am not in agreement with the aforesaid submission because Bihar Fish Jalkar Management Act, 2006, no where, says that remission amount can only be up to 20% of the dues amount. The State has not brought any circular or order of the government to show that the remission cannot be granted for more than 20% of the dues amount. However, the object for grant of remission is very clear from perusal of the aforesaid Act itself as the provision of remission has been inserted in

the aforesaid Act with an object to give relief to the registered- society when they face natural calamity and, that is the reason, the Act says that when claim of remission is made, the Managing Committee shall first consider the effect of the calamity and then the State Government shall take a decision in this regard. Therefore, it cannot be said that even in serious natural calamity, the concerned society shall get remission of only up to 20% of the dues revenue.

9. The second grievance of the petitioner is that the District Fisheries Officer has calculated the amount of revenue for the period in which the society was not even in possession of the Jalkars because admittedly, the settlement was made from 1.7.2007 but Parwana was issued much later of the settlement and after issuance of Parwana, the society got possession of the Jalkars and moreover for the year 2008 no Parwana was issued to the society nor the society got possession of the settled Jalkars and, therefore, the concerned authority has got no right to calculate the revenue for the period in which the petitioner- society was not in possession of the Jalkars.

10. I do agree with the aforesaid submission because it is natural justice that the revenue cannot be charged for the period in which the society was not in possession of the settled Jalkars and the concerned authority can charge revenue for the period in which the society actually enjoyed the right of the fisheries of the settled

Jalkars.

11. In view of the aforesaid discussions, this writ petition stands disposed of quashing the letter no. 679, dated 09.07.2008 (Annexure 14), letter no. 165, dated 19.04.2009 (Annexure 16) and letter no. 190,dated 09.05.2009 (Annexure 17) with a direction to respondent no.5 to calculate the revenue of the society in accordance with law and rules and realize the same in the procedure prescribed by rules and law. Respondent no.5 must send the recommendation of the Managing Committee dated 14.06.2008 to the State Government for final decision under Section 12(v) of the aforesaid Act within a period of four weeks from the date of receipt/production of a copy of this order.

**(Hemant Kumar Srivastava, J)**

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| CAV Date | NA |
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