

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6132 of 2020

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Vinod Mahto Son of Shri Mangal Mahto, Resident of Jokairi, Police Station-
Raxaul, District-East Champaran.

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The Principal Secretary, Animal and Fish Resource Department,
Government of Bihar, Patna.
3. The Director, Fisheries, Bihar, Patna.
4. District Fisheries Officer, East Champaran.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Sandeep Kumar
For the Respondent/s : Mr.Lalit Kishore (Ag)

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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
ORAL ORDER

3 06-07-2020 The present writ petition has been taken up
for consideration through the mode of Video
conferencing in view of the prevailing situation on
account of COVID 19 Pandemic, requiring social
distancing.

Heard the learned counsel for the petitioner,
Sri Sandeep Kumar and the learned counsel
appearing for the State.

The present writ petition has been filed,
seeking the following reliefs:-

*“(i) For issuance of writ in the nature of
certiorari for quashing the impugned*



order dated 09.05.2020 (Annexure-7) passed by the Respondent No. 3 to not extend the settlement of Raxaul Fish Seed Farm, East Champaran, Motihari the petitioner has been directed to handover the Fish Farm to the Respondent No. 4.

(ii) For issuance of writ in the nature of mandamus directing the respondents to consider case of the petitioner for extension of the settlement of the Fish Seed Farm for another 10 years in accordance with the terms of agreement."

The learned counsel for the petitioner has submitted that the petitioner is engaged in the business of construction of maintenance of Fish Seed Farms located at various places. It is submitted that the petitioner was awarded a lease pertaining to settlement of Fish seed Farm vide a lease agreement dated 28.6.2010 for a period of 10 years i.e. with effect from 01.01.2010 to



01.01.2020. It is submitted that the said lease agreement dated 28.06.2010 further postulates that after 10 years of successful operation, an extension of another 10 years may be considered on the basis of the performance. It is thus submitted that since the aforesaid lease in question was going to expire, the petitioner had requested the respondent authorities to renew the same, however, by the impugned letter dated 09.05.2020, the petitioner has been informed that it has been decided not to revise the period of lease upon the expiry of the lease period.

At this juncture, a query was put to the learned counsel for the petitioner that since the settlement of Jalkars relating to the Department of Animal Husbandry and Fisheries, Bihar, Patna is governed by the Bihar Fish Jalkar Management Act, 2006, what would be the implication of Sections 5 and 6 thereof, which reads as follows:-

“5. Settlement :-

- (i) The short term settlement of Jalkars will be done for five settlement years after*



the approval of competent authority as mentioned in sub-section (ii) of Section 7 of this Act.

(ii) *The long term settlement of Jalkars will be done for ten settlement years after the approval of the Collector.*

(iii) Notwithstanding anything contrary contained in this Act, the Director Fisheries with the prior approval of Government, may settle such Jalkars which have been developed or are being developed or have been taken decision to be developed under any scheme of Government/Financial Institution/Bank for a maximum period of ten settlement years, with Fishermen Co-operative Society.

6. Long Term Settlement :-

(i) A long term settlement of Jalkars of water area up to four hectares shall be done only with trained fishermen/ or



trained fishermen self help group selected by the 'Managing Committee' .The long term settlement may be done of only those Jalkars which fulfill at least one of the following conditions :-

- (a) The Jalkar which has been declared Parta or is in the process of being declared Parta.*
- (b) The Jalkar which has an average depth of less than four feet deep between 15th December to 15th January and there may be a possibility of perennial water retaining capacity by increasing its depth.*
- (c) The Jalkar in which there is a possibility of increasing its water retaining capacity by developing embankments.*
- (d) The Jalkar in which there is a possibility of increasing its water*



retention capacity upto 50% by making improvement in the water approach system of the Jalkar.

(e) The Jalkar pertaining to which letter of consent is received from any financial institution, Bank or Government for financial assistance for its proper development.

(ii) The information of date and place for the Long Term settlement of selected Jalkars shall be sent to the following by the registered post:

(a) All fishermen Co-operative Societies under whose area of operation the Jalkar is situated.

(b) The Mukhia of the concerned Panchayat.

(c) The State Level Fishermen Co-operative Federation and

(d) The Block Development Officer, Circle Officer, Divisional Deputy Director (Fisheries), Deputy



Development Commissioner and Collector with a request to display it on the notice board of their offices.

(iii) In the notice to be issued for settlement the name of Jalkar, full address, amount of Reserve deposit and period of settlement shall be mentioned. This notice shall be issued at least twenty one days before the date of settlement.

(iv) The beneficiaries shall be selected by the 'Managing Committee' at the rate of one acre per fishermen member. A group leader will be nominated by the 'Managing Committee' in case more than one, beneficiaries are selected.

(v) For long term settlement, the District Fisheries Officer shall receive applications only from those trained fishermen who are residents of the same Block in which the Jalkar is situated. If there are more than one trained applicant, the Jalkar shall be settled with



fisherman or group of fishermen whose residence is nearest to the Jalkar.

(vi) After settlement the Collector will create charge on the Jalkar for obtaining loan.

(vii) The settlement with the beneficiaries shall be made with the following terms :-

(a) It shall be compulsory to execute the registered agreement, within one month of the issue of the settlement order. Expenses incurred on registration shall be borne by the beneficiaries.

(b) It shall be compulsory to deposit the total amount of reserve deposit of one year within 15 days of the issue of sanction order of the settlement. During the period of settlement, the total amount of reserve deposit of every year shall be deposited prior to 15th July.

(c) It will be compulsory for the beneficiary to develop the Jalkar



within 2 years from the date of issue of the settlement order.

(d) In case of violation of any of the terms of settlement by the beneficiaries, the Collector may cancel the settlement but the beneficiary shall be given an opportunity to be heard before taking such a decision."

Thus, this Court had asked the learned counsel appearing for the petitioner that since the aforesaid Bihar Fish Jalkar Management Act, 2006 provides for long term settlement of Jalkars only for 10 settlement years and as far as the petitioner is concerned, the period of 10 settlement years is already over, then how the petitioner can claim, as a matter of right, for extension of the said lease agreement dated 28.06.2010, to which the learned counsel for the petitioner had no legal answer, however, instead, he has submitted that the lease in question dated 28.6.2010 provides that in case the petitioner operates for 10 years successfully,



extension for another 10 years may be considered on the basis of his performance. At this juncture itself it would suffice to state that Obedience of the fiat of the Law of the State is an essential ingredient of public policy. Any agreement/lease which does not obey the command of Law and is opposed to public policy, is therefore, void. Courts of law cannot countenance such an agreement/lease.

The learned counsel for the Respondents-State has submitted that as per the provisions of the Bihar Fish Jalkar Management Act, 2006, long term settlement cannot be for more than 10 years, hence, the petitioner has got no right to claim extension of the lease agreement in question.

Having heard the learned counsel for the parties, considering the submissions made by them and taking into account the materials available on record as also the provisions of the Bihar Fish Jalkar Management Act, 2006, this Court is of the view that since there is a bar to the period of settlement years and a long time settlement of



Jalkars can only be made for 10 settlement years, the petitioner has got no right under the law to claim for extension of the said lease in question dated 28.6.2010, hence, admittedly, the present writ petition is bereft of any merit, thus, the same stands dismissed.

(Mohit Kumar Shah, J)

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