IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No. 6131 of 2020

Rajan Bharadwaj, aged about 52 years, Male, Son of Shri Shyam Kishore Thakur, Resident of Sneh Sadan, Samtapath, New Bangali Tola, Police Station-Jakkanpur, District-Patna.

... ... 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, Muzaffarpur.

... ... Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Sandeep Kumar, Advocate
For the State	:	Mr. Md. Khurshid Alam, AAG 12

CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH

ORAL JUDGMENT

Date : 26-08-2020

The matter has been heard *via* video conferencing due to circumstances prevailing on account of the COVID-19 pandemic.

2. Heard Mr. Sandeep Kumar, learned counsel for the petitioner and Mr. Md. Khurshid Alam, learned Additional Advocate General 12 for the State.

3. The petitioner has moved the Court for the following reliefs:

> *"(i) For issuance of writ in the nature of certiorari for quashing the impugned order dated 09.05.2020 (Annexure 9) passed by the Respondent No. 3 to not extend the settlement of Dighra Rampur, Muzaffarpur Fish Farm as the Petitioner has been directed to handover the Fish Farm to the Respondent No. 4.*
>
> *(ii) For issuance of writ in the nature of certiorari for quashing the Letter dated 12.05.2020 (Annexure 10) written by the Respondent No. 4 directing the Petitioner to handover the Fish Seed Farm within 10 days.*
>
> *(iii) For issuance of Writ in the nature of mandamus directing the respondents to consider a 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.*
>
> *(iv) For any other consequential relief/reliefs for which the petitioner is entitle by this Hon'ble Court in the facts and circumstances of the present case."*

4. Pursuant to orders of the Court, the authorities have filed affidavits, including a personal affidavit by the Director, Fisheries. The petitioner has also filed subsequent affidavits.

5. Learned counsel for the petitioner submitted that though his period of long-term settlement of 10 years has ended, but as per the agreement, the same could have been extended on the prayer of the settlee if his performance was found satisfactory. Thus, learned counsel submitted that despite a favourable report in his favour, the decision not to give extension, is arbitrary. The

Court is not noting any other argument because this is the only substantive contention and point on which learned counsel for the petitioner has relied.

6. *Per contra,* learned counsel for the State submitted that the report which the petitioner relies on is also with respect to many similarly situated persons, and the Government has taken a decision that no renewal shall be made of the settlees whose long-term settlement period of 10 years has expired, meaning thereby that a fresh process has to be undergone now. It was further submitted that even in the case of the petitioner the conclusion of the report submitted by the Joint Inspection Team discloses that though the main objective behind the settlement under the Public Private Partnership mode was to boost up the production of fish seeds and to supply the same to the fish farmers, with the settlee having to construct hatchery and also to maintain the same at his own level and cost, it transpired during the course of inspection that none of the fish farms under inspection was found to be satisfactorily maintained by the settlees, and moreover all were being used as points of production to sell fishes and none of the hatcheries was properly maintained by them. Learned counsel drew the attention of the Court to the last portion of the report which is indicative of the aforesaid. Learned counsel further drew

the attention of the Court to order dated 06.07.2020 passed in CWJC No. 6132 of 2020 in **Vinod Mahto v The State of Bihar and Ors.**, wherein it was noticed that as per the provisions of the Bihar Fish Jalkar Management Act, 2006 (hereinafter referred to as the 'Act'), especially Sections 5 and 6 thereof, the period of long-term settlement can be only for 10 settlement years. The Court, therefore, held that the petitioner therein had no right under law to claim for extension and resultantly, the writ petition was dismissed. It was submitted that Vinod Mahto (the petitioner therein) was one of the settlees, along with the petitioner and four others, whose request for extension was refused by the same order which is impugned in the present case.

7. Having considered the matter, the Court is in agreement with the view of the co-ordinate Bench in **Vinod Mahto** (*supra*). From the provisions of the Act, it is clear that long-term of settlement can be for a maximum period of 10 settlement years.

8. Sections 5 and 6 of the Act, which are relevant for the purposes of considering the issue at hand, read as under:

> '***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 fisherman 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 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.'

9. Thus, even if it is assumed, for the sake of argument, that the agreement incorporated a clause where there was a provision for renewal, the same would not override the provisions of the Act and would not create a right in favour of the petitioner and an obligation on the authorities to extend the period of settlement. Further, there is nothing in the Act to bar a settlee from again participating in the fresh settlement process, which has to be considered on its own merits, but the extension of the previous settlement in favour of the petitioner, by way of a further extension, not being permissible under the Act, the petitioner cannot be granted such extension by the authorities. Thus, the action of the authorities cannot be faulted.

10. At this juncture, the Court may indicate that it has not gone into the issue of whether the Report was in favour of the petitioner and, thus, had to be considered on the basis of the factual aspect or as per the stand of the authorities, which showed that the main object for which such settlement was made was not

being performed by the petitioner-settlee, as the same has no relevance in the context of what the Court has held above; that in law, as per the provisions of the Act itself, such extension is not contemplated and, thus, could not have been granted by the authorities, much less claimed as a right by the petitioner only on the basis of a clause being incorporated in the agreement between the parties, which at the cost of repetition, could not have been contrary to the provisions of the Act itself.

11. Moreover, the element of public interest also cannot be lost sight of. After 10 years, the interested prospective settlees who have become eligible during the interregnum, also have a right for consideration as such settlement is by the State, and repeated extension(s) in favour of the existing settlee(s) may militate against Article 14 of the Constitution. On this touchstone also the provision in the Act restricting the period of long term settlement to a maximum of 10 settlement years, not providing for extension of the said period, is reasonable.

12. For reasons aforestated, the Court does not find any ground warranting exercise of its extraordinary writ jurisdiction. Accordingly, the writ petition stands dismissed. It goes without saying that if the petitioner fulfils the eligibility criteria, it shall be open for him to take part in the process of fresh settlement. The

authorities are at liberty to proceed with fresh settlement of the *Jalkar* concerned, in accordance with law.

(Ahsanuddin Amanullah, J.)

P. Kumar/Anand Kr.

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