

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WA No. 202 of 2020**

(Arising out of order dated 9.9.2019 passed in WPC No.3101/2019
by learned Single Judge)

1. Dayalu Ram Markam S/o Late Udey Ram, Panch, Gram Panchayat Junwani, aged about 38 years,
2. Dalluram Komra, S/o Bhawan Ram Komra, aged about 49 years, Panch, Gram Panchayat , Junwani.
3. Preetram Salam S/o Late Ghasiram, aged about 70 years.
4. Kriparam Komra, S/o Late Ghasiram Komra, aged about 68 years.
5. Kamlesh Komra, S/o Late Miluram Komra, aged about 37 years,

All the R/o Village Rampur, Post Junwani, Tehsil Narharpur,
District Uttar Bastar, Kanker (CG)

---- Appellants**Versus**

1. Bhagat Singh Matsya Sahakari Samiti, Rampur-Junwani Through Its Chairman Hemant Matiara, S/o Jhumuk Lal, aged about 32 years, R/o Gram Panchayat Junwani, District Uttar Bastar Kanker.
2. State of Chhattisgarh Through Secretary, Fisheries Department, Mantralaya, Mahanadi Bhawan, Capital Complex, New Raipur, District Raipur, Chhattisgarh.
3. Director, Fisheries Culture Department, Indrawati Bhawan, New Raipur, District Raipur Chhattisgarh
4. Collector District Uttar Bastar, Kanker Chhattisgarh.
5. S.D.O. District Uttar Bastar, Kanker Chhattisgarh.
6. Janpad Panchayat Naharpur Through Its Chief Executive Officer, District Uttar Basar Kanker Chhattisgarh.
7. Gram Panchayat Junwani, Through Secretary, District Uttar Bastar Kanker Chhattisgarh.

---- Respondents

For Appellant	:	Mr. Anup Mazumdar, Advocate
For Respondent No.1	:	Mr. Palash Tiwari, Advocate on advance copy.
For Respondents No.2 to 5:	:	Mr. G. Patel, Government Advocate.

Hon'ble Shri PR Ramachandra Menon, Chief Justice

Hon'ble Shri Parth Prateem Sahu, Judge

Order on Board

Per Parth Prateem Sahu, J

18.02.2020

1. Heard on I.A. No.1/2020, an application for condonation of delay in preferring this writ appeal as the same has been preferred with a delay of 115 days.
2. On due consideration, we are of the view that the explanation offered by appellants in order to justify the delay in filing this writ appeal, is satisfactory and the same deserves to be accepted. Accordingly, IA No.1/2020 is allowed and delay of 115 days in preferring this appeal is condoned.
3. Also heard on I.A. No.2/2020, application seeking leave to file writ appeal by appellants, who are residents of Gram Panchayat Junwani, on the ground that the order passed by learned Single Judge would adversely affect their interest.
4. For the reason assigned in IA No.02/2020, it is allowed. Leave is granted.
5. Challenge in this writ appeal is to the order dated 9.9.2019 passed by the learned Single Judge in WPC No.3101/2019 disposing off writ petition preferred by respondent No.1 with certain direction to respondent No.2.

6. Facts of the case, in nutshell, are that petitioner/respondent No.1-Society filed writ petition before the writ Court against the refusal of respondent Gram Panchayat to renew the lease granted in favour of respondent No.1 in respect of pond situated in Rampur, Gram Panchayat Junwani, District Bastar for a period from 2011 to 2018. The learned Single Judge vide order dated 9.9.2019 turned down the prayer of respondent No.1 and while doing so, the learned Single Judge observed in Para-3 of impugned order, as follows;-

“3. Admittedly, lease in favour of the petitioner has expired on 2018 and on mere application of the petitioner it cannot be granted to a single person, if there are other prospective applicants then, naturally it must go to the person who contributes maximum amount to the exchequer. Therefore, the prayer for grant to the petitioner alone cannot be acceded to. Therefore, in the instant case, the Collector shall consider the fact and situation prevailing at the area and may grant the pond by auction to the highest bidder who contributes maximum to the exchequer.”

7. Mr. Mazumdar, learned counsel for appellants submits that as per Guidelines dated 24.3.2003 issued by the State Government, the allotment of ponds situated in gram panchayats is to be made through execution of lease deeds in favour of registered fishers co-operative society or group of fishers on priority basis prescribed therein. Auction proceeding

is initiated only on the basis of the order impugned and as the order impugned stands, they may not be able to challenge the action of issuance of auction notification. He submits that the tender notification has not been published in accordance with law and even it has not been made known to the general public. He also submits that auction notice has been affixed on the notice board of Gram Panchayat on 3.2.2020 and today i.e. 18.2.2020, auction of the pond is to be held. Since the auction proceeding is contrary to the guidelines issued by the State Government for allotting ponds by gram panchayats and also not in accordance with law, the same is liable to be interdicted.

8. Mr. Tiwari, learned counsel for respondent No.1, appearing on advance copy, submits that contempt petition filed by respondent No.1 is fixed today for hearing and in which a reply has been filed on behalf of the respondent contemnor stating that the order passed by the learned Single Judge in WPC No.3101/19 has been complied with.
9. Mr. Patel, learned counsel for the respondent State submits that auction proceeding has already begun; two bidders have submitted their bids and it is at the verge of finalization.
10. We have heard learned counsel for the parties and perused the record.
11. Admittedly, auction proceeding dated 3.2.2020 is not under challenge in this writ appeal and even in the impugned order no relief is granted to petitioner/respondent No.1. Only a

direction was given to the Collector to consider fact and situation prevailing at the area and may grant pond by auction. Furthermore, the appellants were not party to the writ petition and they are simply residents of Gram Panchayat Junwani where the pond in question is situated. In such a situation, without going into the merits of case, this Court is of the view that if appellants are aggrieved by issuance of notification for auction of pond in question, they may approach appropriate authority by filing appropriate proceeding. If the appellants chose to file such proceeding, part of the observation made by the learned Single Judge in Para-3 of the order dated 9.9.2019 i.e. "Therefore, in the instant case, the Collector shall consider the fact and situation prevailing at the area and may grant the pond by auction to the highest bidder who contributes maximum to the exchequer", will not come in their way. The authority/court before whom such proceeding is filed, will decide the same on its own merits strictly in accordance with law.

12. Considering the grounds raised by appellant in the memo of appeal, the respondent authorities are directed not to finalize auction proceeding for a period of two weeks from today.

13. With the above observations and directions, writ appeal stands disposed off.

Sd/-
(PR Ramachandra Menon)
Chief Justice

Sd/-
(Parth Prateem Sahu)
Judge

roshan/-