

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

WRIT PETITION NO. 3605 OF 2020

Katepurna Matsya Vyavasaya Sahakari Sanstha Maryadit,
at post Punoti, Tahsil Barshitakli, Dist. Akola,
through its President Shri Dashrathprasad Batukmaharaj Kevat,
aged about 57 years, R/o Mahan, Tq. Barshitakli, District Akola.

PETITIONER

.....VERSUS.....

1. The State of Maharashtra,
through its Secretary of Fisheries Department,
Mantralaya, Mumbai – 32.
2. The Commissioner of Fisheries, Mumbai.
3. The Regional Deputy Commissioner of Fisheries,
Amravati, Tahsil & District Amravati.
4. The Upper Chief Conservator of Forest,
Amravati, Tahsil & District Amravati.
5. The Divisional Forest Officer (Wild life), Akola,
Tahsil & District Akola.

RESPONDENTS

Shri A.M. Ghare, Advocate for the petitioner.
Ms. K.R. Deshpande, Assistant Government Pleader for the respondents/ State.

CORAM : A. S. CHANDURKAR AND URMILA JOSHI - PHALKE, JJ.

DATE OF RESERVING THE JUDGMENT : JULY 21, 2022

DATE OF PRONOUNCEMENT OF THE JUDGMENT : AUGUST 23, 2022

JUDGMENT (PER : A.S. CHANDURKAR, J.)

In view of notice of final disposal issued earlier, the learned Counsel for the parties have been heard by issuing Rule and making it returnable forthwith.

2. The petitioner is a co-operative Society registered under the provisions of the Maharashtra Co-operative Societies Act, 1960. Its members are local fishermen as well as project affected persons under the Ketepurna Irrigation Project. The Society has been formed with the object of providing source of employment to its members, especially in the traditional business of fishing. Since the year 1990, the Society has been awarded fishing contracts at the Katepurna Irrigation Project. These contracts were for a duration of five years each. On 20/5/2010, the Society was issued a fishing contract at Katepurna Reservoir for the period from 1/7/2010 to 30/6/2015. On account of excess rain in Akola District, the members of the Society could not undertake fishing activities during that period and hence the Society sought extension of the contractual period. Since no decision on that aspect was being taken, the petitioner Society had filed Writ Petition bearing No. 149/2016 in this Court. By the order dated 8/2/2017, the Fisheries Department was directed to take a decision on the question of extension of time for completing the said contract. By the order dated 15/3/2017 extension of the lease was granted for a period of one year. Thereafter, on 19/6/2018, another fishing contract was awarded to the Society for a period of five years from 1/7/2018 to 30/6/2023.

3. On 8/2/1988, the Revenue and Forest Department of the

State Government issued a notification in exercise of powers conferred by Sections 18(1) and (2) of The Wild Life (Protection) Act, 1972 (for short “Act of 1972”). By the said notification, the area to be a sanctuary was declared and it was to be called ‘Katepurna Wildlife Sanctuary’. As per the Schedule to the said notification, the limits of the wildlife sanctuary were prescribed. The total area of the wildlife sanctuary was 7369.17 hectares equivalent to 73.69 square kilometers. The Collector was directed to make necessary enquiry for determining the existence, nature and extent of any right alleged to exist in favour of any person within the said limits. This was to be done in accordance with Sections 19 to 26 of the Act of 1972. Thereafter, on 5/1/2002, the Revenue and Forest Department issued another notification in exercise of powers conferred by Section 26-A(1) of the Act of 1972. By the said notification, the limits of the area as specified in the Schedule which was to comprise within the sanctuary and to be known as ‘Katepurna Wildlife Sanctuary’ was notified. The total reserved forest area in the wildlife sanctuary was indicated as being 3876.45 hectares equivalent to 38.76 square kilometers. According to the Society, it having been issued the fishing contract till 30/6/2023, it was entitled to undertake fishing activities at Katepurna Reservoir. However, on 11/12/2020, its members were restrained by the officials of the Forest Department from undertaking such activities. On 12/12/2020, the Society issued a legal notice to the Forest Department. However, the said

department continued obstructing fishing activities. In that view of the matter, the Society has filed the present Writ Petition seeking a declaration that it was entitled to continue to undertake fishing activities at Katepurna Reservoir as per the lease deed dated 19/6/2018 till 30/6/2023 without any obstruction from the Forest Department. It is also prayed that the Fisheries Department and the Forest Department be directed to resolve the dispute amongst themselves as regards control/ jurisdiction over Katepurna Reservoir.

4. Shri A.M. Ghare, learned Counsel for the petitioner submitted that the Society was undertaking fishing activities at Katepurna Reservoir from 15/6/1990 which was after issuance of the notification dated 8/2/1988. The Fisheries Department was the Competent Authority which was in charge of Katepurna Reservoir and since 1990 it had permitted fishing activities at the reservoir. Referring to various communications on record and especially the communication dated 9/12/1997 issued by the Chief Conservator of Forest, it was submitted that the Forest Department had no authority to interfere in the fishing activities undertaken by the Society. After issuance of the notification dated 5/1/2002 under Section 26-A(1) of the Act of 1972, it was clear that Katepurna Reservoir did not fall within the area of 38.76 square kilometers which comprised of the wildlife sanctuary. Since the reservoir was beyond the boundaries of the

wildlife sanctuary, there could not have been any prohibition to undertake fishing activities. The learned Counsel referred to the relevant provisions of the Act of 1972 to urge that the members of the Society could not be prohibited from undertaking fishing activities. It was also submitted that the Forest Department had not complied with the provisions of Sections 19 to 25 of the Act of 1972 and therefore the provisions of Section 26-A of the Act of 1972 could not be made applicable. Reliance in that regard was placed on the affidavit filed on behalf of the Fisheries Department – respondent Nos. 1 to 3. The learned Counsel also placed reliance on the decisions in *Pradeep Krishen Vs. Union of India and Others* [(1996) 8 SCC 599] and in *Kunapuraju Rangaraju Vs. Govt. of A.P. and others* [AIR 1998 Andhra Pradesh 273] to substantiate his contentions. It was therefore prayed that the Forest Department be restrained from obstructing the members of the Society from continuing with the fishing activities in the reservoir pursuant to the allotment of the work as per the grant of the lease on 19/6/2018.

5. Ms. K.R. Deshpande, learned Assistant Government Pleader for the respondents opposed the aforesaid submissions. It was submitted that Katepurna Reservoir was included in the notification dated 8/2/1988 at Sr. No. 10. As per that notification, the area shown in the Schedule was declared as Katepurna Wildlife Sanctuary. By the subsequent notification

dated 5/1/2002, the forest area within the sanctuary was declared to be a sanctuary. This was after complying with the provisions of Sections 19 to 25 of the Act of 1972. Since this notification was only with regard to the forest area and the earlier notification dated 8/2/1988 continued to operate for the non-reserved forest area, fishing activities being non-forest activities, the same were not permissible. Katepurna Reservoir continued to be a part of the sanctuary and therefore in view of the provisions of Section 18-A of the Act of 1972, the provisions of Sections 27 to 33-A of the Act of 1972 were applicable. It was thus submitted that the Forest Department was justified in restraining the members of the Society from undertaking fishing activities in the sanctuary. It was thus submitted that the Writ Petition was liable to be dismissed.

6. We have heard the learned Counsel for the parties and with their assistance, we have perused the documents placed on record. Before considering the rival submissions, it may be noted that initially, after noticing difference of opinion between the Fisheries Department and the Forest Department, it was directed on 10/3/2021 that the Chief Secretary, State of Maharashtra or any other Senior Officer designated by him would look into the matter by holding a necessary enquiry and file an affidavit thereafter. Pursuant thereto, a report was filed by the Principal Secretary, Animal Husbandry and Dairy Development Department.

Noticing the same, the Chief Secretary, State of Maharashtra was directed to look into the matter and file an affidavit so as to resolve the issue. Thereafter, the Chief Secretary, State of Maharashtra has filed an affidavit dated 13/7/2022. In the said affidavit, it has been stated that initially on 8/2/1988, a notification was issued under Section 18 of the Act of 1972 declaring the area admeasuring 73.69 square kilometers as Katepurna Wildlife Sanctuary. Thereafter, the Sub-Divisional Officer, Akola conducted an enquiry under Sections 19 to 25 of the Act of 1972 and submitted his report dated 6/6/1998. In paragraph 11 of the said affidavit, it has been stated as under :

*“11. I say and submit that, subsequently, the Sub-Divisional Officer, Akola conducted an inquiry under sections 19 to 25 of the said Act and submitted his revised report dated 6th June 1998. A copy of the report is attached herewith as **Annexure-B**. The Sub-Divisional Officer, Akola, in his revised report has observed in respect of fishing activity in the reservoir, on the following lines:-*

Katepurna Wildlife Sanctuary includes 1283.31 Ha of area under Katepurna reservoir. The valuation of this land has not been done since it is learnt that the project affected persons have already been compensated for the same.

Katepurna reservoir has been formed on forest and private land. There is restriction on non-forestry activity as per the Forest Conservation Act, 1980 in the areas included in the Katepurna Wildlife Sanctuary declared by Government of Maharashtra vide notification dated 8th February 1988 as it has a legal status of forest. Hence, the activity of fishing being a non-forestry activity will attract the provisions of Forest Conservation Act, 1980. We are sympathetic towards the fishermen community. However, it is need of the hour to safeguard the biodiversity in the

form of Protected Area for the better future for the mankind. Therefore, the request to allow fishing activity in the sanctuary area is not accepted.

Thus the Sub-Divisional Officer, Akola neither recognized any fishing rights in the reservoir nor did he propose any settlement towards the same.”

It has then been stated that after the Act of 1972 was amended in the year 1991 and Section 26-A was inserted, another notification dated 5/1/2002 with regard to the reserved forest area being declared as sanctuary to the extent of 38.76 square kilometers was issued. In paragraphs 14 and 15 of the said affidavit, it has been stated as under :

“14. I say and submit that, the notification dated 8th February 1988 has not been expressly rescinded, and therefore, it continues to be in force. Hence, the Katepurna reservoir included in the Schedule at Sr. No. 10 of the notification dated 8th February 1988 does not lose its status as shown in the said notification dated 8th February 1988 only because the subsequent notification dated 5th January 2002 is issued, which admittedly is restricted to the reserved forests area comprised in the said sanctuary.

15. At the same time, as submitted in para 11 above, the Inquiry Officer has not admitted the claims of any person or department in respect of fishing rights in his Inquiry Report. Therefore, as already submitted by the Forest Department, fishing activity cannot be carried out in the said reservoir in view of the provisions of the said Act.”

7. Thus from the aforesaid it can be seen that initially,

notification dated 8/2/1988 was issued under Section 18 of the Act of 1972 declaring the area specified to be a sanctuary to be called as Katepurna Wildlife Sanctuary. Katepurna Reservoir was included therein at Sr. No. 10. In the enquiry conducted by the Sub-Divisional Officer as required by Sections 19 to 25 of the Act of 1972, it has been specifically observed that non-forest activity in the form of fishing was not permissible at Katepurna Reservoir. Thereafter, on 5/1/2002, the reserved forest area comprised within the sanctuary was notified under Section 26-A of the Act of 1972. In the said notification, the area mentioned in the Schedule comprising of 38.76 square kilometers which is a forest area comprised within the sanctuary has been declared to be a sanctuary. It can be seen from the Schedule to the said notification dated 5/1/2002 that Katepurna Reservoir is not included therein and the areas comprising of Wai and Wastapur have been referred to therein.

8. It is also necessary to refer to the report prepared by the Sub-Divisional Officer, Akola dated 6/6/1998. This report is pursuant to the steps required to be taken after issuance of notification under Section 18 of the Act of 1972 and in terms of the provisions of Sections 19 to 25 thereof. Insofar as the activities of fishing in Katepurna Reservoir are concerned, that aspect was also considered by the Sub-Divisional Officer. It was noticed that since the said reservoir was included in the

notification dated 8/2/1988, it was not permissible to undertake non-forestry activities therein. After holding that Katepurna Reservoir had been included in the Katepurna Wildlife Sanctuary as per the said notification, the Sub-Divisional Officer held that it would not be permissible to undertake any fishing activities at the said reservoir. The request made on behalf of the local fishermen was therefore not accepted. Thus according to the said report which is pursuant to the enquiry undertaken under Sections 19, 22 and 24 of the Act of 1972, it was found that the activity of fishing could not be permitted to be carried out in Katepurna Reservoir.

9. It is true that as per the subsequent notification dated 5/1/2002 the forest area which is comprised within the sanctuary has been declared to be a sanctuary by the name 'Katepurna Wildlife Sanctuary'. As per the Schedule to the said notification, the particulars of the reserved forest area have been indicated and the total area is stated to be 38.76 square kilometers. The said notification is under Section 26-A of the Act of 1972. It is however seen that despite issuance of the said notification, there has been no alteration of the boundaries of the sanctuary as were initially declared by the notification dated 8/2/1988. As per the provisions of Section 26-A(3) of the Act of 1972, it is not permissible to alter the boundaries of a sanctuary by the State

Government except on the recommendation of the National Board. In the present case, it has not been demonstrated that pursuant to any recommendation by the National Board, the boundaries of the sanctuary that were initially indicated in the notification dated 8/2/1988 have been altered. For this reason, we are inclined to accept the stand taken on behalf of the State Government by its Chief Secretary in paragraphs 14 and 15 which have been reproduced hereinabove.

10. The learned Counsel for the petitioner had sought to emphasize on the communication dated 9/12/1997 issued by the Chief Conservator of Forest wherein it was observed that the Forest Department had no authority to interfere in the fishing activities undertaken by the Society. It is however to be noted that the said communication was issued prior to the report of the Sub-Divisional Officer dated 6/6/1998. The said communication therefore cannot be the basis for conferring fishing rights on the Society. On the contrary, in the order dated 15/3/2017 passed by the Commissioner of Fisheries it was specifically directed that after May-2018, the fishing rights at Katepurna Reservoir should not be leased without permission of the Forest Department. The order dated 19/6/2018 does not indicate that such permission was obtained from the Forest Department before leasing the reservoir for a period of five years. The decisions relied upon by the learned Counsel for the petitioner in these

facts do not assist the case of the Society. In *Pradeep Krishen (supra)*, notification under Sections 26-A and 35 of the Act of 1972 had not been issued and directions were issued to undertake that exercise by issuing a final notification. Similar is the case in *Kunapuraju Rangaraju (supra)*. We therefore find that the declaration sought by the Society for undertaking fishing activities as per the lease deed dated 19/6/2018 cannot be granted in the aforesaid circumstances.

11. In that view of the matter, we do not find any merit in the challenge as raised in the Writ Petition. It is accordingly dismissed leaving the parties to bear their own costs. It is open for the Society to agitate its rights that have accrued to it pursuant to the order dated 19/6/2018 issued by respondent No.3 granting its lease for undertaking fishing activities at Katepurna Reservoir till 30/6/2023. Order accordingly.

(URMILA JOSHI - PHALKE, J.)

(A.S. CHANDURKAR, J.)

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