

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.16366 of 2023

-
-
1. Umaravati Devi wife of Sudama Sahani, resident of Village-Laxmipur, P.O. and P.S.-Adapur, District-East Champaran.
 2. Adapur Prakhand Matsyajivi Sahyog Samiti Ltd. through its Secretary, Umaravati Devi (Female), aged about 45 years, wife of Sudama Sahani, resident of Village-Laxmipur, P.O. and P.S.-Adapur, District-East Champaran, Motihari.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Animal Husbandry and Fish Resources Department, Bihar, Patna.
2. The Divisional Commissioner Tirhut Division, Muzaffarpur.
3. The Collector, East Champaran, Motihari.
4. The Director, Fisheries Department, Bihar, Patna.
5. The Deputy Director Fisheries Department, Tirhut Division, Muzaffarpur.
6. The District Fisheries Officer-cum-Chief Executive Officer, East Champaran, Motihari.
7. Ganesh Mukhiya son of Late Bharat Mukhiya, resident of Village-Koraiya, P.O.-Adapur, P.S.-Mahuawa, District-East Champaran, Motihari. Elected Executive Member of the managing committee of Adapur Prakhand Matsyajivi Sahyog Samiti Ltd.

... .. Respondent/s

Appearance :

Appearance :

For the Petitioner/s	: Sri Bashant Kumar Choudhry, Sr. Advocate Sri Ram Nibash Prasad, Advocate
For the State	: Sri Santosh Chandra Bhaskar, AC to GP-11
For the Resp. No. 7	: Sri Rakesh Kumar Jha, Advocate

CORAM: HONOURABLE MR. JUSTICE SATYAVRAT VERMA
ORAL JUDGMENT

Date : 25-11-2024

Heard learned Senior Counsel for the petitioners,
learned AC to GP-11 and learned counsel appearing on behalf of
the private respondent no. 7.

2. I.A. filed on behalf of the petitioners and the State is
not being pressed as the case is being adjudicated on merits.



3. Petitioner No. 1 is the Secretary-cum-Treasurer of Adapur Prakhanda Matsyajivi Sahyog Samiti Limited.

4. Learned Senior Counsel for the petitioners submits that the election of the Managing Committee of the Society was conducted by the Bihar State Election Authority, Patna in the year 2017, after expiry of the period of the Managing Committee (hereinafter referred to as the 'MC') the fresh election fell due in the year 2022 but due to unavoidable reason the election of the Managing Committee could not take place in the year 2022, as such, an Administrator was appointed. The fresh election of the Managing Committee of the Society was held on 20.05.2023 (Annexure-1) in which the petitioner no. 1 was elected on the post of Secretary-cum-Treasurer. It is submitted that the petitioner no. 1 on 23.05.2023 submitted an application before the District Fisheries Officer (hereinafter referred to as the 'DFO', respondent no. 6) in terms of Section 7(iii)(a), (b), (c) and (d) of the Bihar Fish Jalkar Management Act, 2006, 2007, 2010 and 2018 (hereinafter referred to as the '2006 Act') for taking settlement of all the 81 jalkars situated within the area of operation of the Society. The DFO vide his letter dated 24.05.2023 (Annexure-2) directed the petitioner no. 2 to file an application before the



Collector with all the requisite documents explaining as to why the application seeking settlement was not filed in time.

5. The petitioner no. 1 in compliance of the letter dated 24.05.2023 filed a petition dated 05.07.2023 (Annexure-3) under Section 7(v) of the 2006 Act before the Collector (respondent no. 3) seeking approval of delayed application for settlement on the ground that there was no Managing Committee and the New Managing Committee was constituted on 20.05.2023. The application dated 05.07.2023 of the petitioner no. 1 was favourably considered by the Collector, thereafter the DFO issued letter no. 698 dated 08.07.2023 (Annexure-4) settling all the 81 fish jalkars situated within the operational area of the petitioner no. 2 Society for five years i.e. from 01.07.2023 to 30.06.2028.

6. Learned Senior Counsel for the petitioners submits that initially when application dated 23.05.2023 was submitted by the petitioner no. 1 before the DFO seeking settlement of jalkar the said application was not entertained on the ground that the last date of seeking settlement as per Section 7(iv) of the 2006 Act is 30.04.2023 as such the Society was asked to seek approval of the Collector under Section 7(v) of the 2006 Act, thereafter the petitioner no. 1 filed an application dated 05.07.2023 (Annexure-3) before the Collector explaining the delay, it was only thereafter



that the DFO settled the jalkar by his letter dated 08.07.2023 which amply demonstrates that DFO settled the jalkar only after the application of the petitioner no. 1 dated 05.07.2023 was approved by the Collector. It is next submitted that petitioner no. 1 after settlement deposited the entire revenue for one settlement year i.e. 2023-24 amounting to Rs.6,67,380/- on 20.07.2023 in the account of the DFO (Annexure-5), accordingly, the DFO issued money receipt dated 24.07.2023. It is further submitted that in pursuance of settlement of jalkars, the Members of the Society in whose favour *pattas* were issued came in possession of the jalkars settled with them and started cultivating fish after spending huge amount on the jalkars.

7. It is next submitted that the respondent no. 7 filed Sairat Appeal Case No. 273 of 2023 in the Court of Divisional Commissioner, Tirhut Division, Muzaffarpur with a prayer to cancel the settlement dated 08.07.2023 made by the DFO on various grounds, the petitioners Society and others appeared and filed their reply but the Divisional Commissioner by his order dated 09.10.2023 (Annexure-7) cancelled the settlement order of the DFO dated 08.07.2023 on a technical ground that the settlement order is in violation of Sections 7(v) and 7(vii) of the



2006 Act and directed the DFO to settle all the 81 fish jalkars through limited open bid in terms of Section 7(ix) of the 2006 Act.

8. It is submitted that the order dated 09.10.2023 passed by the Divisional Commissioner is impugned in the instant writ application on the ground that open bid in terms of Section 7(ix) of the 2006 Act is made when the Society is disqualified.

9. It is submitted that the Society of the petitioners was not disqualified on any ground when the Society had sought settlement of the fish jalkar as such there was no violation of Section 7(v) of the 2006 Act as the settlement was made by the DFO after the petitioner no. 1 filed application dated 05.07.2023 (Annexure-5) before the Collector under Section 7(v) of the 2006 Act.

10. It is submitted that the election of the Society was due in 2022 but the elections were not held in time by the Bihar State Election Authority as such an Administrator was appointed, it was only in May 2023 that elections were conducted i.e. on 20.05.2023 and thereafter application for settlement was made which was not accepted by the DFO on the ground that an application under Section 7(v) of the 2006 Act be filed before the Collector with all the documents seeking his approval after explaining the delay, accordingly, the petitioner no. 1 filed an



application dated 05.07.2023 under Section 7(v) of the 2006 Act before the Collector, it was thereafter that the DFO issued settlement order, hence, the settlement order was issued only after the Collector had condoned the delay.

11. It is next submitted that had the election of the Managing Committee been conducted in time in that event the said issue would not have arisen.

12. It is also submitted that the counter affidavit filed on behalf of the respondents no. 3, 5 and 6 does not even remotely suggests that the Collector did not condone the delay under Section 7(v) of the 2006 Act i.e. the settlement was made in breach of Section 7(v) of the 2006 Act. It is thus submitted that the order of the Commissioner becomes vulnerable for not appreciating the facts of the case in its correct perspective.

13. Learned counsel appearing on behalf of the private respondent no. 7 submits that the order of the Commissioner may not be very happily worded but then the Managing Committee without preparing the distribution list of the Members of the Society had approached the DFO on 23.05.2023 seeking settlement of fish jalkar in complete breach of Section 7(iii)(d) of the 2006 Act.



14. Learned counsel further fairly submits that the Society of the petitioners was not disqualified in any respect from seeking the settlement of jalkar as such that part of the order of the Commissioner cannot be sustained whereby he has directed the DFO to make settlement through open/limited bid in terms of Section 7(ix) of the 2006 Act but in the same breath submits that from pleadings made in the writ petition, it would manifest that petitioners have specifically pleaded that in pursuance of the election conducted by the Bihar State Election Authority of the Managing Committee of the Society, the petitioner no. 1 on 20.05.2023 was elected as Secretary-cum-Treasurer of the Society and on 20.05.2023 itself had approached the DFO seeking settlement of 81 jalkars. It is submitted that for seeking settlement of the jalkars, a distribution list is required to be prepared of the members in whose favour the Society intends to settle the jalkar within the area of its operation in terms of Section 10 of the 2006 Act, the preparation of distribution list requires deliberation by the Managing Committee to ward off favouritism. It is submitted that it absolutely does not stand to reason, how the petitioner no. 1, on 20.05.2023 itself approached the DFO seeking settlement without preparing the distribution list in breach of the mandate of Section 10 of the 2006 Act. It is, thus, submitted that if order of the



Commissioner cannot be sustained, in that event, the settlement of the fish jalkar made by the DFO by his order dated 08.07.2023 also becomes vulnerable and, thus, is liable to be set aside for doing complete justice with the parties.

15. The Court, prima facie, is in concurrence with the submissions made by the learned Senior Counsel for the petitioners but then the submission made by the learned counsel for the private respondent no. 7 is also not without merit as the Managing Committee of the Society could not have approached the DFO seeking settlement of jalkar without preparing the distribution list in breach of the 2006 Act. The said submission of the learned counsel for the private respondent no. 7 is not rebutted by the learned Senior Counsel for the petitioners.

16. Learned counsel appearing on behalf of the State is also not in a position to rebut the submissions made by the learned counsel for the parties but then fairly submits that the Society of the petitioners was not disqualified in any respect for seeking settlement of the jalkar though they had approached belatedly without preparing the distribution list of the Members of the Society for settling the jalkar.

17. After hearing the learned counsel for the parties, the Court, prima facie, is of the view that the order of the Divisional



Commissioner dated 09.10.2023 in Sairat Appeal Case No. 273 of 2023 and the order of the DFO dated 08.07.2023 by which settlement of fish jalkar was made with the society cannot be sustained as such the order dated 09.10.2023 in Sairat Appeal Case No. 273 of 2023 passed by the Commissioner and the order dated 08.07.2023 passed by the DFO are hereby quashed.

18. Accordingly, the instant writ application is disposed of.

19. However, it is made clear that the Managing Committee of the Society would be free to approach the authorities in accordance with law for seeking fresh settlement of jalkar in terms of the provisions as envisaged under 2006 Act.

(Satyavrat Verma, J)

Kundan/-

AFR/NAFR	N.A.
CAV DATE	N.A.
Uploading Date	26.11.2024
Transmission Date	

