

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7530 of 2024

1. Surendra Sahani Son of Late Shivmangal Sahani Resident of village-Bhaserwa (wrongly mentioned Bhdedwa in Adharcad in English), P.O.-Purnahia, P.S.- Ghorasahan, District- East Champaran, Motihari
2. Ghorasahan Prakhand Matsyajivi Sahyog Samiti Ltd. through its Secretary Surendra Sahani (Male) aged about 46 years son of late Shivmangal Sahani, Resident of village- Bhaserwa (wrongly mentioned Bhdedwa in Adharcad in English), P.O.- Purnahia, P.S.- Ghorasahan, 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. Sanjay Kumar Sahni Son of Late Gobardhan Sahni Resident of village-Pithawa, Ward No.4, P.O.-Jamunia, P.S- Jharokhar, District-East Champaran, Motihari.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Ram Nibash Prasad
For the Respondent/s : Government Pleader 26

CORAM: HONOURABLE MR. JUSTICE SATYAVRAT VERMA
ORAL ORDER

- 6 21-04-2025 1. Heard learned counsel for the petitioners, learned GP-26, Mr. Anil Kumar Singh assisted by Mr. Gautam Kumar Yadav and the learned counsel appearing on behalf of the private respondent no. 7, Mr. Sanjay Kumar.
2. The learned counsel appearing on behalf of the private respondent no. 7 submits that respondent no. 7 earlier



was being represented by learned Advocate, Mr. Jai Prakash Singh and Mr. Awadhesh Kumar. It is next submitted that the learned Advocate, Mr. Jai Prakash Singh, left for his heavenly abode and thereafter Mr. Awadhesh Kumar also left the case, as such, the respondent no. 7 approached learned Advocate, Mr. Sanjay Kumar to represent him in the case and executed *Vakalatnama* which has been filed on 09.04.2025 along with I.A. No. 01 of 2025. It is also submitted that I.A. No. 01 of 2025 has been filed for permitting the learned Advocate, Mr. Sanjay Kumar to file fresh *Vakalatnama* on behalf of the respondent no. 7.

3. The I.A. No. 01 of 2025 is allowed.

4. The learned counsel for the petitioners submits that petitioner no. 1 is the elected Society/Treasurer of the Managing Committee of the Society of petitioner no. 2 and petitioner no. 2 is a block level Fisherman Cooperative Society registered under the provision of Bihar Cooperative Society Act, 1935 (hereinafter referred as “1935 Act”). The election of the Managing Committee of the Society was conducted by the Bihar State Election Authority, Patna in the year 2017, the next election after expiry of the term of five years of the Managing Committee fell in the year 2022. After



expiry of the term of the Managing Committee in the year 2022, one Paras Kumar, Cooperative Extension Officer, Ghorasahan was appointed as Administrator of the Society. The settlement of the Jalkars of the last settlement year i.e. 2022-2023 expired on 30.06.2023, accordingly, District Fisheries Officer (hereinafter referred as “DFO”) issued Letter No. 427 dated 11.04.2023 (Annexure-1) directing the Administrator of the Society to file an application along with all the required documents on behalf of the Society for taking settlement of Jalkar from 01.07.2023 to 30.06.2028. The Administrator of the Society in terms of the letter dated 11.04.2023 filed a petition dated 27.04.2023 (Annexure-2) before the DFO along with all the required documents for taking the settlement on behalf of the Society.

5. The Administrator filed petition dated 27.04.2023 for taking settlement of the Jalkars on behalf of the Society, but on very next day i.e. 26.04.2023, the Bihar State Election Authority issued Notification No. 894 dated 28.04.2023 (Annexure-3), fixing the date of election for electing fresh Managing Committee of the Society. The fresh election of the Managing Committee of the petitioner no. 2 Society was held on 05.06.2023 (Annexure-4) in which petitioner no. 1 was



elected as Secretary/Treasurer of the Managing Committee of the Society. The petitioner no. 1 after the election filed an application for taking settlement of Jalkar within the area of operation of the Society from the year 2023-2028 annexing all the documents as required under Section 7 of the 2006 Act before the DFO. The DFO, as per Section 7 of the 2006 Act, directed the Society to file an application before the Collector, East Champaran, Motihari seeking his permission, as no Jalkar can be settled without permission of the Collector after 30th June, accordingly the petitioners' society filed an application dated 05.07.2023 (Annexure-5) before the Collector in terms of Section 7 (vii) of the 2006 Act for giving direction to the DFO to settle the Jalkar. The application dated 05.07.2023 was received in the office of the Collector on 06.07.2023.

6. The DFO, after receiving the application from the office of the Collector, issued settlement order dated 08.07.2023 (Annexure-6) in favour of petitioners' Society settling all the 65 Jalkars for five years i.e. from 2023-2024 to 2027-2028 i.e. from 01.07.2023 to 30.06.2028. Thereafter, the petitioner no. 1 deposited the entire revenue for the settlement year i.e. 2023-2024 amounting to Rs. 8,21,383/- in the bank



account of the DFO on 17.07.2023 (Annexure-7), thereafter, the DFO issued money receipt dated 21.07.2023 (Annexure-8).

7. The petitioner no. 1, thereafter, as per approved distribution list as decided by the Managing Committee of the Society in its meeting dated 27.06.2023, issued *Patta* to the member of their respective Jalkar on 14.07.2023 (Annexure-9). The member in whose favour *Pattas* were issued came in possession of Jalkar settled in their favour and started cultivating fish in the Jalkar after spending huge amount of money in cleaning the Jalkar.

8. The respondent no. 7 filed Shairat Appeal Case No. 20 of 2024 (Annexure-10) in the Court of Divisional Commissioner, Tirhut Division, Muzaffarpur assailing the order dated 08.07.2023 (Annexure-6) issued by the DFO, settling the Jalkar with the petitioners. The learned counsel submits that Shairat Appeal was filed not for cancelling the settlement, rather the respondent no. 7 had prayed for fragmenting (*Khandit*) the settlement order which is not permissible. The petitioners' society and others appeared and filed their respective written reply on 15.03.2024 before the Divisional Commissioner, Muzaffarpur (Annexure-11). In the



reply, a preliminary objection was raised that the appeal was not maintainable, as it was filed much beyond the period of 30 days in breach of Section 14 of the 2006 Act, further the respondent no. 7 had not prayed for cancelling the settlement but to fragment it, which was not permissible. The Divisional Commissioner, Muzaffarpur allowed the Shairat appeal after hearing the parties by his order dated 08.04.2024 (Annexure-12) which is impugned in the instant writ petition, without deciding the issue of maintainability of appeal having been filed much after 30 days of the settlement order and that there was no prayer for cancelling the settlement and further directed to settle the entire fish Jalkar through limited open bid as per Section 7(ix) of the 2006 Act. It is submitted that in pursuance of the order dated 08.04.2024 passed in Shairat Appeal Case No. 20 of 2024 by the Divisional Commissioner, the DFO published bid notice contained in Memo No. 977 dated 24.04.2024 (Annexure-13) for conducting limited bid for settling only 18 fish Jalkars for the period 01.07.2023 to 30.06.2028, on 29.05.2024, fixing the reserve Jama above Rs. 15,000/- similarly the DFO also published bid notice contained in Memo No. 978 dated 24.04.2024 (Annexure-14) for conducting bid for settling 47 fish Jalkars on 30.05.2024



for the period 01.07.2023 to 20.06.2028 fixing reserve Jama up to Rs. 15,000/-, both the bid notices are also impugned in the instant writ application.

9. The learned counsel for the petitioners submits that the petitioners' society is a non defaulter society and thus was never declared disqualified at any point of time. It is next submitted that Section 7(i) of the 2006 Act incorporates- That Jalkars situated within the geographical area of a block level fisherman cooperative society is to be settled with the non defaulter society, but the Commissioner has directed to settle all the Jalkrs based on limited open bid when Society is not disqualified in any respect to take settlement, it is next submitted that Commissioner completely failed to take notice of Section 7(ix) of the 2006 Act which mandates to make settlement of Jalkar through limited open bid of the share of the Jalkar of disqualified society only when petitioners' society is not disqualified in any respect.

10. The learned counsel for the petitioners next submits that the Divisional Commissioner while cancelling the settlement made with the Society failed to appreciate the intention of the legislature for introducing the Bihar Fish Jalkar Management Act, 2006 i.e. the Act of 2006 was



enacted to reach benefit to the poor traditional fisherman member of the Society. It is next submitted that Section 10 of the 2006 Act incorporates provision regarding distribution of Jalkar to those members who are resident of the village in which the Jalkar is situated and the settlement is to be made with the society as such the action of the Divisional Commissioner in cancelling the settlement made in favour of the Society adversely affects the member of the Society also. It is further submitted that Section 14(iv) of 2006 Act mandates that any appeal against the settlement order before the Divisional Commissioner is to be filed within a period of 30 days, but then in the present case respondent no. 7 assailed the order of settlement dated 08.07.2023 by filing an appeal before the Divisional Commissioner on 25.01.2024 i.e. after a delay of more than six months, but then from perusal of the order impugned passed by the Divisional Commissioner, it would manifest that though the issue of limitation was raised before him by the petitioners, but then the same was not decided and without deciding the issue of limitation in filing the appeal, the impugned order was passed which makes the order vulnerable.

11. The learned counsel appearing on behalf of the



respondent no. 7 and the State vehemently rebuts the submission of the learned counsel appearing on behalf of the petitioners and submits that from perusal of the pleadings made in the writ application, it would manifest that though it has been submitted that the petitioners, after election was conducted and Managing Committee was constituted, approached the DFO for taking settlement, but the date on which the petitioners approached the DFO for taking settlement is not pleaded in the writ application. It is further submitted that petitioners since the elections were held on 05.06.2023 in which the petitioner no. 1 was elected as Secretary and Treasurer of the Managing Committee of the Society, as such, it appears that the petitioners did not approach for taking settlement prior to 30.06.2023, hence permission of the Collector was required for seeking settlement in terms of Section 7(v) of the 2006 Act. It is submitted that the petitioners without filing any application before the DFO, rather approached the District Magistrate directly by filing an application dated 05.07.2023 seeking permission for settlement of Shairat which was received in the office of the Collector on 06.07.2023. It is submitted that it is the case of the petitioners that in pursuance of the permission



granted by the Collector, the DFO issued order of settlement dated 08.07.2023. It is submitted that from counter affidavit filed on behalf of the respondent nos. 1 and 4, it would manifest that at Para-21 it has been specifically pleaded that the settlements were made on 08.07.2023 by the then District Fisheries Officer, East Champaran, Motihari without any written approval of the Collector which is contrary to Section 7(vii) of the Act and the said fact has been taken into consideration by the Divisional Commissioner while allowing Shairat Appeal No. 20 of 2024 filed by the respondent no. 7. It is also submitted that the then DFO namely Sri Shailesh Kumar Singh has been issued a show cause on various issues including settlement of the instant Shairat without seeking approval of the District Magistrate, Motihari, as would manifest from Letter No. 83 dated 04.03.2024 (Annexure-C to the counter affidavit), on which the learned counsel appearing on behalf of the petitioners submits that from perusal of Letter No. 01 dated 02.04.2024 (Annexure-D to the counter affidavit), it would manifest that the then DFO in his reply has specifically stated that the Secretary of the Society filed an application before the Collector under Section 7 of the Bihar fish Jalkar Management Act, 2006 which were received from



the office of the Collector and upon receipt of the entire documents, settlements were made by him, it is thus submitted that merely because a plea has been taken in the counter affidavit that the Shairat settlement was made without seeking written permission of the Collector, has no legs to stand.

12. The learned counsel appearing on behalf of the State and the private respondent no. 7 rebuts the said submission and submits that in the writ application also, apart from a bald plea that settlement of Shairat was made by the DFO in pursuance of the permission granted by the Collector, East Champaran, Motihari, no document has been annexed in support of the fact that permission was granted by the District Magistrate, East Champaran Motihari for settling the Shairat, as such, the settlement of Shairat in favour of the petitioners' Society was in breach of Section 7(vii) of the 2006 Act.

13. The learned counsel appearing on behalf of the State and the private respondent no. 7 are not in a position to rebut the submission of the learned counsel appearing on behalf of the petitioners that settlement of Shairat by open bid can be done only if the Society is a defaulter and the Society of the petitioners is not a defaulter society and that settlement



was made by an order dated 08.07.2023 issued by the DFO for which the petitioners cannot be faulted, further are not in a position to rebut the submission of the learned counsel appearing on behalf of the petitioners that the Divisional Commissioner, without condoning the delay in filing the appeal by the private respondent, entertained the same and allowed the appeal.

14. After hearing the learned counsel for the parties, it becomes clear that the settlement in favour of the petitioners was made by the DFO by an order dated 08.07.2023, but then the same did not had written approval of the Collector of the district in terms of Section 7(vii) of the 2006 Act, which makes the order of settlement vulnerable, as the same was made after June, 2023, but then whether the petitioners can be held accountable/responsible for the same as they had represented before the Collector of the district seeking permission for settlement and it was thereafter that settlement was made, further the Divisional Commissioner while cancelling the order of settlement ought to have remanded the matter back to the Collector for his consideration for settlement under Section 7(vii) of the 2006 Act, as the Society of the petitioners was not a defaulter society and preference



has to be given to the Society for settlement, further from the order impugned, it becomes manifestly clear that the Divisional Commissioner while allowing the appeal did not condone the limitation in filing the appeal which also makes the order of the Divisional Commissioner vulnerable, as such, in the interest of justice, **the order dated 08.07.2023 passed by the DFO and the order dated 08.04.2024 passed by the Divisional Commissioner, Tirhut Division, Muzaffarpur are hereby set aside.**

15. Accordingly, the instant writ application is allowed.

16. 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 provision as envisaged under 2006 Act.

(Satyavrat Verma, J)

Rishabh/-

U			
---	--	--	--

