
(2010) 06 PAT CK 0039

Patna High Court

Case No: CWJC No. 14988 of 2007

Bipin Kumar

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision: June 30, 2010

Citation: (2011) 1 PLJR 344

Hon'ble Judges: S.K. Katriar, J

Bench: Single Bench

Judgement

@JUDGMENTTAG-ORDER

S.K. Katriar, J.

Heard Mr. Pankaj Kumar for the Petitioner, and Mr. Subhash Prasad Singh, learned Government Advocate No. 8. This writ petition is directed against the order dated 16.10.2007 (Annexure-1), issued under the signature of Respondent No. 2, whereby the settlement of Jalkar for fishery rights on portion of the Gilani Jalkar in Asthawa Prakhanda, District-Nalanda, in favour of Asthawan Prathmik Matasyajibi Swablambi Sahkari Samiti Ltd., Gilani, Nalanda (hereinafter referred to as the "Society"), has been recalled.

2. A brief statement of facts essential for the disposal of the writ petition may be indicated. The Society is engaged in fishing activities. By order dated 10.2.2007 (Annexure-2), the Respondent authorities had made settlement of ten Jalkars, being part of the bigger Gilani area, for a period of five years, namely, 2006-07 to 30.6.2011. The Society was suddenly visited with the impugned order, whereby the settlement was cut short and it was communicated to them that the Jalkar in question shall not be available to them for fishing purposes with effect from 1.11.2007. They were, therefore, directed to exercise their fishing rights and take away their fishes up to 31.10.2007, leading to the present writ petition.

3. The writ petition was for the first time laid before a learned Single Judge of this Court on 18.12.2007 and operation of the impugned order was stayed pending

further consideration of the matter. By order dated 3.3.2009, Respondent No. 4 was directed to consider the entire matter in the light of the observations made therein. He has since disposed of the matter by a reasoned order on 31.12.2009, whereby he has rejected the claims of the Society.

4. We have perused the materials on record and considered the submissions of learned Counsel for the parties. It appears to us that, by the said order dated 3.3.2009, this Court had observed that it prima facie appeared that the settlement in favour of the Petitioner covering a period of five years was drastically cut short. Therefore, Respondent No. 4 was directed to consider whether or not alternative settlement may be made available to the Society, or may be monetarily compensated. It appears to us from a perusal of the order dated 31.12.2009, that the State Government took the decision to use the Gilani Area covering an area of ten acres, to nurture high quality fishing seeds for distribution and use throughout the State of Bihar with the object of producing good quality of fishes. This is obviously in public interest and cannot be faulted.

5. This, however, does not conclude matters. It appears from the order of settlement of 10.2.2007 (Annexure-2), that it was intended to be settled in favour of the Society for a period of five years subject of course to deposit all the prescribed charges etc. It further appears from the order of Respondent No. 4 that they had deposited the consideration money for one quarter only, notwithstanding which the lower functionaries had issued Parwana (authority) for a longer period. Furthermore, the settlement in favour of the Society was meant for an area covering four acres, and the Society is in possession of a much larger area. This is a very dishonest approach and in the teeth of the order of settlement. Law is well settled that writ jurisdiction is never exercised in favour of dishonest persons who are acting in violation of lawful orders of the appropriate authority.

6. Even if it is supposed for the sake of argument that the settlement was intended to be for a period of five years, law is well settled that the State Government under its right of Eminent Domain has the authority to take over the properties in public interest, subject to payment of compensation.

7. In the present case, there are number of circumstances which operate against the Petitioner. The right of Eminent Domain has been validly exercised by the State of Bihar for the purpose indicated hereinabove, which is in public interest. The action of the Respondent authorities cannot from this angle be faulted and is indeed clearly stated in the impugned order passed at the behest of the Court by Respondent No. 4. Secondly, as indicated hereinabove, the settlement was made in favour of the Society for an area covering four acres, for which they deposited the consideration money for one quarter only, and obtained Parwana collusively with the lower authorities for a longer period. Thirdly, the settlement was made for an area of four acres, and they are in illegal possession of half of the Jalkar. Furthermore, the Respondent authorities made full efforts to compensate the

Petitioner by settlement of alternative Jalkars, but the Society had failed/refused to participate in the bid. Instead its members participated in the bid and have obtained settlements. Lastly, in view of the interim order passed by this Court, the Petitioner has continued in possession of half of the Jalkar, a portion of which is in illegal possession, till date. In such circum-stances, there cannot be any order for possession in favour of the Society, nor for payment of compensation.

8. In the result, this writ petition is dismissed with costs quantified at Rs. 10,000/- (Ten thousand) which shall be deposited in the official account of Respondent No. 4 within a period of four weeks from today. It goes without saying that the interim order passed by this Court on 18.12.2007, automatically stands vacated. The Society automatically stands divested of possession of the Jalkar(s) with effect from 1.7.2010. Any obstruction to the State of Bihar and its functionaries in obtaining possession of the Jalkar shall be treated to be violation of the present order.