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Court : Patna

Decided On : Sep-21-1994

Judge : N. Pandey and S.K. Singh, JJ.

Appeal No. : Civil Writ Jurisdiction Case No. 11267 of 1993

Appellant : Gulo Devi and ors.

Respondent : State of Bihar and ors.

Disposition : Application Allowed

Judgement :

1. This writ application has been filed for issuance of an appropriate writ quashing a communication dated 21.11.1992 (Annexure-5), whereby, the District Fishery Officer-Cum-Chief. Executive Officer, Madhubani, was asked to cancel long term settlement with respect to fisheries and take steps for settlement for a short term. The further prayer is to quash an order dated 18.3.1993 (Annexure-6), whereby, respondent No.5 has cancelled the long term settlement of the petitioners with respect to the Jalkars in question, We have heard the parties, therefore, this writ application is being disposed of at the stage of admission itself.

2. Relevant facts for disposal of this writ application are as follows: The petitioners were granted registered lease of Dai Pokhar and Karpur Pokhar for a period of ten years from 1.4.1992 to 31.3.2002. The District Fishery Officer, therefore, on 23.5.1992 submitted a proposal for approval of the settlement.

3. Therefore, in terms of the Government's circular dated 18th January, 1992, the District Fishery Officer by his letter dated 25.11.1992 requested the Deputy Development Commissioner, Madhubani, that for development of the Jalkars, sanction of certain loan be approved. Unfortunately, by the time formalities for approval of the scheme and grant of loan could be finalised by the impugned order the settlement of the petitioners was cancelled.

4. From a bare reference to the impugned order. It would appear that no reason has been assigned for cancellation of the settlement. But learned Counsel, appearing on behalf of the State, submitted since no step was taken by the petitioners to obtain loan from any Nationalised Bank to make development of the Jalkar, in view of the Government's Circular, steps were taken to cancel the settlement. It is stated that as per the relevant circular, a settlee was required to develop the Jalkar in accordance with the Government scheme.

5. It appears as per the Government's Circular dated 18th January, 1992, the District Fishery Officer is required to take steps so that within a 'period of six months from the date of settlement, loan is sanctioned by the relevant Bank in favour of Long Term Settlees. At the same time, the settlees are also required to complete all the formalities for development of Jalkars within one year from the date of such settlement. In case, a settlee fails to complete such formalities, the competent authority shall be entitled to cancel such settlement after giving fifteen day's time to file show cause and, therefore, settlement can be cancelled.

6. learned Counsel, appearing for the petitioners contended that the impugned decision of the authorities is violative of the principle of Natural justice as no notice or opportunity of hearing was given before cancellation of the settlement. Besides the aforesaid, the impugned order is vague and non-speaking. He further contended that even the submission of learned Counsel for the State is accepted, the authorities could not have cancelled the settlement of the petitioners on such grounds.

7. There is no denial that the Jalkar were settled with the petitioners for ten years, commencing from 1992 to 2002. It is also stated that after observing all the formalities lease was executed between the parties on 9.9.1992. The proposal for

sanction of the amount and scheme was submitted by the District Fishery Officer on 25.11.1992. The impugned order to cancel the settlement of the petitioners was passed on 18.3.1993. Therefore, if the scheme for development of the Jalkars or steps for grant of loan etc. were not taken in time we fail to appreciate how the petitioners are to be blamed.

8. We have already noticed that no reason has been assigned for cancellation of the settlement. It is well known that a settlement, of which agreement has been executed, can only be cancelled if there are certain breaches of conditions of agreement or such settlements are in violation of the statutory Rules or Circulars of the State Government. We have also noticed that as per the Circular of the State Government itself, before cancellation of such settlement, a settlee is entitled for a notice and at least fifteen day's time to file show cause after receipt of such notice. Admittedly, no notice was given to the petitioners before cancellation of the settlement. Therefore, we have no option but to hold that the impugned order is bad in law, since it is violative of the principles of natural justice and therefore, the same cannot sustain.

9. The only contention of the learned Counsel for the State is that no step was taken by the petitioners for obtaining loan in order to develop the Jalkars, therefore, in terms of the Government's Circular the respondents had no option but to cancel the settlement, But we have already noticed these grounds are not mentioned in the impugned order nor any counter-affidavit has been filed.

10. In any view of the matter, if these are the only grounds for cancellation of the settlement, the petitioners cannot be held responsible for such delay in obtaining loan. We have already held that no opportunity was given to the petitioner before the impugned decision could be taken. We have no option but to direct the respondents to consider the matter afresh, after giving proper opportunity to the petitioners in the light of the observations, made above.

11. In the result, this writ application is allowed to the extent, indicated above, and the impugned order, so far it relates to the petitioners, is quashed.