IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.14526 of 2023

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1. Ashok Kumar Singh Son of Late Ambika Prasad Singh Resident of Village-Pakra, Police Station-Naugachia, District-Bhagalpur.
2. Hemant Kumar Sinha @ Hemant Kumar Singh Son of Late Mathura Prasad Singh Resident of Village-Pakra, Police Station-Naugachia, District-Bhagalpur.
3. Robin Kumar Singh Son of Late Arun Kumar Singh Resident of Village-Pakra, Police Station-Naugachia, District-Bhagalpur.
4. Raj Kumar Singh Son of Late Krishna Kumar Prasad Singh Resident of Village-Pakra, Police Station-Naugachia, District-Bhagalpur.

... ... Petitioner/s

Versus

1. The State of Bihar through the Secretary of the Department of Animal Husbandry and Fisheries, Government of Bihar, Patna.
2. The Collector-Cum-District Magistrate, Bhagalpur.
3. The Superintendent of Police, Naugachia, District-Bhagalpur.
4. The Sub Divisional Magistrate, Naugachia, District-Bhagalpur.
5. The District Fishery Officer-Cum-Chief Executive Officer, Bhagalpur.
6. Smt. Meera Devi, Mantri, Naugachia Block Matshjivi Sahyog Samiti Ltd., Naugachia, District-Bhagalpur.

... ... Respondent/s

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Appearance :
For the Petitioner/s : Mr. Sallauddin Khan, Advocate
Mr. Brajesh Kumar Singh, Advocate
For the State : Mr. Sajid Salim Khan, SC-25
For the Respondent No. 6 : Mr. Baidnath Thakur, Advocate

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CORAM: HONOURABLE MR. JUSTICE SATYAVRAT VERMA
ORAL JUDGMENT
Date : 20-01-2025

Heard learned counsel for the petitioners, Mr. Sajid Salim Khan, learned SC-25 for the State and learned counsel appearing on behalf of the private respondent no. 6.

2. Learned counsel for the petitioners submits that ancestors of petitioners had purchased fishery rights of 2 Jalkars, namely, Kharnai Nadi and Til Juggadhar from Mr. N.M. Grant by

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two registered sale deeds both dated 19.12.1944 (Annexure-1 and 2) and since then ancestors of the petitioners came in physical possession of the two Jalkars and started fishing rights through their settlees by issuing Hukumnama. After purchasing the Jalkars, the names of the ancestors of the petitioners were recorded and registered in place of Mr. N.M. Grant in the Collectorate of Bhagalpur as owners and proprietors in the Jalkar Register known as Register-D and the Jalkars were identified as Tauzi No. 335 and 336. It is further submitted that after coming in force of Bihar Land Reforms Act, 1950 (hereinafter referred to as the '1950 Act') Parwana for the year 1964-65 was issued in favour of Machuwa Sahyog Samiti on the premise that Jalkars in question have vested in the State of Bihar. The ancestors of petitioners filed Title Suit No. 23 of 1965 in which the State of Bihar was impleaded as a defendant along with Machuwa Sahyog Samiti and others for a permanent injunction against the defendant State and Machuwa Sahyog Samiti and also for declaration that the right of fishing in the said Jalkars have not vested in the State under the provisions of the 1950 Act. Learned Sub-Ordinate Judge, Bhagalpur after hearing the parties vide judgment and decree dated 16.02.1973 (Annexure-3) permanently restrained the State Authorities and

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Machuwa Sahyog Samiti (hereinafter referred to as the ‘Samiti’) from interfering with the Jalkars.

3. The aforesaid judgment and decree in Title Suit No. 23 of 1965 attend finality in absence of any challenge and, as such, the ancestors of petitioners and petitioners after them remain in physical possession of the Jalkars and exercise their fishing right through their settlees by executing settlement and the said position continued till 1990.

4. The State authorities again in 1991-92 issued Parwana in favour of the Samiti in complete disregard of the judgment and decree passed in Title Suit No. 23 of 1965 compelling the petitioners to file Title Suit No. 31 of 1992 for a declaration that State of Bihar has no right to settle the Jalkars in favour of the Samiti and the State of Bihar and Samiti have no right to disturb and interfere with the fishing rights of the plaintiffs (petitioners herein) over the Jalkars in question. Title Suit No. 31 of 1992 was decreed in favour of the plaintiffs on 28.02.2011 (Annexure-4) and the State Authorities were restrained from interfering with the rights of the plaintiffs, thus, the judgment passed in Title Suit No. 31 of 1992 reaffirmed the judgment and decree in Title Suit No. 23 of 1965.

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5. Learned counsel for the petitioners submits that the settlees of the petitioners have also filed C.W.J.C. No. 19883 of 2021 for quashing the Parwana issued by the respondent dated 08.11.2021 for the year 2021-22 in favour of the respondent no. 6 in complete disregard of the judgment and decree in Title Suit No. 23 of 1965 and Title Suit No. 31 of 1992.

6. This Court in C.W.J.C. No. 19883 of 2021, stayed the Parwana by an order dated 15.12.2021 (Annexure-6), thereafter the settlees of the petitioners started fishing in the said Jalkars but the respondent no. 4 initiated a proceeding under Section 144 Cr.P.C. and this Court also based on the submission of the respondents vacated the order of stay dated 15.12.2021 in C.W.J.C. No. 19883 of 2021 by an order dated 24.03.2022 (Annexure-7) which led to looting of the entire fish of the Jalkars by the Samiti people.

7. It is submitted that though the time of Parwana issued for the year 2021-2022 lapsed but the petitioners have learnt that respondent no. 5 has already issued Parwana for the year 2023-2024 in favour of respondent no. 6, as such, petitioners filed an application under the RTI Act (Annexure-8) for seeking information about the issuance of the Parwana but no information was provided.

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8. Learned counsel for the petitioners submits that the authorities have no right to interfere with the Jalkars of the petitioners as Bihar Jalkar Management Act, 2006 has no application in the present case as Jalkars are privately owned Jalkars as has been decided in Title Suit No. 23 of 1965. It is further submitted that the authorities are defying the judgment and decree passed in Title Suit No. 23 of 1965 and Title Suit No. 31 of 1992 and thus are compelling the petitioners and their settlees to approach this Court. It is next submitted that notices were issued on respondent no. 6 by an order dated 21.02.2024 and the notice has been received by the husband of the respondent no. 6, as such, a jointness application was filed on 24.04.2024. Since jointness application has been filed, as such, the notices are deemed to have been validly served and respondent no. 6 now is being represented by his learned Lawyer.

9. Learned State Counsel submits that a counter affidavit has been filed on behalf of respondent no. 2 dated 03.05.2024 wherein a plea has been taken that writ application is not maintainable as C.W.J.C. No. 19883 of 2021 is pending adjudication. Further, the Jalkars belong to the State of Bihar as would manifest from Khatiyan (Annexure-D), as such, the District Fisheries Officer-cum-Chief Executive Officer, Bhagalpur issued

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Parwana in favour of the Samiti vide memo no. 608 dated 01.08.2023 (Annexure-C) for the period 01.07.2023 to 30.06.2024. Further, by mistake 13 Jalkars were mentioned in the memo dated 01.08.2023 when there were only 12 Jalkars, as such, Corrigendum dated 05.08.2023 (Annexure-D) has been issued rectifying the mistake.

10. Learned counsel appearing on behalf of the petitioners vehemently rebuts the said submission of the learned counsel appearing on behalf of the State and submits that it absolutely does not lie in the mouth of the authorities to take a plea that the Jalkars in question belong to the State of Bihar as the State of Bihar never challenged the judgment and decree passed in Title Suit No. 23 of 1965 when the State of Bihar was a party.

11. Learned counsel for the petitioners further draws the attention of the Court to para 13 of the counter affidavit and submits that a peculiar stand has been taken by the State Authorities that the judgment and decree in favour of the petitioners in Title Suit No. 23 of 1965 was not brought to the notice of the State, as such, the State is contemplating to challenge the same and against the judgment and decree in Title Suit No. 31 of 1992 an appeal being Title Appeal No. 31 of 2021 (Annexure-E)

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has been filed and the same is pending adjudication before the learned Additional District Judge, Naugachia.

12. Learned counsel for the petitioners at this stage submits that the case was taken up on 15.01.2025 and the State was directed to seek further instruction in the matter on which learned State Counsel submits that he had personally talked to the Collector and after an inquiry a decision has been taken at the level of the Collector to stay the settlement made in favour of respondent no. 6 for the year 2024-25.

13. Learned counsel appearing on behalf of the petitioners submits that this shows the might of the State and the audacity of the Collector and the District Fisheries Officer-cum-Chief Executive Officer that despite the instant writ application being pending adjudication before this Court in which a stand has been taken that the State of Bihar has been permanently restrained from interfering with the private Jalkars of the petitioners in Title Suit No. 23 of 1965 but still the State Authorities continuously are settling the Jalkars in favour of the private respondent no. 6 and when the case was taken up on 15.01.2025 and an order was passed requiring the learned State Counsel to seek further instruction in the matter and based on instruction it is being submitted that the settlement made in favour of respondent no. 6

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for the year 2024-2025 has been stayed, which amply demonstrates that the Jalkars were settled for the period 2024-2025 and the petitioners were not even aware.

14. Learned counsel for the petitioners submits that since the State till date has not filed any appeal against the judgment and decree passed in Title Suit No. 23 of 1965, as such, they cannot even touch the Jalkars of the petitioners and they should be directed not to interfere with the private rights of the petitioners over the Jalkars. It is further submitted that the stand taken at para 13 of the counter affidavit that the State is contemplating to file an appeal against the judgment and decree passed in Title Suit No. 23 of 1965 amply demonstrates that the State indulges in leisure litigation and does not even feel embarrassed in taking such a stand before this Court.

15. Learned counsel appearing on behalf of the private respondent no. 6 submits that he has appeared in the case on 15.01.2025 and the Jalkars in dispute in the instant writ application are not the same Jalkars which finds mention in the judgment and decree passed in Title Suit No. 23 of 1965.

16. The said submission of the learned counsel appearing on behalf of the respondent no. 6 is vehemently rebutted by the learned counsel appearing on behalf of the petitioners and

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even the State fairly submits that the Jalkars are the same and there is an order passed by a competent court of civil jurisdiction in favour of the petitioners.

17. After hearing the learned counsel for the parties, the Court comes to a considered conclusion that the State by applying its might is disturbing the petitioners. The authorities without challenging the judgment and decree passed in Title Suit No. 23 of 1965 are settling the Jalkars in favour of the private respondents continuously which amply demonstrates that the authorities do not have any regards for the orders passed by a Court of competent civil jurisdiction rather it gives an impression that the authorities throws the order of the Civil Court in dustbin, pleadings made at para 13 of the counter affidavit borders on contempt for the reason that the State of Bihar was a party in Title Suit No. 23 of 1965 and the judgment and decree in the said title suit was passed in the year 1973 on contest and the suit was decided in favour of the petitioners herein and the State of Bihar never challenged the said judgment and decree passed in Title Suit No. 23 of 1965 before any superior forum but then after 51 years a plea has been taken that the State Authorities are contemplating to file an appeal against the said judgment and decree passed in Title Suit No. 23 of

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1965 which amply demonstrates the conduct of the respondent authorities, the less said the better it is.

18. After considering the submissions made on behalf of the parties, the Court directs the District Magistrate-cum-Collector, Bhagalpur and the District Fisheries Officer-cum-Chief Executive Officer, Bhagalpur not to interfere with the private Jalkars of the petitioners till judgment and decree passed in Title Suit No. 23 of 1965 is in existence.

19. The writ application is disposed of with the aforesaid direction and observation.

(Satyavrat Verma, J)

Kundan/-

AFR/NAFR	A.F.R.
CAV DATE	N.A.
Uploading Date	20.01.2025
Transmission Date	

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