

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Civil Writ Jurisdiction Case No.11809 of 2022**

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Ramesh Kumar Malo, S/o Ram Chandra Malo, resident of Ward No. 2,  
Village- Lal Saraiya, P.S. Majhaulia, District- West Champaran.  
... .. Petitioner/s

Versus

1. The State of Bihar through the Secretary, Disaster Management Department, Government of Bihar, Patna.
2. The Secretary, Disaster Management Department, Government of Bihar, Patna.
3. The Secretary, Animal and Fisheries Resource Department, Government of Bihar, Patna.
4. The Director, Directorate of Fisheries, Animal and Fisheries Resource Department, Government of Bihar, Patna.
5. The District Fisheries Officer-cum- Chief Executive Officer, Western Champaran, Bihar.
6. The District Magistrate, West Champaran.
7. The District Co-operative Officer, West Champaran, Bihar.
8. Dharamraj Sahni, Son of Lalan Sahni Resident of Village and P.O. Jaukatia, P.S.- Majhaulia, District- West Champaran, Secretary Cum Treasurer of Majhaulia Prakhand Matsyajivi Sahyog Samiti Ltd. West Champaran.
9. Adalat Sahni, Son of Late Bansi Sahni Resident of Village and P.O. Majharia Sheikh, P.S.- Majhaulia, District- West Champaran, Chairman, Majhaulia Prakhand Matsyajivi Sahyog Samiti Ltd.

... .. Respondent/s

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**Appearance :**

For the Petitioner/s : Mr. Ankit Katriar, Advocate  
For the Respondent No.8 & 9: Mr. Mukesh Kumar, Advocate  
Mr. Krishna Chandra Ojha, Advocate  
For the State : Mr. Sajid Salim Khan, SC-25

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**CORAM: HONOURABLE MR. JUSTICE SOURENDRA PANDEY**

**C.A.V. JUDGMENT**

**Date : 03-07-2026**

Heard the learned counsel for the parties.

2. The case of the petitioner is that the petitioner's



society is a self-supporting cooperative society and the forefathers of its present members were settled the subject *Jalkar* by the Government of India in 1956. It is their case that the said *Jalkar* is the only source of livelihood and they are willing to pay the reserved *jama*. However, the respondent authorities are not settling the said *Jalkar* with the petitioner's society.

3. The contention of the petitioner is that the petitioner's forefathers had migrated from East Pakistan and were fishermen and altogether 15 refugee fishermen families had settled at Lalsaraiya Majhawuliya Block, Bettiah, West Champaran, in the year 1956 by the Ministry of Rehabilitation, Government of India. The said families were allotted a total of 348.55 acres of *Karmawa Man Jalkar* for their livelihood.

4. The initial settlement was executed without any payment of rent. However, after a few decades, the Revenue Department, Government of Bihar, noting the loss of revenue, decided to settle the *Jalkar* subject to a fixed reserved *jama* be taken from them. Such direction for settlement was made in the year 1985 and subsequently thereto, it was again fixed by the State Government in the year 1997 and the fishermen families collectively paid the reserved *jama* till the year 2000.



5. In the year 2001, the State Government, while reiterating its intention to settle the *Jalkar* in favour of the 15 refugee fishermen families on preferential basis, fixed reserved *jama* and directed for the formation of a cooperative society. The said order was, however, challenged before this Court in CWJC No. 5608 of 2001 and the said writ petition was disposed of by order dated 22.01.2002 with an observation that the authorities shall act reasonable and fairly in fixing the reserve *jama* so that the refugee fishermen families are not put to any undue hardship.

6. In compliance with the directions of the State Government, the Lal Saraiya Fishermen Refugees Co-operative Society was constituted and the operation of the said society was confined within the four corners of the Lal Saraiya Man in the Lal Saraiya Refugee Colony and therefore, they cannot undertake fishing activities outside the said colony.

7. In the year 2007, the *Jalkar* in question was transferred by the State Government from the Animal and Fisheries Resources Department to the Disaster Management Department. It has been pointed out that the District Fisheries Officer-cum-Joint Executive Officer, Bettiah, West Champaran, had fixed reserved *jama* at Rs. 42,000/- in the year 2007-2008



for which parwana was also issued to the petitioner on 29.03.2008 upon payment of the reserved *jama*.

8. Contrary to the previously fixed reserved *jama*, the new Department, i.e., the Disaster Management Department, increased the reserved *jama* from Rs. 42,000/- to Rs. 93,960/- vide Letter No. 143 dated 06.03.2009 for the next five years.

9. The case of the petitioner is that the society persistently represented against the arbitrary hike in the reserved *jama* before the Disaster Management Department and the Fisheries Department. However, no response re-fixing the reserved *jama* was received from the respondent authorities. The society was constrained to challenge the order dated 06.03.2009 in a writ petition bearing CWJC No. 22265 of 2018 and the same was disposed of on 13.01.2021 with a direction to the Disaster Management Department to hear the petitioner's counsel personally and pass an order within a period of 45 days. In the year 2022, the *Jalkar* in question was transferred back to the Animal and Fisheries Resource Department *vide* Notification No. 1297 dated 29.03.2022 and therefore, the settlement of the *Jalkar* was to be done by the Animal and Fisheries Resources Department.

10. It has been contended that petitioner's society,



which consists of 116 members, were completely dependent on the income derived from fishing activities, represented before the respondent authorities for seeking settlement of the *Jalkar* in question with them and one such representation dated 06.04.2022 has been brought on record as Annexure P-9.

11. The case of the petitioner is that some non-refugee fishermen have been trying to usurp the settlement rights of the *Jalkar* in question from the petitioner's fishermen society. They have wrongly and illegally tried to assert their dominance and on occasions, fights have also broken out when the non-refugee fishermen have forcibly tried to undertake fishing activities in the *Jalkar* in question.

12. The writ petitioner has, therefore, contended that the Animal and Fisheries Resources Department settles the *Jalkar* in question in favour of the petitioner's society, which has been fishing for the last more than 50 years and they have been settled by the government, as they were refugees and the petitioner society is ready to settle all past dues in accordance with the provisions of the Bihar Fish *Jalkar* Water Management Act, 2006.

13. The grievance of the petitioner is that, instead of considering the plea of the petitioner, the Department has issued



Letter No. 17959 dated 27.08.2022 to the Secretary, Prakhaand Matasya Jivi Sahyog Samiti Limited, with regard to the settlement of the *Jalkar* in question.

14. The State, through the District Fisheries Officer, Bettiah, has contended that the reserved *jama* was fixed by the competent committee chaired by the Deputy Director, Fisheries, on 02.09.2022 for the settlement of the *Jalkar*, Karmava Man Jalkar at Lal Saraiya and it was noticed that the petitioner's cooperative society was not merged with the Fisheries Society from 1955 till 2010 and in the year 2010, the Animal and Fisheries Resources Department settled the said *Jalkar* in favour of the Fisheries Co-operative Society as per the provisions of the Bihar *Jalkar* Management Act, 2006, as amended in 2007, 2010, and 2018.

15. In view of the fact that in one block there would be only one society, it has been contended that the petitioner's society do not have any right to seek settlement of the Karmava Man Jalkar at Lal Saraiya in their favour, as they have been fishing without any right and title and such report has also been submitted by the District Fisheries Officer.

16. During the pendency of the writ application, Interlocutory Application bearing I.A. No. 2 of 2022 was filed



by the interveners, namely, Dharamraj Sahni and Adalat Sahni, who claimed themselves to be the Secretary-cum-treasurer and Chairman of Majhaulia Prakhand Matsyajivi Sahyog Samiti Lmt., respectively. The said interlocutory application was allowed and they were added as party respondent Nos. 8 and 9, respectively.

17. The contention of the intervener-respondent Nos. 8 and 9 is that the petitioner's society, namely, Lal Saraiya Fishermen Refugees Co-operative Society, Block Majhaulia, Bettiah, West Champaran, is no more in existence since the year 2010, in view of Section 11-B (inserted by Act 22 of 2010) of the Bihar Cooperative Societies Act, 1933, all *Jalkars* society at the block level shall stand merged in one cooperative society and the Registrar, Cooperative Societies, shall issue registration certificate.

18. It has been stated that, in view of such reorganization, the existing societies registered under the Bihar Self-Supporting Cooperative Societies Act, 1996, shall be deemed to be members of such reorganized society. Therefore, pursuant to the said Section 11-B of the Bihar Cooperative Societies Act, 1933, there is only one fishermen cooperative society, namely, Majhauliya Prakhand Matasyajivi Sahyog



Samiti Limited, which came into existence in the year 2010.

19. The case of the intervener-respondents is that the petitioner's society was given the benefit of settlement of the *Jalkar* in question, as they were refugees and were in need of extra care. However, later the Department realized that no revenue was being received for a very long period and therefore, it was decided that the *Jalkar* in question should be settled from time to time with the refugees families, who are traditionally fishermen on a fixed reserve *jama*. It has been brought to the notice of this Court that, in the year 2001, the refugee families were directed to form a cooperative society so that the preference may be continued validly under the previous orders issued by the Revenue Department for grant of preference to fishermen cooperative society and therefore, the refugee families formed a cooperative society and got the same registered in the name of Lal Saraiya Fishermen Refugees Co-operative Society.

20. It has been contended that earlier also the petitioner had approached this Hon'ble Court, however, no relief was granted to them and they were asked to form a cooperative society to reap the benefits being granted to them.

21. The further case of the intervener-respondents is



that, in the year 2022, the District Fisheries Officer-cum-Chief Executive Officer had communicated the Joint Director of Fisheries, Patna, regarding the illegal occupation of the *Jalkar* in question. It has been stated that the Karmawa Man *Jalkar*, situated at Lal Saraiya, Manjhaulia, was allotted to the intervener society for the period 2022-23 to 2026-27.

22. The learned counsel for the petitioner submits that the petitioner was refugee and therefore, they should be given preferential consideration in the settlement of the *Jalkar*, as it was settled way back in the year 1956 and their preferential claim was earlier recognized by the State Government, which could be ascertained by the communications issued by the State Government.

23. The learned counsel has further contended that despite the earlier order of this Court requiring the authorities to act fairly, the respondents failed to settle the *jalkar* in question in favour of the petitioner and have instead transferred the *jalkar* in question thereby frustrating the petitioner's legitimate expectation.

24. Per contra, the learned counsel appearing on behalf of the intervener-respondents as well as learned SC-25, has contended that the petitioners' claim rests only on the basis



of the previous settlement. However, in view of the statutory provisions, the petitioner's society cannot be allowed any preferential claim, which would, in fact, be contrary to the statutory provisions.

25. Having heard the learned counsel for the parties and taking into account the materials placed on record, this Court finds that the relief sought for by the petitioner could have only been allowed, if the petitioner had made out a case showing the existence of a legal right.

26. It is well settled that the issuance of a writ of mandamus is based upon the existence of a legal right in the petitioner and a corresponding statutory or public duty in the respondent and unless such an enforceable right is demonstrated, no writ of mandamus can be issued.

27. The Hon'ble Supreme Court, in the case of *Union of India & Anr. v. S.B. Vohra & Ors.*, reported in (2004) 2 SCC 150, has held that a writ of mandamus lies only when the petitioner establishes a subsisting legal right and the respondent owes a corresponding legal duty. However, in the present case, the petitioner has failed to point out any statutory provision under which it possesses an enforceable right to insist upon the settlement of the *Jalkar* in question in his favour.



28. This Court observes that the claim of the petitioners is primarily based on the settlement made in the year 1956 and thereafter two executive communications issued in the years 1995 and 2001. Such executive communications or decisions taken by the Department do not create a perpetual right in favour of the petitioners to demand for settlement of the *Jalkar* in question, irrespective of the governing statutory provisions.

29. There is another fact which has also arisen in the present writ application to the effect that the settlement of the *Jalkar* was made in favour of the petitioners on payment of the reserve *jama*. However, such settlement was admittedly for a specific period, it came to an end with efflux of time. Upon expiry of the contractual settlement, it does not create any substantive right for renewal or fresh settlement in favour of the petitioner.

30. The learned counsel for the petitioner has placed reliance on the earlier orders passed by this Court, which this Court finds to be misplaced, as the said orders were passed by this Court earlier merely, directing the competent authority to act reasonably or to consider the petitioners' representation and such directions cannot be construed as conferring a substantive



right of settlement in favour of the petitioner nor can they fetter the statutory discretion of the competent authority while dealing with the settlement of public *Jalkars*.

31. During the pendency of the writ petition, the Department had issued a letter dated 27.08.2022, whereby the District Fisheries Department, Bettiah, addressed a communication to the Secretary of the Prakhand Matsyajivi Sahyog Samiti Limited (respondent no. 8), with regard to the settlement of the *Jalkar* in question.

32. It is a settled law that no vested right to renewal of a license/lease is derived from any previous settlement made in favour of the petitioner.

33. At this juncture, this Court notes the findings arrived at by the Hon'ble Supreme Court in the case of *State of U.P. & Ors. v. Lalji Tandon (Dead) through LRS* reported in *(2004) 1 SCC 1*, wherein it was held that renewal is a fresh grant and there is no vested right to renewal unless the statute provides. Therefore, the settlement granted in the year 2008 having expired by efflux of time, the petitioner acquired no vested right to claim renewal or a fresh settlement.

34. One important aspect which also needs to be considered is that the State properties must be governed by law



and confirm to Article 14 of the Constitution when the distribution of the same is concerned. The Hon'ble Supreme Court, in the case of *Akhil Bhartiya Upbhokta Congress v. State of Madhya Pradesh & Ors.*, reported in (2011) 5 SCC 29 held that State property cannot be distributed arbitrarily and moreover, the Court cannot direct an allotment in favour of a particular person.

35. The relevant paragraph no.65 of the judgment of *Akhil Bhartiya Upbhokta Congress v. State of Madhya Pradesh & Ors. (supra)* has been reproduced here under for ready reference:

*“What needs to be emphasised is that the State and/or its agencies/instrumentalities cannot give largesse to any person according to the sweet will and whims of the political entities and/or officers of the State. Every action/decision of the State and/or its agencies/instrumentalities to give largesse or confer benefit must be founded on a sound, transparent, discernible and well-defined policy, which shall be made known to the public by publication in the Official Gazette and other recognised modes of publicity and such policy must be implemented/executed by adopting a non-discriminatory and non-arbitrary method irrespective of the class or category of persons proposed to be benefited by the policy. The*



*distribution of largesse like allotment of land, grant of quota, permit licence, etc. by the State and its agencies/instrumentalities should always be done in a fair and equitable manner and the element of favouritism or nepotism shall not influence the exercise of discretion, if any, conferred upon the particular functionary or officer of the State.”*

36. As already observed, the *Jalkar* in question is admittedly a Government property and the settlement thereof must be made strictly in accordance with the governing statutory rules and the constitutional requirement of fairness and equality.

37. The reliance made by the learned counsel for the petitioner on the executive instructions is also not tenable, as it is settled law that executive instructions do not create enforceable rights. The case of *Sant Ram Sharma v. State of Rajasthan & Ors.* reported in *AIR 1967 SC 1910* established that executive instructions do not override statutory rules and ordinarily do not create enforceable rights.

38. For the reasons recorded aforesaid, this Court finds that there is no merit in the writ petition. The petitioner has failed to establish any enforceable legal or statutory right warranting any interference of this Court under Article 226 of



the Constitution.

39. Accordingly, the writ application stand dismissed.

**(Sourendra Pandey, J)**

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