
(2005) 01 AHC CK 0078
In the Allahabad High Court
Case No : C.M.W.P. No. 2947 of 2005

Achhey Lal

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 27-01-2005

Acts Referred:

Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 333

Citation : (2005) 2 AWC 1153

Hon'ble Judges : S.U. Khan, J

Bench : Single Bench

Advocate : S.K. Singh, for the Appellant; V.K. Singh, S.C., for the Respondent

Final Decision : Disposed Of

Judgement

S.U. Khan, J.—From perusal of counter-affidavit of Sri C. P. Singh, Deputy Collector, photostat copies of various orders filed by the learned standing counsel and file of Division Bench Writ Petition No. 36966 .of 2004 (pending) it is clear that petitioner is guilty of material concealment in this writ petition. There is no mention in the writ petition of several orders which are quite material for deciding the controversy involved in this writ petition. The petitioner is warned to be careful in future otherwise stern action may be taken against him.

2. Dispute in the instant writ petition relates to grant of fisheries lease in respect of pond comprised in plot No. 978 area 7.762 hectares situate in village Khairada Tehsil Sadar district Banda. The petitioner was granted fisheries lease in respect of pond in dispute for five years, w.e.f. 8.11.96 to 7.11.2001. On 15.10.2001 petitioner filed application for renewal of lease till June 2002. Thereafter he filed Writ Petition No. 37287 of 2001. Writ petition was dismissed on 21.11.2001 and petitioner was granted liberty to approach the authorities concerned for renewal of his lease according to the Government orders applicable on petitioner's case. The Court refused to pass any Order or direction to permit the petitioner to continue as lessee upto June, 2002 as claimed by the petitioner's counsel. Thereafter petitioner filed application for renewal before Deputy Collector which

was rejected on 24.5.2002. Against the said Order he filed a revision before Additional Commissioner, Chitrakoot Dham Mandal, Banda being Revision No. 1005/347 of 01-p2. Against orders granting or refusing to grant fisheries lease no revision is maintainable as u/s 333 of U.P.Z.A.L.R. Act revision can be filed against Order passed by a Court. While granting or refusing to grant/renew fisheries lease Deputy Collector or any other authority does not act as Court such orders are purely administrative in nature hence not amenable to revisional jurisdiction u/s 333 of the Act (vide 1992 RD 392 (B.R.F.B.)), However, revision was allowed on 23.2.2004. Thereafter in pursuance of the said Order of Commissioner Deputy Collector, Banda on 7.8.2004 directed renewal of fisheries lease in respect of pond in dispute in favour of the petitioner till 6.8.2009 by increasing the previous annual rent by 20 per" cent i.e. on Rs. 2,000 per year. Lease was accordingly renewed/executed on 9.8.2004. In the instant writ petition absolutely nothing has been stated regarding the Order of this Court in the above mentioned writ petition and Order of the Commissioner dated 23.2.2004. The only thing which is stated in the writ petition is that on 9.8.2004 lease/agreement was executed in favour of the petitioner and thereafter reaction was directed to be held on 25.1.2005. On 24.1.2005 when this writ petition was heard as fresh the Court got an impression that Deputy Collector had let out the pond in dispute to the petitioner for highly inadequate consideration hence Deputy Collector and Tehsildar were directed to be present in Court today, i.e., 27.1.2005. Today both the officers are present and counter; affidavit of Deputy Collector and copies of various orders have been filed by the learned standing counsel. Copy of interim Order dated 16.9.2004 passed in Writ Petition No. 36966 of 2004 by a Division Bench of this Court has also been filed by the learned standing counsel. I have also perused the file of the said writ petition. The said writ petition was filed by the Matsyajivi Sahkari Samiti Ltd. In the said writ petition Achhey Lal the petitioner of the instant writ petition is respondent No. 6. In the said writ petition on 16.9.2004 a stay Order was passed to the effect that "until further Order of this Court renewal of lease of fisheries rights granted in favour of respondent No. 6 in pursuance of the approval Order dated 9.8.2004 granted by the S.D.M., Sadar, Banda filed as Annexure-7 to the writ petition shall remained stayed. However, it shall be open to the respondents to hold a public auction for the grant of fisheries rights."

3. Achhey Lal petitioner filed his vakalatnama in the said writ petition on 19.10.2004 and stay vacation application dated 25.10.2004 was also filed by him along with counter-affidavit. On 1.11.2004, the said stay vacation application was directed to be listed with previous papers. No further Order has been passed in the said writ petition. In the instant writ petition petitioner concealed the said stay Order dated 16.9.2004 passed in the aforesaid Division Bench writ petition (In fact in this writ petition there is no mention of the aforesaid writ petition). If an Order has been stayed through Order passed in a writ petition, no other writ petition seeking enforcement of the said Order is maintainable. The concealment of the said stay Order in the instant writ petition is mala fide. In pursuance of

stay Order dated 16.9.2004 passed in the aforesaid Division Bench writ petition Deputy Collector on 4.11.2004 accepted the recommendation of Tehsildar and directed that re-auction shall take place on 23.11.2004. This Order has also been concealed by the petitioner. There is absolutely no mention of this Order in the writ petition. Due to some reasons re-auction could not take place on 23.11.2004 hence on that date Tehsildar passed the Order adjourning the auction to 25.1.2005. Only this Order of Tehsildar dated 23.11.2004 has been filed as Annexure-3 to the writ petition.

4. As the revision before the Commissioner was not maintainable hence the Order of Commissioner dated 23.2.2004 allowing the revision is void and non est.

5. Petitioner is illegally occupying the pond in dispute since expiry of period of, his initial lease, i.e., 8.11.2001. He is liable to pay proper damages/mesne profit for the same. In the opinion of the Court the pond in dispute may very well be let out for Rs. 1,50,000 per year. However, as petitioner is being directed to vacate the pond in dispute forthwith hence award of damages at the rate of Rs. 1 lac per year would be proper. Accordingly it is directed that for illegal use of the pond with effect from 8.11.2001 till date petitioner shall pay Rs. 3 lacs within six weeks from today. Petitioner is permitted to withdraw the fishes put by him in the pond in dispute after depositing the aforesaid amount and till 31.3.2005.

6. Deputy Collector concerned is directed to get the pond vacated by 31.3.2005 positively. During March, 2005, pond in dispute shall be auctioned for fisheries lease after due publicity in two such newspapers which have got wide circulation in the area. Deputy Collector shall make all efforts to let out the pond for atleast Rs. 1,50,000 per year. In several cases auction of fisheries lease has taken place in Court in between rival claimants (following the authority of Supreme Court in Ram and Shyam Company Vs. State of Haryana and Others, and in consequence thereof ponds have been let out for very good amount ranging in between Rs. 50,000 to Rs. 1 lacs per hectare per year. If Deputy Collectors take proper interest, play pro-active role and adopt interventionist attitude then they may let out the ponds for fisheries purposes for very good amount.

7. It is clarified that petitioner shall be permitted to withdraw the fishes only after deposit of Rs. 3 lacs. Deputy Collector shall keep a constant watch over the pond in dispute for compliance of this direction.

8. Writ petition is disposed of accordingly. However, Deputy Collector is directed to submit compliance report on or before 4.4.2005.

9. List on 4.4.2005 for perusal of compliance report.

10. Let a copy of this Order be given to Shri S.R. Jalil, learned standing counsel free of cost for communication to Deputy Collector concerned.