
(2015) 03 AHC CK 0130
In the Allahabad High Court
Case No : Writ-C No. 193 of 2015

Brajesh and Others

APPELLANT

Vs

State of Uttar Pradesh and Others

RESPONDENT

Date of Decision : 25-03-2015

Acts Referred:

Citation : (2015) 127 RD 588

Hon'ble Judges : Anjani Kumar Mishra, J

Bench : Single Bench

Advocate : Devendra Kumar Shukla and Veerendra Kumar Shukla, for the Appellant; Tariq Maqbool Khan, Advocates for the Respondent

Final Decision : Dismissed

Judgement

Anjani Kumar Mishra, J.

1. Heard learned Counsel for the petitioner and learned Standing Counsel for the State-respondents. The writ petition has been filed challenging the order dated 11.12.2014 passed by the Sub-Divisional Magistrate, Hata, District Kushinagar. This order has been passed on an application by the Gram Pradhan. By this order, Inspector In-charge, Kotwali Hata has been directed to stop of illegal fishing being carried out by the petitioner in the ponds belonging to the Gram Panchayat.

2. The facts of the case are that an auction was held on 6.6.2001. The ponds in question are alleged to have been settled in favour of the petitioners for a period of 10 years. Simultaneously 1/4th of the bid amount in the aforesaid lease is said to have been deposited by the petitioner.

3. It is the case of the petitioner that these bids made by them being the highest bids were ultimately accepted on 19.7.2006. It is, therefore, contended that the lease would be operative for a period of 10 years from the date of its acceptance and, therefore, the petitioners are liable to fish in the ponds upto 18.7.2016.

4. It appears that on 11.12.2014 the Pradhan made an application to the respondent No. 3, the SDM, Hata stating therein that the lease allotted by means of the auction dated 6.6.2001 had come to an end in 2011 since it had been granted for a period of 10 years only. Despite this expiry of the lease, the petitioners were illegally fishing in the pond causing financial loss to the Gaon Sabha. It is on this application of the Pradhan that the order impugned has been passed.

5. When the case was taken up on an earlier date, a pointed query was made to the petitioners' Counsel as to whether any further deposit had been made by the petitioners apart from what had been deposited by them initially being 1/4th amount of the bid itself. In this regard, a supplementary affidavit dated 20.1.2015 has been filed wherein it has been admitted that only 1/4th of the total amount had been deposited by the petitioners and that they are ready to deposit the balance amount. It has also been alleged that although remaining amount was tendered the same was not accepted.

6. From the facts noticed above, it clearly emerges that although the petitioners had been granted a lease for a period of 10 years, they have deposited only 1/4th of the bid amount. No further deposit has in fact, been made by them. It is further clear that the petitioners have operated the lease, at least till the date the order impugned was passed, namely, 11.12.2014. Thus even if the contention of the learned Counsel for the petitioners is accepted that the lease was to be effective from the date the bid was accepted, namely, 19.7.2006 yet, after expiry of a period of almost 8 years, they have failed to deposit the balance lease rent. They have, therefore, already operated the lease for a period of much longer than the period for which the lease rent has been paid by them.

7. Under the circumstances, there is no equity in favour of the petitioners. The petitioners, therefore, are not entitled to claim any relief and the Gram Sabha is entitled to recover the balance lease rent from the petitioners.

8. The petitioners are also not entitled to any relief because they have not filed the lease agreement they must necessarily have been entered into between the parties. Therefore, it is not clear as to from what date the lease came into operation.

9. Since admittedly the auction was held in the year 2001 and the lease was to be granted for a period of 10 years which period has expired long back, this writ petition is being dismissed with the observation that the respondent authorities should auction the fishery rights expeditiously, and in accordance with the Government Orders as also the decisions of this Court, in this regard. This exercise may be done as expeditiously as possible. It is further provided that proceedings for recovery of the balance lease rent from the petitioners be initiated forthwith. Accordingly and subject to the aforesaid observations/directions, this writ petition is dismissed.