
(2015) 04 AHC CK 0198

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 66919 of 2014

Chandrika

APPELLANT

Vs

State of Uttar Pradesh and Others

RESPONDENT

Date of Decision : 23-04-2015

Acts Referred:

Citation : (2015) 6 ADJ 231 : (2015) 4 AWC 3918 : (2015) 128 RD 376

Hon'ble Judges : Ran Vijai Singh, J

Bench : Single Bench

Advocate : B.P. Mishra and Manvendra Kumar Yadav, for the Appellant; Tarik Maqbool Khan, Advocates for the Respondent

Final Decision : Allowed

Judgement

Ran Vijai Singh, J—Heard Sri B.P. Mishra, learned counsel for the petitioner, learned Standing Counsel appearing for the State-respondents and learned counsel for the Gaon Sabha. By means of the present writ petition, the petitioner has prayed for issuing a writ of mandamus directing the respondent No. 1 to decide the petitioner's application dated 11.8.2014 and approve the bid of the petitioner for the pond in dispute.

2. The facts giving rise to this case are that with respect to pond over Khasra Nos. 304 and 305 measuring about 0.267 hectare and 0.3240 hectares respectively situated in Village Khairahva Jangal, Nautanwa, District Maharajganj, an advertisement was made in the news paper Rashtriya Sahara dated 25.6.2014, fixing 11.7.2014 for settlement of fishery lease. Pursuant thereto, two persons participated, out of which, the petitioner's bid was Rs. 60,900/-. The petitioner was required to deposit 1/4th amount, which he deposited, but no lease was executed. Thereafter, the petitioner filed an application on 11.8.2014 requesting the authority concerned to execute the lease pursuant to the auction held on 11.7.2014. When nothing was done, the petitioner has approached this Court through the present writ petition.

3. In this writ petition, on 10.12.2014, learned standing counsel was directed to seek instructions. Pursuant thereto, after number of dates, instruction was obtained and considering the same, on 1.4.2015 this Court has passed the following order:

"Pursuant to the earlier order of this Court, learned standing counsel has sought instructions informing the Court that after the bid was over, one Sri Bibhuti Yadav and Sri Ram Milan had approached the auction officer and offered some more amount for the performance of the lease. On this, petitioner's bid has been cancelled.

Learned standing counsel is directed to get the personal affidavit of Sub Divisional Officer concerned, swearing the contents of the instructions on affidavit within a period of 10 days.

As prayed, put up this case on 17.4.2015 in the additional cause list.

By that date, learned standing counsel shall file the required personal affidavit and on next date of listing, the concerned Sub Divisional Officer shall remain present before this Court alongwith complete records of the auction proceedings in order to assist the learned standing counsel."

Pursuant to the aforesaid order, Sri Jay Chandra Pandey, Sub Divisional Officer, Nautanwa, Maharajganj has filed his personal affidavit. For the purpose of this case, perusal of paragraphs 5, 6 and 7 of the aforesaid affidavit would be necessary to be looked into, which are reproduced, herein, under:

"5. That it may be submitted here that Sri Mangru son of Rupai and Sri Chandrika son of Jokhu have taken part in the auction, and the petitioner was the highest bidder for Rs. 60,900/-.

6. That after the auction, Sri Vibhuti Yadav and Sri Ram Milan moved their applications on 15.7.2014 and 16.7.2014 before the then Sub Divisional Officer, mentioning that the auction has been done in low money and without giving information, which caused loss to gaon sabha. It is further submitted that Sri Ram Milan wished to lease the land at Rs. 80,000/-, on the basis of which, the then Tehsildar on 18.7.2014 produced a report that Rs. 20,000/- may be deposited by Sri Ram Milan son of Santu as security amount and the auction may again be initiated by cancelling the auction dated 11.7.2014, upon which that then Sub Divisional Officer agreed on 28.7.2014, and directed to proceed in furtherance. A true copy of the applications dated 15.7.2014 and 16.7.2014, and a true copy of the letter dated 18.7.2014, is being filed herewith and marked as ANNEXURE Nos. 1, 2 and 3 to this personal affidavit.

7. That subsequent to above, Sri Ram Milan on 28.7.2014 deposited the amount of Rs. 20,000/- in the Naib Nazir Register No. 4, as such, the auction dated 11.7.2014 has been cancelled vide order dated 28.7.2014 of the Sub Divisional Officer."

4. From the perusal of the aforesaid paragraphs, it is apparent that pursuant to the advertisement made in Rashtriya Sahara on 25.6.2014, the petitioner participated in the auction proceeding and offered Rs. 60,900/- on 11.7.2014 and deposited the required amount. After the auction was over Sri Vibhuti Yadav and Sri Ram Milan moved applications on 15.7.2014 and 16.7.2014 respectively stating therein that they are ready to pay Rs. 80,000/-. The Tehsildar as well as the Sub Divisional Officer, instead of proceeding with the auction held on 11.7.2014, entertained the applications submitted by Vibhuti Yadav and Ram Milan and required them to deposit Rs. 20,000/- for initiating fresh proceeding. It is thereafter, the auction, held on 11.7.2014, was cancelled 28.7.2014. It would also appear from the record that Ram Milan had deposited Rs. 20,000/- on 28.7.2014.

5. It is not in dispute that the fishery leases are settled in accordance with the provisions contained in the Government Order dated 17.10.1995 and the law laid down by the Full Bench of this Court in the case of Ram Kumar and others v. State of U.P. and others, 2005 (99) RD 823. In the Government Order dated 17.10.1995, preferences have been given for execution of fishery lease, according to which first priority is to be given to Kewat, Mallha, Nishad, etc. The petitioner belongs to Kewat by caste and he has participated in the proceeding on 11.7.2014. Once the proceeding was over, it was not open for the revenue authorities to entertain any application of third person on the ground that some more amount has been offered. The object of the Government Order dated 17.10.1995 is the upliftment of the poorest person belonging to the Machhua community and not to earn more revenue otherwise there would have been provision for open auction. The State Government itself knowingly and willingly has issued the Government Order dated 17.10.1995 for such purpose negating the open auction for improving the economic condition of a particular community which has been approved by the Full Bench of this Court in the case of Ram Kumar (supra). Therefore, if the lease is allowed to be executed in favour of persons belonging to other castes or of the same caste falling under higher income group that will defeat the object of the Government Order dated 17.10.1995 and that will be against the law laid down by the Full Bench of this Court in the case of Ram Kumar (supra).

6. The matter may be examined from another angle also, once the auction proceeding was over, it was not open for the revenue authorities to accept the application, requiring the person to deposit the money in order to earn more venue. The settlement of fishery right has to held strictly in accordance with the terms and conditions of the advertisement and the Government order dated 17.10.1995. The action of the revenue authorities in entertaining the applications after the auction was over is beyond their jurisdiction and contrary to the aim and object of the Government Order dated 17.10.1995 and the Full Bench decision of this Court in the case of Ram Kumar (supra) and conditions of the advertisement.

7. In view of the foregoing discussions although the petitioner has not sought quashing of the subsequent auction of the revenue authorities, but under the facts and circumstances of the case, the order dated 28.7.2014 passed by the Sub Divisional Officer, Nautanwa, Maharajganj, cancelling the earlier auction held for settlement of fishery lease (in which the petitioner has offered Rs. 60,900/-) and the subsequent proceeding, if any being illegal and arbitrary, deserves to be quashed. In the result, the writ petition succeeds and is allowed. The impugned order dated 28.7.2014 and the consequential proceeding, if any, is hereby quashed. The Sub Divisional Officer, Nautanwa, Maharajganj is directed to proceed in accordance with law and pass an appropriate order regarding approval/disapproval of the proceeding dated 11.7.2014 within a period of two weeks from the date of production of certified copy of the order of this Court. In case, it is approved, it is well and good and in case, it is disapproved reason for the same may be recorded in the form of order.