
(2010) 02 AHC CK 0304
In the Allahabad High Court

Chattu	Vs	APPELLANT
State of U.P. and Others		RESPONDENT

Date of Decision : 01-02-2010

Acts Referred:

Citation : (2010) 2 AWC 2036 : (2010) 3 BC 72

Hon'ble Judges : C.K. Prasad, C.J.;Arun Tandon, J

Bench : Division Bench

Final Decision : Allowed

Judgement

C.K. Prasad, C.J. and Arun Tandon, J.—Respondent No. 6-appellant, aggrieved by order dated 1.12.2009, passed by a learned single Judge in Civil Misc. Writ Petition No. 54588 of 2009, has preferred this appeal under "Rule 5, Chapter VIII of the High Court Rules.

2. Facts lie in a narrow compass:

3. Fisheries right over pond appertaining to plot No. 332 having an area of 0.739 hectares situate in village Rakksha, Tehsil Shohratgarh in the district of Siddharthnagar was granted to respondent No. 6-appellant (hereinafter referred to as "appellant") for ten years on payment of Rs. 7,400 per year. No advertisement preceded the settlement. Writ petitioner-respondent No. 6 (hereinafter referred to as "respondent. No. 6") challenged the same in the writ application. When the matter was taken up on 23.11.2009, the Court relying on a Full Bench authority of this Court in the case of Ram Kumar v. State. 2005 (99) RD 823 , observed .that fisheries right had to be granted after due advertisement and further, relying on the decision of the Supreme Court in the case of Ram and Shyam Company Vs. State of Haryana and Others, decided to auction the fisheries right in Court on 25.11.2009. The Court further observed that the counsel representing the parties shall seek instructions in this regard. When the matter was taken up. On 25.11.2009, at the request of the appellant, it was adjourned to 30.11.2009. On 30.11.2009, the learned single Judge passed the

following orders ;

It is extremely unfortunate that learned Counsel for respondent No. 6 on flimsy ground is seeking adjournment again. Accordingly, put up tomorrow. It is made clear that for no reason further adjournment would be granted.

4. On 1.12.2009, learned Counsel for the appellant was not present. Taking note of the offer of the respondent No. 6, the learned single Judge cancelled the fisheries right granted to appellant and further directed that fisheries right be given to respondent No. 6 for ten years on payment of Rs. 13,000 per year.

5. Mr. Sobhit Dube, appearing on behalf of the appellant submits that the learned single Judge may be right in cancelling the settlement made in his favour but it ought not to have directed for settlement of the fisheries right in favour of respondent No. 6. He submits that as there was no advertisement at all," the settlement ought not to have been confined between respondent No. 6 and the appellant, and taking into account the offer made by respondent No. 6, settlement ought not to have been directed in his favour.

6. Ms. Afshan Shafaut, appearing on behalf respondent No. 6, submits that as the respondent No. 6 had offered higher amount, the learned single Judge did not err in directing for settlement of the fisheries right in his favour.

7. Undisputedly, before settlement of the fisheries right, no advertisement in the Newspaper was at all made. A Full Bench of this Court in the case of Ram Kumar and Ors. v. State of U.P. and Ors. 2005 (99) RD 823, had the occasion to consider this question and has observed in categorical terms that as a general rule notice should be published in a newspaper having wide circulation for the settlement of fisheries right. Paragraph 29 of the judgment, which is relevant for the purpose, reads as follows:

The settlement of fishery according to the directions u/s 126 of 1950 Act is settlement of property vested in the gaon sabha which should be done in a prescribed manner giving opportunity to all eligible persons to participate. The Revenue Officer, who are entrusted with duty, shall ensure proper advertisement of the date of settlement so that all persons who are eligible to participate have sufficient notice of the proposed settlement. The Government order itself contemplate "wide publicity". The Sub-Divisional Officer himself should see that wide publicity is made. Now-a-days Newspapers having wide circulation in the area is surest mode to publish a proposed settlement. As a general rule the Sub-Divisional Officer should publish in a Newspaper having wide circulation of the settlement of fishing right to enable all concerned to participate. As observed above, in the event there are more than one person in one particular category of preference, the Sub-Divisional Officer is not prohibited to award the said fishing right by inviting bids by tender or auction.

(Italics ours)

8. It is nobody's case that because of any exceptional circumstance, conscious

decision was taken not to make an advertisement in the Newspaper. On the face of it, in our opinion, when admittedly the settlement of the fisheries right was made in favour of appellant without any advertisement, same was fit to be quashed and was rightly quashed by the learned single Judge. In fairness, it has not been questioned.

9. However, the question which falls for determination is as to whether the learned single Judge should have proceeded to hold auction in the Court and to direct settlement in favour of respondent No. 6 taking into account his offer.

10. In the facts of the present case, we are of the opinion that the learned Judge ought not to have chartered this course. Undisputedly, in the present case, no advertisement was published. We do not know the number of persons, who may be interested in taking the settlement. There may be a case in which after the advertisement only two persons make their offers and the matter ultimately travels to the Court, in such circumstance, this Court may exercise its discretion to hold auction between bidders and to see the bona fide of the auction, by asking the parties to make offer.

11. It is well-settled that the property of the State or its agency is a community property and every citizen of this country has vital interest in its effective use and disposal. As the property is a public property, every citizen has the right to bid for its settlement. A large number of persons, in absence of advertisement, who might have been interested in getting the settlement, were deprived of their right to participate in the auction. The State or its agency is not free like an ordinary citizen in selecting recipient for its largesse.

12. It is not the case of the appellant that he was selected in conformity with any State policy and he is the only person concerned under that policy. In the face of it, we are of the opinion that the learned single Judge erred in directing for holding of auction confining it to the appellant and respondent only. In view of what we have observed above, direction to make settlement in favour of respondent No. 6 is fit to be set aside.

13. The authority of the Supreme Court in the case of Ram and Shyam (*supra*) does not, as a proposition of law lays down that when there is challenge to the auction conducted by the functionary of the State or its agency, the Court as a matter of course shall conduct the auction. In this case, notification was issued fixing the date of auction and the highest bid of one of the participants was accepted by the officer conducting the auction but it was not accepted by the Government and the offer of a person who made higher offer was accepted. On a challenge made, the Supreme Court asked the competing claimants to make their offers. Here in the present case, no notice for auction was published, and as such it is difficult to assume that besides the two claimants, others were not willing to take the settlement and hence, reliance by the learned single Judge on the said judgment to hold auction in Court confining it to two claimants only is misplaced.

14. The Sub-Divisional Officer shall now proceed to make settlement keeping in mind the observation aforesaid.

15. In the result, the appeal is partly allowed and the order of the learned single Judge, to the extent it directs for settlement in favour of respondent No. 6, is set aside. No cost.