
(2001) 11 AHC CK 0025
In the Allahabad High Court
Case No : C.M.W.P. No. 18611 of 1991

Fauzdar

APPELLANT

Vs

Collector, Maharajganj and Others

RESPONDENT

Date of Decision : 02-11-2001

Acts Referred:

Citation : (2002) 2 AWC 1282 : (2002) 2 UPLBEC 1082

Hon'ble Judges : Lakshmi Behari, J;D.S. Sinha, J

Bench : Division Bench

Advocate : Prakash Padia, for the Appellant; U.K. Pandey, S.C., for the Respondent

Judgement

D. S. Sinha and Lakshmi Bihari, JJ.—Heard Sri Prakash Padia, learned counsel appearing for the petitioner, and Sri U. K. Pandey, the learned standing counsel of the State of U. P., representing the respondents.

2. Instant petition has been filed by the petitioner for grant of the following two reliefs :

"(i) Issue, a writ, order, or direction include a writ in the nature of mandamus commanding the respondents to refund the money deposited by the petitioner in case the petitioner is not found eligible for the extension of the patta ;

(ii) Issue, a writ, order, or direction including a writ in the nature of certiorari, quashing the order dated 10.5.1991 (Annexure-5 to this writ petition) ;"

3. Sri Prakash Padia, the learned counsel of the petitioner, stated that relief No, (ii) is not pressed and the petition be treated to be continued to relief No. (i) only.

4. The petitioner is a contractor. By an order dated 16th April. 1990, passed by the District Magistrate. Maharajganj, the petitioner was granted lease for excavation of sand in the area within village Balua (Ballia Nala) Tehsil Sadar, District Maharajganj, for a period of one year for a consideration of Rs. 22,000. The order of the District Magistrate was communicated to the petitioner vide

communication dated 18th April, 1990, a copy of which is Annexure-1 to the writ petition.

5. The communication dated 18th April, 1990, required the petitioner to get the lease deed registered within one month. It also required the petitioner to deposit Rs. 500 as demarcation charges.

6. It appears that the lease money was to be deposited in two instalments. Half of the amount before execution of the lease deed and the remaining half within three months in two equal instalments.

7. The petitioner deposited Rs. 11,000 the half of the lease money. He also deposited Rs. 500 towards demarcation charges. Thereupon, the petitioner approached the relevant authority for due execution of the lease deed and demarcation of the area.

8. The concerned authority instead of executing the lease deed and having the area demarcated proceeded to re-auction the area on 2nd February, 1991, and issued requisite notice therefor. However, no auction was held on the said date.

9. In the meantime, the petitioner made representation dated 25th January, 1991, to the Collector, Maharajganj, pressing for execution of the lease deed. The Collector, Maharajganj, did not pay any heed. This led the petitioner to file in this Court a writ petition on 15th March, 1991. The Court by means of Its order and judgment dated 15th March, 1991, disposed of the petition finally directing the Collector, Maharajganj, to dispose of the representation of the petitioner within three weeks of the date of production of a certified copy before him, by a reasoned order.

10. On 16th May, 1991, the petitioner was served with a communication dated 10th May, 1991, informing him that his representation had been rejected by the Collector, Maharajganj, vide order dated 18th April, 1991. This communication is appended to the writ petition as Annexure-5.

11. The Court has read and reread the communication dated 10th May, 1991, to find out the reasons in support of the order of the Collector, Maharajganj, dated 18th April, 1991, rejecting the representation of the petitioner. But, the Court has not been able to find any reason.

12. Feeling aggrieved by rejection of his representation, the petitioner filed in this Court instant petition on 17th July, 1991, assailing rejection of his representation.

13. On 19th July, 1991, a Division Bench of this Court required the petitioner to file a supplementary-affidavit annexing thereto the certified copies of the communication dated 10th May, 1991, and the order dated 18th April, 1991, passed by the District Magistrate/Collector, Maharajganj. The Court also directed the Additional Collector (Finance and Revenue), the respondent No. 2, to ensure supply to the petitioner of the certified copies of the order of the Collector,

Maharajganj, dated 18th April, 1991, and the communication dated 10th May, 1991.

14. The petitioner communicated the order of the Court dated 19th July, 1991, to the relevant authority along with application for supply of the requisite certified copies.

15. It is asserted that the certified copies have not been supplied to the petitioner despite due communication of the order of the Court dated 19th July, 1991.

16. It may be recalled that on 9th October, 1991, the Court had granted a month's time for filing counter-affidavit. But no counter-affidavit has been filed hitherto. Thus, the facts asserted by the petitioner before this Court remain uncontroverted and are accepted to be correct.

17. It is not disputed that no lease deed has been executed in favour of the petitioner. In pursuance of the order of the Collector, Maharajganj, the respondent No. 1, granting lease in his favour for one year for a consideration of Rs. 22,000. It is also not disputed that the petitioner has deposited a sum of Rs. 11,500 (Rs. 11,000 being half of the amount of lease money and Rs. 500 by way of demarcation charges). There is nothing on record to show that the money deposited by the petitioner has been forfeited by any order passed in accordance with law.

18. The lease deed having not been duly executed in favour of the petitioner and there being no order, much less valid order, passed by any competent authority forfeiting the money deposited by the petitioner, there is no justification for withholding the money. The money deposited by the petitioner is held in trust, and the petitioner is clearly entitled to the refund of the same.

19. The money deposited by the petitioner having been withheld without any legal justification, the petitioner is entitled to interest also on the money deposited by him.

20. On the facts and circumstances noticed hereinabove, the petition succeeds and is allowed. The respondents are directed, jointly and severally, to refund or cause to be refunded to the petitioner a sum of Rs. 11,500 deposited by him together with interest computed at the rate of 1.8 per cent per annum from the date of deposit within a period of two months from the date of production of a certified copy of this order before the Collector. District Maharajganj, the respondent No. 1.

21. There is no order as to costs.