
(2013) 10 AHC CK 0226
In the Allahabad High Court
Case No : C.M.W.P. No. 55536 of 2013

Gaon Sabha/Gram Panchayat

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 07-10-2013

Acts Referred:

Citation : (2013) 6 AWC 6076 : (2013) 121 RD 503

Hon'ble Judges : Amreshwar Pratap Sahi, J

Bench : Single Bench

Advocate : Manoj Kumar Yadav, for the Appellant; S.K. Singh, for the Respondent

Final Decision : Disposed Of

Judgement

Amreshwar Pratap Sahi, J.—Heard Sri Manoj Kumar Yadav, learned Counsel for the petitioner, and Sri S.K. Singh for the Caveator respondent No. 5. A fishery lease duly approved has been granted to the respondent No. 5 in respect of a pond in the village in question. This writ petition has been filed by the Gram Pradhan of the village contending that the grant of fishery lease is causing inconvenience to the public at large and certain complaints had been entertained, which are mentioned in Annexures-4 and 5 to the writ petition. The said complaints are addressed to the Sub-Divisional Officer and a report is said to have been made by the Lekhpal, which is Annexure-5 to the writ petition.

2. I have perused the Government Order that has been produced by the learned Counsel for the petitioner dated 17.10.1995 and Clause-3 of the said Government Order, recites as follows:--

3. From the complaint made by the petitioner, it appears that there was some allegation of obstruction in the use of the pond by the villagers. It is for this reason that a prayer has been made for determining the lease granted in favour of the respondent No. 5.

4. Having considered the aforesaid submissions, there is no statutory violation

alleged nor is there any material to indicate any such violation.

5. Learned Counsel for the petitioner submits that the respondent No. 5 is not a resident of the village and, therefore, he is not entitled for the grant of lease. For this, reliance has been placed on the family register extract indicating that the petitioner is a resident of different village and also the voter list of the said village. Learned Counsel for the respondent No. 5 disputes the said position and he contends that the respondent No. 5 is residing in the village and his name is also entered in the voter list. It is urged that the correct documents have not been filed on record.

6. Having perused the Government Order and the contentions raised, the priority for grant of lease is in favour of a Member of Schedule Caste or Member of a boatman community of the village; the second priority is in favour of Member of the village Nyay Panchayat and the third priority is in favour of any resident of the said category in the entire block. The fact that the respondent No. 5 is the resident of the same block is undisputed and, therefore, the respondent No. 5 falls within the third category as provided in the Government Order dated 17.10.1995.

7. The complaint made and the report given by the Lekhpal are at variance in respect of the main grievance raised namely that the respondent No. 5 is not a resident of the same village. This ground of residence, therefore, does not appear to be available to the petitioner Gaon Sabha.

8. So far as the utilization of the pond for the purpose as referred to in Clause-3 extracted hereinabove, the Government Order itself provides that the pond shall be allowed to be used for the said purpose unhindered. In the circumstances, this writ petition is disposed of with liberty to the Gaon Sabha to raise any complaint in case Clause-3 of the Government Order has been violated before the appropriate authority. There is no ground made out for, cancellation of the lease as on the strength or the records which are now available at present.