

(1999) 05 AHC CK 0149

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 38579 of 1993 & C.M.W.P. No. 653 of 1997

Gopal Singh and Ors.

APPELLANT

Vs

Upper Mukhya Adhikari, Zila Parishad, Aligarh & Ors.

RESPONDENT

Date of Decision : 06-05-1999

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1999) 05 AHC CK 0149

Hon'ble Judges : Binod Kumar Roy, J and D.R. Chaudhary, J

Final Decision : Disposed Of

Judgement

1. Since these two writ petitions are interparties, which have been heard together, and they were also tied up, they are being disposed of by this common order.

2. In Writ Petition No. 38579 of 1993 the six petitioners have come up with a prayer to quash a communication of the Addl. Chief Officer, Zila Parishad, Aligarh as contained in Letter No. 6/9394, dated 41093 (as contained in Annexure 16) communicating to Respondent Nos. 3 and 4 Smt. Chandrawati Devi and Smt. Ishwari Devi that in continuation of the order dated 2791993 of the Chairman of the Zila Parishad they are permitted to hold cattle fair on Saturday with this rider that they will hold cattle fair as per the Byelaws issued from time to time by the Parishad. Their further prayer is to quash the licences if any issued by Respondent Nos. 1 and 2 to the aforementioned Respondent Nos. 3 and 4. They have made yet another prayer to command Respondent Nos. 1 and 2 to permit the petitioners to deposit the licence fee for the year 199293 and for subsequent period for holding cattle fair in their Plot Nos. 613,629 and 631 of village Lohgarh, District Aligarh.

3. By an interim order dated 14101993 while issuing notices to Respondent Nos. 3 to 6 the Bench stayed the operation of the order dated 4th October, 1993 granting licences to Respondent Nos. 3 and 4.

4. In Civil Misc. Writ Petition No. 653 of 1997 the prayer of the petitioners is to quash the order dated 12121996 passed by Respondent No. 1 as contained in Annexure1 to the writ petition. Its perusal shows that the objection raised by the petitioners against grant of licences to hold cattle fair on Saturday in favour of Respondent No. 3 Ishwari Devi and Smt. Chandrawati, who according to the petitioners had died four months earlier to passing of the impugned order.

5. A lot of submissions were made in support of the prayers made by the petitioners through Sri Mahesh Gautam, their learned Counsel and in reply by Sri Choudhary, learned Counsel appearing on behalf of Zila Parishad Aligarh authorities and by Sri A.P. Shahi, learned Counsel appearing on behalf of Respondent No. 3 but in view of the nature of the order which we propose to pass, we do not consider expedient to reproduce all of them.

6. One of the common submissions made by Sri Choudhary and Mr. Shahi was that since the licence was granted for a limited period which expired, therefore, these writ petitions have become infructuous. On the other hand, the submission of Mr. Mahesh Gautam, learned Counsel appearing on behalf of the petitioners was that despite the fact that Smt. Chandrawati had died around August, 1996, therefore, the Zila Parishad has committed a blunder in upholding its earlier order issuing licences to her as well as Ishwari Devi Respondent No. 3 herein. His further contention was that having regard to the peculiar facts and circumstances including one that it was the petitioners who were holding the cattle fair on Saturday for the last about several decades except in the years 197778 they were holding cattle fair alongwith the aforementioned two ladies jointly but this significant aspect of the matter was completely lost sight of by the Zila Parishad authorities. He also contended that as the operation of the order dated 4101993, which is under challenge in Writ Petition No. 38579 of 1993 was stayed by the interim order dated 14101993, which is sti1"" operation till to date the authorities have committed blunder in granting licences further and some other authorities as well as Zila Parishad in permitting them to hold cattle fair on Saturday in connection with which the petitioners have already filed Civil Misc. Contempt Petition No. 2356 of 1993. In this regard Mr. Shahi contended that the said writ petition has been wrongly placed before us and if at all the placing is only for reference sake in terms of Court's order and that in terms of several further directions made by this Court, further orders have been passed by the authorities which is under challenge by an amendment petition in Civil Misc. Writ Petition No. 653 of 1997. Mr. Shahi also contended that the authorities have granted licences to the ladies taking into account that the land on which the cattle fair was being held or which is to be held this larger area belong to the ladies and not to the petitioners.

7. Having heard the learned Counsel for the parties, and perused the bulky records, we are of the view that the authorities are required to reconsider the matter objectively after considering the cases setforth by one or the other party and reminding the law that they cannot pass an order in favour of a dead person.

8. With the directions as above, we dispose of these two writ petitions with this further direction to Respondent No. 1 to pass a fresh reasoned order objectively applying its mind to the cases set forth by both sides and after perusal of the documents which have been produced earlier and which may be produced before him within 30 days from today.

9. We also give liberty to the parties, if one or the other so likes to file further detailed objection/claim in support of their respective cases.

10. We are being informed by Sri Choudhary that the Chairman of the Zila Parishad, Aligarh has been suspended and in his place a three men committee has been constituted by the State Government. If this be so, then the three men committee constituted by the State Government shall be obliged to pass appropriate orders.

11. The orders which are under challenge in these two writ petitions or by supplementary amendment application are being kept in abeyance and shall not be looked into for the purposes of fresh disposal of the dispute by Respondent No. 1.

12. We also put on record the request of Mr. Mahesh Gautam, learned Counsel for the petitioners that he made a request to keep the orders under challenge either through the main writ petition or through amendment application be kept in abeyance but having regard to the fact that the period for which they were under operation, and their operation was stayed earlier by this Court, we do not feel necessary to pass further order keeping them in abeyance taking into account that they by lapse of time had become infructuous and as stated above the earlier orders shall not be looked into by Respondent No. 1 for adjudicating the dispute which we have remitted back to him.

13. Before parting, it is clarified that this order shall not be construed to mean expression of our views in regard to pending contempt proceedings which is required to be heard and disposed of by a learned Single Judge.

14. The office is directed to handover a copy of this order within one week to Sri Choudhary, learned Counsel for the Zila Parishad, Aligarh for its communication to Respondent No. 1 for a follow up action by him.

Petitions disposed of.