
(2000) 07 AHC CK 0069

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 31987 of 2000

Kamla Kant Pathak

APPELLANT

Vs

Chief Revenue Officer, Deoria and Others

RESPONDENT

Date of Decision : 28-07-2000

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2000) 07 AHC CK 0069

Hon'ble Judges : R.H. Zaidi, J

Final Decision : Disposed Of

Judgement

R.H. Zaidi, J.—This petition was put up before me on 27.7.2000. Learned Standing Counsel prayed for and was granted 24 hours' time to seek instructions and to produce relevant Government Orders, if any, with respect to grant of fishing rights before the Court.

2. By means of this petition filed under Article 226 of the Constitution of India, petitioner prays for issuance of a writ, order or direction in the nature of certiorari quashing the order dated 23.5.2000, passed by the respondent to settle the fishing rights in favour of any member of community of fisherman and the order dated 29.1.1997 passed by the respondent No. 2 to settle the aforesaid right in accordance with the Government Orders in favour of any member of community of fishermen.

3. In the present case, no factual controversy is involved, learned Standing Counsel has also agreed that this petition may be decided finally at this stage. Accordingly, this petition was heard and is being decided finally at this stage.

4. Learned Counsel for the petitioner submitted that the lease was granted in favour of the petitioner for a period of ten years and under clause 12 it was provided that if the petitioner makes a payment of lease money and his work and conduct is found satisfactory, he would be entitled to get the lease renewed for a further period of ten years or for a short period, at his own expense. The

petitioner, therefore, prayed that his lease may be renewed for a further period of ten years as he fulfilled the terms and conditions of the lease deed to the satisfaction of the authorities concerned.

5. On the other hand, learned Counsel for the respondent submitted that in view of the Government Orders issued from time to time and in view of the decision of this Court, lease of fishing right can be settled by public auction only. In support of his submission reliance was placed upon the decision of the Division Bench of this Court in the case of *Panchoo v. The Collector/The District Magistrate, Gorakhpur and others*, reported in 1999 RD186.

6. I have considered the submissions made by the learned Counsel for the parties and also perused the record.

7. It is no doubt correct that lease of fishing right was granted in favour of the petitioner for a limited period of ten years. The term of the said lease has already come to an end. The law laid down by this Court is binding on the subordinate authorities and Courts. In the said case, it was ruled by this Court as under:

"Shri Swaraj Prakash, learned Counsel for the petitioner has relied upon the decision of a Division Bench of this Court *Ajai Singh v. State of U.P.* and the decision in *Gram Panchayat v. Collector*. In our opinion these decisions are with Article 19(1)(g) of the Constitution. Article 19(1)(g) states that every citizen has freedom to do business or trade. Hence in our opinion every citizen of any community or caste can do business of fishery, and it cannot be restricted to any particular caste or community. Any Rule or G.O. to the contrary is in our opinion violative of Article 19(1)(g). The renewal of the lease in 1997 was violative of Article 14 and 19(1)(g) and wholly unconstitutional. We are of the opinion that if the lease in question has been granted without advertisement in well known newspapers having wide circulation and thereafter holding public auction that lease will also be invalid. Hence if as yet no fishery lease after 1997 has been granted after advertising it in well known newspapers and holding public auction then we direct the authorities concerned to grant it only after following the aforesaid procedure otherwise it will be violative of Article 14 and 19(1)(g) of the Constitution."

8. In view of the aforesaid decision, the fishing rights can be settled only by means of a public auction. The impugned orders and the Government Orders, if any, to the contrary, are illegal and ineffective. The impugned orders are, therefore, liable to be quashed.

9. The writ petition succeeds and is allowed. The impugned orders dated 29/11/1997 and 23/5/2000 are hereby quashed. The respondents are directed to grant the lease of fishing rights in the pond situated in plot Nos. 301/.71 Decimal, 457/.31 Decimal, 713/7.27 Decimal and 775/11.36 Decimal Village Barka District Deoria. It is further, provided that if auction of the aforesaid rights in the pond in question, is held, the petitioner and other members of the public shall also be permitted to participate in the same. Petition allowed.