

(1982) 09 AHC CK 0030

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 15379 of 1981

Lakhmi Chand

APPELLANT

Vs

The Collector, Agra and Others

RESPONDENT

Date of Decision : 03-09-1982

Acts Referred:

Constitution of India, 1950 — Article 226
Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 126
Uttar Pradesh Zamindari Abolition and Land Reforms Rules, 1952 — Rule 115S

Citation : AIR 1982 All 460

Hon'ble Judges : M.N. Shukla, J

Bench : Single Bench

Advocate : R.K. Dwivedi and I.N. Misra, for the Appellant; Standing Counsel and D.S. Sinha, for the Respondent

Final Decision : Dismissed

Judgement

M.N. Shukla, J.—The Collector, Agra, respondent No. 1, made a declaration by publication for holding an auction of fisheries rights of river Yamuna Part III for the period 1-1-1982 to 31-12-1982 u/s 122-A of the U. P. Zamindari Abolition and Land Reforms Act read with Para 60 of the U. P. Gaon Sabha and Bhumi Prabandhak Samiti Manual, hereinafter referred to as "the Manual", in accordance with the terms and conditions incorporated in the auction notice attached as Annexure CA 2 to the counter affidavit filed on behalf of the respondents Nos. 1, 6 and 7 i. e. the Collector, Agra, the District Land Reforms Officer, Agra and the State of Uttar Pradesh. The conditions of the auction, inter alia, were that a bidder would be required to deposit a sum of Rs. 1,000/- as advance, thereafter furnish a certificate of solvency and then he would be entitled to participate in the auction. It was also provided that the bidder in whose favour the auction concluded would have to deposit one-fourth of the bid amount immediately and in the event of default his advance money i. e. Rs. 1,000/- would be forfeited and the bid would stand cancelled. Para 6 of the Conditions, stipulated that at the conclusion of the bids the highest bidder would

be required to deposit one-fourth of the bid amount immediately and after obtaining the sanction of the Collector he would have to deposit another one-fourth prior to the execution of the lease; thereafter the remaining half of the amount would have to be deposited in two equal installments within six months. In the event of default in depositing the installments the Collector shall be competent to cancel the lease and order reauction and recover the loss from the lessee. Para 9 of the Terms and Conditions is important and it is to the effect that ordinarily lease shall be executed in favour of the highest bidder but the Collector will have the right not to accept such highest bid and accept a lower bid and that the decision of the Collector in this respect shall be final. Para 24 of the Conditions provided that all disputes relating to the lease shall be decided by the Collector or his nominee.

2. Initially the auction of the fisheries rights for Gaon Sabha Naunihai in respect of Yamuna river Part III was held on 16-10-1981 by the District Land Officer, Agra, respondent No. 6. The petitioner's bid to the tune of Rs. 70,100/- was the highest bid whereas the bid of Ram Babu, respondent No. 3, was for Rs. 70,000/- only. These bids being considered inadequate by the respondent No. 1, The Collector, Agra, he ordered that the auction be held on the following day. Accordingly on 17-10-1981 again an auction was held in which the respondent No. 2, Jan Kalyan Samiti raised its bid to Rupees 1,50,200/-, the petitioner to Rs. 1,20,100/-, Ram Babu, respondent No. 3, to Rs. 97,100/-, Rais Khan, respondent No. 4, to Rupees 1,50,100/- and Sunehari Lal to Rs. 1,50,000/-. The bid of respondent No. 2, namely, Jan Kalyan Samiti, being the highest, was provisionally, accepted, subject to the approval of the Collector and a direction for deposit of one-fourth of the total bid amount was issued by the respondent No. 6. However, this auction was also cancelled on the ground that the auction bids in question were lower than those received in the preceding years, Consequently, the Additional Collector by his order dated 29-10-1981 directed reauction. The auction was then held on 5-11-1981 in which Sunehari Lal offered a bid of Rupees 2,00,000/-, Sri Rais Khan of Rs. 1,50,100/-, the petitioner of Rs. 1,51,000/- and Ram Babu of Rs. 1,50,000/-. The bid of Sunehari Lal being highest was provisionally accepted by the auctioning authority, namely, the District Land Reforms Officer but Sunehari Lal did not deposit one-fourth of the bid money and as such the auction held on 5-11-1981 was cancelled and the Additional Collector passed an order directing forfeiture of the earnest money deposited by Sunehari Lal and ordered reauction. The order was passed in accordance with condition No. 3 of the Terms and Conditions of the auction notice. In the circumstances on 7-11-1981 the petitioner filed an application purporting to be under para 60 (3) of the Manual asserting that he was a local fisherman and after the exclusion of the highest bid of Sunehari Lal on account of his failure to deposit one-fourth of the bid money, the petitioner became entitled to the acceptance of his bid, In these circumstances the District Land Reforms Officer recommended fresh auction and the Additional Collector after considering the petitioner's application dated 7-11-1981 ordered reauction, which took place

on 23-11-1981. In the meantime the petitioner had preferred a revision before the Commissioner and at the time of reauction the petitioner again asserted by making an application dated 23-11-1981 that he was a local fisherman and that he did not want any rebate of 25% to which he was entitled under the Rules and that even if the highest bid of respondent No. 2 be taken into account, then after deducting 25% the net amount paid by the petitioner would be highest, since the respondent No. 2 had actually claimed such rebate. On the petitioner's application the auctioning officer passed an order :

"He may offer bid if he so likes".

3. But the petitioner did not offer any bid. The objection filed by the petitioner was ultimately rejected by the Collector, Agra by his order dated 22-12-1981 and the auction held on 23-11-1981 was declared valid. It was by virtue of that auction that fisheries rights of river Yamuna Part III for the year 1982 were finalised in favour of the respondent No. 2 i. e. Jan Kalyan Samiti. On these facts the petitioner has prayed for a writ of certiorari for quashing of the order of the Collector, Agra dated 22-12-1981 and for a mandamus directing the respondent No. 1 not to grant approval in favour of respondent No. 2 on the basis of the reauction dated 23-11-1981. At the Bar another relief, which was vehemently pressed, was that the relevant authority be asked to execute a Patta in the petitioner's favour and the collector be ordered to grant approval to the same.

4. The question therefore which arises for decision is as to whether the petitioner is entitled to the reliefs claimed and whether on the above facts the authority concerned could be ordered to execute a Patta in the petitioner's favour and grant approval of the same. The subsidiary arguments advanced were that the authority had no right to cancel the auction from time to time and order reauction and that the petitioner having complied with all the requirements of law had earned a right to the execution of the lease in his favour. He mainly relied on the provisions of Para 60 of the Manual which, inter alia, provides :

"The highest bids in the auctions of fishing rights, whether the auctions are conducted by the Bhumi Prabandhak Samiti (Land Management Committee) or by the Collector, shall be accepted. If, however, the highest bidder does not belong to a class of local professionals (Mallaos or Dheemars etc.) or is not their registered co-operative society, and any of the other bidders belonging to such a class has given a bid, which is not less than 75 per cent of the highest bid, the lease of fishing rights shall be given to him. If there are more than one such bidders among the local professionals, the person whose bid is the highest among such of them shall get the fishing lease. Creation of monopolies of individuals shall, as far as possible, be avoided."

Reliance was also placed on the provisions of Para 58 of the Manual which says that no lease or licence in respect of any property vested in the Gaon Sabha shall be made in favour of a person except by public auction held in accordance with the procedure prescribed below :

"the auction shall be closed in favour of the highest bidder and shall become final--

(a) Where no objections are filed-- On the expiry of forty two days from the date of auction.

(b) Where any objections are filed.-- On the auction being confirmed by the Tahsildar or the Collector after the disposal of objection or the appeal, as the case may be."

It was contended, in short, that under the Rules the petitioner was the highest bidder and under the law the authorities were legally bound to close the auction in favour of the highest bidder and consequently the impugned order passed in favour of the respondent No. 2 was illegal. Before dealing with the various submissions of law made before me I deem it necessary to refer to the preliminary point on which alone the entire argument of the petitioner can be foreclosed. It cannot be disputed that originally the State was the repository of the rights in fisheries. Section 6 of the U. P. Zamindari Abolition and Land Reforms Act, 1950 provides that all rights, title and interest of all the intermediaries in fisheries shall cease and be vested in the State of Uttar Pradesh free from all encumbrances. u/s 117 of the same Act it was open to the State Government to declare by means of a notification that from the date specified in this behalf all the fisheries which had vested in the State shall vest in a Gaon Sabha or any other local authority etc. It is by virtue of such subsequent notification that the rights in fisheries have come to vest in the Gaon Sabhas. By virtue of Section 28-A of the U. P. Panchayat Raj Act the Gaon Panchayat of every Gaon Sabha shall also be the committee known as the Bhumi Prabandhak Samiti which would discharge the duties of the upkeep, protection and supervision of all property vested in the Gaon Sabha u/s 117 of the U. P. Zamindari Abolition and Land Reforms Act. Section 28-B of the U. P. Panchayat Raj Act provides that the Bhumi Prabandhak Samiti shall for and on behalf of the Gaon Panchayat establishing it be charged with the general management, preservation and control of all property referred to in Section 28-A, including the maintenance and development of fisheries and tanks. Thus it would be seen that the Bhumi Prabandhak Samiti discharges only those functions which are delegated to it by the State Government. Section 126 of the U. P. Zamindari Abolition and Land Reforms Act empowers the State Government to issue such orders and directions to the Land Management Committee as may appear to be necessary in order to ensure the efficient discharge of such functions. The State Government has also been empowered by the U. P. Zamindari Abolition and Land Reforms Rules to issue direction under the Rule 115-A to the Bhumi Prabandhak Samitis (Land Management Committees) established u/s 28-A of the Panchayat Raj Act on several matters, including those relating to the functions of the Bhumi Prabandhak Samiti as laid down in Section 28-B of the U. P. Panchayat Raj Act. In this connection it is necessary to notice the provisions of Rule 115-B of the U. P. Zamindari Abolition and Land Reforms Rules and explanations added thereto:

"115-B. The directions on the subjects mentioned in Rule 115-A shall be issued by the State Government to the Land Management Committee through the Collector of the district.

Explanation (1)-- The directions contained in the Bhumi Prabandhak Samiti Manual shall be deemed to be the directions issued in accordance with Rule 115-A.

Explanation (II)-- The directions contained in the Gaon Samaj Manual, so far as they are necessary for purposes of this Act, and are not inconsistent with these rules, shall be deemed to be the directions issued under Rule 115-A so long as they remain in force".

From Explanations I and II it is manifest that the Bhumi Prabandhak Samiti Manual is largely a compendium of the directions contained in the Rules framed under the U. P. Zamindari Abolition and Land Reforms Act. I have already noted that in support of his contention the petitioner had mainly relied on para 58 of the Manual which lays down that the auction shall be closed in favour of the highest bidder. This provision is only an extension and reproduction of Rule 115-S of the U. P. Zamindari Abolition and Land Reforms Rules but that Rule is hedged in by the following proviso:

"Provided that the provisions of this Rule shall not apply to cases in which the State Government issue directions u/s 126 of the Act read with Rules 115-A and 115-B."

Since the Rule enshrined in Para 58 of the Manual about the acceptance of the highest bid is culled from the directions issued u/s 126 of the U. P. Zamindari Abolition and Land Reforms Act read with Rules 115-A and 115-B of the U. P. Zamindari Abolition and Land Reforms Rules, this provision shall not be applicable to the auction of fishing rights.

5. Even if it be assumed for the sake of argument that para 50 (58?) of the Manual is attracted to the facts of the present case, the petitioner is not entitled to any relief. He can succeed on his own strength and not by merely pointing out the infirmities in the case of the respondent No. 2. The existence of a legal right is the foundation of a petition under Article 226 of the Constitution. Before a writ or an appropriate order can be issued in favour of a petitioner, it must be established that he has a legal right, which has been illegally invaded or threatened. (See *State of Orissa v. Ram Cbandra Dev*, AIR 1964 SC 685). The right to maintain a petition under Article 226 postulates a subsisting personal right in the claim which the petitioner makes and in the protection of which he is personally interested. (See *Kalyan Singh v. State of U. P.*, AIR 1962 SC 1183).

6. The question, therefore, which arises is whether the petitioner had acquired any legal right by virtue of which he could force the Collector to grant an approval to his bid and execute a Patta in his favour. The reply must be in the negative. The terms and conditions of the auction were, admittedly embodied in

the notice of auction annexed as Annexure CA 2 to the counter affidavit of the District Magistrate. Paragraph 9 of that document clearly authorises the District Magistrate to decline to grant a lease in favour of the highest bidder and attaches finality to his decision in this regard. It is, therefore, evident that unless the Collector approves of and accepts the highest bid, such bidder does not acquire any legal right to have the Patta. It is not the petitioner's case that his bid was approved by the Collector. On the other hand, his whole grievance is that the Collector acted illegally in refusing to accept the petitioner's bid. Where licences are granted by holding auctions the parties are bound by the terms and conditions of the auction. The petitioner and other bidders participated in auction without demur and with full knowledge of the commitments which the bids involved. The conditions governing the auction were in the nature of an invitation to those who were interested in the sale of fisheries lights to make their offers. The bids given in the auction were offers made by the prospective vendors to the Collector and the parties could not resile from such conditions. It is only after the Collector accepts and approves of the highest bid that the question of executing a lease within one week thereof arises as provided in para 10 of the terms and conditions. Until such approval or acceptance by the Collector is accorded and the formal agreement executed on behalf of the Collector, the sale is not binding on him. Admittedly no such approval has been given by the Collector and no formal agreement was executed. Consequently no rights have been created in favour of the petitioner on the basis of the bid offered by him. The petitioner's so-called highest bid at the auction having not culminated into a binding contract between the parties, the petitioner has no enforceable right to challenge the settlement made by the Collector in favour of the respondent No. 2. It was open to the Collector not to accept any highest bid. Condition No. 3 is very clear that where a person in whose favour the bid has concluded fails to deposit one-third of the bid amount immediately, the Collector can treat such bid as cancelled and likewise under Condition No. 6 if there is any default in the payment of the deposit amount, the Patta, even though executed, can be cancelled and the property be re-auctioned. The principle applicable to the auction sales in which the vendor has reserved the right to refuse to accept the highest bid was succinctly enunciated in the case of Haridwar Singh Vs. Bagun Sumbrui and Others, where in similar circumstances their Lordships held that the coup could be settled with some other party despite an auction sale having taken place and the highest bid obtained and that this option was open to the Government until the highest bid was finally accepted. Similarly in the case of State of Orissa and Others Vs. Harinarayan Jaiswal and Others, which related to a case of excise, it was ruled that once the Government declined to accept the highest bid the auction held became useless. It was observed in para 17 that:

"Public auctions are held to get the best possible price. Once these aspects are recognised, there appears to be no basis for contending that the owner of the privileges in question who had offered to sell them cannot decline to accept the highest bid if he thinks that the price offered is inadequate. There is no

concluded contract till the bid is accepted. Before there was a concluded contract, it was open to the bidders to withdraw their bids By merely giving bids, the bidders had not acquired any vested rights."

7. These principles apply with full force to the facts of the present case. The above decisions of the Supreme Court were followed by the Orissa High Court in the Division Bench case of Nilgiri Contractors Society v. State of Orissa AIR 1975 Ori 33 and the Full Bench case of Abdul Yakub Vs. State of Orissa and Others, . In the latter decision it was held that it was apparent from the general condition of auction sale of the forest produce in Orissa, that a contractor acquired no rights until the ratification order was communicated to him and a formal agreement was executed on behalf of the Government and so no legal right accrued to the petitioner which could be enforced through a writ petition. In the case of Sushil Chandra and Another Vs. The State of Uttar Pradesh and Others, a Division Bench decided that in an auction for sale of excise shops, according to the provisions of the Excise Manual, unless a bid received the sanction of the Excise Commissioner, no right was acquired by the highest bidder and before by certifying of the acceptance no settlement of shop could be said to have taken place. For this reason it was held that the petitioner despite his highest bid had no "locus standi" to complain if the licence was refused to him. The same opinion was endorsed in the cases of Virendra Kumar v. State of U. P. 1978 All LJ 108 and Krishna and Others Vs. State of U.P. and Others, .

8. On the facts of the present case I am unable to hold that a concluded contract came into existence between the parties and in any case if the petitioner feels aggrieved on account of the breach of the conditions of the contract, a writ petition is not an appropriate remedy for impeaching contractual obligations (See Har Shankar and Others Vs. The Dy. Excise and Taxation Commr. and Others, .

9. I do not find any merit in another submission advanced on behalf of the petitioner on the basis of para 60 of the Manual. It was contended first that the petitioner was a local fisherman as contemplated by Paragraph 60, and secondly, that the respondent No. 2 was not a registered Co-operative Society of such local fishermen as provided by the same Rule. These are essentially questions of fact on which it is not possible for this Court to substitute its own finding for the conclusions reached by the authorities who held and conducted the auction. In the writ petition there is no allegation that the respondent No. 2 was not a registered Society of professional fishermen of the locality. The only averment in para 10 is that the respondent No. 2 is a fraudulent organisation of one Brij Lal and it is a forged body, none of whose members is a fisherman. On the other hand, in the counter affidavit filed on behalf of respondent No. 2 there is a categorical assertion that it is a society registered u/s 8 (1) of the U. P. Co-operative Societies Act, 1965. A photostat copy of the certificate of registration is appended as Annexure CA 1. The District Magistrate in his counter affidavit has also supported his assertion and referred to the same registration certificate. It contains an additional allegation which is very important that the petitioner may

be a fisherman but not a local fisherman vis-a-vis the area or river in question and so he was not entitled to the benefit of para 60 (3) (d) of the Manual. I find no reason to disagree with the finding of fact recorded by the Collector and the District Land Reforms Officer, Agra.

10. On the aforesaid analysis I find no merit in this writ petition, which is accordingly dismissed. In the circumstances of the case there is no order as to costs.