

(2014) 10 AHC CK 0018
In the Allahabad High Court
Case No : Writ-B No. 57999 of 2014

Lal Bahadur

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 31-10-2014

Acts Referred:

Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 198(4), 198(6)

Citation : (2015) 126 RD 310

Hon'ble Judges : Ram Surat Ram (Maurya), J

Bench : Single Bench

Advocate : P.K. Chaurasia, Advocates for the Appellant; Tariq Maqbool Khan, Advocates for the Respondent

Judgement

Ram Surat Ram (Maurya), J.—Heard Sri P.K. Chaurasia for the petitioner. The writ petition has been filed for quashing the order of Collector dated 17.10.2013 canceling the fisheries lease of the petitioner and the order of Board of Revenue dated 8.9.2014 dismissing the revision of the petitioner against the aforesaid order.

2. It is stated that the tank situated in plot No. 540, area 4.290 hectare of village Bairawa Bankatwa, Tehsil Nautanwa, district Maharajganj was settled for fisheries lease on the basis of the resolution of Land Management Committee dated 29.7.2009 in favour of the petitioner, which was approved by the Sub Divisional Officer by order dated 3.8.2009. Against the approval granted by the Sub Divisional Officer, Shanker Nishad and Ram Chandra filed an application before the Collector for cancellation of the approval granted by the Sub Divisional Officer. After issue of notice the petitioner appeared before the Collector and the matter was contested by him before the Collector. On 20.9.2013, the petitioner filed an application for adjournment of case in order to give opportunity for argument. However, the Collector decided the matter by order dated 17.10.2013. The Collector in the order dated 17.10.2013 found that notice of settlement of

fisheries lease was published by beat of drum on 29.7.2009 and the meeting of Land Management Committee was held on that day at 12-00 noon. Lekhpal submitted the report relating to resolution of the Land Management Committee on the same day. Although the area of pond was 4.290 hectare but the procedure for auction as well as publication has not been followed. The petitioner, who was an individual and was granted lease of the pond although according to the Government Order he was not eligible. On these findings the proposal of Land Management Committee dated 29.7.2009 and the order of approval of the Sub Divisional Officer dated 3.8.2009 was cancelled and the Sub Divisional Officer was directed to make a fresh publication for settlement of fisheries lease after following the prescribed procedure. The petitioner filed a revision against the aforesaid order, which was dismissed by the Board of Revenue by order dated 8.9.2014. Hence this writ petition has been filed.

3. The Counsel for the petitioner submits that no objection has been filed under the provision of Rule 115-S of the Rules framed under U.P. Act No. 1 of 1951 within the time limit prescribed under the aforesaid Rules. In such circumstances, the lease of the petitioner was not liable to be cancelled. He submits that the Collector has failed to consider the resolution of the Land Management Committee in which it has been clearly mentioned that although area of the pond is 4.290 hectare but water logging is in the area of 0.910 hectare and even some portion of it also remain dry without water in summer season. In such circumstances, the area of actual pond was below one hectare and not above two hectares. The Land Management Committee was competent to grant fisheries lease on the basis of resolution passed by it. The observation of the Collector that publication of notice by beat of drum was made on 29.7.2009 is incorrect inasmuch as report of the Lekhpal as well as in the resolution it has been clearly mentioned that notice by beat of drum was made on 20.7.2009.

4. I have considered the arguments of the Counsel for the petitioner.

5. So far as the argument based on the limitation as provided under Rule 115-S is concerned, Rule 115-S is not applicable over the resolution of the Land Management Committee. In any case the procedure for cancellation of the lease has been provided under section 198(4) of U.P. Act No. 1 of 1951 and limitation as provided under section 198(6) of U.P. Act No. 1 of 1951 is five years from the date of allotment. In such circumstances, it is incorrect to say that proceeding initiated before the Collector for cancellation of the approval of the allotment was beyond limitation.

6. So far as the other argument about area of the pond as well as notice by beat of drum is concerned, the Collector has clearly recorded that area of pond was 4.290 hectare and notice by beat of drum was given on 29.7.2009 on which date the resolution has been passed. Therefore, finding in this respect cannot be challenged only on the basis of report of Lekhpal.

7. So far as eligibility of the petitioner is concerned, since the area of pond is

4.290 hectare as such auction ought to have been held after due publication and the eligibility criteria as mentioned in the Government Order dated 17.10.1995 and the petitioner being an individual was not coming in the preferential categories as mentioned in it. The impugned orders do not suffer from any illegality. The writ petition is dismissed.