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**(2008) 05 AHC CK 0150**  
**In the Allahabad High Court**

Laloo Mallah

APPELLANT

Vs

Board of Revenue and Others

RESPONDENT

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**Date of Decision :** 16-05-2008

**Acts Referred:**

Constitution of India, 1950 — Article 19

**Citation :** (2008) 3 AWC 3136 : (2008) 105 RD 237

**Hon'ble Judges :** Ashok Bhushan, J

**Bench :** Single Bench

**Final Decision :** Disposed Of

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## Judgement

Ashok Bhushan, J.—Heard Sri P.K. Singh, learned Counsel for the petitioner, Sri Vivekanand Yadav, learned Counsel for the respondent No. 6 and Sri V.K. Singh, learned Counsel for the respondent No. 4 as well as learned Standing Counsel. Counter and rejoinder affidavits have been exchanged and with the consent of learned Counsel for the parties, the writ petition is being finally decided.

By this writ petition, the petitioner has prayed for a writ of certiorari, quashing the order dated 15.2.2008, dismissing the revision of the petitioner against the order dated 31.8.2006 by which order fisheries lease has been approved in favour of respondent No. 6.

2. The brief facts necessary for deciding the writ petition are; an advertisement was published in daily news paper "Dainik Jagaran" fixing 21.7.2006 for settlement of fisheries lease in accordance with the relevant Government Orders by organizing a camp in Tahsil Salempur, district Deoria for various ponds mentioned therein. One of the ponds which was to be settled was pond No. 25 Ka area 0.458 hectare village Dhanauli Lala. Six persons appeared and made applications for grant of fisheries lease. The applicants were directed to produce their income certificate and caste certificate. The committee considered five applicants including the petitioner as well as the respondent No. 6, Vinod Sahni. The income of the petitioner was shown as Rs. 30,000/-, whereas income of

respondent No. 6 was shown as Rs. 21,000/-. Recommendation was made in favour of respondent No. 6 for grant of Patta at the rate of Rs. 700/- per month. The Sub Divisional Officer on 31.8.2006 approved the lease in favour of respondent No. 6 against which order, the petitioner filed a revision before Board of Revenue. The Board of Revenue rejected the revision holding that settlement was made by Sub Divisional Officer on the basis of the income certificates. It was also held that there was no illegality in settling the lease other than by auction.

3. Learned Counsel for the petitioner challenging the impugned orders contends that the procedure adopted by the respondents for settlement of the lease, is incorrect and against the Government Orders issued by the State Government for regulating the grant of lease. He further contends that in view of Full Bench judgement of this Court in Ram Kumar and Ors. v. State of U.P and Ors. reported in 2005 (3) UPLBEC 2487 , when there are more than one person in one category, the settlement is to be made only by auction. Learned Counsel for the petitioner further submits that the premium on which the lease has been granted, has been fixed without any basis and is inadequate. Learned Counsel for the petitioner submits that the petitioner was ready to take the pond at the premium of Rs. 10,000/- per annum. This Court in its judgment in the case of Babban Ram Vs. State of U.P. and Others, held that average premium for granting fisheries lease has to be Rs. 10,000/- per hectare per year. Learned Counsel appearing for the respondent No. 6, refuting the submission of learned Counsel for the petitioner, contended that settlement of fisheries lease made by the Sub Divisional Officer was on the basis of income certificate of the applicants, which is in accordance with Government Order dated 17.10.1995. Learned Counsel appearing for the respondent No. 6 submitted that Full Bench judgment of this Court in the case of Ram Kumar (supra) has upheld the procedure for grant of lease as laid down by the Government Order and has disapproved the judgment of this Court which had held that fisheries lease could only be settled through public auction. Learned Counsel for the respondents referred to Annexures-4 and 5 to the counter affidavit in order to show that amount of Rs. 1000/- per hectare is the amount as intimated by Mukhya Karyakari Adhikan, Deoria hence, the amount fixed was in accordance with orders of the Collector of the District, which is adequate. Learned Standing Counsel as well as learned Counsel for the Gaon Sabha has supported the settlement in favour of the respondent No. 6 and has contended that such settlement is in accordance with the procedure prescribed under the Government Order dated 17.10.1995, which has been issued by the State Government in exercise of the powers u/s 126 of the U.P. Zamindari Abolition and Land Reforms Act.

4. I have considered the submissions of learned Counsel for both the parties and perused the record.

U.P. Zamindari Abolition and Land Reforms Act, 1950 and the Rules framed thereunder regulate the grant of lease of Gaon Sabha property as well as fisheries lease. Section 126 of the Act empowers the State Government to issue

orders and directions to the Land Management Committee as may appear to be necessary for the purposes of this Act. Rule 115-S(1) provides that no lease or licence in respect of any property vested in the Gaon Sabha shall be made for a period exceeding one year except with the specified permission of the Government in the Revenue Department and no lease or license shall be made in favour of a person except by a public auction. However, the proviso to Rule 115-S Sub-rule (ii) provides that provisions of Rules shall not apply in cases for which State Government has issued directions u/s 126 of the Act read with Rules 115-A and 115-B. Proviso to Rule 115-S(ii) is quoted herein below:

Provided that provisions of this rule shall not apply to.

(i) ...

(ii) Cases in which the State Government issues direction u/s 126 of the Act read with Rules 115-A and 115-B.

5. The State Government from time to time has issued various Government Orders, regulating the grant of fisheries lease for the tanks and ponds vested in the Land Management Committee. Learned Counsel for the respondents has placed before the court the relevant Government Orders issued on 17.10.1995 for management of tanks, ponds and water channels which vest in the Gaon Sabha. The said Government order has been issued specifically u/s 126(1) and Rule 115A. It is necessary to look into the procedure as laid down in the Government Order for settlement of fisheries lease. The procedure prescribed for settlement of a fisheries lease is different for the ponds and tanks up to two hectares and the ponds and tanks which are more than 2 hectares. In the present case, the pond in question has an area of 0.458 hectare hence, the procedure prescribed for settlement of pond of less than 2 hectares was required to be followed. The category A provides for settlement of such ponds in favour of persons belonging to Machhuva community (Kevat, Nishad, Mallah, Bind, Dheedar, Cheemar, Kashyap, Batham, Raykavar, Majhi, Mediya, Kahar, Sureha or Suraha, Gondiya, Tureha, Turaha etc.) belonging to the concerned Gaon Sabha. Thereafter the next category is of the persons belonging to above communities of concerned Nyay Panchayat. The present is a case of the applicants belonging to the same Gaon Sabha. Paragraph 5(ii) is relevant for the present case which is as follows:

;fn ojh;rk dze ls ,d ls vf/kd O;fDr@lfefr;ksa gks rks muds izkFkZuk i= ij izkIr dj fu/kZurk@vko;"drk ds vk/kkj ij iV~Vk fu"ikfnr fd;k tk;sxk A

6. Thus, the Government Order contemplates that for settlement of fisheries lease, if there are more than one person/society in one category, then after obtaining applications from them, the lease is to be considered by Avantan Samiti on the basis of poverty/need. The Government Order itself provides for settlement of fisheries lease on the basis of poverty/need. In the present-case, the respondents have proceeded to ask the applicants to submit their caste certificate and income certificate and on the basis of the certificates received, the

respondent No. 6, who was found to have less income, has been selected for the grant of fisheries lease.

7. The submission which has been pressed by learned Counsel for the petitioner is that when there are more than one person in one category, the settlement of fisheries right has to be made only by auction. Learned Counsel for the petitioner has placed reliance on the Full Bench judgment of this Court in the case of Ram Kumar and Ors. v. State of U.P and Ors. (supra). The Full Bench judgment considered the Government Orders issued from time to time u/s 126 including the last Government Order dated 17.10.1995. Learned Single Judge made a reference for consideration of the Full Bench due to conflicting Division Bench judgements. The Division Bench judgment in the case of Ashok Kumar v. State of U.P. reported in 1995 ACJ 1066, Panchu v. Collector reported in 1999 R.D. 186, had taken view that fisheries lease has to be granted after holding public auction, whereas the Division Bench in Gram Panchayat Kanta Gulzarpur, Unnao v. Collector, Unnao and Ors. reported in 1997 (3) A.W.C. 1665 held that Government Orders issued u/s 126 of the Act does not amount to discrimination because the State can make any provision for the advancement of any social or backward classes of citizens. The Full Bench did not approve the view of the Division Bench that lease has to be necessarily settled through public auction. Following was laid down by the Full Bench in paragraphs 23 and 25:

23. From the above pronouncements made by the apex Court, it is well settled that restrictions imposed to give effect to the constitutional goals as laid down in Directive Principles of State Policy are restrictions with intention to give certain benefits to weaker Section of the society which are reasonable restrictions which does not infringe any right of individual citizen under Article 19(1)(g). The rights under Article 19(1)(g) are not absolute rights. As noted above, every individual has also right of consideration but according to preference laid down in the Government orders issued u/s 126 of the 1950 Act. The preferences have been provided in the scheme of the Government with object of providing livelihood to fishermen and fishermen cooperative societies. The view of the Division Bench in Panchoo's case (supra) and other cases that unless fishing right is not settled by auction it will violate Article 19(1)(g) is not correct. The settlement of fishing right by auction will necessarily be in favour of a person giving highest bid. The big contractors and moneyed persons will steal a march over poor fishermen and other poor people of the village who are unable to organise themselves and the result would be that a sizeable Section of fishermen and other communities will be deprived of their livelihood. To stop the settlement from going into the hands of big contractors and middlemen, the scheme was enforced by the State Government. The scheme has rational nexus with the object sought to be achieved and the persons for whose benefits the scheme has been framed definitely falls in a separate class having intelligible differentia. The settlement of fishing right in ponds and tanks by public auction cannot be held to serve the purpose and object nor the same can carry forward the goals as laid down in the Directive Principles of State Policy. Mere getting more revenue by public auction

is not only object for letting out the fishing right. The objective as displayed from the directions of the State Government u/s 126 of 1950 Act is to provide livelihood to fishermen and other similar communities and also to give preference to the cooperative societies of such fishermen so that they may organise themselves and carry on their traditional vocation for the benefit of large part of weaker Section of the society.

25. However, it is relevant to note that the directions issued u/s 126 of 1950 Act itself provides that settlement of fishing right shall be done with proper and extensive publicity so that all who are eligible to participate may be aware of such proposed settlement and may participate. It is true that without information or knowledge of all concerned who are eligible to participate the settlement will be arbitrary. The Division Bench of this Court in 1992 A.L.T. 482; Gaon Sabha, Tuja, v. The Sub Divisional Officers and Ors., had noted the proviso to Rule 115-S and observed that public auction for settlement of fishery right is not mandatory. The Division Bench, however, in the said judgment has observed that although there is no requirement to the Sub Divisional Officer to settle the fishery lease by auction but the said procedure of auction can be exercised by the Sub Divisional Officer when there are more than one person claiming entitlement for grant of lease. Following was laid down by the above Division Bench in paragraph 5:

5. ...While laying down order of preference for the grant of Patta it has been provided that if there are more than one person of one group the Patta shall be granted by auction in favour of the highest bidder. The normal rule laid down by aforesaid Government order is the grant of Patta by Sub Divisional Officer without any public auction, unless the case falls within the last part of Clause 2 which has provided for public auction, if there are more than one person of one group. It may, however, be observed that though there is no statutory requirement requiring the Sub Divisional Officer to settle the land by auction, there is no prohibition either and if he is of the opinion that in view of the fact and circumstances of a particular case it will be expedient to grant the Patta of the fisheries right by means of public auction, he may do so. But if he has settled the fisheries by means of other than the auction his order cannot be set-aside on the ground that he has not settled it by holding public auction.

8. From the above observation of the Full Bench, it is clear that the settlement in accordance with the Government Order issued u/s 126 is justified. However, the Full Bench also made following observation in paragraph 26:

26. The settlement of fishery according to the directions u/s 126 of 1950 Act is settlement of property vested in the Gaon Sabha which should be done in a prescribed manner giving opportunity to all eligible persons to participate. The Revenue Officers, who are entrusted with duty, shall ensure proper advertisement of the date of settlement so that all persons who are eligible to participate have sufficient notice of the proposed settlement. The Government order itself contemplate "wide publicity". The Sub Divisional Officer himself should see that wide publicity is made. Now a days newspapers having wide

circulation in the area is surest mode to publish a proposed settlement. As a general rule the Sub Divisional Officer should publish in a newspaper having wide circulation of the settlement of fishing right to enable all concerned to participate. As observed above, in the event there are more than one person in one particular category of preference, the Sub Divisional Officer is not prohibited to award the said fishing right by inviting bids by tender or auction.

9. The observation of the Full Bench as quoted above are to the effect that Sub Divisional Officer is not prohibited to award the said fisheries right by inviting bids by tender or auction. The Full Bench has also emphasized the necessity of issuing proper advertisement before settling the fisheries right. The Full Bench thus, has not laid down that fisheries right has to be settled only by public auction when there are more than one person in one category. Although the Full Bench held that Sub Divisional Officer is not prohibited to invite tenders or auction. Inviting tenders or holding auction is thus, not prohibited but if settlement is made without inviting tender or auction, it cannot be said that settlement is liable to be set aside only on that ground. In the present case, the Sub Divisional Officer proceeded to settle the fisheries right in accordance with the Government Order dated 17.10.1995 hence, the procedure adopted by the Sub Divisional Officer cannot be faulted. Thus, the submission of the learned Counsel for the petitioner that procedure adopted for settlement of fisheries right is contrary to the law laid down by the Full Bench , cannot be accepted.

10. Now comes the second Submission of the learned Counsel for the petitioner with regard to fixing of the lease rent without any basis and the same being inadequate. The lease has been granted in favour of respondent No. 6 for an amount of Rs. 700/- per annum. This Court in the case of Babban Ram (supra), while considering the question of premium for fisheries lease, made following observations in paragraph 6:

On the basis of experience gained by auctioning fisheries leases in court it can safely be said that the average premium for which such leases can be granted is Rs. 10,000 per hectare per year. In future if lease is granted for lesser premium than Rs. 10,000 per hectare per year then special reasons must be given by the Deputy Collectors in the orders accepting the proposal/bid.

To support the premium of Rs. 700/- per annum the learned Counsel for the respondents has relied on letter dated 31.5.2006 of Mukhya Karyakari Adhikari and letter dated 15.6.2006 both the letters have been collectively filed as Annexure-C.A.-4 to the counter affidavit of respondent No. 6. The letter dated 31.5.2006 referred to paragraph 4-60(2)(Ga) of the Gaon Sabha Manual with regard to annual rent for pond and tanks. Paragraph 60(2)(Ga) is quoted herein below:

“60? ?? ?x? iV~Vs ds fy, okf"kZd yxku mDr rkykc] isk[kjs] ehuk"k; vkfn ds fiNys rhu o"kksZ dh vk; dk vkSlr fudky dj fu;r fd;k tk,xk A ,sls rkykc vkfn tks uo fodflr gks vFkok fiNyh vk; Kkr u gks ogkW yxku eRL; foHkkx }kjk r; dh x;h njksa

ds vuqlkj gksxk vkSj tc rd njs r; u gks vU; d`f"k iV~Vks dh Hkkafr eSk:lhknj ls vkdfyr yxku dh nqxquh /kujkf"k] yxku ds :i es fuf"pr dh tk; A

11. It is relevant to note that in the Government Order dated 17.10.1995, there is no guideline for fixing the premium. No other material has been brought before the Court regarding fixation of the premium. Paragraph 60(2)(Ga) as quoted above, may be treated as relevant criteria for fixation of lease rent. The principles which has to be adopted for fixing rent is average of the income of the last three years from the pond. Only for those tanks, which are newly developed or with regard to which earlier income is not known, the lease rent can be fixed on the basis of rates fixed by fisheries department and until the rate is not fixed, on the basis of hereditary rent. In the present case, the said letter dated 31.5.2006 refers to the lease rent as fixed for the development of pond. A calculation has been annexed along with the letter which is at page 23 of the counter affidavit. The heading of the calculation is "Cost Approved in U.C. Meeting Held on 22.01.2001 Development of Existing Pond (One Ha)". While approving the cost as is apparent from the calculation, there are two heading i.e. Capital expenses and Recurring expenses. Capital expenses for developing one hectare has been mentioned as 82500/-and recurring expenses have been mentioned as Rs. 31,500/- grand total Rs. 1,14,000/-. In the said calculation under the heading of Recurring expenses in column No. 10 there is a heading lease rent. The rate is mentioned as lump sum Rs. 1000/-. The astrick has been put against the item lease rent which has been explained "to be fixed on case to case basis". Thus, the lease rent which has been mentioned in the calculation has been taken as lease rent for one particular case for development of existing pond. The said lease rent has been added as a recurring expenses which will be incurred by the unit for development of the pond and the said amount has been explained as to be fixed on case to case basis thus, even that calculation which has been relied in the letter dated 31.5.2006, cannot be said that fisheries department has fixed rate of rent as Rs. 1000/- per hectare. The Mukhya Karyakari Adhikari has wrongly taken the aforesaid amount as rate fixed by the fisheries department. The word "to be fixed on case to case basis" has been lost sight of for fixing the rent for settlement of a pond or tank. One of the relevant factor is the cost which has to be incurred for maintenance and development of the pond. It is not clear from the facts of the present case, as to whether the pond is to be developed or to be maintained by lessee or Land Management Committee. It is not necessary to express any opinion in this regard in this case. Suffice it to say that fixing of rent as tried to be explained by the respondent No. 6, cannot be accepted. Thus, the submission of the learned Counsel for the petitioner that fixing of rent is inadequate and has been issued on wrong basis, has to be accepted. The Collector office also by letter dated 15.6.2006 has intimated the Sub Divisional Officer that the rent of the pond be fixed as Rs. 1000/- per hectare per annum as mentioned in the letter dated 31.5.2006. Both the Collector and Mukhya Karyapalak Adhikari has not adverted to the calculation (cost approved in U.C. meeting held on 22.1.2001 development of existing pond)

and has mechanically come to the conclusion that Rs. 1000/- has been fixed per hectare which has to be fixed on case to case basis as per the calculation itself. However, since in view of the fact that lease has already been granted in favour of respondent No. 6, who is carrying out the lease and it has been found in the earlier part of the judgment that the lease was settled in accordance with procedure laid down under the Government Orders, ends of justice be served in directing that the lease rent to be paid by the respondent No. 6 be enhanced to Rs. 5000/- per annum, since in the event the matter is remitted to the Sub Divisional Officer for fixation of lease rent, there shall be unnecessarily delay. Fixing of Rs. 5000/- per annum for the pond is also in accordance with the observations of this Court as made in the case of Babban Ram (supra).

12. In view of the foregoing discussions, the prayer of the petitioner for quashing the order approving the lease, is refused. However, the respondent No. 2 is directed to charge the lease rent from respondent No. 6 at the rate of Rs. 5000/- per annum w.e.f. 2008 onwards.

The writ petition is disposed of with the aforesaid direction.