

(2005) 03 AHC CK 0178

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 38078 of 2001

Manohar Lal

APPELLANT

Vs

State of U.P., Additional Commissioner (Administration),
Bareilly Division, District Magistrate and Jhajan Lal

RESPONDENT

Date of Decision : 07-03-2005

Acts Referred:

Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 194, 198(4)

Citation : (2005) 2 AWC 1086

Hon'ble Judges : Rakesh Tiwari, J

Bench : Single Bench

Advocate : Devendra Swaroop, for the Appellant; B.B. Jauhari and S.C., for the Respondent

Final Decision : Dismissed

Judgement

Rakesh Tiwari, J.—Heard counsel for the parties and perused the record.

2. The petitioner has filed this writ petition for quashing the order passed by the Commissioner (Administration), Bareilly dated 1.11.99 and the order of the District Magistrate, Pilibhit dated 26.8.98 cancelling the fisheries lease granted to the petitioner on 20.7.96 in exercise of power u/s 198(4) of U.P.Z.A. & L.R. Act.

3. A fishery lease of plot No. 261 area 1.044 hectares situate in village Umaria, Tehsil Bisalpur was granted on 20.7.96 to the petitioner for 10 years. Earlier the lease was granted to Jhaghan Lal whose lease expired on 30.11.95. A proposal was made by Gram Sabha Umaria to grant the lease to the petitioner. However, the A.D.M. (Finance and Revenue), Pilibhit submitted a report that lease had been wrongly granted to the petitioner, prior to expiry of earlier lease. The lease of the petitioner was cancelled by order dated 1.11.99. The petitioner filed a revision which was dismissed on 30.6.2001. During the pendency of revision the order of cancellation remained stayed.

4. The petitioner challenges the order of cancellation on the ground that earlier

fishery lease had been cancelled. The respondents have no right to cancel the lease u/s 194 of the U.P.Z.A. & L.R. Act as said section deals with allotment of land of Sirdar and Assamies and of fishery lease. It was also alleged that Collector has no power of review for reviewing his order and wrongly stating that Nanhi Devi wife of the petitioner participated in the meeting of the Gaon Sabha in which lease had been granted. It was also stated that only Rs. 2.50 paise per annum was fixed as lease rent which is no consideration. Contravention of Section 28-C of the Panchayat Raj Act was also alleged.

5. The contention of the respondents is that the lease was granted in favour of three persons, namely Sarva Sri Tula Ram, Janki Prasad and the petitioner. Sri Tula Ram and Janki Prasad did not challenge the order of cancellation of lease before the Commissioner and have also not been impleaded as respondents in this writ petition, hence petition is bad for nonjoinder of necessary parties.

6. It is further submitted that lease granted in favour of petitioner was illegal because it was granted during subsistence of earlier lease i.e. before expiry of 10 years, Smt. Nanhi Devi wife of petitioner was a member of Gaon Sabha, was present and signed the resolution for granting of lease was passed as such it is against Section 28-C of the Panchayat Raj Act. He also submits that it has been held by a division bench of this Court in 1997 RD page 656, Abdul Gaffoor v. State of U.P. and full bench judgment of this Court in case of Panchayat Raj Act has ruled fishery leases can not be granted except by public auction and wide publicity which has not been done in this case.

7. It is evident from the record that Smt. Nanhi Devi wife of the petitioner was present in the meeting when the resolution for grant of fishery rights was passed. Section 28-C of the Act was contravened. The plot was not given by public auction and wide publicity as laid down by the full bench and the lease was granted before expiry of period of 10 years of the earlier lease. Even the lease rent of Rs. 2.50 per annum was very nominal so as not to amount to any consideration for lease hold rights for fishery in plot having area 1.044 hectares.

8. For the reasons stated above, the order dated 26.8.96 passed by the District Magistrate cancelling the fishery lease and the order of the Commissioner (Administration), Bareilly dated 1.11.99 are up-held. The writ petition is dismissed with penal cost of Rs. 1,000/- per year on the petitioner for the period the leased plot remained under her possession. The cost is to be paid within two months from today. On failure to pay the cost it shall be recovered from the petitioner as arrears of land revenue within two months thereafter and paid to the Gaon Sabha. No orders as to cost.