
(2008) 10 AHC CK 0047
In the Allahabad High Court

Matsyajiwi Sahkari Samiti Ltd.

APPELLANT

Vs

State of U.P., The Collector, Sub Divisional Officer and Gujar
Tal Matsyajiwi Sahkari Samiti Ltd.

RESPONDENT

Date of Decision : 22-10-2008

Acts Referred:

Citation : (2009) 1 AWC 269 : (2008) 105 RD 707

Hon'ble Judges : Rajes Kumar, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Rajes Kumar, J.—Heard Sri Sheo Ram Singh, learned Counsel for the petitioner, learned Standing Counsel appears on behalf of respondent Nos. 1 to 3 and Sri Rajesh Kumar Singh, learned Counsel appears on behalf of respondent No. 4.

2. Learned Standing Counsel has produced the record.

3. By means of the present writ petition, petitioner is challenging the order dated 03.09.2008 passed by the Sub Divisional Officer, Sahganj, district Jaunpur, by which the pond No. 440 area 4.177 hect, situated in village Kohda Block Suitha Kala Sahganj, district Jaunpur has been allotted to the respondent No. 4.

4. Learned Counsel for the petitioner submitted that Sub-Divisional Officer, Sahganj, district Jaunpur has allotted the pond in question to the respondent No. 4 on the ground that no other application was available on record on 11.07.2008. He submitted that the petitioner has moved an application for the allotment of the pond on 19.07.2008, which is clear from the record as well as the report of the Sub Divisional Officer, Sahganj, district Jaunpur, dated 30.07.2008, annexure-5 to the writ petition. He submitted that on 11.07.2008, the pond in question has not been allotted to anyone. It appears that the respondent No. 4 has moved application on 11.07.2008 for the allotment of the pond but no allotment was made in his favour on that day. He further submitted that respondent No. 4 filed Writ Petition No. 41081 of 2008, in which this Court has

directed the Sub Divisional Officer, Sahganj, district Jaunpur to intimate the decision taken on the application of the petitioner for the grant of lease within a period of two weeks from the date of receipt of the certified copy of the order of this Court. In pursuance thereof, on 03.09.2008, the allotment of the pond in question was made in favour of the respondent No. 4. In fact no decision has been taken on the application of the respondent No. 4 on 11.07.2008 or prior to 03.09.2008, therefore, the question of informing any decision on the application does not arise. He submitted that for the first time the allotment was made on 03.09.2008 when the application of the petitioner was also available on record and, therefore, while making the allotment application of the petitioner should have been considered by Sub Divisional Officer, Sahganj, district Jaunpur, while to provide the benefit to the respondent No. 4 the application of the petitioner has been ignored and procedure for the allotment has not been followed.

5. Learned Counsel appearing on behalf of the respondent No. 4 submitted that as per the advertisement, application for the allotment of pond in dispute was to be made on 11.07.2008. The advertisement was claimed to have been published in the various news paper, photocopies of which is at page No. 26 of writ petition No. 41081 of 2008. Therefore, the application for the allotment should have been filed by 11.07.2008 and since the petitioner has admittedly not filed any application by 11.07.2008 and filed on 19.07.2008, therefore, the petitioner's application for the allotment has not been considered Sub Divisional Officer, Sahganj, district Jaunpur. He submitted that in pursuance of the allotment order dated 03.09.2008, respondent No. 4 has deposited the required money and has also started fishery rearing operation. He further submitted that in case, if the claim of the respondent may not be accepted the Sub Divisional Officer, Sahganj, district Jaunpur may be directed to refund the amount deposited and allow some time to take out the fishes from the pond in question.

6. Learned Standing Counsel admits that there is no official advertisement for the allotment of the pond in dispute for 11.07.2008 on record. No proceeding for the allotment has taken place on 11.07.2008 and in fact no allotment was made on 11.07.2008. He submitted that the petitioner filed the application on 19.07.2008, which was available on 03.09.2008 and, therefore, the application of the petitioner should have been considered for the allotment of the pond.

7. Having heard learned Counsel for the parties, I have perused the impugned order and the record produced by learned Standing Counsel and the record of Writ Petition No. 41081 of 2008.

8. 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 licence 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 hereinbelow:

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.

9. 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 115-A. 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 4.177 hectare hence, the procedure prescribed for settlement of pond of more than 2 hectares was required to be followed.

10. The matter relating to the allotment of pond for fishery purposes came up for consideration before the Full Bench of this Court in the case of Ram Kumar v. State of U.P. reported in 2005 (99) RD 823.

11. In the aforesaid Full Bench authority in para 29 it has clearly been held that the fisheries lease shall be settled through auction after due advertisement in newspaper. It has also been held in the said authority that no renewal must be granted. The Government Order dated 17.10.1995 dealing with manner of settlement of fisheries lease and preference for such settlement with certain castes/communities have been approved subject to these two exceptions. The said Government order has been upheld by the Full Bench in respect of priorities to members belonging to such castes, who are traditionally carrying on me fisheries business. Para 29 of Ram Kumar's Full Bench decision is quoted below:

29. 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 contemplates "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.

12. However, if no person belonging to the preferential category as mentioned in the Government order dated 17.10.1995 is interested in taking the lease then the pond cannot be left vacant. It will have to be given to any other person who is interested in taking the fisheries lease and is highest bidder in the open auction. According to the Full Bench even if in the preferential category more than one person are interested, then the lease shall be settled through auction.

13. Perusal of the record reveals that no advertisement for the allotment of the pond in question was made. The date fixed, i.e. 11.07.2008 for the allotment of the pond in question was not an official date fixed for the allotment and can not be considered to be the date fixed for the allotment. The alleged advertisement at page No. 26, annexure-4 to the writ petition No. 41081 of 2008 are only information by the various newspapers. It is not the official advertisement issued by any of the responsible official for the allotment of the pond in question.

14. Admittedly, the proceeding for the allotment did not take place on 11.07.2008 and no allotment was made on 11.07.2008, therefore, after the expiry of 11.07.2008, fresh date for allotment should have been announced in accordance to law. It appears that no advertisement was made for the allotment of pond for 03.09.2008.

15. In pursuance of the order of this Court dated 13.08.2008 passed in Writ Petition No. 41081 of 2008, Sub Divisional Officer, Sahganj, district Jaunpur without any advertisement in the newspaper has suo moto fixed 03.09.2008 as the date of allotment and after ignoring the application of the petitioner filed on 19.07.2008, has allotted the pond in question in favour of the respondent No. 4, which is patently illegal.

16. This Court in its order dated 13.08.2008 has only directed the Sub Divisional Magistrate to intimate the decision on the application of the respondent No. 4 for the allotment of the pond. This Court has not directed to make any allotment in favour of respondent No. 4. From the facts stated above, it is apparent that the then Sub Divisional Magistrate, Shahganj District Jaunpur to provide benefit to the respondent No. 4 appears to be with ulterior motive ignoring the procedure contemplated in the Government Order dated 17th October, 1995 and the Full Bench decision of this Court in the case of Ram Kumar referred herein above allotted the pond in favour of respondent No. 4.

17. In view of the above, the writ petition is allowed. The allotment of the pond No. 440 area 4.177 hect. Situated at village Kohda Block Suita Kala Sahganj,

district Jaunpur on 03.09.2008 in favour of the respondent No. 4 is set aside. Sub Divisional Officer, Sahganj, district Jaunpur is directed to fix the date for advertisement for the allotment of the pond in dispute within a period of three weeks inviting the application and, thereafter, fix any date after two weeks for the allotment of the pond and on the said date ensure that the allotment of the pond should be made so that there shall be no revenue loss, strictly in accordance to law. The allotment of pond shall be made strictly in, accordance to law. laid down by the Full Bench of this Court in the case of Ram Kumar v. State of U.P. referred herein above and Government Order dated 17th October, 1995.

18. However, it is open to the respondent No. 4 to move an application before Sub Divisional Officer, Sahganj, district Jaunpur for the refund of the amount deposited and for taking out the fishes, which has been put by him in the pond in question. In case, if any application is being moved by the respondent No. 4 before Sub Divisional Officer, Sahganj, district Jaunpur, he is directed to dispose of the same expeditiously preferably within a period of two weeks from the date of presentation of the certified copy of the order strictly in accordance to law.