
(2009) 08 AHC CK 0258
In the Allahabad High Court

Mohan Lal and Another

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 20-08-2009

Acts Referred:

Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 126

Citation : (2010) 1 AWC 853

Hon'ble Judges : A.P. Sahi, J

Bench : Single Bench

Final Decision : Partly Allowed

Judgement

A.P. Sahi, J.—Heard Shri Kalpnath Bind, learned Counsel for the petitioners and the learned standing counsel for the respondent Nos. 1 and 2.

2. The matter has been taken up in the revised call but no counsel has appeared either on behalf of the respondent No. 3 or on behalf of the respondent No. 4, even though the case has been listed on the listing application filed by the respondent No. 4.

3. The dispute in the present writ petition relates to the auction of fishery lease rights in respect of a plot No. 3 area 0.632 hectare situated in Gram Sabha Bhaktapur, Tehsil Aurai, District Sant Ravi Das Nagar (Bhadohi). The petitioners claim that on 28th June, 2003 the settlement had been made in favour of the petitioners for a sum of Rs. 10, 000/- for a period of 10 years. The petitioners had deposited the necessary requisites for the lease as approved by the Sub-Divisional Magistrate. In between, it appears that on 13th August, 2004 the settlement on a strength of alleged resolution in favour of the respondent No. 4 by the Gaon Sabha, is stated to have been made settling the fishery rights in their favour for a period of 10 years at a rate of Rs. 1500/- per year. The said settlement was approved by the Sub-Divisional Magistrate on 20.08.2004 and the lease was also executed in favour of the respondent No. 4 on 11.10.2004.

4. The petitioners, who had earlier claimed settlement on the strength of the

proceedings dated 28.06.2003, moved an application before the District Magistrate on 30th September, 2004 alleging that their lease should be approved as the proceedings dated 28th June, 2003 has been completed in accordance with law. The same application, which was moved before the District Magistrate, was placed on 1st October, 2004 before the Sub-Divisional Magistrate. The proposal of the petitioners dated 28th June, 2004 was approved on 19.11.2004 by the Sub-Divisional Magistrate. When this fact was brought to the notice of the respondent No. 4, they moved an application alleging that the fishery lease rights had already been excuted in their favour in August, 2004 itself and, therefore, the approval of the petitioners on 19.11.2004 was erroneous. Accordingly, the Sub-Divisional Magistrate recalled his order dated 19.11.2004 vide order dated 29.11.2004.

5. The petitioners challenged the said order dated 19.11.2004 by filing a Civil Misc. Writ Petition No. 53881 of 2004 before this Court and the Division Bench vide order dated 03.01.2005 disposed of the said writ petition with a direction to the petitioners to approach the Sub-Divisional Magistrate through a representation and till the said representation was decided the order impugned in the writ dated 29.11.2004 was kept in abeyance. The impugned order dated 19th March, 2005 has been passed by the Sub-Divisional Officer in compliance of the said direction. The Sub-Divisional Magistrate has found that the order dated 29.11.2004 had been passed erroneously as the fact pertaining to the settlement of rights in favour of the respondent No. 4 were not brought to notice when the said order was passed.

6. Learned Counsel for the petitioners contends that even accepting that the settlement was not brought to notice to the Sub-Divisional Magistrate yet there was no occasion for the Sub-Divisional Magistrate to have discarded the proceedings in favour of the petitioner dated 28th June, 2003.

7. A perusal of the impugned order indicates that the proposal in favour of the petitioner was made after the alleged news was published in the news paper calling for persons to attend the camp of the Tehsildar, wherein it is alleged that some persons including the petitioners had participated. The news is alleged to have published on 27.06.2003 and the said camp was concluded on the very next day on 28.06.2003. Learned Counsel for the petitioners contends that the Tehsildar, who concluded the proceedings, called upon the petitioners to complete the formalities including the submission of stamp papers etc. for execution of the lease pursuant to the said proceedings.

8. From a perusal of the impugned order, it is evident that the Sub-Divisional Magistrate, who is the authority competent to approve the same, did not have any knowledge of the said proceedings concluded by the Tehsildar dated 28.06.2003. It was for the first time that the Sub-Divisional Magistrate, from the application moved by the petitioner before the District Magistrate was, apprised of the said proceedings which was approved on 19.11.2004.

9. Having considered the submissions advanced, in my opinion it was not open to the Sub-Divisional Magistrate to have passed an order of approval in favour of the petitioners on 19.11.2004 when a settlement had been made earlier in favour of the respondent No. 4. In view of this, the recall of the order dated 19.11.2004 cannot be faulted with to that extent. The order impugned does not suffer from any error on that count.

10. Coming to the second submission raised on behalf of the petitioner that the settlement in favour of the respondent No. 4 is equally erroneous, inasmuch as, it had been concluded without following the procedure prescribed in law, the facts reveal that in the counter affidavit that has been filed on behalf of the State, in paragraph 9 thereof, it has been narrated that it was made under a resolution of Gaon Sabha dated 13.08.2004. The proposal in favour of the respondent No. 4 was accepted by the Sub-Divisional Magistrate on 11.10.2004. Learned standing counsel on the strength of the said averments contends that there is no infirmity in the said procedure adopted for the settlement of the rights in favour of the respondent No. 4.

11. The said contention advanced on behalf of the State cannot be accepted keeping in view the law laid down in this regard by the Full Bench of this Court in the case of Ram Kumar and Ors. v. State of U.P. and Ors. reported in 2005 (99) RD 823. The paragraphs 28 and 29 of the said decision are being quoted below:

28. 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 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 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 ground. 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 facts 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.

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 Officer, 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. The relevant paragraphs 28 and 29 of the said decision clearly prescribe the procedure, which is envisaged under the Gaon Sabha Manual, to be followed for the purposes of carrying out auction of fishery rights. The law laid down by the Full Bench clearly emphasizes on wide publicity and discourages settlement not by mere negotiations, even though such methods are not totally ruled out. However, the judgment clearly recites that even if individual or preferential offers are to be considered, the same has been to be done only after wide publicity and on an appropriate advertisement, so that persons may be able to approach the authority concerned within time.

13. This having not been done, the impugned order to that extent cannot be sustained. It is for this reason that this Court after assessing the contention of the petitioner had passed an interim order on 08.04.2005 staying the operation of the impugned order and also from giving effect the lease dated 20.08.2004 executed in favour of the respondent No. 4. In view of the conclusions drawn herein above. The subsequent proceedings that were carried out settling the fishery rights in favour of the respondent No. 4 cannot be legally sustained and are hereby set aside.

14. The writ petition is partly allowed. It shall be open to the Sub-Divisional Magistrate of the area concerned to issue necessary instructions for settlement of necessary rights in the light of the law laid down in the case of Ram Kumar (supra).