
(2011) 06 AHC CK 0069
In the Allahabad High Court

Mohd.Abu Talib

APPELLANT

Vs

State of U.P.and Others

RESPONDENT

Date of Decision : 22-06-2011

Acts Referred:

Citation : (2011) 06 AHC CK 0069

Hon'ble Judges : Dilip Gupta, J and Pankaj Mithal, J

Final Decision : Allowed

Judgement

Dilip Gupta and Pankaj Mithal, JJ.—Supplementary affidavit filed is taken on record.

2. This writ petition seeks the quashing of the order dated 13th June, 2011 passed by the SubDivisional Magistrate Shahganj, District Jaunpur directing for removing the wall constructed by the petitioner in the pond within 5 days.

3. Learned counsel for the petitioner has pointed out that the said order dated 13th June, 2011 is based on the order dated 11th June, 2011 passed by the District Magistrate, Jaunpur and even though the said order required the SubDivisional Magistrate to give notice of 5 days to the petitioner to explain whether the wall has been raised in the pond, the SubDivisional Magistrate without giving any opportunity to the petitioner has passed the order dated 13th June, 2011 for removing the constructions raised by the petitioner. He therefore, submits that the impugned order deserves to be set aside.

4. Learned Standing Counsel appears for respondents no. 1 to 4. Sri Mahesh Narain Singh, has put in appearance on behalf of respondent No.5. In view of the order we propose to pass, it is necessary to issue notice to respondent No.6.

5. Learned Standing Counsel has submitted that in view of the nature of the controversy involved in this petition it is not necessary to file any counter affidavit and the petition may be disposed of at this stage. He has further submitted that the wall has been raised by the petitioner in the pond.

6. We have considered the submission advanced by learned counsel for the parties.

7. A perusal of the order dated 11th June, 2011 passed by the District Magistrate, Jaunpur clearly shows that the SubDivisional Magistrate was required to give 5 days time to the petitioner to explain whether the wall has been raised in the pond or not. The impugned order dated 13th June, 2011 passed by the SubDivisional Magistrate, does not indicate that any opportunity was given to the petitioner. The order in fact requires the petitioner to remove the constructions within 5 days.

8. It is therefore, clear that no opportunity was given to the petitioner before passing the impugned order, despite the order dated 11th June, 2011 passed by the District Magistrate, Jaunpur.

9. We therefore, in this view of the matter, quash the order dated 13th June, 2011 passed by the SubDivisional Magistrate but liberty to him to pass a fresh order expeditiously after giving opportunity to the petitioner and private respondent No.6 Wasiullah.

10. Petition is allowed to the extent indicated above.