

(1997) 07 AHC CK 0073

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 21796 of 1997

Nagar Palika Parishad

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 11-07-1997

Acts Referred:

Wild Life (Protection) Act, 1972 — Section 18, 18(1), 21, 22, 24

Citation : AIR 1998 All 232

Hon'ble Judges : M. Katju, J;D.K. Seth, J

Bench : Division Bench

Advocate : Piyush Shukla and L.P. Naithani, for the Appellant; Standing Counsel, for the Respondent

Judgement

1. By a notification dt. 2nd Sept, 1993 issued u/s 18(1) of the Wild Life (Protection) Act, 1972 the concerned area was declared to be included within the limit of the sanctuary. Subsequently, a notification was issued on 11th of Jan, 1994, u/s 21 of the said Act being a proclamation specifying the area as sanctuary requiring persons claiming any right mentioned in Section 19 of the said Act to lodge their claim within the period specified in Section 21(b) of the said Act. The petitioner claimed to have lodged its claim on 28th of Feb. 1994, which is Annexure-9 to the writ petition, admittedly, within the time specified. It is alleged that no steps has been taken on the basis of the said claim lodged by the petitioner. On the other hand, on its enquiry by a letter dt. 28th of May, 1997, it has been disclosed that the said land has been decided to be included within the sanctuary. The petitioner points out that he was not given opportunity of hearing nor any compensation has been given to him. According to the petitioner he is the owner of the property and as such entitled to manage the same.

2. We have heard Mr. L.P. Naithani for the petitioner and the learned Standing Counsel. Mr. Naithani stresses on the objection to the declaration of the area as sanctuary.

3. On examination of the scheme of the Act it appears to us that the statute does not envisage lodging of any objection by any person in the declaration of sanctuary. There is no scope for the Court to go into the justification of any declaration of any area to be included in the sanctuary provided it satisfies the test of Section 18(1) of the Act. Section 18 of the Act empowers the-State Government to declare any area to be a sanctuary if it is considered that such area is of adequate . ecological, faunal, floral, geomorphological, natural or zoological significance for the purpose of protecting, propagating or developing wild life or its environment. Once these tests are satisfied the grievance of a person having right over any such property included in sanctuary is limited to the determination of his rights as envisaged in Section 19 read with Section 21(b) followed by Sections 24 and 25 of the said Act. Section 19 vests in the Collector the power of enquiry and determination of the existence, nature and extent of the right of a person. Such right is to be decided on the lodging of a claim u/s 21(b) of the Act. Section 21 requires a proclamation to be published through notification (a) specifying the limits of the sanctuary and (b) lodging of claim in described forms within two months. The claim meant in Section 21(b) is to be understood from the extent of claim mentioned therein. The legislative intent can be gathered from the expression used which is clear and unambiguous and does not leave any scope for any other kind of interpretation. The claim is confined in "specifying the nature and extent of the right..... and the amount and particulars of compensation". . . . This expression does not permit of any other claim or objection within scope thereof.

4. After the claim is lodged the Collector, after serving notice upon the claimant, shall enquire the claim preferred as well as those not preferred in terms of Section 22 with the aid of Section 23, After such enquiry the Collector u/s 24(1) may reject or admit the claim in whole or part and then either to exclude the land from the limits of sanctuary or to proceed to acquire in exercise of the power conferred on him u/s 24(2). The procedure for acquisition is prescribed in Section 25. It is for the Collector to decide as to which course he will adopt viz. either to exclude or to acquire. From the pleadings of this case this stage does not appear to have been reached.

5. The claim that the petitioner, being the owner, is entitled to the management of the property is not a claim which is permissible to be claimed unless it is excluded u/s 24(2)(b). Our above interpretation finds support from Section 27 which imposes restriction on entry to sanctuary to every person other than (a) public servant (b) a person permitted by the Chief Wild Life Warden or the Officer authorised to reside inside the sanctuary (c) a person having right over immovable properties inside the sanctuary. The right exempted from restriction of Section 27 can arise only when either such property though situated within the sanctuary but is not included in the declaration or by reason of its exclusion after declaration in terms of Section 24(2)(a). Therefore, the claim of management is dependent in this case on the decision of the Collector while exercising power u/s 24.

6. Therefore, such contention cannot be accepted in view of Section 27 of the said Act which imposes restrictions on the entry in the sanctuary since proclamation is issued. The only remedy of the petitioner may have to seek compensation which he had specified in his objection which is Annexure-9 to the writ petition at least to the extent that in case claim of the petitioner to exempt or exclude the same from within the limit of the sanctuary is not allowed, the compensation as the petitioner has claimed may be determined and paid to him. As-soon claim is lodged in terms of Section 21(b) it is the duty of the Collector u/s 22 to hold an enquiry and determine the claim in view of the Section 24. If, after determination it appears that it is included in the sanctuary either in whole or in part, in that event, the Collector may either exclude the land from the limits of the sanctuary or may proceed to acquire, as the case may be, in the process specified in Section 25 of the said Act.

7. The communication contained in Annexure-13 to the writ petition does not specifically point out as to whether the authority would proceed to acquire the right of the petitioner or not it does not specify on which date the petitioner's claim u/s 21(b) was determined. In the absence of such material, it is not possible to decide the said question.

8. In the facts aforesaid it appears that no useful purpose would be served by keeping this petition pending. Justice would be better served if the writ petition is disposed of in the following manner.

9. In case the claim of the petitioner is decided earlier in that event a copy of the said order may be served on the petitioner. In case it is not decided, it may be decided in terms of Sections 22 and 23 of the said Act within a period of two months from the date a certified copy of this order is produced before the concerned respondent. Thereafter, the concerned respondent shall proceed in terms of Section 24 or Section 25 of the said Act, as he may deem fit.

10. The writ petition is thus disposed of. There will, however, be no order as to costs.

11. Copy of this order may be provided to the learned counsel for the petitioner within seven days on the payment of usual charges.