
(2015) 05 AHC CK 0225

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 24241 of 2015

Ramanand Sahani

APPELLANT

Vs

State of Uttar Pradesh and Others

RESPONDENT

Date of Decision : 12-05-2015

Acts Referred:

Citation : (2015) 7 ADJ 99 : (2015) 6 ALJ 697 : (2015) 4 AWC 3934

Hon'ble Judges : Ran Vijai Singh, J

Bench : Single Bench

Advocate : Manish Chandra Tiwari and Anil Kumar Chaudhary, for the Appellant;
P.K. Sahani, R.C. Upadhyay, Vinod Kumar Patel and Pawan Kumar Srivastava,
Advocates for the Respondent

Final Decision : Allowed

Judgement

Ran Vijai Singh, J—This writ petition has been filed with the following prayers:

- "1. issue a writ, order or direction in the nature of mandamus directing the District Magistrate, Mau to decide the case pending before him in between Ramanand v. Sudhir and others, under Section 60(2)(b) of Gaon Sabha Manual against order dated 18.2.2014 passed by the Sub Divisional Magistrate, Madhuban, District Mau;
2. issue any suitable writ, order or direction which this Hon''ble Court may deem fit and proper under the circumstances of the case.
3. award the cost of the writ petition in favour of the petitioner."

Heard Sri Manish Chandra Tiwari, along with Sri Anil Kumar Chaudhary, learned counsel for the petitioner, learned Standing Counsel appearing for the State-respondents, Sri R.C. Upadhyay, learned counsel for the Gaon Sabha and Sri Pawan Kumar Srivastava, holding brief of Sri Pramod Kumar Sahani, learned counsel for respondent No. 5.

2. It was argued before this Court that the entire proceeding of the allotment of

ponds situated over plot Nos. 244 and 246 measuring about 407 air situated in Village Gurumha, Tehsil Madhuban, District Mau is farce, as it was made contrary to the provisions contained in Government Order dated 17.10.1995 as well as Government Order dated 9.7.2013. Considering the same, this Court on 29.4.2015 passed the following order:

"Heard Sri Manish Chandra Tiwari along with Sri Anil Kumar Chaudhary, learned counsel for the petitioner, learned Standing Counsel appearing for the State-respondents, Sri Vinod Kumar Patel, along with Sri Pramod Kumar Sahani, learned counsel for the respondent No. 5 and R.C. Upadhyay, learned counsel for the Gaon Sabha.

In substance, the petitioner appears to be aggrieved by approval to execute the lease in favour of respondent No. 5 pursuant to the advertisement dated 28.1.2014 published in Dainik Hindustan. The advertisement appears to have been issued by the Assistant Registrar (Kanoongo), Tehsil Madhuban, District Mau. The petitioner has brought on record the copy of the advertisement, which does not contain the names of the villages, pond number, its area and other requirements for participating in the settlement of fishery lease.

It is contended that the aforesaid advertisement is contrary to the provisions contained in the Government Order dated 17.10.1995 as well as Government Order dated 9.7.2013 circulated vide letter No. 1750/1-2-2013-96 (writ)/13 by the Principal Secretary, Government of U.P. and the law laid down by this Court in the case of Pramod Kahar and Others Vs. State of U.P. and Others, (2012) 6 AWC 6277 and Kaushaliya Devi Vs. State of U.P.(2015) 1 ADJ 656 : (2015) 2 ALJ 212 : (2015) 126 RD 473 . In his submissions, the entire proceeding pursuant thereto is void ab initio.

Learned standing counsel is directed to seek instructions in this matter and produce the records justifying the issuance of the advertisement and apprising the Court as to whether the advertisement has been issued in consonance with the Government Order dated 17.10.1995 as well as Government Order dated 9.7.2013 and the law laid down by this Court in the case of Pramod Kahar (supra) and Smt. Kaushaliya Devi (supra).

It shall also be apprised to this Court as to whether the lease has been executed in favour of respondent No. 5 or not.

As prayed, put up this case as fresh on 12.5.2015. On that date, the Sub Divisional Officer, Madhuban, District Mau shall remain present before this Court along with complete records in order to assist the learned standing counsel."

3. Pursuant thereto, learned standing counsel has sought instructions. Sri Amar Nath Rai, Sub Divisional Officer, Tehsil Madhuban, District Mau is also present before this Court along with complete records.

4. The contents of the advertisement dated 28.1.2014 published in Dainik Hindustan is reproduced herein below:

5. This Court in Pramod Kahar and others v. State of U.P. and others, 2012 (94) ALR 538, has issued a guideline for issuing advertisement for the purposes of settlement of fishery lease. Pursuant thereto, on 9.7.2013, the State Government issued a Government Order requiring the details to be published in the advertisement for settlement of fishery lease, which is reproduced below:

6. From the perusal of the Government Order dated 9.7.2013, it transpires that while issuing the advertisement, the number of pond, its area, minimum bid which is to be offered, date & time of settlement of proceeding for auction, details of deposit of security and place for settlement of fishery lease, etc. have to be disclosed.

7. Here, in this case, from the perusal of the advertisement, which has been brought on record as Annexure No. 3 to the writ petition, it transpires that the advertisement does not contain anything as required under the Government Order dated 9.7.2013, whereas the advertisement was issued on 28.1.2014. It also transpires that the advertisement has been issued by the Assistant Registrar (Kanoongo), who does not have power to issue such advertisement. From the perusal of the record, it transpires that only the Revenue Inspector, Tehsildar and Sub Divisional Officer have signed, the memo of the bid, whereas as per the Government Order dated 17.10.1995, at the time of auction, presence of a person nominated by the District Magistrate of the concerned district from the Machhua community as well as an Officer of the Fishery Department and the Pradhan of the concerned village is required, who are required to sign the memo of bid. This is apparently lacking on the face of the record, therefore, the auction proceeding, on the basis of the advertisement dated 28.1.2014 with respect to ponds over plot Nos. 244 and 246 measuring about 407 air situated in Village Gurumha, Tehsil Madhuban, District Mau, is illegal.

8. In view of the aforesaid the writ petition succeeds and is allowed. The auction proceeding, pursuant to the advertisement dated 28.1.2014 with respect to ponds over plot Nos. 244 and 246 measuring about 407 air situated in Village Gurumha, Tehsil Madhuban, District Mau, is hereby quashed.

9. It may be noticed that the learned standing counsel, on being confronted as to whether pursuant to the proceeding dated 7.2.2014, other leases have also been executed or not, he states that no other lease has been executed. Sri Pawan Kumar Srivastava, learned counsel appearing for respondent No. 5 submits that pursuant to the advertisement, proceeding was not concluded only with respect to pond in question, but other ponds were also put for settlement of lease and the leases have been executed.

10. Since this Court has held that the auction proceeding pursuant to the advertisement dated 28.1.2014 is patently illegal, therefore, the Collector concerned is directed to initiate a proceeding for cancellation of the lease executed in favour of other lessees and thereafter, conclude the proceeding expeditiously in accordance with law, after hearing all concerned, preferably,

within a period of six months from the date of receipt of certified copy of the order of this Court. The Sub-Divisional Officer is also directed to initiate a fresh proceeding in accordance with law and conclude the same within a period of three months from the date of receipt of certified copy of the order of this Court with respect to pond in question. Since Sri Amar Nath Rai, Sub Divisional Officer, Tehsil Madhuban, District Mau is present before this Court, therefore, no separate information is required to be given. He has to proceed in accordance with law.