
(2012) 08 AHC CK 0124
In the Allahabad High Court
Case No : Writ Petition No.1668 (MIS) of 1986

Saheb Bux

APPELLANT

Vs

Commissioner, Faizabad Division, Faizabad and Others

RESPONDENT

Date of Decision : 29-08-2012

Acts Referred:

Citation : (2012) 08 AHC CK 0124

Hon'ble Judges : Sudhir Agarwal, J

Final Decision : Allowed

Judgement

Sudhir Agarwal, J.—This case is pending for the last 26 years and this is also surprising that despite repeated opportunities, respondents 1 to 3 have not filed any counter affidavit. Even respondent no. 4, who was issued notice and this Court by order dated 25.7.2012 has deemed the notice sufficient, has not chosen to put in appearance or file any counter affidavit. In the circumstances, I have proceeded to hear and decide this case.

2. Heard learned counsel for petitioner and learned Standing Counsel.

3. This writ petition is directed against the order dated 3.2.1984 passed by Addl. District Judge (Finance and Revenue) cancelling lease of petitioner granted under the provisions of U.P. Bhoodan Yagna Act, 1952 (hereinafter referred to as "Act, 1952"), on the ground that petitioner did not belong to Village Zamon and, therefore, could not have been granted lease since under the statute, the lease ought to have been granted to a resident of the same village but ignoring eligible persons of the Village Zamon, it was granted to petitioner.

4. However, in the show cause notice, copy whereof has been filed as Annexure 2 to writ petition, name of no such person has been given who was found resident of village Zamon, eligible for grant of lease, but was ignored by Gram Sabha. It is said that there was no such person hence the lease was granted to petitioner who was not resident of that village. The impugned order does not show any thing to discredit the petitioner's above claim.

5. The aforesaid order has also been confirmed by the Commissioner by dismissing petitioner's revision but therein also nothing has been said about this aspect.

6. It is not the case of respondents that there is a complete bar that a person who does not reside in the same village would not be granted lease under the Act, 1952. The requirement is that if any eligible person, belong to the same village, is available, the lease of the land under the Act, 1952 shall be granted to him but in absence of any such person it may be granted to a person belong to any other village. In the present case, since it has not been disclosed by the respondents at any point of time that any person eligible of village Zamon was available but he was ignored for granting lease, in my view, cancellation of lease granted to petitioner was patently illegal, hence cannot sustain.

7. In the result, writ petition is allowed. Impugned orders dated 3.2.1984 and 30.11.1985 (Annexures 4 and 5 respectively to writ petition) are hereby quashed.

8. Considering the conduct of the respondents and laxity shown by the them in conduct of this case, in my view petitioner is be entitled to cost which I quantify to Rs. 25,000/ against respondents no. 1 to 3. At the first instance it shall be paid by respondent no. 3, who shall be at liberty to recover the said amount from the official concerned who are responsible for such illegal orders and also laxity shown in conduct of this writ petition, after making such inquiry as permissible under the rules.