
(2013) 11 AHC CK 0032

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 63050 of 2013

Sangeeta and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 19-11-2013

Acts Referred:

Uttar Pradesh Panchayat Raj Act, 1947 — Section 28C

Citation : (2013) 10 ADJ 551 : (2014) 1 AWC 244 : (2013) 121 RD 850 : (2014) 1 UPLBEC 282

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

Bench : Single Bench

Advocate : Mohd. Khalil and Santosh Kumar Srivastava, for the Appellant;
Mahesh Narain Singh, for the Respondent

Final Decision : Dismissed

Judgement

A.P. Sahi, J.—Heard learned counsel for the petitioners. This writ petition is reported to be barred by laches by more than a year.

2. Learned counsel submits that the petitioners were financially distressed and have now been able to file the writ petition after such a long time.

3. It is not known as to how the financial distress has vanished when the petitioners are represented by two lawyers, Sri Mohd. Khalil and Sri Santosh Kumar Srivastava. The explanation for the laches therefore does not inspire any genuineness.

4. I have also considered the case on merits. The finding recorded in relation to the cancellation of the lease is based on the fact that the procedure prescribed was not followed while making allotment to the petitioners and secondly the petitioners could not have acquired the land as they were related to the Members of the Land Management Committee and the Gram Panchayat. The finding recorded is that this acquisition of lease could not be possible without there being any proper permission of the competent authority as contemplated u/s 28-

C of the Uttar Pradesh, Panchayat Raj Act, 1947.

5. The finding is that the petitioners had applied for such permission but the allotment came to be made on 11.4.1997 without there being any permission from the competent authority.

6. Sri Santosh Kumar Srivastava contends that the permission was subsequently granted on 12.9.1997 and therefore the defect stood cured.

7. Section 28-C is quoted herein under:

28-C. Members and officers not to acquire interest in contracts, etc., with Bhumi Prabandhak Samiti.--(1) No member or office bearer of (Gram Panchayat) or Bhumi Prabandhak Samiti shall, otherwise than with the permission in writing of the Collector, knowingly acquire or attempt to acquire or stipulate for or agree to receive or continue to have himself or through a partner or otherwise any share or interest in any licence, lease, sale, exchange, contract or employment with, by, or on behalf of the Samiti concerned:

Provided that a person shall not be deemed to acquire or attempt to acquire or continue to have or stipulate for or agree to receive any share or interest in any contract or employment by reason only of his-

(a) having acquired any interest, before he became a member or office bearer;

(b) having a share in a joint stock company which makes the contract; and

(c) having a share or interest in the occasional sale through the Samiti concerned of an article in which he regularly trades up to a value not exceeding Rs. 50 in any one year.

(2) No Court or other authority shall enforce at the instance of any person a claim based upon a transaction in contravention of the provisions of sub-section (1).

8. A perusal thereof would leave no room for doubt that permission contemplated therein is a prior permission, inasmuch as, the acquisition of a lease can be initiated and attempted only after permission is granted. The obtaining of the permission is therefore a condition prerequisite which has to be fulfilled before any such property is acquired by way of lease. In the circumstances, the contention raised on merits also does not hold water. The writ petition lacks merit and is accordingly dismissed.