
(2003) 01 AHC CK 0080
In the Allahabad High Court
Case No : C.M.W.P. No. 55497 of 2002

Shiv Poojan Prasad

APPELLANT

Vs

District Magistrate and Others

RESPONDENT

Date of Decision : 09-01-2003

Acts Referred:

Constitution of India, 1950 — Article 14

Citation : AIR 2003 All 149 : (2003) 1 AWC 530 : (2003) 94 RD 169

Hon'ble Judges : S.N. Srivastava, J

Bench : Single Bench

Advocate : R.N. Shukla, for the Appellant; D.K.S. Rathore and S.N. Singh and S.C., for the Respondent

Final Decision : Allowed

Judgement

S.N. Srivastava, J.—Present petition has its genesis in the order dated 26.11.2002 passed by the District Magistrate, Chandauli, arrayed as respondent No. 1 and the consequential order dated 29.11.2002 thereby reopening the auction of pond/tank for fisheries rights, comprising in Plot Nos. 609/2, 619, 687 admeasuring 2.56 acres situated in village Baburi, Pargana Majhwar, Tahsil and district Chandauli.

2. Facts shorn of unnecessary details are that the pond/tank in question was, to begin with, put to auction in accordance with law on 9.10.2002 and the fisheries rights came to be settled in favour of the petitioner who being the highest bidder i.e., Rs. 70,000. Subsequently, patta came to be executed in favour of the petitioner on 30.10.2002 by the competent authority. It transpires from the record that respondent No. 4 made an application seeking cancellation of the patta before the District Magistrate, Chandauli, on the ground that manipulations were contrived in the proceeding of auctioning the fisheries rights to the petitioners in the pond/tank in question. In the selfsame application preferred for cancellation of patta, the respondent No. 4 gave yet higher offer. It would further transpire from the record that on the said application, Tahsildar-respondent No. 3

issued notice on 20.11.2002 fixing 28th November, 2002, for appearance and hearing. It would further appear from the record that the District Magistrate took up the matter on 26.11.2002, before the date fixed and made direction to the Sub-Divisional Officer to initiate proceeding for re-auction of the pond/tank visibly on the premises that opposite party No. 4 had made offer of Rs. 2,80,000 for fisheries rights In the said pond/tank. As a sequel to the direction, the Sub-Divisional Officer called for a report from the Tahsildar vide order dated 29.11.2002.

3. I have heard learned counsel for the parties and considered the respective contentions in all its ramifications. One Bablu son of respondent No. 2 who has filed an application for impleadment in the instant petition is represented by Sri D.K.S. Rathore. On behalf of Jagdish Prasad, caveator, Sri S.N. Singh, addressed the Court. Learned counsel for the petitioner began his submission stating that auction in favour of the petitioner had attained finality on 9.10.2002 and resultantly patta was executed accordingly on 30th October, 2002, by the competent authority with consequent approval of the Sub-Divisional Officer affixed thereon. He further submitted that the patta still subsists and has not been rescinded. On application of the opposite party No. 4, proceeds the submission, a notice was received from Tahsildar to appear on 28th November, 2002 and before the petitioner could act upon the notice, orders were made for re-auctioning of the pond/tank for fisheries rights without any authority of law. He further submitted that the impugned order dated 26th November, 2002 and consequent order of the S.D.O. dated 29.11.2002 nodding in approval of the said order wear the taint of having been passed without jurisdiction and the same militate against the principles of natural justice. The learned counsel further submitted that the competent authority to award/settle patta is the Sub-Divisional Officer and once the patta has been executed, even the Sub-Divisional Officer is not competent to interfere in the matter for re-auctioning of the fisheries rights. Sri Anuj Kumar, learned counsel appearing for the Gaon Sabha canvassed his contentions In vindication of the order of Tahsildar and the learned standing counsel put weight to the contentions made by the learned counsel appearing for the Gaon Sabha. When they were confronted with the questions as to how the order dated 26.11.2002 was passed without cancelling patta executed in favour of the petitioner post-fixed with the approval of the S.D.O. and further as to how the order was passed ex parte behind the back of the petitioner, both the counsel could not furnish adequate reply in vindication of the orders impugned herein.

4. It is borne out from the record that 28.11.2002, had been fixed in the notice issued by Tahsildar on 20.11.2002 for appearance and hearing and before the date fixed, the authorities made the order dated 26.11.2002 ex parte for re-auctioning the pond/tank for fisheries rights without allowing the petitioner to have his say on the date fixed in response to the notice. It is worthy of notice that there is nothing on the record nor any material has been brought on record in vindication of the impugned orders, and in the circumstances, conclusion is

irresistible that the impugned order has been passed without giving opportunity of hearing and in breach of the principles of natural justice and thus the impugned orders are vitiated and cannot be sustained in law. It brooks no dispute that it is the Collector who is clothed with the power to cancel patta and since the patta in favour of the petitioner had been executed validly post-fixed with the approval of the Sub-Divisional Officer, the same was not cancelled before ordering re-auction of fisheries rights. The necessary corollary is that after the settlement of patta with approval of the Sub-Divisional Officer affixed thereon, a right had come to be vested in the petitioner. If the District Magistrate had received any complaint about manipulations in the proceeding of auction or any irregularity whatsoever, he was under a duty to set afoot appropriate enquiry or to pass appropriate orders after affording opportunity of hearing to a person in whose favour patta had been executed and no cancellation of patta/auction finally settled in favour of a person or direction for re-auction merely on the basis of a complaint could be made. It is well-settled that decision of administrative or quasi-judicial body affecting vested rights or interest of individual could not be altered without affording opportunity of hearing. When there is an obligation to adopt the judicial approach and to comply with the basic requirements of justice, principles of audi alteram partem have to be observed. In the instant case, the function of awarding patta is a statutory function under the U. P. Zamindari Abolition and Land Reforms Act and it is too patent to be ignored that the District Magistrate made directions of re-auctioning the fisheries rights without hearing the petitioner in whose favour a right had come to be vested and by this reckoning, the principles of natural justice have not been observed in compliance occasioning infringement of Article 14 of the Constitution. It is quite obvious from the record that the District Magistrate never issued any notice nor gave opportunity of hearing before passing the order dated 26.11.2002 and the order has been made ex parte. In the light of the above facts as the patta executed in favour of the petitioner is still intact in law and the impugned orders are liable to be quashed. In the facts and circumstances of the case, it would be appropriate to remit the matter to the Collector with the direction to decide the application filed by the respondent No. 4 in accordance with law. The question that has to be put into forefront for consideration and adjudication by the Collector is whether patta executed in favour of the petitioner could be cancelled on the allegations made in the application filed by the respondent No. 4 and secondly whether once the auction has attained finality, the matter could be reopened for re-auction at subsequent stage after confirmation of auction and after the patta had been executed in favour of the petitioner, merely on the ground that a third person has made higher offer for fisheries rights. Besides, he will also go into the question whether the auction had taken place in accordance with law and procedures prescribed. The above questions shall be traversed upon and answered as early as possible. It needs hardly be said that the Collector who is the appropriate authority in the matter of cancellation of patta, will afford opportunity of hearing to all concerned on the application made by the respondent No. 4 and pass appropriate orders in the light of the directions embodied in this judgment.

5. In the result, the petition succeeds and is allowed. The impugned order dated 26.11.2002 and consequential order dated 29.11.2002, are quashed. The matter is remitted to the Collector to adjudicate upon the controversy in the light of the directions aforesaid.