

(2005) 01 AHC CK 0052
In the Allahabad High Court
Case No : C.M.W.P. No. 1887 of 2005

Shyam Kunwar and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 20-01-2005

Acts Referred:

Citation : (2005) 2 AWC 1525 : (2005) 2 ESC 901 : (2005) 98 RD 361 : (2005) 1 RD 361 : (2005) 2 UPLBEC 1799

Hon'ble Judges : S.U. Khan, J

Bench : Single Bench

Advocate : R.K. Shukla, for the Appellant; S.R. Jalil, S.C. and Anuj Kumar, for the Respondent

Judgement

S.U. Khan, J.—Fisheries lease in respect of a pond comprised in plot No. 290 area 1.137 hectares situate in village Surharpur, Tappa-Haveli, Pargana and Tehsil Mohammadabad Gohna, District Mau was granted by Deputy Collector in favour of respondent No. 4-Chhotkun for only Rs. 2,000/- per year and that also without any advertisement or auction. There are several authorities of this Court (op. cit) to the effect that fisheries lease shall be granted only and only through auction, and that auction cannot be confined to members of any particular caste, society or group of professionals (Machhuva Samudai). In the aforesaid authorities it has also been held that fisheries lease cannot be renewed and after expiry of fisheries lease fresh auction/re-auction shall take place. Like the present case, I have found that in several cases fisheries leases are being settled without any auction and just on the recommendation of Naib Tehsildar/Tehsildar or resolution of Gaoh Sabha and that also for highly inadequate rents. In several such matters where two parties were claiming for grant of fisheries lease I settled the matter by auction in open Court in between the contesting parties drawing inspiration from the authority of the Supreme Court in Ram and Shyam Company v. State of Haryana AIR 198S SC 1147. In several such auctions parties offered quite handsome amount. I therefore, held in Babban Ram v. State, 2004 (2) RD 675 that normally fisheries lease should be settled at the rent of Rs.

10,000/- per hectare per year. However, on the basis of experience gained in subsequent auctions I found that even the said rent was on the lower side. In several cases parties offered in between Rs. 25,000/- to Rs. 50,000/- per year rent. In few cases rent offered was around Rs. 1 lac per hectare per year. In pursuance of my Order dated 17.1.2005 passed in this writ petition Deputy Collector concerned has filed his affidavit stating therein that as earlier lease was granted for Rs. 700/- per year hence Rs. 2,000/- appeared to be appropriate to him and that he was also not aware of the Full Bench authority of this Court in *Fern v. State of U.P.*, 2004 (96) RD 645. The Court refrains from making any comment on this blissful ignorance.

2. Facts of the instant case are that ten years' fisheries lease in respect of pond in dispute was granted in favour of petitioner's father in the year 1994 on 28.3.1994 for Rs. 700 per year even though lease deed (copy of which is Annexure-3 to the writ petition) was executed on 30.7.1996 but the period of lease was from 1.4.1995 to 31.3.2005. It has further been stated that Land Management Committee on 4.7.2004 passed a resolution for grant of fisheries lease for ten years in favour of Chhotkun, respondent No. 4. Initially on the said resolution a report was submitted that as the period of lease in favour of petitioners' father was to expire on 31.3.2005 hence before that period no fresh lease could be granted. However, Tehsildar on 25.10.2004 submitted another report to the effect that lease in favour of petitioners' father was granted by Order dated 28.3.1994 hence it expired on 28.3.2004, therefore resolution of Gaon Sabha shall be accepted. Said report was given by Tehsildar on 25.10.2004 which was accepted by Deputy Collector/S.D.O. by Order dated 19.11.2004 which is Annexure-6 to the writ petition. The said Order is under challenge in the instant writ petition.

3. In the following authorities, it has been held that fisheries lease shall be settled through open auction and after expiry of period of lease, re-auction shall take place and initial lease shall not be renewed :

1. Ashok Kumar v. State 1995 ACJ 1066.
2. Abdul Gaffar v. State of U.P. and Ors. 1997 RD 656
3. Panchoo v. Collector. 1999 ACJ 312.
4. Ram Bharosey Lal v. State of U.P. 2002 ACJ 1148.
5. Feru v. State of U.P. 2004 RD 645 (All) (FB).

4. It is a matter of grave concern that in spite of the aforesaid judgments Deputy Collectors are settling fisheries pattas without auction on highly inadequate premiums which is some times almost no premium as in the instant case.

5. On enquiry from Court learned Counsel for the petitioners stated that petitioners were ready to take fresh lease of the pond in dispute at the rate of Rs. 25,000/- per year effective from 1.4.2005.

6. As the earlier lease in favour of the petitioners' father was granted from 1.4.1995 till 31.3.2005 hence fresh lease can be granted only with effect from 1.4.2005. Even though Order for grant of lease was passed in the year 1994 however, as lease deed itself mentioned that it was for the period from 1.4.1995 till 31.3.2005 hence there was no question of granting fresh lease effective before 31.3.2005 on the ground that there was some error in respect of period in the lease deed.

7. Accordingly, it is directed that within six weeks from today petitioners shall deposit Rs. 25,000/- before Deputy Collector concerned as first year's rent from 1.4.2005 till 31.3.2006. On such deposit being made Deputy Collector shall within one month invite respondent No. 4-Chhotkun, son of Ramat as well as any other person who may be interested in taking the lease of the pond in dispute to offer higher amount i.e. more than Rs. 25,000/- per year. For inviting other interested persons such procedure may be adopted by the Deputy Collector as he considers appropriate. If no person offers higher amount than ten years' fisheries lease in favour of petitioners effective from 1.4.2005 shall be executed on yearly rent of Rs. 25,000/- payable every year in advance and recoverable like arrears of land revenue in case of default. However, if respondent No. 4 Chhotkun or any other person offers higher amount then auction must take place in between those persons and the petitioners in the office of Deputy Collector and lease shall be settled in favour of the highest bidder with similar terms in respect of payment of rent. This Order is being passed without issuing notice or hearing respondent No. 4, Chhotkun as his interest has sufficiently been safeguarded in the Order. However, if respondent No. 4 feels aggrieved by this Order he is at liberty to apply for its recall.

8. As the period of initial lease in favour of petitioners' father is to continue till 31.3.2005 hence till then respondent No. 4 shall not make any interference in petitioners' right of using pond in dispute for fisheries purposes. Deputy Collector shall conclude the proceedings for grant of fresh lease as directed above before 31.3.2005.

9. In Babban Ram v. State 2004 RD 675 I had directed that fisheries lease shall normally be granted at the rate of Rs. 10,000/- per hectare per year however, as stated above the said amount has been found to be on the lower side. Accordingly, it is directed that in future all the Deputy Collectors shall make efforts to grant fisheries lease for Rs. 20,000/- per hectare per year unless there are special reasons for granting the same for lesser amount in which eventuality reasons must be given while granting the lease. If at the time of auction Deputy Collectors take special interest then rent may easily be enhanced. In several cases the Court has found that on the mere suggestion of the Court parties agree to enhance the rent by several times.

10. Writ petition disposed of accordingly.

11. Shri S.R. Jalil, learned Standing Counsel is directed to send copies of this

judgment of Chief Secretary, Revenue Secretary and all the Collectors of the Districts of Uttar Pradesh for perusal and communication to Deputy Collectors.

12. Let a copy of this Order be given free of cost to Shri S.R. Jalil, learned Standing Counsel.