
(2011) 11 AHC CK 0384

In the Allahabad High Court

Case No : Civil Misc Writ Petition No. 42796 of 2011

Smt. Bhagwatiya

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 14-11-2011

Acts Referred:

Citation : (2011) 10 ADJ 363 : (2012) 2 AWC 1655

Hon'ble Judges : Sunil Hali, J; Amttava Lala, J

Bench : Division Bench

Final Decision : Allowed

Judgement

Hon'ble Sunil Hali, J.—A licence to hold vegetable and cattle market on every Monday over Plot No. 158 was allotted to the respondent No. 4 for the year 2000-01 vide order dated 10th April, 2000. Complaints were filed against the said respondent by Sri Sampat Singh, Sri Dharampal Singh, Sri Mohar Singh, Sri Asha Ram Pal and Suresh Singh and the following allegations were levelled against him :

- (a) that he had permitted to sell the cow and its progeny for the purpose of slaughtering;
- (b) that he was charging "Tahbazari" in excess of the rate fixed;
- (c) that he did not maintain register regarding sale and purchase of the cattle.

2. After conducting the enquiry in the matter the licence was cancelled on 5th April, 2002. On the cancellation of the license of respondent No. 4 same was allotted to the petitioner on her land situated at Gata No. 214 for the year 2002-03 on 17th April, 2002. In pursuance to the issuance of license petitioner is regularly holding the vegetable and cattle market on each Monday of the week on her plot. A Civil Suit was filed by the respondent No. 4 in the Court of Civil Judge (JD), District J.P. Nagar against the Zila Panchayat. An application for grant of interim injunction was also filed. Trial Court rejected the application vide

order dated 25th May, 2002 against which a Civil Appeal was filed before the appellate authority. During pendency of the Civil Appeal, an application was filed by the respondent No. 4 before the Upper Mukhya Adhikari, J.P. Nagar requesting that he may be permitted to hold the cattle and vegetable market on Thursday of every week. The said application was allowed and he was permitted to hold the cattle market on every Thursday of the week which he continued to do till date. It seems that aggrieved by the order of the cancellation of the license dated 5th April, 2002 an appeal was preferred before the Chairman (respondent No. 2) which stood dismissed on 23rd August, 2005. Aggrieved by the order of the appellate Court he filed a Civil Misc Writ Petition No. 54345 of 2006 before this Court. The writ petition was allowed. Both the orders dated 5th April, 2002 and 23rd August, 2005 were quashed and the matter was remitted to the respondent No. 3 and Upper Mukhya Adhikari, J.P. Nagar was directed to decide the matter afresh after giving full opportunity of hearing to the petitioner and other interested persons. In pursuance to the direction issued by this Court, Upper Mukhya Adhikari, Zila Panchayat, J.P.Nagar again rejected the plea of the respondent No. 4 vide order dated 24th December, 2008. While rejecting the appeal of the respondent No. 4, following observations were recorded by the appellate Court:

(i) Earlier the license was given to Khacheru Singh (father of respondent No. 4) for the period of 17th April, 1999 to 31st March, 2000. After expiry of the aforesaid period Khacheru Singh neither applied for renewal nor any application was moved to transfer the license in the name of Ram Phal Singh.

(ii) After perusing the record, it has been found that the Ram Phal Singh with the connivance of the employees of the office illegally obtained the renewal between the period of 1st April, 2000 to 31st March, 2001. The aforesaid renewal does not bear the signature of competent authority.

(iii) After perusing the record, it is found further that renewal of license for the year 2001-02 fraudulently obtained by Ram Phal Singh by adding the market for Tractor in the renewal.

(iv) Allegations found correct regarding non maintaining the register and collection of Teh-Bazari more than the rate fixed.

3. In respect of the aforesaid allegations respondent No. 4 despite of service of notice neither filed the reply nor appeared before the officer

(v) It has also been found in Gata No. 158 that there is no sufficient land in the name of Ram Phal to hold the cattle and vegetable market, because on the aforesaid Gata 23 shops and residential houses have already been constructed. No other facilities for the cattle are available, hence the application moved by Ram Phal Singh was rejected by Upper Mukhya Adhikari by order dated 24th December, 2008 (Annexure 10 to the writ petition).

4. Against this order an appeal was preferred by respondent No. 4. Without

waiting for the decision in the appeal a Civil Misc Writ Petition No. 24311 of 2009 was filed by the respondent No. 4 before this Court and this Court vide order dated 8th May, 2009 was pleased to direct the respondents to decide the appeal expeditiously. On its failure to decide the appeal Contempt Application No. 3287 of 2009 was filed before this Court against the Chair person of Zila Panchayat. The appeal was dismissed on 25th August, 2009 and it was held that since the respondent No. 4 was already holding the market on Thursday hence the license for holding the market on Monday cannot be given to him. Another Civil Misc Writ Petition No. 24637 of 2011 was filed by respondent No. 4 before this Court against the order dated 24th December, 2008. this Court vide its order dated 6th May, 2011 finally disposed of the said writ petition directing the appellate authority to decide the matter after holding an opportunity of hearing to the petitioner. On the direction of the Court, Chairman Zila Panchayat passed the order dated 24th June, 2011 restoring the license in favour of the respondent No. 4 for holding tee cattle and vegetable market on Monday of every week over Gata No. 158. This order is subject matter of challenge before this Court.

5. We have heard Learned Counsel for the parties and perused the material on record.

6. Learned Counsel for the petitioner has contended that the impugned order is violative of the principles of natural justice as he has not been afforded any opportunity before passing the impugned order. Hence the impugned order deserves to be quashed.

7. The learned Standing Counsel appearing on behalf of the respondents urged that the impugned order has rightly been passed and the licence issued in favour of the petitioner could have been cancelled at any time. In the circumstances of the case he urged that the petitioner is entitled to no relief from this Court.

8. Impugned order reveals that the decision to restore the licence of the respondent No. 4 has been taken on the plea that on the date license was cancelled it was allotted to the present petitioner on the same day. It is also stated that the husband of the petitioner had also filed a complaint against respondent No. 4 levelling certain allegations against him. The order proceeds on the assumption that a conspiracy seems to have been hatched against the respondent No. 4 in order to have license allotted in favour of the present petitioner. While construing the import of the order, it clearly emerges that the appellate authority did not take into consideration the allegations against the respondent No. 4 and also the finding recorded by the same appellate authority in this behalf. It is pertinent to mention here that while rejecting his earlier appeal the appellate authority vide its judgment dated 24th December, 2008 found that (a) the license issued in favour of the father of respondent No. 4 was never renewed as it did not bear the signature of the competent authorities; (b) that in the renewal order one more item of Tractor was also added which was not in the earlier license; (c) that the excess Tehbazari was recovered by the respondent No. 4; (d) that the land situated at Gata No. 158 was not sufficient

for conducting of the market as it was recorded in the order that there were 23 shops and residential houses over the said land.

9. Impugned order passed by the appellate authority was required to go into these questions after hearing the parties. Instead of addressing itself on these issues a new theory has been expounded that the license of the respondent No. 4 was cancelled on account of conspiracy hatched by the husband of the petitioner with the prescribed authority. This per-se is perverse finding. It may also be noted that the appellate authority was to deal with the correctness of the order of the cancellation issued against the respondent No. 4. Without addressing the merits of the issues raised, it has travelled beyond the scope of direction issued by this Court by examining the legality of the license issued in favour of the petitioner. Direction of the Court was to hear the parties afresh and pass appropriate order. The vary nature of the direction circumscribed the area of controversy which was required to be determined by the appellate authority Appellate authority has absolutely mis-directed itself in travelling beyond the direction of the Division Bench. As already stated herein supra, the finding recorded by the same appellate authority in which certain findings were recorded against the respondent No. 4 has not been examined and it was the correctness of that order which was required to be re-examined by the appellate authority as directed by this Court. There is one more aspect of the matter that respondent No. 4 on his own has requested the prescribed authority to allow him to hold the cattle market on Thursday which plea has been accepted. After having accepted to hold the cattle market it could not have raked up the issue seeking cancellation of the order by which license has been cancelled. He was estopped from questioning the order of cancellation of license when on his own admission he had accepted to hold the market on Thursday instead of Monday.

10. For the reasons stated above, the writ petition is allowed. The order dated 24th June, 2011 is hereby quashed. There shall be no order as to costs.