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**(2004) 01 AHC CK 0113**  
**In the Allahabad High Court**  
**Case No : C.M.W.P. No. 38175 of 2001**

Vinda Prasad Awasthi

APPELLANT

Vs

Up-Zila Adhikari and Others

RESPONDENT

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**Date of Decision :** 12-01-2004

**Acts Referred:**

Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 6

**Citation :** (2004) 1 AWC 804

**Hon'ble Judges :** Rakesh Tiwari, J

**Bench :** Single Bench

**Advocate :** Rishikesh Tripathi, for the Appellant; Jamal Ali and V.K. Singh and S.C., for the Respondent

**Final Decision :** Allowed

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## Judgement

Rakesh Tiwari, J.—Heard the counsel for the parties and perused the record.

2. This writ petition is directed against the order dated 20.2.2001 passed by respondent No. 1, Annexure-4 to the writ petition, by which the fishery lease of the pond has been granted in favour of Gulab Chandra, respondent No. 3, for a period of ten years. A writ of mandamus has also been prayed directing the respondents not to interfere in the peaceful possession of the petitioner over the pond in dispute.

3. The pond situated in plot Nos. 1921, 1922, 1923, 1924, 1925, 1926, 1927 and 1928 of village Lade-ka-purwa, which are alleged to have originally belonged to one Gangadhar Rao Gore alias Baba Sahab Gore, who was Diwan of Nawab of Banda. It is stated that after the death of Gangadhar Gore, his property including the pond and temples was inherited by his successor Balwant Rao Gore. After the death of Balwant Rao Gore, his son Kashi Nath Gore inherited the property including the pond and the temples. He appointed Sri Ram Prapannacharya as pujari of the temple and also for the management of the attached property including the pond. During the period of Sri Ram Prapannacharya, who was

acting as worshipper in the temple, one Khan Bahadur Shaikh Masaddujjama filed Title Suit No. 251 of 1937 against Mahant Ram Prapannacharya and Kashi Nath Gore claiming title over the aforesaid plots in dispute and also claiming the title over the plots situated out of the bank of the tank, which was dismissed in toto vide Judgment and order dated 19.5.1938. Aggrieved, Khan Bahadur Shaikh Masaddujjama filed Appeal No. 65 of 1938, which was also dismissed vide judgment and order passed by the Additional Civil Judge, Banda, dated 15-9.1942. The said judgment and order dated 15.9.1942 was not challenged in any higher court and it became final between the parties. Thus the ponds situated in plot Nos. 1921 to 1928 and temple, goshala, etc. in dispute remained property of Gore family.

4. After the death of Kashi Nath Gore, his properties were inherited by his son Janardan Rao Gore and after his death, the same was inherited by his son Basant Rao Gore. And Sri Ram Prapannacharya was working as pujari in the temple and after the death of Ram Prapannacharya, the temple, goshala and pond were left without proper supervision. Thereafter Basant Rao Gore appointed Sri Vamdeo, Gosewa Sadan Samiti Babu Sahab Ka Talab, Lade-ka-purwa Shastri Nagar, Banda, as sarvaharkar by a registered deed dated 13.8.2001 to manage the temples, pond and the attached property. Sri Bhawani Dutt Vyas is the present Adhyaksh of the Samiti and the petitioner is the Upadhyaksh of that Samiti. This property did not belong to an intermediary and did not vest in the State. The temple and pond was not property of an intermediary, hence it did not vest in the State u/s 6 of the U. P. Zamindari Abolition and Land Reforms Act.

5. Counsel for the petitioner submits that with the connivance of the members of the Land Management Committee and its Chairman, Up-Zila Adhikari, Banda, without following the procedure contained in paragraph 60 (2), (Kha) (i) of the Gaon Sabha and Bhumi Prabandhak Samiti Manual, executed the fishery lease of the pond illegally in favour of respondent No. 3 for the period of ten years vide order dated 20.2.2001, even though the Land Management Committee had no right or title to grant fishery lease of the pond in question. He submits that the title of the pond, vests in Basant Rao Gore and at present Sri Vamdeo, Gosewa Samiti is sarvaharakar of the pond, temples, goshala and the attached properties and as such the Up-Zila Adhikari had no power and authority to grant the fishery lease in favour of respondent No. 3. Counsel for the petitioner further submits that no Munadi by beat of drum or in any way was done in the village in question before surreptitious and collusive auction of fishery lease over the pond in question. It is further submitted that immediately after the grant of fishery lease in favour of respondent No. 3, the petitioner moved a number of representations before respondent No. 1 and the Collector, Banda, to cancel the fishery lease dated 20.2.2001, but no order has been passed on the representations.

6. The counsel for the respondents submits that the tank vests in the State and relied upon the Government order dated 17.10.1995 issued in exercise of powers u/s 126 of the Act, according to which grant of fishery lease of tanks and ponds

is to be given to the weaker section of society in order of preference. He also submits that according to the Government order dated 17.10.1995, power to grant fishery lease has been given to respondent No. 1 in consultation with Land Management Committee and such rules relating to auction will not apply in respect of Patta of Fishery rights as contained in paragraph 60 (2-kha) of the Gaon Sabha Manual. He further submits that the Land Management Committee passed a resolution on 29.2.2000 for grant of fishery lease, which also had earlier been granted in the year 1986 for ten years.

7. On the ground of maintainability, the counsel for the respondents submits that the suit is the proper remedy for deciding the dispute in question. He submits that similar question has been decided by the Full Bench of this Court in Writ Petition No. 23932 of 2001, Ram Kumar and Ors. v. State of U. P. and Ors., and order has been passed, hence it cannot be said that this writ petition is not maintainable. The pond in question has vested in the State and thereafter vested in Gaon Sabha as per declaration by the State Government. The provision of Clause (k) of Sub-section (2) of Section 122A of the Act provides that the maintenance and development of fisheries, tanks and ponds will be made by the Land Management Committee under the directions issued by the State Government. The State Government has been authorised u/s 126 of the Act to issue such orders and directions to the Land Management Committee. In para 9 of the rejoinder-affidavit, it has been stated that Annexures-C.A.-3, C.A.-4, C.A.-5, C.A.-6 and C.A.-7, of the counter-affidavit are forged documents.

8. The only question involved in the present writ petition is whether Gaon Sabha can grant fishery lease of a private pond belonging to Vamdeo Gosewa Samiti, who is managing the property in dispute, i.e., pond and four temples inside the embankment of the pond where religious ceremonies were performed throughout the year. There is a specific finding to this effect in civil court's judgments dated 19.5.1938 and 15.9.1942 that the temples and the attached pond are being used by the decree holders since long even before the abolition of the Zamindari. The pond and other properties, which do not belong to the Zamindars, are not vested in the State Government.

9. In the instant case, the private pond situate over the plot belonging to the tenant, has been held vide Judgments dated 19.5.1938 and 15.9.1942 to be vested in the petitioner and as such it never vested in the State of U. P. The petitioner is sarvaharakar of the pond and temples. It was dug and dedicated to the temples much before 1937 by the Diwan of Nawab of Banda. The ownership and possession of the petitioner is beyond doubt in this case. The petitioner has relied upon the cases of Ram Singh Vs. District Magistrate, Fatehpur and another, ; Desh Kumar and others Vs. State of U.P. and others, and Matsya Jeevi Sahkari Samiti Ltd. Vs. State of U.P. and others,

10. The copy of the Government order dated 17.10.1995, has not been filed. It may be that under the G.O. dated 17.10.1995 the State Government had power to grant fishery lease in consultation with the Land Management Committee but

it cannot be said that this right exists to the private properties. As stated above, the pond appurtenant to the temples has been decided vide judgment dated 15.9.1942 as properties of the petitioner. He is in possession over the same even before the U. P. Zamindari Abolition and Land Reforms Act and has not vested in U. P. u/s 6 of the Act.

11. For the reasons stated above, the writ petition is allowed and the lease dated 20.2.2001 granted by respondent No. 1 in favour of respondent No. 3 is quashed. No order as to costs.