(2004) 10 AHC CK 0179

Allahabad High Court

Case No: C.M.W.P. No. 6715 of 2004

Babban Ram		APPELLANT
	Vs	
State of U.P. and Others		RESPONDENT

Date of Decision: Oct. 6, 2004

Acts Referred:

- Constitution of India, 1950 - Article 14, 226

Citation: (2005) 1 AWC 122

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

Bench: Single Bench

Advocate: R.K. Singh, for the Appellant; G.D. Mishra and K.K. Sharma and Anuj Kumar, S.C., for the Respondent

Final Decision: Disposed Of

Judgement

S.U. Khan, J.

Dispute in the instant writ petition relates to grant of fisheries rights in respect of a pond comprised in plot No. 220 area 1.06 Hectares situate in village Seuwara, Tahsil Machhalishahr, district Jaunpur. Initially petitioner was lessee of the said pond at an annual rent/premium of Rs. 300. Lekhpal, Naib Tahsildar and Tahsildar recommended that the lease of fisheries rights in respect of the said pond might be given to respondent Nos. 5 and 6 for Rs. 250 per year. S.D.O/Deputy Collector on 14.11.2003 passed a patent order, "accepted as proposed". On 23.3.2004 I passed an order indicating that on the next date pond might be auctioned in the open court. Today both the parties, i.e., petitioner on the one hand and respondent Nos. 5 and 6 on the other hand through their learned counsel offered their bids in the following manner :

Petitioner	Respondents
Rs. 6,000	Rs. 10,000
Rs. 15,000	Rs. 20,000

Rs. 22,000	Rs. 25,000
Rs. 27,000	Rs. 35,000
Rs. 37,000	

2. By judicial intervention annual rent/premium has been enhanced from Rs. 250 to Rs. 37,000 (i.e. 148 times).

3. I have followed this procedure with very good results in several cases drawing inspiration from an authority of Supreme Court in Ram and Shyam Company Vs. State of Haryana and Others, In the said authority Supreme Court settled mining lease through auction in court wherein annual premium was enhanced from Rs. 4.5 lacs to Rs. 25 lacs, i.e., about five and half times by judicial intervention, which according to para 6 of the said authority visibly shocked and surprised each one in the Court.

"Shock was induced by the fact that public property was squandered away for a song by persons in power who hold the position of trust. Surprise was how judicial intervention can serve larger public interest. One would require multilayered blindfold to reject the appeal of the appellant on any tenuous ground so that the respondent may enjoy and aggrandize his unjust enrichment. On this point we say no more." (Para 6 of the aforesaid authority of the Supreme Court).

4. Accordingly lease deed which was earlier executed in favour of respondent Nos. 6 and 7 is set aside. Let lease deed be executed in respect of the pond in question in favour of the petitioner for ten years on annual rent/premium of Rs. 37,000 payable in advance every year. Petitioner is directed to submit a certified copy of this order before Deputy Collector concerned along with Rs. 37,000 within a month whereupon Deputy Collector concerned shall execute the lease deed in favour of the petitioner as aforesaid. If for any year rent/premium is not paid by the petitioner then the same shall be recovered like arrears of land revenue.

5. This High Court in the following authorities has repeatedly held that fisheries patta in respect of pond shall be settled only through open auction :

(1) Ashok Kumar v. State 1995 ACJ 1066.

(2) Abdul Gaffar v. State of U. P. and Ors. 1997 RD 656.

(3) Panchoo Vs. Collector/District Magistrate, Gorakhpur and others,

(4) Ram Bharosey Lal Vs. State of U.P. and Others,

(5) Feru v. State of U. P. 2004 RD 645 (FB).

6. It is a matter of grave concern that inspite 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. In the instant case, instead of enhancing the premium it has been reduced. In almost all such cases favourable recommendation for renewal or grant of lease is made by Naib Tehsildars, Tehsildars and Revenue Inspectors and the said recommendation is blindly accepted by Deputy Collectors by patent order "accepted as proposed". Deputy Collectors are not supposed to pass such orders in important matters. Such orders can be passed only in routine matters. For important matters Deputy Collector or any other Executive Officer must apply his mind and pass a reasoned order. In several cases pertaining to fisheries pattas which came before me during last two and half months premium was enhanced by 30 to 50 times either through auction in Court or by simply asking patta holder to enhance the premium. The Deputy Collectors are directed to be cautious in future otherwise Court may consider recommending initiation of punitive proceedings against erring officials including Deputy Collectors. Collectors of the Districts are also directed to keep a watch on the working of Deputy Collectors in this regard. On the basis of experience gained by auctioning fisheries leases in Court it can safely be said that the average premium for which such leases can be granted is Rs. 10,000 per hectare per year. In future if lease is granted for lesser premium than Rs. 10,000 per hectare per year then special reasons must be given by the Deputy Collectors in the orders accepting the proposal/bid.

7. Copy of this order shall be sent by Registrar General to all Collectors in the State of Uttar Pradesh for compliance and information to Deputy Collectors in their Districts.

8. Writ petition is disposed of accordingly.