

Court No. - 51

Case :- WRIT - C No. - 23771 of 2023

Petitioner :- Dhivar Matsjivi Sahkri Samiti Ltd.

Respondent :- State Of U.P. And 5 Others

Counsel for Petitioner :- Firoz Haider, Mohd. Naushad Siddiqui

Counsel for Respondent :- C.S.C.

Hon'ble Chandra Kumar Rai, J.

1. Heard Mohd. Naushad Siddiqui, learned Counsel for the petitioner and Mr. R.C. Srivastava, learned Additional Chief Standing Counsel for the State Respondents.

2. The instant petition has been filed for the following relief:

"(i) to issue a writ order or direction in the nature of certiorari quashing the impugned order dated 06.06.2023 passed by Collector Lalitpur, District-Lalitpur in Case No.326/2023 (Gopi Tiwari vs. Harcharan) computer Case No. D20230450000326 filed under Rule 59, (233) (2) (14) U.P. revenue code, 2006 as well as directing the respondents to not to interfere on the area which was allotted by the authority for fisheries lease.

(iA) issue a writ or direction in the nature of certiorari quashing the clause No.5 advertisement dated 26.08.202 (Annexure No.2 to the writ petition) and further declare it ultra virus."

(ii) to issue any other suitable writ, order or direction as this Hon'ble Court may deems fit and

proper under the facts and circumstances of the case."

3. Brief facts of the case are that petitioner is a society registered under the U.P. Cooperative Society Act 1965. The aforementioned society has been registered on 13.05.2009 and certificate has been issued by the Assistant Director, Fisheries (Cooperative) on behalf of Registrar Fisheries Cooperative Society, Uttar Pradesh. On 26.08.2022 advertisement has been issued for auction of fisheries lease in respect to the pond (plot No.507 area 4.047 hectare and plot No.585 area 1.550 hectare) situated in village-Sadkaura, Tehsil-Mehrauni, District-Lalitpur by notification number 3449/7/Revenue Officer (Office) fisheries lease, 2022-23. The date for auction was 09.09.2022 but the auction proceeding was adjourned on 09.09.2022 and next date for auction was fixed as 16.09.2022, but again auction could not take place on 16.09.2022 accordingly on 23.09.2022 auction was concluded in favour of the petitioner and certificate has been issued by the authority on 21.10.2022. Auction certificate has been issued in favour of the petitioner on the annual rent of Rs. 56,000 for the period of 10 years. The copy of the lease certificate issued in favour of the petitioner has been annexed as Annexure No.3 to the writ petition. Petitioner has deposited the amount of Rs.49,000/- on 03.10.2022 and Rs.7,000/- on 06.10.2022 accordingly, started the fisheries right in the pond in question on the basis of auction settled in favour of the petitioner. Against the auction settled in favour of the petitioner appeal under Rule 59 (233) (2) (14) of U.P. Revenue Code Rules, 2016 was filed by respondent No. 4 to 6 which has been

registered as Appeal No. 326 of 2023 computerized Case No. D202306450000326. Respondent No.2/Collector Lalitpur, District-Lalitpur vide order dated 06.06.2023 cancelled fisheries lease granted in favour of the petitioner, hence this Writ Petition.

4. This Court, vide order dated 11.08.2023 and 06.09.2023 directed the learned Standing Counsel to obtain instructions in the matter.

5. In compliance of the order of this Court, instruction dated 24.09.2023 was filed by learned Standing Counsel which is already on record.

6. Petitioner has filed reply/ affidavit dated 25.10.2023 to the facts mentioned in the instruction filed by State.

7. Learned Counsel for the petitioner submitted that fisheries lease has been granted in favour of the petitioner in accordance with the provisions of U.P. Code and Rules framed there under. He further submitted that petitioner has deposited the required amount within the period prescribed under the Code and Rules framed there under. He next submitted that petitioner has started fisheries right in accordance with the Rules but appeal filed by the contesting respondents who are not person aggrieved, has been allowed by passing cryptic order dated 06.06.2023 passed by respondent No. 2/ Collector, Lalitpur, District-Lalitpur. He further submitted that lease certificate has been issued in favour of the petitioner in pursuance of the auction proceeding as petitioner has completed all the formalities/ conditions as such setting aside the auction proceeding is

abuse of process of law and appellate order is liable to be set aside. He further submitted that Clause-5 of the advertisement dated 22.8.2022 is also illegal as such the same is also liable to be set aside.

8. On the other hand, Mr. R. C. Srivastava, learned Additional Chief Standing Counsel for the State-Respondents submitted that against the order impugned, the remedy of revision is available to the petitioner, as such, the writ petition is liable to be dismissed on the ground of alternative remedy. He further submitted that the advertisement was issued on 26.8.2022 and amount has been deposited on 3.10.2022 and 06.10.2022 as such deposit cannot be treated as valid deposit. He further submitted that in view of the clause-5 of the advertisement, the petitioner should deposit the amount for the entire period of ten years rather for one year. He further submitted that no interference is required against the order impugned passed by Respondent No. 2 and the writ petition is liable to be dismissed.

9. In reply, learned Counsel for the petitioner submitted that once auction has been settled in accordance with law in favour of the petitioner, which is a registered society having experience in the fisheries rights and the valid deposit has been made by the petitioner also, as such setting aside the auction proceeding on the ground that valid deposit was not made by the petitioner, is wholly illegal. He further submitted that appellate order passed by the Respondent No. 2 setting aside the auction proceeding which was settled in accordance with law will amount to illegal exercise of

jurisdiction as such the remedy of revision will not come in the way of the petitioner to challenge the appellate order before this Court in exercise of jurisdiction under Article 226 of the Constitution of India.

10. I have considered the arguments advanced by the learned counsel for the parties and perused the record.

11. There is no dispute about the fact that petitioner is the registered society having experience in the fisheries rights. He further submitted that lease certificate dated 21.10.2022 has been issued in favour of the petitioner on the basis of the auction taken place on 13.09.2022 in respect to plot no.507 and 585 area 5.597 hectare.

12. In order to appreciate the controversy involved in the matter, Rule 57 (7) of the U.P. Revenue Rules Code, 2016 will be relevant for perusal which is as under.:

"Lease of Tanks

57. (7) If the list of eligible persons prepared under sub-rule (4) consists of more than one person, then an auction shall be held on the spot in which only those shall be allowed to participate whose names are included in such list. If there is only one person eligible for the lease aforesaid, the lease shall be granted on the annual rent of the amount fix by the State Government from time to time which shall not be less than Rs. 1000/- and shall not exceed Rs.2000/- per acre."

13. Paragraph 8 of the instruction dated 24.09.2023 is also relevant for the perusal which is as under:

"8. यह कि रिट याचिका के पैरा- 09 के सम्बन्ध में कथन है कि प्रश्नगत पट्टे के सम्बन्ध में जो विज्ञापन समाचार पत्र में दिनांक 26.08.2022 को प्रकाशित कराया

गया उसमे अंकित नीलामी की शर्त क्रमांक 05 के अनुसार अधिकतम बोली वाले व्यक्ति/ समितियों द्वारा 10 वर्षीय की लगान की सम्पूर्ण धनराशि का ¼ भाग तत्काल जमा करनी होगा, शेष ¾ धनराशि एक पक्ष या 14 दिन के अन्दर जमा करनी होगी। प्रश्नगत नीलामी में याची द्वारा उक्त शर्तों का पालन नहीं किया गया तथा तत्काल कोई धनराशि जमा नहीं की गई एवं जो धनराशि 03.10.2022 व 06.10.2022 को कुल मिलाकर 56000/- रु० जमा की गयी। जो मात्र एक वर्ष की धनराशि की थी जबकि शर्त क्रमांक 05 के अनुसार 10 वर्षीय लगान की सम्पूर्ण धनराशि जमा करनी थी। जिसका पालन याची द्वारा नहीं किया गया इसी कारण रेस्पोंडेंट सं०- 02 जिलाधिकारी ने प्रश्नगत नीलामी को विधि विरुद्ध मानते हुये अनुमोदित/स्वीकृति आदेश निरस्त किया है। जो सही है और याची की याचिका निरस्त होने योग्य है।"

14. Perusal of the instruction reveals that the objection taken in the instruction is misconceived as the petitioner has already annexed proof of deposit made by the petitioner on 3.10. 2022 and 06.10.2022 in pursuance of the auction taken place on 23.09.2022.

15. Considering the deposit made by the petitioner as well as lease certificate issued in favour of the petitioner, auction cannot be cancelled on the ground that there was no valid deposit made by the petitioner in pursuance of the auction taken place in respect to the pond in question.

16. Impugned order dated 06.06.2023 passed by Respondent No. 2/ Collector Lalitpur, District-Lalitpur will be also relevant for perusal which is as under:

"मण्डल:- झांसी, जनपद:- ललितपुर

न्यायालय जिलाधिकारी

वाद संख्या:- 326/2023

गोपी तिवारी बनाम हरचरन

कंप्यूटरीकृत वाद संख्या:- D202306450000326

अंतर्गत धारा:- नियम 59, (233) (2) (14), उत्तर प्रदेश राजस्व संहिता-2006

आदेश तिथि:- 06/06/2023

अंतिम आदेश

निर्णय

गोपी तिवारी पुत्र मुलू निवासी ग्राम सडकौरा तहसील महरौनी जनपद ललितपुर आदि ने यह अपील मत्स्य पालन आवंटन पत्रावली ग्राम सडकौरा परगना महरौनी तहसील महरौनी जनपद ललितपुर में पारित उप जिलाधिकारी महरौनी के स्वीकृति/अनुमोदन आदेश दिनांक 12.10.2022 से क्षुब्ध होकर प्रस्तुत की गई है।

उभयपक्षों के विद्वान अधिवक्ताओं को सुना तथा पत्रावली का अवलोकन किया। पत्रावली से विदित है नीलामी में केवल एक ही व्यक्ति/संस्था द्वारा भाग लिया गया है तथा नीलामी हेतु सिक्क्योरिटी मनी जमा किये जाने का कोई साक्ष्य/अभिलेख पत्रावली पर नहीं और न ही नीलामी सम्पन्न होने के उपरांत नीलामी की शर्त/विज्ञप्ति दिनांक 26.08.2022 के अनुसार निर्धारित समय में बोलीदाता द्वारा धनराशि जमा की गई है। उपरोक्त से स्पष्ट है कि नीलामी में किसी प्रकार की कोई प्रतिस्पर्धा दर्शित नहीं है और न ही नीलामी की शर्तों का पूर्णतः पालन सुनिश्चित किया गया है। ऐसी स्थिति में उप जिलाधिकारी महरौनी के स्वीकृति/अनुमोदन आदेश दिनांक 12.10.2022 में हस्तक्षेप किये जाने का पर्याप्त आधार है।

आदेश

उपरोक्त विवेचनानुसार उप जिलाधिकारी महरौनी का स्वीकृति/ अनुमोदन आदेश दिनांक 12.10.2022 निरस्त किया जाता है तथा पत्रावली इस निर्देश के साथ वापस प्रेषित की जाती है कि नियमानुसार पुनः नीलामी प्रक्रिया सम्पन्न कर कार्यवाही सम्पादित करें। आदेश की प्रति सहित पत्रावली वापस प्रेषित की जाये। पत्रावली बाद आवश्यक कार्यवाही दाखिल दफ्तर हो।

दिनांक 06.06.2023
(आलोक सिंह)

कलेक्टर ललितपुर

उक्त आदेश मेरे द्वारा हस्ताक्षरित, दिनांकित एवं मुद्रांकित होकर आज खुले न्यायालय में उद्घोषित किया गया।

(आलोक सिंह)
कलेक्टर ललितपुर"

17. Considering the provisions contained under Rule 57 (7) of U.P. Revenue Code Rules 2016 as well as the deposit made by petitioner on 03.10.2022 and 06.10.2022 the impugned order dated 06.06.2023 passed by Collector as quoted above, as well as clause 5 of the advertisement cannot be sustained in the eye of law.

18. Since the impugned order dated 06.06.2023 passed by respondent No.2 has resulted into illegal exercise of appellate jurisdiction, as such writ petition filed by petitioner

cannot be dismissed on the ground of alternative remedy.

19. Considering the entire facts and circumstances of the case, the impugned order dated 06.06.2023 passed by respondent No.2/ Collector Lalitpur, District-Lalitpur as well as Clause No.5 of the advertisement dated 26.08.2022 cannot be sustained in the eye of law and the same are hereby set aside. Respondents are directed not to interfere in the fisheries right of the petitioner which was granted in favour of the petitioner for the period 21.10.2022 to 20.10.2032.

20. Writ petition stands allowed.

Order Date :- 30.11.2023

PS*