

Court No. - 52

Case :- WRIT - C No. - 27428 of 2021

Petitioner :- Ravikesh Singh

Respondent :- State Of U.P. And 4 Others

Counsel for Petitioner :- Suyash Pandey

Counsel for Respondent :- C.S.C.

Hon'ble Saurabh Srivastava,J.

1. Heard Sri Suyash Pandey, learned counsel for petitioner and Sri Prabhakar Tripathi, learned Standing counsel appearing on behalf of respondent no. 1 to 4.

2. Present petition has been filed seeking following reliefs:

"i. to issue a writ, order or direction in the nature of certiorari quashing the impugned order dated 21.6.2021 passed by the respondent no. 3 (Annexure no. 6 to the writ petition);

ii. to issue a writ, order or direction in the nature of mandamus commanding the Sub-Divisional Officer, Tehsil Martinganj, District Azamgarh to execute lease deed in favour of the petitioner in respect of the pond situated in plot no. 44 having 0.380 hectare situated in Gram Panchayat, Mahibullaganj, Tehsil Martinganj District Azamgarh, within the period to be stipulated by this Hon'ble Court;"

3. It is the case of the petitioner that being the highest bidder, the petitioner has been declared as the original candidate for extending the lease in shape of pond for fishing purpose. It is the admitted fact that after deposition of the earnest money at the time of bidding no further amount has been demanded or directed to the petitioner for deposit against lease for which petitioner has already participated and no lease deed has ever been extended in pursuance to the result of the open bidding. In spite of the outcome of open bidding, wherein the petitioner has been declared as the successful candidate for extending the lease for pond situated at village Mahibullaganj, Tehsil Martinganj, District Azamgarh, no lease deed has been executed and without informing any further the proceeding initiated for extending lease in favour of the petitioner has been cancelled over some report submitted by concerned Tehsildar/Naib Tehsildar.

4. Learned counsel for the petitioner submitted that with regard to any further action whatsoever has been taken up by the responding authority after declaration of the most suitable candidate in pursuance to the open bidding in favour of the

petitioner when no action has been taken up in consonance with the provisions of Section 57 of U.P. Revenue Code, 2006 which espouses cause of action in favour of the petitioner to prefer instant writ petition wherein all the above mentioned information has been submitted by the responding authorities through counter-affidavit.

5. After having the knowledge of the action carried out by responding authorities, the same has been negated and controverted by way of filing rejoinder affidavit preferred on behalf of the petitioner wherein the specific stand has been taken that no opportunity of hearing has ever been provided at the time of deciding for cancellation of the entire proceedings which has been carried out for extension of lease in favour of the petitioner. The specific averment has been made under para 10 of the petition that with regard to knowledge about the cancellation of the proceedings has been submitted at the time when the Writ petition no. 15936 of 2021 has been taken up by co-ordinate Bench of this Court which culminated into dismissal of the same as withdrawn with liberty to file fresh and thereafter the instant petition has been preferred by the petitioner.

6. Per contra, learned Standing counsel vehemently opposed the prayer as made in the petition on the basis of the averments made in the counter affidavit preferred on behalf of respondent no. 2, 3 and 4, wherein it has been mentioned that after acceptance of bid in question, remaining 3/4th of the bid money was to be deposited within 15 days but the petitioner deposited remaining bid money after expiry of 15 days on his own and the same was without any proper permission from the respondent no. 3, moreover on the basis of the enquiry report submitted by the Tehsildar, Tehsil Martinganj, District Azamgarh respondent no. 3 cancelled the auction proceedings of pond in question vide order dated 21.06.2021 and at the same time directed for refund the bidding amount to the tune of Rs.40,000/- deposited by the petitioner.

7. Learned Standing counsel also informed that the entire proceedings initiated in shape of cancellation of the proceedings has been initiated at the behest of an application preferred by Gram Pradhan who has not participated in pursuance to compliance of Section 57(3) of U.P. Revenue Code Rules, 2016, at the same time it is also mentioned that after cancellation of the entire proceedings which culminated into order which impugned the present petition no fresh auction proceedings has ever been initiated for the same pond.

8. After hearing learned counsel for the rival parties, the sole question which has to be dealt before dealing with the contentions raised by learned counsel for the petitioner for challenging the order passed by respondent no. 3 is that whether the petitioner is entitled to challenge the proceedings which culminated into cancellation of the same specifically over the report submitted by concerned Tehsildar after acceding to the application preferred by concerned Gram Pradhan.

9. Sri Suyash Pandey, learned counsel for petitioner submitted that the petitioner has accrued the rights once he has been declared as successful in pursuance to the open bidding and his name has been recommended for extension of the lease of pond in question, moreover after accepting the earnest money deposited by the petitioner at the time of bidding also conferred the entire rights for challenging any decision in respect of the pond, if taken by the responding authorities which is adversely affecting the rights pertaining to the petitioner.

10. Per contra, learned Standing counsel relied upon the provisions available under Section 57 of U.P. Revenue Code Rules, 2016 through which it has been demonstrated that petitioner was only shortlisted being the single bidder and recommended for formal orders to be passed after approval of the competent authority i.e respondent no. 3 and as such by mere deposition of the earnest money at the time of participating in the open bidding and recommending thereafter does not create any right in favour of the petitioner for challenging the decision taken up by respondent no. 3 at the behest of an application preferred by the Gram Pradhan that was with regard to usage of the same pond by the public at large for performing different rituals in different festivals and the water of the same was being utilized for irrigating near about 1 acres of land nearby to the pond.

11. After hearing the submissions extended by learned counsels for the parties, one thing is crystal clear that there is hardly any case with regard to *inter se* clash of interest amongst the parties and there is hardly any matter indicated through the instant petition that the rights of the petitioner are being infringed at the behest of some interest involved with regard to another person interested over the same, since at the time of raising arguments fair contention, it has been admitted by learned counsel for petitioner that no further proceeding for extension of lease has ever been initiated by the responding authority after cancelling the proceedings which impugned the present petition.

12. The core submission is submitted by learned Standing counsel that no lease deed has been performed after having approval of the recommendation made in favour of the petitioner and as such the petitioner is not legally entitled to challenge the order passed by respondent no. 3 through which the entire proceedings initiated in shape of extension of lease of a particular pond in favour of petitioner has been stood cancelled. The arguments raised by Sri Prabhakar Tripathi, learned Standing counsel seems to be justified.

13. Before entering into the merits of the matter, it was obvious duty of a Court to first examine whether the seeker of the justice has been acquainted with the proper rights as well as with the locus for challenging the same. In the instant matter the proceedings has to by long way to incur any right in favour of the petitioner and the same has been challenged at the very initial stage once the entire proceeding has been only finalised upto the level of the recommendation of the name of the petitioner that too on the basis of the single bidder, the recommendation does not create any right in favour of the petitioner for challenging the order of cancellation of the proceedings which has been carried out at the half of the way.

14. The grounds taken up by learned counsel for the petitioner that the entire action initiated against petitioner was behind the back and that too without intimating and the same has been culminated without affording any proper opportunity of hearing is having no grounds since no prejudice has been caused to the petitioner only after shortlisting his name and recommended for approval, on the other hand the application preferred by the concerned Gram Pradhan which culminated into cancelling the entire proceedings vide order dated 21.06.2021 passed by respondent no. 3 seems to be logical and at the same time there is hardly any averment made in the petition with regard to objecting the application preferred by the Gram Pradhan which has been considered by respondent no. 3 before arriving over the determination drawn vide order dated 21.06.2021.

15. The core issue as determined earlier with regard to competency of the petitioner along with right to challenge the order dated 21.06.2021 passed by respondent no. 3 is hereby decided against the petitioner on the grounds and the facts mentioned above.

16. In view of the observation made above, writ petition stands ***dismissed*** accordingly. However, it is made clear that while cancelling the entire proceedings vide order dated 21.06.2021 which impugned the present petition there is a specific

averment made by respondent no. 3 that the money which has already been deposited being the earnest the same has to be refunded. Learned counsel for the petitioner specifically denied that no money has been refunded till today. Respondent no. 3 (Sub Divisional Officer, Tehsil Martinganj, District Azamgarh) is hereby directed to refund the earnest money along with the other money, if deposited by the petitioner be refunded within a period of four weeks from today.

Order Date :- 5.12.2023

Shaswat