

**Court No. - 52**

**Case :-** WRIT - C No. - 34443 of 2023

**Petitioner :-** Chandra Kumar

**Respondent :-** State Of U.P. And 3 Others

**Counsel for Petitioner :-** Dharmendra Kumar, Shailendra Kumar

**Counsel for Respondent :-** C.S.C., Achal Singh

**Hon'ble Saurabh Srivastava, J.**

1. Heard Sri Dharmendra Kumar, learned counsel for petitioner and Sri Abhishek Shukla, learned Additional Chief Standing counsel appearing on behalf of respondent no. 1 to 3 and Sri Ambuj Srivastava holding brief of Sri Achal Singh, learned counsel for respondent no. 4.

2. Present petition has been filed seeking following reliefs:

*"(i) Issue writ order or direction in the nature of certiorari quashing the impugned order dated 22.8.2023 passed by the respondent no.3, the Sub Divisional Magistrate, Tehsil Baberu, District Banda (Annexure no. 5) to the writ petition as relates to the serial no. 54 village Nilathu, Tehsil Baberu District Banda.*

*(ii) Issue writ order or direction in the nature of mandamus commanding/restraining the respondents from interfering in any manner in the fisheries of the petitioner over plot no. 535 area 1.8660 hectares situated in village Nilathu, Tehsil Baberu, District Banda."*

3. It is the case of the petitioner that after the death of his maternal grand-father who has been extended lease against pond as plot no. 535 area 1.866 hectare for 10 years vide allotment order dated 25.09.2018 situated at village Nilathu, Tehsil Baberu, District Banda. Ill luck would have it, maternal grand-father of the petitioner expired on dated 30.12.2022. It is apparent that the period for which the lease has been extended was still remaining and in pursuance to the will-deed executed by the maternal grand-father in favour of the petitioner, he continued operation of the pond for the purposes of which it has been extended in favour of maternal grand-father of the petitioner in shape of lease.

4. Learned counsel for petitioner submitted that petitioner abide all the terms and conditions with regard to schedule of payment as mentioned in the lease deed and no default has ever been made in

respect of deposition of the same. All of a sudden a notification dated 22.08.2023 has been issued from the office of the respondent no. 2, wherein pond being operated by petitioner has been notified and available at serial no. 54 of the notification dated 22.08.2023. The above mentioned notification rises cause of action in favour of the petitioner for challenging the same only with respect to serial no. 54 by way of filing the instant petition. While assailing the notification dated 22.08.2023 only with respect to serial no. 54 learned counsel for petitioner relied upon the judgment dated 26.02.2014 passed in Writ C no. 7322 of 2014 (**Smt. Sonmati vs. State of U.P. and 4 others**) which has been further reiterated in Civil Misc. Writ Petition no. 8762 of 2015 (**Ravindra and others Vs. State of U.P. and others**) decided on dated 02.04.2015 and the same ratio has already been decided in Writ C no. 54245 of 2010 (**Smt. Sumitra Vs. State of U.P. and others**) decided on 06.09.2010.

5. While highlighting the ratio of the above mentioned judgments, learned counsel for the petitioner submitted that the lease extended in shape of pond is heritable in nature and as such the maternal grand-father of the petitioner was having only three daughters and at the fag end of his life time he executed an un-registered will deed in favour of the petitioner and on the basis of the same, petitioner is in possession of pond that is plot no. 535 situated at village Nilathu, Tehsil Baberu, District Banda.

6. Per contra, learned Additional Chief Standing counsel vehemently opposed the prayer as made in the petition and rebutted the stand taken up in pursuance to the judgments relied upon by learned counsel for the petitioner. For substantiating his arguments, learned Additional Chief Standing counsel sought the attention of the Court over R.C. Form 15 available at Appendix 2 of the U.P. Revenue Code, 2006 wherein the essential terms and condition have been defined that has to be mentioned while executing the lease deed performed after finalization of the lease deed approved by the competent authority in favour of the bidder. Para 10 of the R.C. Form 15 is reproduced hereinbelow:

*"(10) That this lessee shall have no right to sub-let the tank in any circumstance nor shall the lessee transfer it to any person."*

7. Sri Abhishek Shukla, learned Additional Chief Standing counsel submitted that the plot in question which has already been extended in shape of lease in favour of maternal grand-father of the petitioner cannot be transferred in the strict terms and condition prescribed under para 10 of the R.C. form 15 as

mentioned above.

8. After hearing the rival submissions extended by learned counsel for the parties and perusal of the relevant documents appended along with petition, it is crystal clear that the will-deed executed in favour of the petitioner was not having any specific plot number for which the lease has been extended in favour of the maternal grand-father of the petitioner and as such the essential terms and conditions mentioned in the lease deed has not been violated by the maternal grand-father of the petitioner. It was the general will through which all the movable and immovable property pertains to the maternal grand-father has been transferred in favour of the petitioner, law provides the property in shape of movable or immovable which is having clear cut title of the executor and not properties which were extended in his/her favour for specific period of time and as such the arguments raised by learned Additional Chief Standing counsel is not sustainable in the eye of law that the property in shape of lease has been specifically transferred and as such the terms and condition under para 10 has been violated by the maternal grand-father of the petitioner.

9. One vital question perhaps lies in favour of the responding authorities that without deciding the inheritance coming from the lineage of the maternal grand-father of the petitioner, the lease cannot be automatically extended in favour of the petitioner and as such the notification contains serial no. 54 specifically for the pond which were extended in shape of lease against maternal grand-father of the petitioner and the same is re-notified for allocation to the person who comes under the eligibility criteria after finalisation of the bidding process. If in case there is no dispute with regard to inheritancy of maternal grand-father of the petitioner which will be ascertained by the respondent no. 3, the continuance of the lease in favour of the petitioner shall not be disturbed.

10. Writ petition stands ***disposed of*** accordingly.

**Order Date :- 23.11.2023**

Shaswat