

Court No. - 40

Case :- WRIT - C No. - 36762 of 2023

Petitioner :- Sanjay Kumar Singh

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

Counsel for Petitioner :- Rajendra Singh, Sarvagya Singh

Counsel for Respondent :- C.S.C.

Hon'ble Mahesh Chandra Tripathi, J.

Hon'ble Prashant Kumar, J.

1. Heard Sri Rajendra Singh, learned counsel for the petitioner and Sri S.C. Upadhyay, learned Additional Chief Standing Counsel for the State respondent nos.1 to 4.

2. Notice need not be issued to the private respondent no.5 in view of the order proposed to be passed.

3. Present writ petition is preferred inter alia for following reliefs:-

"i. issue a writ, order or direction in the nature of certiorari to quash the order No.1287/CRA/2023 dated 15.9.2023 (Annexure No.8) passed by respondent no.2, District Magistrate, Chandauli.

ii. issue a writ, order or direction in the nature of mandamus directing the respondent no.2, District Magistrate, Chandauli to handover the possession of the land forming part of auction proceeding to the petitioner within stipulated time."

4. Brief facts of the case are that fifth respondent namely Lallan Upadhaya was initially granted fisheries lease of plot nos.146, 149, 179 on 8.9.1987 for a period of ten years w.e.f. 8.9.1987 to 8.9.1997 and he was continuously doing his fisheries business over the aforesaid ponds. Once the Land Management Committee interfered with the right of the 5th respondent for fisheries then he filed Writ Petition No.38365 of 1995 (Lallan Upadhyay vs. State of U.P. and others) and this Court vide order dated 14.5.1995, directed the authority concerned, not to dispossess him from the aforesaid plots with respect to his fisheries right. Thereafter, he had filed an application before the District Magistrate on 19.11.1997 and prayed for extension of the fisheries lease for a further period of 10 years. The Addl. District Magistrate (Finance & Revenue) submitted a report dated 26.9.1997 and recommended for extending the fisheries lease in his favour for a further period of 10 years. The 5th respondent had deposited the requisite amount

from time to time which was even accepted by the Land Management Committee without any objection and allowed him to carry out fisheries in the pond in question.

5. It further appears from the record that once the local person started interference in the fisheries right of the 5th respondent with respect to the pond in question then he filed an Original Suit No.478/2016 for permanent injunction in which an interim injunction was granted by the Civil Judge (Senior Division), Chandauli on 24.11.2016. Meanwhile, a complaint was filed by one Mangla Upadhyay of the same village and accordingly, a report was submitted before the Sub-Divisional Officer that the fifth respondent had made encroachment on the aforesaid plots in dispute, which are recorded as pond in the revenue records. The proceeding for ejectment under Section 136 of the U.P. Revenue Code, 2006, was initiated against him which was registered as Case No.323/2022 (Computerized Case No.T202214180200323, State vs. Lallan Upadhyay). Again the fifth respondent filed Writ C No.34938 of 2022 (Lallan Upadhyaya vs. State of UP and 3 others), which was dismissed by this Court on 21.01.2022. Finally, the Sub-Divisional Officer, Chakiya, Chandauli vide order dated 24.2.2022, passed an order for ejectment of the fifth respondent from plot nos. 146, 149, 149kha as well as imposed damages of Rs.1,10,68,000/-. The Sub-Divisional Officer had recorded a finding of fact that after enquiry, it has been found that no fisheries lease was executed in his favour and he is occupying the plot in question for the last 25 years which is recorded as pond.

6. Against the order of the Sub-Divisional Officer dated 24.2.2022, the fifth respondent filed Revision No.612 of 2022 (Computerized Case No.AL2022141800612, Lallan Upadhyaya vs. State of U.P. and Others), under Section 210 of the U.P. Revenue Code, 2006 before the Board of Revenue along with stay application. During the pendency of the aforementioned revision before the Board of Revenue, an order of attachment was issued by the Sub-Divisional Officer on 11.4.2022 as well as proclamation of sale under Section 184 of the U.P. Revenue Code, 2006 dated 5.5.2022. On the basis of the aforementioned proclamation, the property of the fifth respondent was sold in violation of Section 184(3) of U.P. Revenue Code, 2006. The sale was made through auction and the petitioner purchased the property, which was attached in the aforementioned proceeding for Rs.35,36,000/- on 4.6.2022. Against the order dated 4.6.2022, the fifth respondent filed an application to set aside the sale under Section 193 of the U.P. Revenue Code, 2006 read with Rule 171 of the U.P. Revenue Code

Rules, 2016 along with stay application which has been numbered as Computerized Case No.C202214000001046 of 2022 (Lallan Upadhyay vs. S.D.M, Chakiya and Others), Under Section 193 of the U.P. Revenue Code, 2006 along with stay application.

7. The fifth respondent filed Writ C No.12706/2022 (Lallan Upadhyay vs. State of U.P. and Others) which was disposed of vide order dated 1.7.2022, directing the Board of Revenue to pass appropriate orders on the stay application within a period of 10 days. The Court had also directed that the order shall be passed in all the applications within a period of three weeks and till the passing of the order, parties shall maintain status quo with respect to nature, character and possession of the property in dispute. A direction was also issued for deciding the revision within a period of 6 weeks. In compliance of the order dated 1.7.2022, passed by this Court, the fifth respondent filed applications on 11.7.2022 i.e. amendment application, impleadment application and stay application and all the aforementioned applications are pending before the Commissioner in the proceeding under Section 193 of the U.P. Revenue Code, 2006. Again the fifth respondent filed Writ C No.24642/2022 (Lallan Upadhyay vs. State of UP and others) for mandamus directing the Commissioner, Varanasi Division, Varanasi to decide stay application, pending in the aforementioned case under Section 193 of the U.P. Revenue Code, 2006 read with Rule 171 of the U.P. Revenue Code, 2006 pending since 10.6.2022, within time-bound period and the aforesaid writ petition was dismissed by learned Single Judge on 07.02.2023.

8. In pursuance of the aforesaid order, an advertisement was published on 30.05.2022 for auction of pond in question. In the said auction, total seven persons including the petitioner participated. In the said auction the petitioner was the highest bidder and his bid of Rs.35,36,000/- was accepted. The Sub Divisional Magistrate, Tehsil Chakiya, District Chandauli vide order dated 20.6.2022 has also confirmed the sale. Thereafter, the petitioner deposited the requisite amount and the requisite stamp for registration. Once no action has been taken by the authority concerned to handover the possession of the said land to him then the petitioner has filed Writ C No.26358 of 2022 (Sanjay Kumar Singh vs. State of UP and 3 others), which was disposed of by the Division Bench on 18.1.2023 giving liberty to the petitioner to raise his grievance before the respondent no.3 within two weeks, who shall take appropriate decision in accordance with law after affording reasonable opportunity of hearing to the petitioner and other concerned parties within next four weeks, if there is no legal

impediment. When no decision was taken by the respondent no.2, then the petitioner preferred Contempt Application (Civil) No.2752 of 2023 (Sanjay Kumar Singh vs. Jwala Prasad, S.D.M.), which was disposed of on 26.4.2023 according three months' further time to the opposite party to comply with the order dated 18.01.2023. In response thereof, the impugned order has been passed on 15.9.2023.

9. In this backdrop, learned counsel for the petitioner states that in the auction proceeding the petitioner was the highest bidder and accordingly, while passing the order dated 23.5.2022 in Writ C No.12706 of 2022 learned Single Judge directed the concerned Sub Divisional Magistrate and the revenue authorities to comply with the order dated 24.02.2022, whereby the auction was confirmed in favour of the petitioner. He submits that in response to the auction proceeding the petitioner has deposited the entire amount of Rs.35,36,000/- alongwith requisite stamp but till date the possession has not been given to him. He has placed reliance on the letter dated 29.06.2022, which is appended as Annexure No.5 to the writ petition. He is not pressing the first relief for quashing the order dated 15.9.2023, whereby the claim of the petitioner has been rejected merely on the ground that the sale consideration was approved by the Sub Divisional Magistrate in bereft of powers as under Section 169 of U.P. Revenue Code, 2006 read with Rule 141 of the U.P. Revenue Code Rules, 2016 the competent authority is the District Magistrate. He is not inclined to press the first relief and direction may be issued to the respondents to return the aforesaid amount alongwith stamp.

10. Considering the facts and circumstances we are not inclined to keep the matter pending consideration.

11. In view of above, without expressing any opinion on the merits of the issue and considering the facts and circumstances of the case, this writ petition is disposed of finally with a direction to the District Magistrate, Chandauli (respondent no.2) to decide the claim set up by the petitioner for return of the aforesaid amount alongwith stamp strictly in accordance with law within a period of six weeks from the date of production of a certified copy of this order before him.

Order Date :- 6.12.2023

RKP