

Court No. - 17

Case :- WRIT - C No. - 9331 of 2023

Petitioner :- Ram Milan

Respondent :- State Of U.P Thru. Distt, Magistrate Distt. Sultanpur And 5 Others

Counsel for Petitioner :- Alok Kirti Mishra, Rupa Singh, Shashank Kumar Shukla

Counsel for Respondent :- C.S.C., Mohan Singh

Hon'ble Alok Mathur, J.

Heard learned counsel for the petitioner, learned Standing Counsel on behalf of respondents no.1 to 4 and Ms. Richa Tiwari, Advocate holding brief of Shri Mohan Singh, learned counsel appearing on behalf of respondent no.5.

In light of the order proposed to be passed notice to respondent no.6 is dispensed with.

Controversy in the present case relates to the auction of the fishries rights with regard to the pond situated in village- Loharmau District Sultanpur at Gata No.755, measuring .0.7080 hectares.

It has been submitted by the learned counsel for the petitioner that in order to auction the fishries rights of the said pond a camp was organized in Tehsil Sadar, District Sultanpur on 12.7.2022. In the said camp petitioner was the only bidder for the said pond and he had made a bid for Rs.4,000/- per year and consequently his bid was accepted.

It has further been submitted that recommendations for settlement of the rights in favour of the petitioner was recommended by the Committee on 12.7.2022 and the matter was referred to the SDM Sadar, District Sultanpur.

It is stated that the said matter is kept pending with the respondents for over one year and subsequently the petitioner came to know that the allotment has been cancelled by means of the impugned order dated 20.9.2023 and 22.9.2023.

It has been submitted that once the bid of the petitioner has been accepted then the same could not have been cancelled without giving opportunity of hearing to the petitioner, consequently, order of cancellation of the allotment of the petitioner is illegal and arbitrary and further a direction has been sought to the respondents to decide the representation of the petitioner dated 25.9.2023.

Learned Standing Counsel on the other hand has submitted that the bids were invited for grant of the fishries rights on the pond situated at Gata no.755 but no 'patta' was in fact settled in favour of the petitioner. He submits that in the meanwhile several representations were received from the villagers stating that the pond is utilized by all the villagers collectively and it was further noticed that in case the rights are settled in favour of the petitioner it may lead to law and order position and breach of public peace and, accordingly, the report was forwarded to the competent

authority.

It is further being noticed that in the alleged order dated 20.9.2023 it has been recorded that the said pond is used for the purpose of religious worship by the villagers and there is strong opposition at the local level and consequently the auction deserves to be set aside.

It has further been submitted that, in fact, no allotment was issued to the petitioner and, consequently, no further proceedings were held in pursuance of the bid submitted by the petitioner and in the said circumstances the SDM has directed that the amount deposited by the petitioner should be returned.

I have heard learned counsel for the parties and perused the record.

It is noticed that proceedings were initiated by the respondents for settlement of the fishries rights in relation to the pond situated at village - Loharmau District - Sultanpur, Gata No.755 measuring 0.7080 hectares. After the advertisement a camp was organized on 12.7.2022 where the petitioner had participated and made a bid for obtaining fishries rights on the said pond. The proposal was duly forwarded to the SDM by the Committee constituted for auctioning the said rights.

Admittedly, no proceedings have been held subsequent to 12.7.2022. No allotment letter was issued to the petitioner nor has the same been annexed along with the writ petition and petitioner also does not dispute this fact. It is only when after lapse of substantial time that no agreement was entered into in pursuance of the said bid then the petitioner obtained the copies of the orders impugned in the present writ petition dated 20.9.2023 and 22.9.2023.

A perusal of these two letters indicate that there are handwritten documents which are not even addressed to the petitioner. There are mere internal notings with regard to the auction of the said pond and it has been recorded that there may be a law and order situation in case the said pond is auctioned and also that there is already litigation pending and villagers are also using the said pond for religious worship and it will not be suitable or advisable to auction the said pond. No formal order of either allotment or cancellation of the pond is on record.

This position is also not disputed by the petitioner. He submits that impugned notings amount to cancellation of the bid of the petitioner.

It is in the aforesaid circumstances this Court is of the considered view that the authorities have taken a decision not to proceed further with the bid considering the fact that there is a law and order problem and also that the said pond is used for the religious worship by the villagers.

Considering the fact that no allotment letter was issued in favour of the petitioner settling the fishries rights in his favour nor any agreement was entered as provided in rules for allotment between the petitioners and revenue authorities, this Court is of the considered view that no right is vested in the petitioner with regard to the said pond. In case there was any allotment in favour of the petitioner or an agreement had been entered then it could have been said that some right had vested in favour of the petitioner and the respondents, in case they were divesting the petitioner of

the said rights would have been under a mandate to give an opportunity of hearing to the petitioner.

In the present case the petitioner had merely participated in the auction and he was the highest bidder.

According to the said rules regarding allotment which has been annexed by the petitioner indicates that the rights stand vested only when the said bid has been accepted and allotment letter has been issued to the petitioner followed by an agreement entered into between the petitioner and revenue authorities.

In the present case neither is there any letter of allotment nor any agreement between the petitioner and the respondents and, consequently, no right vests in the petitioner.

Accordingly, by not proceeding with the bid the respondents have not violated the principle of natural justice. Apart from the same notings which have been assailed by the petitioner cannot be held to be an order of cancellation. In the *Municipal Committee v. Jai Narayan and Company and Another* reported in 2022 SCC OnLine SC 376 Hon'ble Supreme Court has held as under :-

*"16. This Court in a judgment reported as **State of Uttaranchal v. Sunil Kumar Vaish (2011) 8 SCC 670** held that a noting recorded in the file is merely a noting simpliciter and nothing more. It merely represents expression of opinion by the particular individual. By no stretch of imagination, such noting can be treated as a decision of the Government. It was held as under :-*

*"24. A noting recorded in the file is merely a noting simpliciter and nothing more. It merely represents expression of opinion by the particular individual. By no stretch of imagination, such noting can be treated as a decision of the Government. Even if the competent authority records its opinion in the file on the merits of the matter under consideration, the same cannot be termed as a decision of the Government unless it is sanctified and acted upon by issuing an order in accordance with Articles 77 (1) and (2) of Articles 166 (1) and (2). The noting in the file or even a decision gets culminated into an order affecting right of the parties only when it is expressed in the name of the President or the Governor, as the case may be, and authenticated in the manner provided in Article 77 (2) or Article 166 (2). A noting or even a decision recorded in the file can always be reviewed/ reversed/ overruled or overturned and the court cannot take cognizance of the earlier noting or decision for exercise of the power of judicial review. (See **State of Punjab v. Sodhi Sukhdev Singh AIR 1961 SC 493, Bachhittar Singh v. State of Punjab AIR 1963 SC 395, State of Bihar v. Kripalu Shankar (1987) 3 SCC 34, Rajasthan Housing Board v. Shri Kishan (1993) 2 SCC 84, Sethi Auto Service Station v. DDA (2009) 1 SCC 180 and Shanti Sports Club v. Union of India (2009) 15 SCC 705.**"*

It is merely that the authorities have corresponded with each other delineating the reasons for not proceeding with the said auction. The reasons itself discloses that the authorities were made aware of the fact that the said pond is used for various religious worship by the villagers and in case same is settled in favour of the petitioner it may create a law and

order problem. It has further been disclosed in the said documents that the matter is also subjudice before some revenue court and it would not be appropriate to auction the fishries rights in favour of the petitioner.

It seems that when the authorities were made aware of the said position they have not proceeded further for settling the rights in favour of the petitioner and, accordingly, they have not committed any illegality.

In light of the above, no interference is called for under Article 226 of the Constitution of India.

The petitioner has vehemently submitted that even if there is some delay in allotment, a right vests in the authorities to permit the petitioner to conduct fishries operations on day to day basis. It is noticed that once the authorities have taken the decision not to auction the fishries rights, the question of grant of right of conducting the day to day fishries would be contradictory and further that no such prayer has been made in the writ petition the direction as sought by the petitioner cannot be granted.

It is provided that in case subsequently any decision is taken to auction the fishries rights in relation to the said pond then prior to any such exercise the case of the petitioner shall be considered before inviting any bids.

For the aforesaid reasons no merit is made out for interference.

Subject to the aforesaid observation the petition is dismissed.

Order Date :- 27.10.2023

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(Alok Mathur, J.)