

Court No. - 4

Case :- CONTEMPT APPLICATION (CIVIL) No. - 4691 of 2023

Applicant :- Ram Sajeevan

Opposite Party :- Shri Rakesh Kumar Mishra, District Magistrate, Amethi And Others

Counsel for Applicant :- Bare Lal Bhartiya, Jai Prakash Yadav

Hon'ble Rajesh Singh Chauhan, J.

1. Heard learned counsel for the petitioner.

2. Attention has been drawn towards order of the writ court dated 29.9.2015 passed by Writ Court in Writ-C No. 7891 of 2015, which reads as under :

"Notice on behalf of respondent nos. 1 to 3 has been accepted by learned Standing Counsel.

Issue notice to respondent no.4 returnable at an early date.

Steps to be taken within a week.

Pursuant to the order dated 15.09.2015, Sri Surya Kant Tripathi, Sub Divisional Officer, Tiloi, Amethi, is present.

Learned Standing Counsel, on the basis of instructions, has submitted that the lease of fishing rights, which was earlier settled in favour of the petitioner on 20.2.2007 has been cancelled on 30.10.2014 and thereafter, the lease has been settled in favour of respondent no.4 after following due proceedings.

The fishing rights lease was granted to the petitioner on 20.2.2007 for a period of 10 years i.e. till 19.2.2017. One of the terms of lease is that in case there is any violation by the lease holder of the terms and conditions of the lease, the concerned Gaonsabha/District Magistrate will cancel the same without any compensation. Thus, under the terms of lease, it is the District Magistrate and not the Sub Divisional Officer/Magistrate, who is empowered to cancel the lease.

At this stage it has been pointed out by the learned Standing Counsel that in the case of Ram Kumar vs. State of U.P. reported in 2006 LCD 59, Full Bench of this Court has held that in case there is misrepresentation or fraud in granting the lease, it is the Sub Divisional Magistrate, who can cancel the lease.

The aforesaid explanation offered by the learned Standing Counsel does not appeal to reason as in the instant case the lease has been cancelled not on the allegation of the lease having been obtained by playing fraud or misrepresentation, the lease has been cancelled on account of violation of the terms of lease inasmuch as the petitioner failed to pay the premium.

In our considered opinion, prima facie, the petitioner has been able to make out a case for grant of interim relief for the reason that the order cancelling the lease dated 30.10.2014 has been passed by the Sub Divisional Officer, who is incompetent and does not have the jurisdiction as the said jurisdiction in terms of the lease lies with the District Collector.

Accordingly, we hereby stay the order of cancellation of lease dated 30.10.2014 and restrain the respondent no.4 from exercising the fishing rights, till the next date of listing.

The officer present today is exempted from appearance unless called for."

3. Learned counsel for the petitioner has submitted that the aforesaid order was flouted in the year 2017 and 2018 then petitioner preferred representation to Sub-Divisional Officer concerned on 14.3.2018 but no appropriate steps have been taken by the authority concerned then petitioner preferred couple of representations but to no avail. 4. On being confronted on the point of limitation, learned counsel for the petitioner could not explain properly, however, he has requested that he may be permitted to withdraw the contempt petition to avail the appropriate remedy before the appropriate court.

4. In view of the aforesaid fact and request of learned counsel for the petitioner the contempt petition is **dismissed** with the aforesaid liberty.

5. Notices discharged.

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[Rajesh Singh Chauhan, J.]

Order Date :- 22.12.2023

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