

Abdul Gaffar Vs. State of U.P. and Others

Abdul Gaffar Vs. State of U.P. and Others

SooperKanoon Citation : sooperkanoon.com/461797

Court : Allahabad

Decided On : Sep-15-1997

Reported in : 1998(1)AWC706b

Judge : R.R.K. Trivedi and; M. Katju, JJ.

Acts : [Constitution of India](#) - Article 14

Appeal No. : C.M.W.P. No. 29965 of 1997

Appellant : Abdul Gaffar

Respondent : State of U.P. and Others

Advocate for Def. : S.C.

Advocate for Pet/Ap. : P.N. Singh, Adv.

Judgement :

R.R.K. Trivedi and M. Katju, JJ.

1. Heard learned counsel for the petitioner and learned standing counsel.
2. Both the learned counsel have agreed that this petition be decided finally at this stage.

3. It appears that with regard to pond No. 83 (old) and 394 (new), lease was granted in favour of the petitioner in the 1983 for ten years which has expired. Thereafter further extension was granted to the petitioner upto January, 1998. The petitioner has filed this petition for a direction to respondent Nos. 2 and 3 to renew the fishery lease of the petitioner relating to the aforesaid pond which is going to expire in January, 1998 for another five years. It has also been prayed that for this purpose, an application has been filed by him on various dates which may be directed to be decided. The application has also been filed for claim of renewal of the lease.

4. In our opinion, the settlement of ponds to exercise the right of fishery cannot be done by renewal or private negotiation. This Court has already held in *Ashok Kumar v. State of U. P.*, 1995 ACJ 1066, that such public property can only be leased out on the basis of public auction or tender after adequate publicity. In our opinion, once the term of the fishery lease has expired, there is no question of renewal, as that would amount to creating a monopoly in favour of one person. We hold that whenever a fishery lease expires, it can only be let out thereafter by a public auction or public tender after publicity in a newspaper having wide circulation in the area, otherwise there will be violation of Article 14 of the Constitution as held by the Supreme Court in *Raimanna Shetty v. International Airport Authority*. AIR 1979 SC 1628.

5. In the circumstances, the relief claimed cannot be granted to the petitioner. However, the respondents are directed to take steps to auction the ponds in accordance with law. Thus, the writ petition is rejected.