

Mohammad Ismail Vs. the District Magistrate and ors.

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Court : Allahabad

Decided On : Mar-20-1957

Reported in : AIR1957All487

Judge : M.L. Chaturvedi, J.

Acts : [Constitution of India](#) - Articles 14, 19(1) and 226

Appeal No. : Civil Misc. Writ No. 3827 of 1956

Appellant : Mohammad Ismail

Respondent : The District Magistrate and ors.

Advocate for Def. : P.C. Chaturvedi and ;S.N. Kacker, Advs. and ;S.C.

Advocate for Pet/Ap. : S.C. Khare and ;N.C. Upadhyaya, Advs.

Disposition : Petition allowed

Judgement :

ORDER

M.L. Chaturvedi, J.

1. This is a petition under Article 226 of the Constitution.

2. The rights in fisheries, which previously vested in the zamindars, came to be vested in the State of Uttar Pradesh by virtue of a notification issued under Section 4 of the U. P. Zamindari Abolition and Land Reforms Act on 30th June 1952. The State Government transferred some of these rights to the Land Management Committees or Gaon Panchayats of the Villages. These rights are auctioned sometimes by the Land Management Committees and sometimes by the Gaon Panchayats directly or through officers of the Government.

The District Magistrate of Etawah, as the District Planning Officer, notified the sale of fishery rights in some of the rivers by means of a notification published in Hindi, a copy of which has been filed along with the original affidavit. It was notified that fishery rights in question would be sold by auction at 11 a.m. on 24th September 1956 for the period 1st October 1956 to 30th September 1957. Certain conditions of sale were mentioned in this notice, which I shall have occasion to refer to later on, The auction started at the appointed date and hour and the petitioner made the highest bid for six fishery rights and also deposited 1/4th of the security money, as required by the rules. But the rights in other fisheries were not auctioned that day and were postponed for 25th September 1956.

On 25th September 1956 the petitioner made the highest bid for other six fisheries, but on this date he deposited 1/4th of the security money only for two out of six bids. No bids were accepted on 25th September 1956 and it appears that it was announced at the time of the auction that the, persons wishing to bid may file tenders for these rights by 26th of September. The 4th respondent was also present at the time that the bids were made, but his bid was not highest in respect of any one of the fisheries. He subsequently made an application to the District Magistrate increasing the bid for some of the fisheries and the District Magistrate accepted his application and the bids contained in that application, in respect of 12 fisheries.

When the petitioner came to know of this acceptance, he made a representation to the District Magistrate on 28th September, 1956 protesting against the acceptance of the bids made by the 4th respondent. This representation was followed by another dated 8th October 1956. The petitioner was asked to be present on 15th

October 1956 when the petitioner appeared and he was heard. Orders were passed the same day by the District Magistrate rejecting the petitioner's representation and accepting the bids made by the 4th respondent.

3. The present petition was filed on 15th November 1956 praying for the issue of a writ of certiorari quashing the Collector's orders dated 27th September 1956, accepting the bids of the 4th respondent, and that dated 15th October 1956 rejecting the petitioner's representation. It is further prayed that a writ of mandamus be issued to the respondents directing them to accept the bids made by the petitioner or in the alternative to hold a fresh auction of the fisheries in question.

4. The contention of the learned counsel for the petitioner is that an auction of the fisheries could be made only according to paragraph 63 of the U. P. Gaon Samaj Manual, which really contains the relevant rules framed under the U. P. Zamindari Abolition and Land Reforms Act. There is no doubt that these rules clearly provide that fishery and other rights should be transferred only by public auction and that the bid of the highest bidder should be accepted.

But if somebody had any objection to the acceptance of the bids, the objection is to be filed before the Tahsildar and is to be decided by him. If these rules apply to the auction of the fishery rights in question, there can be no doubt that the acceptance of the bids of the 4th respondent must be held to be illegal, because the bids of the 4th respondent were not highest at the auction. He subsequently applied to the District Magistrate giving higher bids and the District Magistrate accepted these bids which were tendered a day later.

5. A somewhat similar question arose before the Supreme Court in the case of K. N. Guruswamy v. State of Mysore, AIR 1954 SC 592 (A). The case arose out of sale of liquor contracts and the rights to sell liquor were sold by public auction. The appellant before the Supreme Court had made the highest bid, and the 4th respondent subsequently made an application to the Deputy Commissioner enhancing the bid by Rs. 5000/-. The Deputy Commissioner accepted the bid of the 4th respondent.

The question before the Supreme Court was whether the Deputy Commissioner had acted, legally in accepting the bid of the respondent. On an interpretation of the rules, the Supreme Court took the view that the action of the Deputy Commissioner was against the rules and was, therefore, illegal. It was open to the Deputy Commissioner to accept bids by tenders instead of by public auction, but proper notification of this method was to be made before the auction was held. After considering the rules their Lordships observed.

'But that apart, this would, in our opinion, run counter to the policy of the legislature which is that matters of such consequence to the State revenue cannot be dealt with arbitrarily and in the secrecy of an office. Whatever is done must be done either under the Rules or under a Notification which would receive like publicity and have like force and of which the people at large would have like notice. Arbitrary improvisation of an ad hoc procedure to meet the exigencies of a particular case is ruled out. The grant of the contract of Thimmappa was therefore wrong.'

6. The contention of the learned counsel for the 4th respondent is that these rules have no application to cases where the auction is held under the supervision of the District Magistrate or the State Government. He has referred me to the second proviso to paragraph 63 which says that the provisions of this paragraph shall not apply to cases where any special instructions have been issued by the State Government or the Collector.

The contention of the, learned counsel is that these special instructions can be issued at any time and at any stage of the proceedings of the auction, and whenever instructions are issued by the District Magistrate or the State Government, the instructions will then have precedence over the rules and the rules will have no application to such a case. I am unable to attach this wide - meaning to the wording of the second proviso which is as follows :

'Provided that the provisions of this paragraph shall not apply to

(ii) cases where any special instructions have been issued by the State Government or the Collector.'

The proviso, I think, means that if any special instructions have been issued by the State Government or the Collector, the provisions of the rules would cease to apply, but this obviously suggests that the special instructions must precede the auction concerning which special instructions have been issued. If no special instructions have been issued before the date of the auction, then the second proviso would have no application, and the rules contained in paragraph 63 would continue to apply. It could not have been contemplated that with respect to the same auction the rules and the special instructions, at different times must both be applicable. I think the proviso would have application only if special instructions have been issued by the Collector or the State Government before the auction is held.

7. In the instant case, it appears that no special instructions had been issued prior to the holding of the auction. The auction with respect to some of the fisheries was held on 24th of September and with respect to others on 25th September. The evidence produced by the respondent shows that it was on 25th of September that it was declared that the bidders may file tenders also concerning these auctions and these tenders could be filed by the 26th of September.

It is true that notices in Hindi, mentioned above, had been distributed long before the date of the auction but these notices nowhere stated that it would be open to the District Magistrate to transfer these rights by accepting tenders. Condition No. 1 was to the effect that it was open to the Additional District Magistrate to accept any bid without any reason and it was further stated that the highest bid would ordinarily be acceptable only after the sanction of the District Magistrate. Condition No. 3 also refers to the final acceptance of the bid and the deposit of certain amounts before and after the final acceptance.

But none of these conditions anywhere mentioned the fact that the rights could be transferred by accepting tenders subsequently. As already stated, this was announced for the first time on 25th of September. It may have been done for the best of motives, and the order passed by the District Magistrate shows that his action was quite bona fide and in the interest of the collection of the largest amount possible. But the question is whether his action was legal.

8. After a consideration of the rules contained in paragraph 63 of the Manual and the proviso referred to by the learned counsel, I have come to the conclusion that the method adopted of accepting bids by tender after public auction had been held must be held to be illegal. No rule-making authority could possibly have contemplated that a part of the proceedings be carried on according to the rules contained in paragraph 63 and the rest be carried on according to the directions issued by the District Magistrate or the State Government, If the rules in paragraph 63 were not to be followed, the position should have been made clear before auctions were actually held, which was not done in this case.

9. The other ground for deciding the case against the respondent is that the power conferred by the proviso appears to be an absolutely arbitrary and uncontrolled power leaving it open to the State Government or the Collector to follow one method in respect of transfer of one fishery right and a totally different method in respect of transfer of another fishery right. Apart from this, they may not follow any procedure at all and just say what they like at the spur of the moment. It would then be open to them to transfer a right for no rhyme or reason to the lowest bidder; and if the interpretation put by the learned counsel for the respondent is correct, the power vested in the District Magistrate or the State Government would be absolutely arbitrary and uncontrolled.

Such a power cannot be held to be valid after the coming into force of the Constitution. It may be possible for the District Magistrate and the State Government to make some unimportant alterations in the rules of auction laid down in paragraph 63 of the Manual. But the proviso purports to say that the rules themselves would not apply where any directions are issued by the District Magistrate. The proviso nowhere says that what those directions should be and with what object and for what purpose they should be issued.

The directions may be of any kind and issued at any stage of the proceedings, and the moment the directions are issued, the rule ceases to be in force with the result that there remains absolutely no rule for guidance if any directions have been issued under the proviso. Such an arbitrary and uncontrolled discretion is inconsistent with the provisions of Article 14 of the Constitution, and it also cannot

be said to be a reasonable restriction on the right of a person to carry on the trade of fishery.

10. For both the above reasons, the auction sale held in respect of the fisheries in question is held to be illegal.

11. The next question is what is the proper form of relief which should be granted in this case. The learned counsel for the petitioner, Mr. S. C. Khare, made it clear that, in view of the expiry of nearly half the period for which the rights were transferred, the petitioner would not like to pay the same amount which he had offered at the time of the bid and it is not possible for me in proceedings under Article 226 of the Constitution to make out a new contract for the parties. It further appears that according to the conditions of auction sales mentioned in Hindi notice, the District Magistrate had reserved a right in himself not to accept any bid.

He refused to accept the petitioner's bids and I think he had a right to refuse to accept bids. No mandamus can, therefore, be granted to the petitioner directing the respondents to accept the petitioner's bid. I think the proper order to be passed, under all the circumstances of this case, is to direct the first three respondents to hold fresh auction for the fisheries in question as soon as conveniently possibly for the period ending 30th September 1957 or for such other period as the respondents may legally be entitled to fix.

12. The petition is consequently allowed and a writ of mandamus shall issue to the 1st, 2nd and 3rd respondents directing them to hold fresh auction within a reasonable time for the transfer of the fishery rights in dispute in this writ petition.

13. The petitioner will be entitled to his costs from the 4th respondent.

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