

Ram Kumar and ors. Vs. State of Uttar Pradesh and ors.

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SooperKanoon Citation : sooperkanoon.com/482380

Court : Allahabad

Decided On : Sep-25-2001

Reported in : 2001(4)AWC3149; (2001)3UPLBEC2530

Judge : R.R. Yadav, J.

Acts : Allahabad High Court Rules 1952 - Rules 6, 115A, 115A(3), 115B, 115S, 115S(1), 155L to 155R and 173 to 177; [Constitution of India](#) - Articles 14, 19, 19(1), 31B, 38(2), 39, 46 and 243G; Uttar Pradesh General Clauses Act - Sections 21; Uttar Pradesh Panchayat Raj Act - Sections 28B; Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1951 - Sections 3(14), 3(18), 117, 122A(2), 122C(4), 122C(6), 122C(7), 126, 333 and 333A; Uttar Pradesh Co-operative Societies Act, 1965; Transfer of Property Act - Sections 117; Uttar Pradesh Zamindari Abolition and Land Reforms (Amendment) Act, 1986

Appeal No. : C.M.W.P. No. 23932 of 2001 with 5 other Writ Petitions

Appellant : Ram Kumar and ors.

Respondent : State of Uttar Pradesh and ors.

Advocate for Def. : G.N. Verma and ;Sankatha Rai, Advs.

Advocate for Pet/Ap. : K.C. Srivastava and ;R.K. Srivastava, Advs.

Judgement :

1. Heard.

2. The aforesaid writ petitions are posted today for admission. The learned standing counsel, Sri L.P. Tewari is raising preliminary objections of general importance in these writ petitions inviting my attention to conflicting decisions rendered by learned Judges constituting Division Benches of coordinate jurisdiction of this Court staring to each other. I am of the view that disposal of these writ petitions either at admission stage or at final hearing is not possible unless conflicting opinions of different Division Benches of this Court are resolved by a larger Bench under Chapter V, Rule 6 of the Rules of the Court. In such a situation, this Court has no alternative except keeping in view judicial decorum and propriety to refer the questions involved in these writ petitions to a larger Bench for consideration and resolving conflicts between different Division Benches of this Court relating to grant of fishery leases, its renewal and jurisdiction to cancel such fishery lease by Sub-Divisional Officer. Collector and Civil Courts for the reasons given herein below.

3. By way of filing the aforesaid writ petitions, the petitioners are either questioning the legality and validity of patta granted in favour of respondents relating to fishing rights in ponds and tanks vested in gaon sabha under Section 117 of U. P. Z. A. & L. R. Act [hereinafter referred as Act No. 1 of 1951) or refusing renewal of their leases under Paragraph 60 (2) Kha of Gaon Sabha Manual, which is based on statutory direction issued by the Government from time to time in exercise of its power under Section 126 of the said Act and Rules framed thereunder.

4. The learned standing counsel, Sri L.P. Tewari raised preliminary objection to the effect that due to conflicting decisions of co-ordinate Benches of this Court, the laudable object of affirmative justice awarded by State Government by issuing statutory directions from time to time under Section 126 of U. P. Act No. 1 of 1951 in favour of weaker section of society who are socially, educationally and economically in disadvantageous position and are traditionally engaged in profession of fishing to ameliorate their economic condition within the meaning of Articles 38(2), 39(c) and 46 of the Constitution enshrined under Directive Principle

of State Policy in Chapter IV is being defeated.

5. In support of his aforesaid submission, he placed reliance on a decision rendered by learned Judges constituting Division Bench (B.M. Lal and J.S. Sidhu, JJ.) in case of *Ajai Sonkar v. State of U. P. and Ors.*, 1997 (88) RD 157, and *Anr.* rendered by learned Judges constituting Division Bench (S.H.A. Raza and S. Dikshit, JJ.), in case of *Gram Panchayat, Kanta Gulzarapur, Unnao v. Collector, Unnao and Ors.*, 1997 (3) AWC 1665 (LB), upholding the policy decision of the State Government and its affirmative action contained under Paragraph 60 (2) (Kha) of Gaon Sabha Manual in favour of weaker section of society who are socially, educationally and economically in disadvantageous position and are traditionally engaged in fishing profession like Machchua, Mallah, Kewat, Bind, Lodhi, Dhoewar, Dhimar, Kashyap, Bothom, Raikwar, Manjhf, Godia, Kahar, Sureha or Suraha and in absence of members of the community of fishermen mentioned above of the concerned Gaon Sabha/Nyaya Panchayat area/Block level area, thereafter to the members of Scheduled Caste/Scheduled Tribe community and only then thereafter other persons of general category of Gaon Sabha/Nyaya Panchayat and Block level area issued under Section 126 of U. P. Act No. 1 of 1951 whereas when the same question came up for consideration in case of *Panchoo v. Collector/D. M., Gorakhpur and Ors.*, 1999 RD (1) 186, before another Division Bench of this Court of co-ordinate jurisdiction practically for all purposes, judgments of aforesaid two Division Benches are overruled holding that under Article 19(1)(g) of the Constitution every citizen meaning thereby general public has freedom to do business or trade of fishery. It is held in the case of *Panchoo (supra)* that every citizen of any community or caste can do business of fishery and cannot be restricted to any caste and community. In pith and substance, it is held that Paragraph 60 (2) (kha) of Gaon Sabha Manual is violative of Articles 14 and 19(1)(g) of the Constitution, The learned standing counsel Sri L.P. Tewari also invited my attention to another decision of another co-ordinate Bench in the case of *Desh Kumar and Ors. v. State of U. P. and Ors.*, (1998) 2 CRC 342, reiterating the same view denying allotment of patta in favour of weaker section of society and its renewal in their favour on the ground of Article 14 of the Constitution with direction to settle fishery rights by auction to everybody legible to obtain fishery leases.

6. The learned standing counsel Sri Tewari brought to my notice a reference made by learned single Judge to larger Bench in Writ Petition No. 4336 of 1991, Dhruv Chand v. Board of Revenue and other decided on 20.1.1993, wherein question of jurisdiction of civil courts by way of filing title civil suits for cancellation of fishery leases under Paragraph 60 (2) (kha) of Gaon Sabha Manual is pending consideration.

7. It seems that during the pendency of aforesaid reference to a larger Bench, the question about jurisdiction of civil court, jurisdiction of Sub-Divisional Officer and jurisdiction of Collector for cancellation of fishery leases came up for consideration before the learned single Judge in Civil Misc. Writ Petition No. 54260 of 1992, Man Singh and Ors. v. Board of Revenue, U. P. at Allahabad and Ors., (1994) 1 CRC 53, wherein it is held that Sub-Divisional Officer is vested with power of cancellation of fishery leases under Paragraph 60 (2) (kha) with aid of Section 21 of U. P. General Clauses Act which provides that where by any U. P. Act, the power to issue statutory instrument is conferred then that power includes a power exercisable in the like manner and subject to the like sanctions and conditions if any, to add, amend, vary or rescind the 'statutory instrument' so issued, it is further held that Collector has the power to cancel a lease granted under Paragraph 60 (2) (kha) within the ambit and scope of G. O. dated April 20, 1990. After interpreting aforesaid G. O. it is held that dispute relating to grant of leases or to examine the illegality or irregularity of the grant of leases by Sub-Divisional Officer can be examined by Collector. It is further held that there is no reason to believe that the Legislature and for that purpose the State Government while issuing G. O. dated 24.4.1990 in exercise of its power under Section 126 of U. P. Act No 1 of 1951 would have intended to provide a different forum [civil court] for resolution of disputes about legality or otherwise of a lease of fisheries granted under Paragraph 60 (2) (kha). It is further held that the power conferred upon the Collector to cancel the leases as contained in Paragraph 60 (2) (kha) (1) is not exhaustive but it is illustrative and the Collector can cancel a lease not only in the exigencies contemplated by Paragraph 60 (2) (kha) (1) but also upon his satisfaction that it was unfair, irregular or illegal. Thus, powers of cancellation of leases were conferred upon the Sub-Divisional Officer as well as the Collector. The power of cancellation of fishery leases by Collector was upheld by the learned

single Judge in the case of Man Singh (supra) holding the order passed by Collector revisable under Sections 333 and 333A of U. P. Act No. 1 of 1951 but jurisdiction of civil court to cancel leases in title suit was repelled. In support of his aforesaid conclusion that the civil court has no jurisdiction to cancel fishery leases granted under Paragraph 60 (2) (kha) of Gaon Sabha Manual he placed reliance on a decision rendered in case of Nithuri v. IVth Additional District Judge, 1984 RD 335 (HC), while construing earlier G.O. of 1981 holding that civil court has no jurisdiction to cancel fishery leases. The learned single Judge in case of Man Singh (supra) also placed reliance on a decision of this Court in case of Gaon Sabha v. Collector, 1972 AWC 380, which has been approved by a Division Bench in C.M. Saxena v. State, 1979 AWC 254. The learned single Judge in case of Man Singh (supra) also noticed Division Bench decision rendered in case of Todi and Ors. v. Board of Revenue and Anr., 1994 RD 13 and distinguished it on the ground that there was no discussion about scope and ambit of G. O. issued by Government in exercise of its power under Section 126 of U. P. Act No. 1 of 1951. In case of Man Singh (supra) the view taken by the Full Bench of Board of Revenue in Gorakh Nath v. Ram Singh, 1992 RD 392, was overruled.

8. It is also brought to my notice that Hon'ble R.P. Mishra, J., also made reference to larger Bench in Civil Misc. Writ Petition No. 28029 of 1998 on 3.11.2000 relating to cancellation of fishery leases by civil court granted under Paragraph 60 (2) (kha) of Gaon Sabha Manual.

9. In view of the aforesaid contentious preliminary objections raised by the learned standing counsel bringing to my notice the conflicting opinions of different coordinate Benches of this Court, I think it proper to appoint Sri Sankatha Rai as amicus curiae to assist the Court. The learned amicus curiae Sri Sankatha Rai brought to my notice Section 3 (18) of U. P. Act No. 1 of 1951, which defines connotation 'prescribed' which means prescribed by the Rules made under U. P. Act No. 1 of 1951. He invited my attention to Clauses (iv) and (vi) of Sub-section 117 of the Act, which provides that fisheries, tanks and ponds have vested in State under Act No. 1 of 1951 and thereafter in Gaon Sabha subject to further declaration by State Government in favour of other local authorities. The learned amicus curiae Sri Sankatha Rai brought to my notice the mandatory provisions of

Clause (k) of Sub-section (2) of Section 122A, which provides the maintenance and development of fisheries and tanks of Land Management Committee and Section 126 of the said Act, which postulates that State Government may issue such orders and directions to the Land Management Committee as may appear to be necessary for purposes of this Act and Sub-section (2) of the aforesaid Section further provides that it shall be the duty of Land Management Committee and the office-bearers to comply with such directions. He also brought to my notice Sub-rule (3) of Rule 115A and Explanation (II) appended to Rule 115B, which provides that the directions contained in the Gaon Sabha Manual so far as they are necessary for the purposes of the Act, and are not inconsistent with these rules, shall be deemed to be the directions issued under Rule 115A so long as they remain in force. The learned counsel also brought to my notice the latest G.O. dated 17.10.1995 issued by State Government in exercise of its power under Section 126 of U. P. Act No. 1 of 1951, which is occupying field today relating to grant of fishery leases of ponds and tanks vested in Gaon Sabha to the weaker section of society in order of preference.

10. I wish to mention here that although Rule 115-S provides that no lease or licence in respect of any property vested in Gaon Sabha shall be made for a period exceeding one year except with the permission of the Government in the Revenue Department and that no lease or licence shall be made in favour of a person except by public auction, but the aforesaid general rules of auction relating to lease or licence by public auction are made subject to exception contemplated under Sub-clauses (i) and (ii) of Clause (viii) of Sub-rule (1) of Rule 115-S. The aforesaid provisions provide exception in case of allotment of agricultural land and abadi sites covered by Rules 173 to 177 and Rules 155-L to 115R respectively and Sub-clause (ii) of the aforesaid Clause (viii) of Sub-rule (1) of Rule 115-S further made an exception of auction in those cases in which the State Government issued directions under Section 126 of Act of Act No. 1 of 1951 read with Rules 115A and 115B.

11. It is urged by the learned omicus curiae Sri Sankatha Rai with emphasis that the decisions rendered in the cases of Ajai Sonkar (supra) and Gram Panchayat, Kanta Guizarpur, Unnao (supra), were brought to the notice of learned Judges

constituting Division Bench in case of Panchoo (supra), but the learned Judges constituting Division Bench in case of Panchoo (supra) instead of referring the aforesaid two decisions to larger Bench of this Court within the meaning of Chapter V, Rule 6 of the Rules of this Court 1952 entered into correctness of judgments rendered by two earlier Division Benches of co-ordinate jurisdiction, while judicial propriety requires that the learned Judges constituting Division Bench in case of Panchoo (supra), if were unable to agree with the earlier two Division Benches of co-ordinate jurisdiction, then the question ought to have been referred to a larger Bench with their conflicting opinion which requires reconsideration by larger Bench. The conflicting views taken by learned Judges constituting Division Bench in case of Panchoo (supra) have wrongly overruled the earlier two decisions by necessary implication without referring to the larger Bench which is making the task of the subordinate courts difficult. The members of the Bar and litigant public are not certain what is correct law on granting fishery leases under Paragraph 60 (2) (kha) of Gaon Sabha Manual. It is submitted that the learned Judges constituting Division Bench in case of Panchoo (supra) did not discuss the scope and ambit of Paragraph 60 (2) (kha) of Gaon Sabha Manual issued by State Government in exercise of its power under Section 126 of U. P. Act No. 1 of 1951, which has been placed in IX Schedule of the Constitution.

12. It is vehemently submitted by Sri Sankatha Rai, the learned amicus curiae that one Division Bench of coordinate jurisdiction has no jurisdiction to take contrary view against the earlier two Division Benches of this Court by merely saying that ratio of these decisions are distinguishable whereas as a matter of fact, it is not so. Correct legal position according to him is that if the latter Division Bench in case of Panchoo (supra) was inclined to take a different view from former Division Benches, a request ought to have been made to the Chief Justice to refer the same to a Full Bench. In support of his aforesaid contention he placed reliance on a decision rendered by Supreme Court in case of Budhan Singh (dead) by his legal representatives and Anr. v. Babi Bux and Anr., AIR 1970 SC 1880 (paragraph 7), which reads thus :

'It is unfortunate that the latter Division Bench should have thought it proper to sit in judgment over the correctness of a decision rendered by a Bench of co-ordinate

jurisdiction. Judicial propriety requires that if a Bench of a High Court is unable to agree with the decision already rendered by another co-ordinate Bench of the same High Court, the question should be referred to a larger Bench. Otherwise, the decision of High Courts will not only lose respect in the eyes of the public, it will also make the task of subordinate courts difficult.'

13. In support of his aforesaid argument, he also placed reliance on a decision rendered by Apex Court in case of *Lala Shri Bhagwan and Anr. v. Ram Chand and Anr.*, AIR 1965 SC 1767 (paragraph 18), which reads thus :

'.....It is plain that the said decisions had not been directly or even by necessary implication overruled by any decision of this Court, indeed, the judgment delivered by the learned single Judge shows that he was persuaded to re-examine the matter himself and in fact he had substantially recorded his conclusion that the earlier decisions were erroneous even before his attention was drawn to the decision of this Court in *Laxman Purshottam Pimputkar's case*, (1964) 1 SCR 200 : AIR 1964 SC 436 (supra). It is hardly necessary to emphasise that considerations of judicial propriety and decorum require that if a learned single Judge hearing a matter is inclined to take the view that the earlier decisions of the High Court, whether of a Division Bench or of a single Judge, need to be reconsidered, he should not embark upon that enquiry sitting as a single Judge, but should refer the matter to a Division Bench or, in a proper case, place the relevant papers before the Chief Justice to enable him to constitute a larger Bench to examine the question. That is the proper and traditional way to deal with such matters and it is founded on healthy principles of judicial decorum and propriety. It is to be regretted that the learned single Judge departed from this traditional way in the present case and chose to examine the question himself.'

The learned amicus curiae Sri Sankath Rai also placed reliance on a decision rendered by Supreme Court in case of *Usha Kumar v. State of Bihar and Ors.*, JT 1998 (4) SC 359, reiterating with approval the ratio decidendi laid down in aforesaid two decisions mentioned hereinabove wherein latter Division Bench started to embark upon the former Division Bench of the same High Court instead of referring the earlier decision for reconsideration to a larger Bench with its

opinion.

14. In these writ petitions, problem before me has to be viewed from two angles : firstly from the view point of the legal practitioners and secondly from view point of the litigant public which can be tackled by giving brief legislative history of Paragraph 60 of Gaon Sabha Manual under which fishery leases are granted together with constitutional provisions justifying directions, issued by State Government under Section 126 of U.P. Act No. 1 of 1951 which are contained under the aforesaid paragraph of Gaon Sabha Manual.

15. Coming to the statutory provision of U. P. Act No. 1 of 1951 and the Rules framed thereunder, upon which Paragraph 60 (2) (kha) of Gaon Sabha Manual is based, the Government has been authorised under Section 126 of U. P. Act No. 1 of 1951 to issue such orders and directions to the Land Management Committee as appears necessary for the purposes of the said Act. By Sub-section (2) of aforesaid Section, duty has been cast upon the Land Management Committee and its office-bearers to carry out such orders and directions. Rule 115A of the rules framed under Act No. 1 of 1951 empowers the State Government to issue directions to the Land Management Committee from time to time on the matters mentioned therein. One of the matters referred under Rule 115A of the said Rules, on which Government can issue directions relates to the functions of the Land Management Committee as laid down in Section 28B of the U. P. Panchayat Raj Act. Some of the functions of the Land Management Committee specified in Section 28B of the U. P. Panchayat Raj Act are about settlement, management, maintenance and development of the fisheries and tanks. In view of the provisions of Section 28B, U. P. Panchayat Raj Act, Section 126 of U. P. Act No. 1 of 1951 read with Rule 115A of the Rules, the State Government is competent to issue necessary directions for maintenance and development of fisheries ponds and tanks as well as settlement and management of the land. The expression 'Land' is defined under Section 3 (14) of U. P. Act No. 1 of 1951 which means land held or occupied for purposes connected with agriculture, horticulture or animal husbandry which includes pisciculture and poultry farming. Dictionary meaning of pisciculture is artificial rearing of fishes. Thus, settlement of fishery leases for rearing of fishes in ponds and tanks vested in Gaon Sabha under Section 117 of U.P. Act No. 1 of

1951 fall within the definition of agricultural land.

16. It is to be borne in mind that full mechanism for grant of leases and its cancellation of land have been provided under U. P. Act No. 1 of 1951 and rules framed thereunder together with forums where such leases are to be cancelled except pisciculture for which complete mechanism for grant of leases, its cancellation and its renewal are provided under Paragraph 60 of Gaon Sabha Manual. It is to be noticed that grant of lease of agricultural land by Gaon Sabha under the Act and Rules are not for specified period whereas grant of fishery leases are only for ten years subject to its renewal provided the conduct of the lessee is found to be satisfactory by Revenue Authorities. The preferences for settlement of fisheries rights are given in the G.O. issued by the Government from time to time in favour of weaker section of society if area of pond and tank is less than two Hectares and if it is more than two Hectares then Cooperative Societies formed by them.

17. It is true that Rule 115S prohibits the grant of lease or licence in respect of any property vested in the Gaon Sabha except by public auction held in accordance with the procedure laid down therein. However, last but one proviso appended to Rule 115S (1) excludes the applicability of Rule 115S in cases in which the State Government has issued directions under Section 126 of the Act read with Rules 115A and 115B of the Rules framed thereunder. The relevant proviso is reproduced hereinbelow for ready reference :

Rule 115S.....

Provided that the provision of this rule shall not apply to :

(i) Cases of allotment of agricultural land and abadi sites covered by Rules 173 to 177 and Rules 115L to 115R respectively ; and

(ii) cases in which the State Government issued directions under Section 126 of the Act read with Rules 115A and 115B.

18. In these cases on hand, the Government has issued directions from time to time, which are contained in Paragraph 60 of Gaon Sabha Manual. Explanation II

appended to Rule 115B lays down that the directions contained in Gaon Sabha Manual shall be deemed to be the directions issued under Rule 115A. The relevant directions on the subject in question issued by the Government are contained in its Order dated 17th October, 1995. According to this order, leases of fisheries rights are to be given by the Sub-Divisional Officer in consultation with the Land Management Committee. It has further been provided therein that if the Land Management Committee is unable to grant patta or the Sub-Divisional Officer is of the opinion that it is expedient to do so, he may grant patta without consulting with the Land Management Committee of the village.

19. In backdrop of the aforesaid discussion, I am of the view that the directions issued from time to time by the State Government under Section 126 of the U. P. Act No. 1 of 1951 which is amended by G.O. dated 17.10.1995, Rule 115S relating auction will not apply and the grant of patta of fisheries rights is to be made in accordance with these directions contained under Paragraph 60 (2) (kha) of the Gaon Sabha Manual. It is true that if there are more than one person of same preferential group, the patta shall be granted by auction in favour of highest bidder. Thus, the normal Rule laid down by the G.O. dated 17.10.1995 is the grant of patta by the Sub-Divisional Officer without any public auction unless the case falls within the last paragraph of the aforesaid G.O., which provides for public auction in case there are more than one person of the same group. Thus, to my mind, settlement of fisheries rights by means of other than auction as provided by the Government Order dated 17.10.1995 cannot be said to be illegal simply on the ground that it has not been settled by holding public auction.

20. Now time is ripe to discuss constitutional provisions in support of Paragraph 60 of Gram Sabha Manual. In case of Gram Panchayat Kanta, Gulzarpur, Unnao (supra) when a General Caste petitioner prayed for renewal of lease of fishery rights in his favour against preferential order in favour of weaker section of fishing community mentioned under Paragraph 60 of Gaon Sabha Manual, it was negatived by the learned Judges constituting Division Bench after quoting with approval of the provisions enshrined under Articles 38(2), 39(c) and 46 of the Constitution. Ratio of the aforesaid case is quoted hereinbelow for ready reference.

'We have to examine the policy decision or direction of the State Government and the provisions of para 60 (2) Kha of the Gaon Sabha Manual in view of the constitutional provisions.

Article 38(2) of the Constitution provides that :

'the State shall, in particular, strive to minimise the inequalities in income, and endeavour to eliminate inequalities in status, facilities and opportunities, not only amongst groups of people residing in different areas or engaged in different vocations.' Article 39(c) of the [Constitution of India](#) also provides that :

'The operation of the economic system does not result in the concentration of wealth and means of production to the common detriment.' Article 46 provides that :

'The State shall promote with special care the educational and economic interest of the weaker sections of the people, and, in particular, of the Scheduled Castes and the Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation.' If the State Government under the provisions of Article 15(4) of the Constitution and directive principle of the State Policy passed Government orders which are contained in Gaon Sabha Manual or other orders it cannot be said that it amounts to discrimination because the State can make any special provision for the advancement of any socially and educationally backward classes of citizens.

It has also been contended that neither any Co-operative Society nor any person belonging to the caste of Mallah and Nishad, etc., were available in the village in question, hence the tease in favour of respondent cannot be faulted. But this Court cannot ignore that one community, i.e., Kahar, was available and, therefore, it was incumbent upon the authorities to have followed the provision pertaining to a preferences contained in Gaon Sabha Manual or other Government order, while renewing the theka in favour of the respondent No. 3 but even when persons belonging to other preferential categories were not considered and the lease deed was renewed in favour of the respondent No. 3.'

21. Apart from Article 38(2), Article 39(c) and Article 46 of the Constitution mentioned in earlier decision of Division Bench in case of Gram Panchayat, Kanta Gulzarpur, Unnao (supra), it is to be noticed that in the State List of Seventh Schedule of the Constitution under Item No. 21, the State Legislature is competent to legislate upon fisheries rights. It is further to be noticed that newly inserted Article 243G of the Constitution clearly provides that subject to the provisions of the Constitution, the Legislature of the State may, by law, endow the panchayats with such powers and authority as may be necessary to enable them to function as institutions of self-government and such law may contain provisions for the devolution of powers and responsibilities upon the panchayats at the appropriate level, subject to such conditions as may be specified therein, with respect to the preparation of plans for economic development and social justice and the implementation of schemes for economic development and social justice as may be entrusted to them including those in relation to the matters listed in the Eleventh Schedule. A close scrutiny of Eleventh Schedule higrated under Article 243G of Constitution fisheries are included at Item No. 5. Thus, by distributive justice, the State Legislature can make law to ameliorate the economic conditions of citizens, who are socially, educationally and economically in disadvantageous position and the State Government shall promote with special care the educational and economic interest of the weaker sections of the people, and, in particular, of the Scheduled Castes and Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation. Here in the present case pursuant to Section 126 of U. P. Act No. 1 of 1951, enacted by State Legislature, the State Government has issued directions laying down appropriate guidelines to ameliorate the economic conditions of weaker section of people and also with avowed object to eliminate middlemen coming in their way in fishing trade. The aforesaid object is apparent from perusal of the G. O. dated 17th October, 1995, to the effect that the State Government intends to protect the aforesaid weaker section of the people from exploitation by middlemen ; who by sheer dint of their muscle power and economic power corner the lease of fisheries of tanks and ponds vested in Gaon Sabha in their favour, while taking work from the fishing community, who are expert in fishing and breeding of fisheries. The object behind the aforesaid G.O. dated 17th October, 1995, is the same as U. P. Act No. 1 of

1951, which abolished Zamindari system who were exploiting peasantry classes as middlemen between the Government and tiller of the soil. Now under U.P. Act No. 1 of 1951, there is direct relationship between Government and tiller of the soil. To my mind, if fishing patta of ponds and tanks are allotted to middlemen, they will not work, but after taking work from the aforesaid community, they will enrich themselves by adopting method of exploitation against the fishing community as Zamindars were exploiting the peasantry classes in the past due to which Zamindari is abolished and land is settled with the tiller of the soil.

22. It is pertinent to mention here that U. P. Act No. 1 of 1951, has been placed in the Ninth Schedule of the Constitution, therefore. Section 126 of the said Act which authorised State Government to issue directions contained in Para 60 (2) (kha) of Gaon Sabha Manual are immuned under Article 31B of the Constitution from any challenge on the ground that it is inconsistent with or takes away or abridges any of the rights conferred by Articles 14 and 19 of the Constitution. I am fortified in taking the aforesaid view from decision rendered by Supreme Court in case of Lingappa Pochanna v. State of Maharashtra, AIR 1985 SC 389. In my humble opinion, the view taken by the learned Judges constituting Division Benches in cases of Panchoo (supra) and Desh Kumar (supra) contrary to the decision rendered by Supreme Court in case of Lingappa Pochanna (supra) do not hold water and require reconsideration.

23. It is also imbibed that while judging the reasonableness of the restrictions imposed under Article 19 of the Constitution, the Courts are to strike a balance between the Directive Principles of State Policy and the social control envisaged under Preamble of the Constitution. It is further to be imbibed that Article 14 forbids hostile discrimination and not reasonable classification. Equality before law does not mean that the same set of law should apply to all persons under every circumstance ignoring differences and disparities between men and things. Therefore, it is for the State to make a reasonable classification, which must fulfil two conditions : firstly, the classification must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group, and secondly, the differentia must have a reasonable nexus to the object sought to be achieved by the statute. The aforesaid well

settled aspect of legal position also escaped the notice of the learned Judges constituting Division Bench in case of Panchoo (supra) and Desh Kumar (supra) which require reconsideration by a larger Bench. The views taken by the learned Judges in the case of Panchoo (supra) and Desh Kumar (supra) are inconsistent to the decisions rendered by Supreme Court in the case of Pathumma and Ors. v. State of Kerala and Ors., AIR 1978 SC 771, in case of Lingappa Pochanna v. State of Maharashtra and Ors., AIR 1985 SC 389, and in case of Union of India and Ors. v. Hindustan Development Corporation and Ors., AIR 1994 SC 988.

24. The next preliminary objection raised by the learned standing counsel and adopted by Sri V.K. Singh appearing on behalf of Gaon Sabha and emphasised with vehemence by learned amicus curiae Sri Sankatha Rai is that civil courts have no jurisdiction to cancel the fisheries leases. It is to be noticed that two references are already pending as mentioned hereinabove. In both the reference, the decision rendered by a Constitutional Bench of Supreme Court in case of Dhulabhaf v. State of Madhya Pradesh, AIR 1969 SC 78, was not brought to their notice, wherein Hidayatullah, C.J., speaking for the Court ruled that question of correctness of orders are for the decision of the authorities created by a statute and a civil suit does not lie if the orders of the authorities are declared to be final. An identical question arose before Full Bench of this Court in case of Similesh Kumar v. Gaon Sabha Uskar and Ors., AIR 1977 All 360, wherein after placing reliance on case of Dhulabhai (supra), it is laid down that if an Act creates rights indicating the manner for resolution of disputes about legality of a lease, then no other authority has jurisdiction to readjudicate the matter covered thereby. To my mind, in such a situation, jurisdiction of civil courts shall be deemed to be barred expressly as postulated under Section 9 of the Code of Civil Procedure read with G. O. dated 17.10.1995 whereby the order either cancelling or declaring fishery lease valid by Collector is made final.

25. The second limb of the aforesaid argument is whether the Sub-Divisional Officer and Collector both have jurisdiction to cancel the fisheries leases granted in favour of the fishing community mentioned hereinabove under G.O. dated 17.10.1995. The learned amicus curiae Sri Sankatha Rai has placed reliance on the decision rendered by learned single Judge in the case of Man Singh (supra).

From the perusal of the aforesaid judgment, it is revealed that learned single Judge has arrived at a conclusion that Sub-Divisional Officer and Collector both have jurisdiction to cancel the fisheries leases. According to the learned single Judge, the Sub-Divisional Officer is empowered to cancel the lease within the meaning of Section 21 of U. P. General Clauses Act whereas the Collector has jurisdiction to cancel the lease on the basis of the exigency contemplated under Paragraph 60 (2) (kha) of Gaon Sabha Manual under the then G.O. dated 24th April, 1990, which is amended by latest G.O. dated 17.10.1995 without bringing any change in this regard. It is held by the learned single Judge that the power conferred upon the Collector to cancel the lease contemplated in Paragraph 60 (2) (kha) is not exhaustive, but it is illustrative. The learned single Judge has also ruled in case of Man Singh (supra) that civil court has no jurisdiction to cancel the lease granted under Paragraph 60 (2) (kha) of the Gaon Sabha Manual. I respectfully concur with the view expressed by the learned single Judge that the power of Collector to cancel fishery leases is illustrative and not exhaustive. To my mind, once it is held that the power conferred to Collector to cancel the lease contemplated in paragraph 60 (2) (kha) of Gaon Sabha Manual is illustrative and not exhaustive, then on any ground if anyone is aggrieved against the grant of a lease under Paragraph 60 (2) (kha), he has to initiate proceedings for cancellation of fishery lease before the Collector. In my humble opinion, power of cancellation of lease can be conferred upon Sub-Divisional Officer with aid of Section 21 of U. P. General Clauses Act only if there would have been no specific statutory provisions conferring upon the Collector to cancel the lease under Paragraph 60 (2) (kha) of Gaon Sabha Manual and making it final. Once it is held that power conferred upon the Collector is illustrative and not exhaustive, then by aid of Section 21 of General Clauses Act, power of cancellation of lease conferred upon Sub-Divisional Officer in case of Man Singh (supra) is not palatable to me. I am also not able to persuade myself with the proposition of law laid down in case of Man Singh (supra) that although under Paragraph 60 (2) (kha) of Gaon Sabha Manual the order passed by Collector either cancelling fisheries leases or declaring them valid are made final, yet such orders are subject to revisions under Section 333 or 333A of U. P. Act No. 1 of 1951 as the aforesaid conclusion, the learned single Judge in case of Man Singh (supra) has relied upon cancellation of lease relating

to abadi sites passed by Collector. The provisions relating to cancellation of lease of abadi sites by Collector has been drastically amended by U. P. Act No. 24 of 1986, which escaped the notice of learned single Judge while holding in case of Man Singh (supra) that the order of Collector which is made final in the G.O. dated 24.4.1990, yet it is subject to revision. The relevant amended Sub-sections (6) and (7) of Section 122C of U. P. Act No. 1 of 1951 relating cancellation of patta of abadi sites passed by Collector is quoted hereinbelow :

'(6) The Collector may of his own motion and shall on the application of any person aggrieved by an allotment of land under this Section inquire in the manner prescribed into such allotment, and if he is satisfied that the allotment is irregular, he may cancel the allotment, and thereupon the right, title and interest of the allottee and of every other person claiming through him in the land allotted shall cease.

(7) Every order passed by the Assistant Collector under Sub-section (4) shall, subject to the provisions of Sub-section (6) and every order passed by the Collector under Sub-section (6) shall be final, and the provisions of (Section 333 and Section 333A) shall not apply in relation thereto.'

26. From conjoint reading of amended Sub-section (6) and Sub-section (7) of Section 122C of U. P. Act No. 1 of 1951, providing the manner of settlement of dispute relating to abadi sites, the order passed by Collector is made final and State Legislature expressly prohibits filing of revision against the order passed by Collector either under Section 333 or 333A of U. P. Act No. 1 of 1951. I am fortified in taking the aforesaid view from the decision rendered by Full Bench in case of Similesh Kumar (supra),

27. I have the misfortune to be unable to agree with erudite opinion of learned Judges constituting Division Bench in case of Panchoo (supra) and Desh Kumar (supra). I respectfully agree with the decision rendered in the case of Ajai Sonkar (supra) and the decision rendered in Gram Panchayat, Kanta Gulzarpur, Unnao (supra) rendered by two co-ordinate Benches of equal jurisdiction recognising leases of fishery rights in favour of weaker section of society, who are socially, educationally and economically in disadvantageous position and traditionally

engaged in fishing profession like Machchua, Mallah, Kewat, Bind, Lodhi, Dhoewar, Dhimar, Kashyap, Bothom, Raikwar, Manjhi, Godia, Kahar, Sureha or Suraha etc. members of the community of Fishermen mentioned above of the concerned Gaon Sabha/ Nyaya Panchayat/Block level area and thereafter members of the Scheduled Caste and Scheduled Tribe community of Gaon Sabha and only then thereafter other persons of Gaon Sabha/Nyaya Panchayat/Block level area, provided area of the tanks or ponds of fishery are up to two hectares and in case it is more than two hectares, then by the Co-operative Society formed by the members of the aforesaid weaker section of the society registered under U. P. Co-operative Societies Act. 1965, formed by community of fishermen in the order of preference given in G.O. dated 17th October. 1995.

28. In my humble opinion, the decisions rendered by former two Division Benches of this Court in case of Ajai Sonkar (supra) and Gram Panchayat Kanta Gulzarpur, Unnao (supra) recognising leases of fishery rights in favour of weaker section of society cannot be termed either per incuriam or suffer from vices of Sub-silentio whereas latter two Division Benches decision rendered in cases of Panchoo (supra) and Desh Kumar (supra) suffer from vices of Sub-silentio as latter decision did not examine the scope and ambit of Paragraph 60 of Gaon Sabha Manual founded on U. P. Act No. 1 of 1951, based on our constitutional philosophy. My aforesaid view is buttressed from a decision rendered by a Division Bench of this Court in case of Gaon Sabha Tuja v. Sub-Divisional Officer and Ors., 1992 ALJ 482.

29. From the discussion made hereinabove, in my considered opinion the decision rendered in cases of Panchoo (supra) and Desh Kumar (supra) overruling the decision of co-ordinate Benches of equal jurisdiction rendered in the cases of Ajai Sonkar (supra) and Gram Panchayat, Kanta Gulzarpur, Unnao (supra) and decision rendered by Division Bench in case of Todi (supra) on point of jurisdiction of civil courts to cancel fishery leases require reconsideration by larger Bench on the following points :

(i) Whether judicial propriety demands that if a Bench of High Court is unable to agree with the decision already rendered by earlier Division Bench of co-ordinate

jurisdiction, the question of disagreement should be referred to a larger Bench under Chapter V. Rule 6 of the Rules of the Court, 1952?

(ii) Whether the decisions rendered in former two Division Benches in the cases of Ajai Sonkar (*supra*) and Gram Panchayat, Kanta Gulzarpur, Unnao (*supra*) which were brought to the notice of learned Judges constituting Division Bench in case of Panchoo (*supra*), the latter Division Bench instead of disagreeing with ratio decidendi of two former Division Benches, it ought to have referred the same to a larger Bench of this Court?

(iii) Whether Article 14 and Article 19(1)(g) of the Constitution postulate a reasonable classification to ameliorate the economic condition of weaker section of society of fishermen community enumerated under Paragraph 60 (2) (kha) of Gaon Sabha Manual and also for elimination of middlemen to save the said weaker section of society from exploitation as the Directive Principles embodied the ideal of socio economic justice as assured in the preamble of the Constitution and the Courts are to adopt the principle of harmonious interpretation of Articles 14 and 19(1)(g) of the Constitution so as to give effect to the Fundamental rights as well as Directive Principles of State Policy?

(iv) Whether in view of State List of Seventh Schedule Item No. 21 empowers State Legislature to enact on the subject of fisheries, placing U. P. Act No. 1 of 1951, with Ninth Schedule of the Constitution and the mandatory provisions enshrined under Article 243G read with Item No. 5 of Eleventh Schedule which includes settlement of fisheries of the ponds and tanks vested in Gaon Sabha with powers, authority and responsibility of Panchayat, the preparation of plans for economic development and social justice and the implementation of scheme for economic development and social justice as entrusted to them under Paragraph 60 (2) (kha) of Gaon Sabha Manual issued by State Government in exercise of its power under Section 126 of U. P. Act No. 1 of 1951 and the Rules framed thereunder are sacrosanct being policy of affirmative action of State Government giving Distributive justice to the weaker section of society and to protect them from social injustice and all forms of exploitation?

(v) Whether the decision rendered by learned single Judge in case of Man Singh (supra), conferring jurisdiction upon Sub-Divisional Officer and Collector both for cancellation of patta of fishery right making the order of Collector revisable requires reconsideration in view of Sub-sections (6) and (7) of Section 122C of U. P. Act No. 1 of 1951 and decision rendered by Supreme Court in case of Dhulabhai (supra)?

(vi) Whether jurisdiction of civil court is expressly barred to cancel the fisheries rights granted under Paragraph 60(2) (kha) of Gaon Sabha Manual and the decision rendered by Division Bench of this Court in case of Todi (supra), requires reconsideration in view of decision rendered by Full Bench of this Court in case of Similesh Kumar (supra)?

(vii) Whether rights of appeals and revisions are creation of statute and once statutory provisions indicate the manner of settlement of dispute, no other authority including civil court has jurisdiction to re-adjudicate the matter covered thereby?

(viii) Whether leases of rearing of fishes in ponds and tanks vested in Gaon Sabha under Section 117 of U. P. Act No. 1 of 1951, fall within the meaning of agricultural lands as defined under Section 3 (14) of the said Act and such leases are exempted from Registration as envisaged under Section 117 of Transfer of Property Act?

30. Office of Registry of this Court is to place the records of these cases before Hon'ble the Chief Justice for making reference to a larger Bench under Chapter V, Rule 6 of the Rules of the Court.