

Bala Devi (Gram Pradhan) Vs. State of U.P. and ors.

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Court : Allahabad

Decided On : Nov-26-2008

Reported in : 2009(1)AWC525

Judge : Tarun Agarwala, J.

Appellant : Bala Devi (Gram Pradhan)

Respondent : State of U.P. and ors.

Disposition : Petition allowed

Judgement :

Tarun Agarwala, J.

1. Heard Sri Uttam Kumar Goswami, the learned Counsel for the petitioner and Sri J. K. Khanna, the learned standing counsel appearing for the respondents No. 1, 2 and 3 and Sri Amit Saxena, the learned Counsel appearing for the respondent No. 4. The Court has also perused the original records produced by the standing counsel.

2. The present dispute relates to the renewal of the fishery right of a pond granted in favour of the plaintiff/respondent No. 4. The facts as culled out from the record produced by the State Authorities is, that the plaintiff-respondent No. 4 was granted a patta for fishery rights in the pond in question for a period of 10 years on

23.6.1996. A formal agreement dated 4.4.1997 was executed. It transpires that the plaintiff applied for the renewal of the fishery rights on 27.3.2006. A report was submitted by the revenue authority on the same date and, the Sub-Divisional Magistrate renewed the lease on the same date, i.e., on 27.3.2006. When correct facts and law was brought to the knowledge of the authority concerned, the matter was enquired into and the Sub-Divisional Magistrate found that the renewal of the lease could not be granted and that under the judgment of the High Court, the fishery rights were again required to be given through the procedure evolved under the Acts, Rules and Regulations. The Sub-Divisional Magistrate also found that the renewal was obtained fraudulently by concealment of material facts and, accordingly passed an order dated 12.9.2006, cancelling the order of the renewal of the fishery right in favour of the plaintiff.

3. Without disclosing the cancellation of the patta, the plaintiff filed a Suit No. 958 of 2006 on 22.9.2006 before the Civil Court, Aligarh alleging that the patta was renewed by the revenue authority and that the defendants were unnecessarily interfering in his fishing right, and, therefore, prayed for the grant of a temporary injunction restraining the defendants from interfering in the fishing rights granted to the plaintiff/respondent No. 4. The trial court passed an ex parte order dated 7.11.2006 granting a temporary injunction. The defendant, who is the Pradhan on behalf of the Gaon Sabha filed a Misc. Appeal under Order XLIII, Rule 1 (r) of the C.P.C. contending that the patta granted in favour of the plaintiff had been cancelled and, consequently no injunction could be granted. The said appeal was dismissed by the lower appellate court by an order dated 8.2.2007. The petitioner, being aggrieved, has filed the present writ petition.

4. More than one and half years have elapsed and the respondent No. 4 having put in appearance did not file any counter-affidavit. This Court, after considering the matter directed the standing counsel to produce the original record which the Court has perused. The Court has also heard the learned Counsel for the plaintiff/respondent No. 4.

5. The learned Counsel for the petitioner submitted that a suit against the grant or cancellation of a fishery right, was not maintainable nor could the trial court grant

an injunction which was specifically prohibited under the Specific Relief Act. The learned Counsel submitted that the patta had been cancelled and consequently, no injunction could have been granted by the trial court.

6. On the other hand, the learned Counsel for the plaintiff/respondent No. 4 submitted that the writ petition was not maintainable at the instance of the petitioner, as there was no resolution in his favour of authority, by which a petition could be filed engaging a private counsel. The learned Counsel further submitted that the suit was maintainable and that against the cancellation of the patta, the plaintiffs have preferred a revision before the Commissioner, in which, an interim order of status quo was passed by the appellate authority which is continuing and by virtue of the said interim order, the plaintiff was entitled to continue with his fishery right pursuant to the renewal of the patta. The learned Counsel submitted that since the defendants were interfering in his fishery right, the suit for injunction was filed which was maintainable and the trial court was justified in entertaining the suit and had rightly granted a temporary injunction. The learned standing counsel on behalf of revenue authorities submitted that pursuant to the Full Bench decision of the Court, the renewal of the patta could not have been granted and that the patta has to be granted after due advertisement in accordance with the provisions of the Revenue Manual. The standing counsel submitted that the trial court committed an error in grant of an injunction.

7. Having heard the learned Counsel for the parties at some length and having perused the records, this Court is of the opinion that no injunction could have been granted by the trial court. The objection of the plaintiff/respondent No. 4 that the writ petition was not maintainable at the instance of the Pradhan is patently erroneous. There is an authority letter issued by the Additional District Magistrate which in my opinion was sufficient for the petitioner to file a writ petition. Even otherwise, assuming that a valid authority was not given to the petitioner, nonetheless, the Court takes cognizance and entertains the writ petition since it has been filed by the Pradhan of the village who is a vital link of the Gaon Sabha.

8. In *Ram Kumar and Ors. v. State of U. P. and Ors.* 2006 All CJ 123, a Full Bench of this Court held that renewal of fishery lease is impermissible and that the

renewal clause in the patta was ultra vires to Article 14 of the Constitution. The Full Bench found that every individual has a right to have, a fishery lease and that the grant of lease cannot be restricted to a particular caste or community. The Full Bench further found that the civil court dealing with suits and such matter does not have any jurisdiction to consider matters regarding settlement of fishery rights when statutory rights of appeal and revision are available under the Act and the Rules.

9. In the present case, the lease of the plaintiff-respondent has been cancelled. This fact was concealed by the plaintiff when the suit was instituted on 22.9.2006. If there was a breach of contract, the plaintiff at best was entitled for damages in lieu of injunction as provided under Section 40 of the Specific Relief Act and no injunction could be granted in view of the provisions of Section 41(e) of the Specific Relief Act. In the present case, a perusal of the plaint indicates that no relief for damages was asked for and the suit was in effect to permit the petitioner to continue with the terms and conditions of the renewal of the lease which in fact had been cancelled by the authority. In my opinion, no injunction could be granted by the trial court which would allow the plaintiff to continue with his fishery right when in fact the fishery right had already been cancelled.

10. The learned Counsel for the plaintiff/respondent submitted that the cancellation of the fishery right had been stayed by the Commissioner in the appeal filed by him. The learned Counsel has placed a photostat copy of the order of the Commissioner dated 25.9.2006, a perusal of which indicates that the appellate authority had passed the/ order directing parties to maintain' status quo. The order of status quo does not entitle the plaintiff to continue with his fishery right. The fishery right had already been cancelled prior to the interim order. The plaintiff-respondent could not be allowed to continue with his fishery right. Consequently, this Court is of the opinion that the order of status quo does not revive the patta under any circumstances nor does it give a right to the plaintiff to continue with his fishery right.

11. In view of the decisions of the Full Bench and in view of the aforesaid, this Court is of the opinion that the suit filed by the plaintiff was not maintainable. The

plaintiff had already invoked the machinery before the revenue authority against the cancellation of the patta. The Full Bench clearly indicates that no suit is maintainable. Consequently, this Court is of the opinion that the suit filed by the plaintiff/respondent, was clearly not maintainable.

12. In view of the aforesaid, the impugned orders dated 7.11.2006 and 8.2.2007 cannot be sustained and are quashed. The suit filed by the plaintiff/respondent is quashed as not maintainable. It is open to the plaintiff/respondent to pursue his remedy before the revenue authority in his appeal where the matter is pending.

13. This Court further directs the revenue authority to take appropriate steps immediately to settle the fishery right through the process of law and envisaged under the Act and its Rules and the decision of the Full Bench (supra).

14. The writ petition stands allowed. The trial court is directed to pass a formal order of the dismissal of the suit consequent to the order of this Court.

15. A certified copy of this order shall be sent by the registry to the trial court for necessary action within two weeks from today.

16. Standing counsel is also directed to intimate the revenue authority about the direction of this Court immediately.