SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com

A and N Fish Processing Project Pvt. Ltd. and Others Vs. Union of India and Others

A and N Fish Processing Project Pvt. Ltd. and Others Vs. Union of India and Others

SooperKanoon Citation : sooperkanoon.com/853965

Court : Kolkata

Decided On : Jan-21-1993

Reported in : AIR1994Cal145,(1993)2CALLT184(HC)

Judge : Susanta Chatterji, J.

Acts : Constitution of India - Article 14;; Andaman and Nicobar Islands Allotment of Brackish Areas of Coastal Acqua Culture of Entrepreneurs Rules, 1989 - Rule 5

Appeal No. : Cr. No. 32(W) of 1991

Appellant : A and N Fish Processing Project Pvt. Ltd. and Others

Respondent : Union of India and Others

Advocate for Def. : Mr. R. Shiv Saroop, Adv.

Advocate for Pet/Ap. : Mr. Tapan Kumar Mukherjee, Adv.

Judgement :
ORDER

1. Having heard Mr. Tapan Kumar Mukherjee for the petitioner and Mr. R. Shiv Saroop for the respondent Administration, it appears that the writ petitioner hasprayed inter-alia:

(A) A writ in the nature of Mandamus commanding the Respondents and each one of them

(i) to cancel, rescind and/or withdraw the impugned memo dated 13th November 1991 issued by the Assistant Secretary Respondent No. 7 herein, forthwith;

(ii) to consider the application of the petitioner company for grant of allotment of lease for waste land of Brackish water Prawn culture after giving a reasonable opportunity of hearing to the petitioners and on the basis of micro-level survey team's report and the report of the Tahsildar of Port Blair dated 2nd November 1987 as well as the order dated 17th October 1988 passed by the Hon'ble Lt. Governor and pass a speaking and reasoned order and grant allotment in favour of the petitioners on payment of usual charges for any area within Andaman.

(B) A writ in the nature of Certiorari directing the Respondents to certify and transmit the entire records including the impugned Memo dated 13th November 1991 (Annexure Q) so that conscionable justice may be done by setting aside and/or quashing the same;

(C) A Rule in terms of Prayers (A) & (B)above;

(D) An ad-interim order of injunction restraining respondents and each one of them, their servants and/or agents and/or subordinates from leasing out the land for Brackish acquaculture in favour of any third party until and unless the applications of the petitioner company for grant of allotment of land for Brackish waters land/acquaculture/ prawn culture is duly considered by the Respondent on the basis of the Micro level Survey team's report as well as the report of the Tahsildar, Port Blair dated 2-11-87 and the recommendation of the Lt. Governor of Andaman dated 17th October, 1988 (Annexure J) and from interfering with the business of the petitioner company on the said land in any manner whatsoever pending the disposal of the Rule;

(E) And pass such other or further order ororders as your Lordships Court may deem fit and proper.

2. It is contended that the petitioner No. 1 is a Company, and petitioner No. 2 is one of the Directors. In the year 1987, the petitioners made an application before the Deputy Commissioner, District of Andamans Port Blair for allotment of waste land-about 3000 hectares for brackish water prawn/shrimp culture. There are several reports of Tahsildar, Rangat, that certain areas are lying vacant and viable for allotment. The matter was brought to the notice of the Director of Fisheries A & N Islands for allotment of land in question. The Director of Marine Products Export Development Authority was approached for technical opinion. The Assistant Secretary of A & N Administration by a communication placed on record -- that the Director of Fisheries A & N Islands, took steps as to conducting of micro level survey of brackish water area in A & N Islands and the Administration has already informed the Marine, Cochin and Mahasagar, New Delhi that the survey team may visit for micro level survey in these islands within a specific period. Ultimately the Marine Products Development Authority gave out its reaction that the areas at Bharatpur and Lakanpur in Neil Island are basically dense forests situated well above the water level. Moreover, the soil is totally sandy and there is no natural creek for drawing any water lience these two areas were not considered for farming. There is also a communication between the Lt. Governor and a Member of Parliament about the steps taken by the Ministry of Agriculture to undertake the Micro-level survey to assess the potential aspect as suitable for brackish water acquaculture. Subsequently, the rules were framed viz 'the Andaman and Nicobar Islands Allotment of Brackish Areas for Coastal Acquaculture to Entrepreneurs Rules 1989'. Rule 5 envisages inter alia that the allotment of Brackish area on lease will be given to the locals only. In case locals are not available, the non-locals may be considered for such allotment by the Secretary (Fisheries), A & N Administration. The pro forma of the lease-documents has also been prepared. The grievance of the petitioners is thatthey made huge investment upon the alleged assurance by the departments concerned and the present writ petition is filed to seek the reliefs as indicated above.

3. The writ petition is opposed by the Administration by filing an affidavit-in-opposition. All the allegations have been controverted. It is placed on record that in any appropriate time the question of granting lease may be considered but the petitioner company is not entitled and there is a back loan and other infirmities.

Affidavit in reply has been filed by the petitioners reiterating the points already taken in the main writ petition. It is also averred that there is no bar or impediment to grant lease in favour of the petitioners while the petitioners are ready to comply with all the terms as prescribed under the rules.

4. With great anxiety, this Court has considered the materials on record and submissions on behalf of the respective parties. This Court is of the view that by any private negotiation and by keeping the Administration in good humour, no steps should be taken by the Statutory Authorities and in particular, the Respondent Administration to grant lease or to grant settlement in favour of either any individual or group or companies. While the Administration has already taken a policy decision to lease out the brackish water and a rule has been framed, the same has got to be complied with stricth as per law. When the Administration has already taken a decision to lease out, steps must be taken to advertise proposed settlement by way of lease stipulating the terms, and there should be invitation of tenders in order to enable the Administration to act freely and fairly, and a proper opportunity should be given to all the intending persons to obtain the lease by fulfilling the terms and by complying with the rules as indicated above. It is everybody's expectation that this country should be ruled by Law and not by whims and caprices of any individual, how-so-ever high he may be. Mr. R. Shiv Saroop appearing for the respondents has fairly submitted that the respondent administration has no intention to lease out any land either in favour of the petitioner or in favour of anybody by violating the rules orby taking any steps which will be contrary to and inconsistent with provisions of Law. Although Mr. Mukherjee, Ld. Advocate appearing for the petitioner has tried to argue that the case of promissory estoppel may not be lost sight of, Regard being had to the materials on record this court is of the view that there is no question of violation of promissory estoppel. The approach of the petitioner has well been considered. Steps have been taken to formulate a policy. Rules have been framed. Now the stage has come to grant lease. This grant of lease must be followed by actions after giving fare opportunities to all intending lessees. There should be open advertisement inviting tenders to obtain the lease and the petitioner will be given full opportunity to participate according to law. There should not be any extraneous consideration for grant to any individual, company or any other legal entity for arty

action made for any other transaction which would not be remotely connected with the grant of lease. Mr. Mukherjee has tried to draw the attention of this court that there is a reference of bank loan in the affidavit-in-opposition filed by the Administration. If there is any bank loan, the concerned authority is free to take steps for the recovery of the same. But if any individual has incurred any loan, the same will not stand as a bar to obtain any lease in respect of 'any other property according to law. Considering all the aspects of the matter this Court is of the view that the petitioner is neither in any advantageous position for the alleged assurance nor it is in any disadvantageous position for incurring any loan. Regarding the grant of the lease, the petitioner is nowhere for asking any writ in the manner as claimed in the writ petition. For the foregoing reasons, this writ petition is disposed of with clear observation that pursuant to the rules already framed, the respondent Administration will take effective steps to make advertisement in the (sic) time asking for the tenders from the intending parties of granting lease by stipulating conditions as admissible under law, and if the petitioner (makes) any application within the time as would be stipulated the same would be considered along with other applications if any and the matter would be decided there-after. Any other act done and/or caused to have been done contrary to the rules will not be deemed to have any legal effect. No (step) should be taken to lease by private negotiation. No order as to costs. Let a plain copy of this order be given to both the parties on usual undertaking that they will apply for certified copy of the judgment.

5. Order accordingly.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com