

(2004) 05 AHC CK 0024
In the Allahabad High Court
Case No : C.M.W.P. No. 9084 of 1999

Ajay Sharma

APPELLANT

Vs

Collector and Others

RESPONDENT

Date of Decision : 12-05-2004

Acts Referred:

Allahabad High Court Rules, 1952 — Rule 2
Civil Procedure Code, 1908 (CPC) — Order 9 Rule 13
Constitution of India, 1950 — Article 226
Penal Code, 1860 (IPC) — Section 218, 420, 467, 468, 471
Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 48
Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 176, 229B

Citation : (2004) 5 AWC 3811 : (2004) 97 RD 2

Hon'ble Judges : R.B. Misra, J

Bench : Single Bench

Advocate : Anil Bhushan and Amit Kumar Srivastava, for the Appellant; Vikram Nath and V.K. Singh, S.C., for the Respondent

Final Decision : Dismissed

Judgement

R.B. Misra, J.—Heard Sri. Anil Bhushan, learned Counsel for the Petitioner, Sri. Vikram Nath, learned Counsel for the Respondent Nos. 7 to 9 and learned standing counsel for the Respondent Nos. 1 to 4.

2. With the consent of learned Counsel for the parties this writ petition is decided finally at this stage in view of the Second Proviso to Rule 2 of Chapter XXII of the Allahabad High Court Rules, 1952.

3. In the present writ petition, prayer has been made for issuance of writ of certiorari for quashing the order dated 27th November, 1998 (Annexure-5 to the writ petition) passed by the Collector, Varanasi and order dated 17th December, 1998 (Annexure-6 to the writ petition) passed by the Sub-Divisional Officer (Uttari), Varanasi.

4. According to the Petitioner, he had filed Suit No. 250 in the year 1981 u/s

229B read with Section 176 of the Uttar Pradesh, Zamindari Abolition and Land Reforms Act, 1950 (hereinafter in short called as the Z.A. and L.R. Act") against the Respondent Nos. 3 to 9 with regard to the agricultural plots situated in village Kaniyar, district Varanasi, the suit was decreed on 23.8.1989 by the Additional Sub-Divisional Officer in favour of the Petitioner, but the Respondent Nos. 7, 8 and 9 filed an application under Order IX, Rule 13 of CPC for setting aside such ex parte decree dated 23.8.1989 with prayer that the appeal be not proceeded with till the application is decided, however, the Additional Commissioner passed an order dated 21.4.1993, against which revision was admitted by the Board of Revenue on 19.5.1993. Subsequently, the Board of Revenue dismissed the revision on 13.7.1995 with an observation that the Petitioner had got "amal daramad" in the revenue records. Against the above order a Writ Petition No. 3287 of 1997 was preferred by Sri. Sindhuja Pratap Singh, wherein interim order was granted on 29.1.1997. Subsequently, the District Magistrate/Collector, Varanasi passed orders on 27.11.1998 and 17.12.1998.

5. According to the Petitioner the decree passed in favour of the Petitioner cannot be set aside by the administrative order under the dictates of the higher authorities, more so, in violation to the principle of natural justice, without affording opportunity of hearing to the Petitioner. According to the Petitioner, the decree/judgment could not be set aside by the same authority but by the higher authority in the judicial proceedings and in the present case the order passed by the Additional Sub-Divisional Officer on 23.8.1989 could not be reviewed or rectified without affording opportunity of hearing to the Petitioner.

6. To strengthen the cause for and the following submissions have been made for and on behalf of the Petitioner:

(a) The issue of jurisdiction raised at the first instance before the lower authorities and decree passed in favour of the Petitioner could not be legally set aside administratively by the Sub-Divisional Magistrate at the instance of the District Magistrate, in view of *Sabha Chand and Ors. v. Narain Singh and Ors.* 1981 ACJ 138, where the question of jurisdiction in the suit for partition not raised earlier before the trial court could not be raised before the civil court after the dismissal of the suit on merits, the findings arrived at by trial court could not be challenged on the ground of lack of jurisdiction at subsequent stage. For raising the contentions and questions of jurisdiction too before the appellate or revisional court two aspects are necessary ; firstly, the objection must have been taken at earliest stage, and secondly, the failure of justice might have been the cause before the civil court. Similar view was also taken in *Baldeo v. Beni Lal Kedia and Ors.* 1981 ACJ 148.

(b) The decree could be set aside on an application under Order IX, Rule 13 of CPC provided it was not decided on merits. Since in the present case the decree was passed after hearing the parties, as such, the application under Order IX, Rule 13, CPC was not maintainable, therefore, the appropriate remedy for

Respondent Nos. 7 to 9 was to file an appeal against the decree but instead of filing appeal such Respondent got the earlier decree set aside by way of administrative order, which are in derogation to the judgment in Parmarth Prakash Vs. Union of India,

(c) The impugned orders could be judged on a reason given in the impugned order itself, not on the basis of supplementation put by way of an affidavit, hence the counter-affidavit filed by the Respondent raising certain questions for strengthening the impugned order is not permissible in view of the judgment of Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others,

7. On the other hand the following submissions were made for and on behalf of the Respondent:

(i) The dispute relates to plot Nos. (i) 1304 area 0.30, (ii) 249A area 0.60, (iii) 465 Kha area 0.38, (iv) 528 Kha area 0.46, (v) 885 Ga area 0.90, (vi) 887 Kha area 0.14 total 6 plots measuring area 3.78 acres situate in village Kaniyar, Pargana Pandrah, Tehsil and district Varanasi.

(ii) Sri. Ram Lakhan Singh, grandfather of Respondent, was the bhumidhar in possession of the property in dispute. He had executed a Will in favour of his grandsons. Sri. Ram Lakhan Singh died in the year 1985. After his death the name of Respondent Nos. 7 to 9 was substituted in the revenue records on the basis of Will executed by Sri. Ram Lakhan Singh. In the mean-time consolidation operation intervened and chaks were carved out in favour of Respondent Nos. 7 to 9. Thereafter, in the khatauni of 1395 to 1400 fasli the name of Respondent Nos. 7 to 9 was recorded over the land in dispute. (Annexures-C.A.-1 and C.A.-2 to the counter-affidavit).

(iii) The Petitioner and his brother-in-law Sakumbari Prasad Singh and land grabbers/land Mafia operating in Varanasi district adopted modus operandi by filing false and frivolous suit for declaration, and by setting up imposters they got suits decreed. After obtaining the ex parte decree against the real owner they remain silent for some time and thereafter in collusion with local police they took forcible possession of the property through police help.

(iv) The Petitioner and Sakumbari Prasad Singh had got manipulation by forging and interpolation in the original record of 1365 fasli in the revenue records room at Varanasi, wherein they got the name of ancestors of the Respondent deleted.

(v) Thereafter on the basis of the interpolated records of 1365 fasli the Petitioner filed a suit for declaration u/s 229B of the U.P. Zamindari Abolition and Land Reforms Act, 1950 (U.P. Act No.1 of 1951), in the Court of the Additional Sub-Divisional Officer, Varanasi, whereas in fact the Additional Sub-Divisional Officer had no jurisdiction or authority to receive and register suits directly. The Court of Additional Sub-Divisional Officer was only authorized to hear and decide suits transferred to its Court from the parent court of the Sub-Divisional Officer by the

orders of the Collector.

(vi) In the said suit the Petitioner falsely and mala fidely impleaded his own relatives in order to get the ex parte judgment confirmed by superior courts by filing frivolous appeals.

(vii) The suit was alleged to be registered as Suit No. 250 of 1989, Ajay Sharma v. State of U.P. and Ors. The Court of the Sub-Divisional Officer, Varanasi registered on said number another case in the name of Chanik v. Estate of Village Gurwat, Pargana Katehar, Tehsil and District Varanasi (Annexure-C.A. 6 to the counter-affidavit).

(viii) In the said farzi suit the Petitioner got written statement filed through imposters, however, neither any written statement was filed by Respondent Nos. 7 to 9 nor they had any knowledge of the proceedings.

(ix) The said suit was decreed ex parte on 23.8.1989 by the Additional Sub-Divisional Officer (Annexure-1 to the writ petition). The Petitioner did not get the judgment incorporated in the revenue records for about 2 years as per his usual modus. Thereafter in April, 1992 he got the judgment incorporated in the revenue records as apparent from the extract of khatauni of 1395-1400 fasli. (Annexure-C.A.-3 to the counter-affidavit).

(x) On coming to know of the fraud committed by the Petitioner and Sakumbari Prasad Singh the Respondent Nos. 7 to 9 filed two applications before the District Magistrate/Collector, Varanasi. One application was filed highlighting the interpolation made in the original revenue record of 1365 fasli in the record room and the second application was filed regarding the decree obtained by fraud on 23.8.1989 from the Court of Additional Sub-Divisional Officer.

(xi) The Collector, Varanasi, entrusted the inquiry regarding the fraud in the khatauni of 1365 fasli to the Sub-Divisional Officer (Northern Varanasi) and in so far as the other inquiry relating to fraudulent judgment u/s 229B of the Act No. 1 of 1951 is concerned, was entrusted to Chief Revenue Officer, Varanasi.

(xii) The Sub-Divisional Officer after inquiry found that the Petitioner and Sakumbari Prasad Singh had made interpolation in the original records of 1365 fasli. He, therefore, directed vide order dated 19.5.1993 that the name of Baijnath Singh wrongly entered in 1365 khatauni be deleted. (Annexure-C.A. 4 to the counter-affidavit).

(xiii) On the basis of the said order the Collector, Varanasi, directed the Officer-in-charge of the Revenue Record Room, Varanasi to lodge first information report against Sakumbari Prasad Singh and the Petitioner. The first information report was registered as Case Crime No. 32 of 1994 under Sections 218, 467, 468 and 471, I.P.C., Police Station Cantonment, Varanasi. In the said case after investigation the police has submitted the charge-sheet and the case was pending trial before the Court. (Annexure-C.A. 5 to the counter-affidavit).

(xiv) In so far as the inquiry regarding the frivolous decree u/s 229B of the Act was concerned the Chief Revenue Officer found that the suit had been deliberately and illegally filed in a Court, which had no jurisdiction to entertain. The Additional Sub-Divisional Officer having acted without jurisdiction in entertaining the suit, any decree passed therein was without jurisdiction, null and void.

(xv) On the basis of the report of the Chief Revenue Officer, the Collector, Varanasi vide order dated 27.11.1998 directed the Sub-Divisional Officer to pass suitable order in the case in view of the apparent fraud committed by the Petitioner. (Annexure-5 to the petition). Accordingly the Sub-Divisional Officer passed an order dated 17.12.1998 giving reasons of the fraud committed by the Petitioner and Sakumbari Prasad Singh. (Annexure-6 to the petition).

(xvi) Further the Respondent No. 8 Amitabh also lodged a first information report with the Police Station Cantonment, Varanasi regarding the frivolous decree, which was registered as Case Crime No. 373A of 1992 under Sections 467, 468, 471 and 420, Indian Penal Code (IPC) Police Station Cantonment, Varanasi against the Petitioner. (Annexure-C.A. 7 to the counter-affidavit).

(xvii) Sakumbari Prasad Singh and the Petitioner have not only made efforts to grab the land of Respondent Nos. 7 to 9, but have also tried to grab the land of several other persons in respect of which different criminal cases are pending against them. (Annexure-C.A.-8 to the counter-affidavit).

(xviii) The Petitioner and Sakumbari Prasad Singh being land grabbers/land mafia and also being involved in so many fraudulent transactions and having played fraud upon the Court are not entitled to any kind of relief from this Court in its extraordinary jurisdiction.

(xix) In the present writ petition, there is no averment by the Petitioner disputing the finding regarding the inquiry by Sub-Divisional Officer and the Chief Revenue Officer regarding the fraud committed by them. Petitioner's want to take undue advantage of the fraud committed by them by raising frivolous and technical pleas. In effect, by the order of the Collector dated 27.11.1998 and that of the Sub-Divisional Officer dated 17.12.1998 substantial justice has been done and fraud has been set aside.

8. The following submissions have been advanced on behalf of learned Counsel for the Respondent Nos. 7 to 9:

(a) The writ jurisdiction under Article 226 of the Constitution is an equitable and discretionary jurisdiction. In the present case, neither there is equity in favour of the Petitioner nor is the Petitioner for his conduct entitled to any discretionary relief from this Court. The Petitioner, who is an established land mafia involved in land grabbing, is not entitled to any equitable relief from this Court. The Petitioner has tampered and manipulated with the original revenue records of 1365 fasli, and has further played fraud upon the Court and the parties by

instituting the suit in a Court, which has no jurisdiction to entertain the same, as such both the finding of manipulation and fraud have been recorded by Senior Officers and the Petitioner has not rebutted/ denied the same.

(b) An order obtained by fraudulent means can always be set aside without affording opportunity. The principles of natural justice does not come into play where an order has been obtained by fraud. In the present case, the entries in the revenue records based upon the void order dated 23.8.1989 were corrected and entries existing prior to it were restored. There was no illegality in the same.

(c) By the orders, dated 27.11.1998 and 17.12.1998 passed by Respondent Nos. 1 and 2 the entries in the revenue records based upon an order obtained by fraud had been corrected. In case the Petitioner was aggrieved by the same he ought to have filed appeal against the same under the provisions of U.P. Land Revenue Act, 1901, as such the present petition is liable to be dismissed on the ground of alternative remedy.

(d) The contention of the Petitioner that he has not been afforded any opportunity is also not sustainable. Firstly, in case the Petitioner was aggrieved, he ought to have applied for recall of the orders dated 27.11.1998 and 17.12.1998, on the ground that it was ex parte secondly, the Petitioner having not denied nor rebutted the findings recorded by the Collector, the Chief Revenue Officer and the Sub-Divisional Officer have acknowledged the manipulation and fraud. In the circumstances even if the opportunity is afforded to the Petitioner he will be not able to prove otherwise and the result would remain the same, thus, also no fruitful purpose would be served for providing opportunity of hearing at this stage.

9. In *The Chairman, Board of Mining Examination and Chief Inspector of Mines and Another Vs. Ramjee*, , the Supreme Court observed as under:

Natural justice is not unruly horse, no lurking land line, nor a judicial cure all. If fairness is shown by the decision-maker to the man proceeded against, the form, features and fundamentals of such essential process properly being conditioned by facts and circumstances of each situations, no breach of natural justice can be complained of. Unnatural expansion of natural justice, without reference to the administrative realities and other factors of a given case, can be exasperating. We can neither be finical nor fanatical but should be flexible yet firm in this jurisdiction. No man shall be hit below the belt-that is the conscience of the matter.

10. The Supreme Court has reiterated time and again that the doctrine of natural justice cannot be imprisoned within the straitjacket of rigid formula and its application would depend upon the scheme and policy of the statute and relevant circumstances involved in a particular case. Vide *Union of India v. P.K. Roy and Ors.* AIR 1968 SC 850; *Channabasappa Basappa Happali v. State of Mysore* AIR 1972 SC 32 and; *Kumaon Mandal Vikas Nigam Ltd. v. Girja Shankar Pant and Ors.* 2001 (1) AWC 83 (SC) : (2001) 1 SCC 182.

11. In *S.L. Kapoor Vs. Jagmohan and Others*, the Supreme Court has observed that where on admitted or undisputed fact, only one conclusion is possible and under the law only one penalty is permissible, the Court may not issue the writ to compel the observance of the principles of natural justice as it would amount to issuing a futile writ. Similarly, in *State of Uttar Pradesh Vs. Om Prakash Gupta*, , the Supreme Court has observed, that the Courts have to see whether non-observance of any of the principles enshrined in statutory rules or principles of natural justice have resulted in deflecting the course of justice. Thus, it can be held that even if in a given, case, there has been some deviation from the principles of natural justice but which has not resulted in grave injustice or has not prejudiced the cause of the delinquent, the Court is not bound to interfere. This Court does not function as a court of appeal over the findings of the Disciplinary Authority, rather it has limited power of judicial review to the departmental proceedings in which appreciation of evidence is not permissible. The Court can review only to correct the error of law or fundamental procedural requirements which lead to manifest injustice or court can interfere with the impugned order if the same has been passed in flagrant violation of the principles of natural justice. Vide *Rae Bareilly Kshetriya Gramin Bank v. Bhola Nath Singhand and Ors.* AIR 1997 SC 1908.

12. In *Syndicate Bank Vs. The General Secretary, Syndicate Bank Stff Association and Another*, , the Supreme Court dealt with a similar case and held that where a show cause notice is served upon the delinquent employee and the employee choose not to respond to the said notice even after expiry of the notice-period, the employer has a right to presume that the employee does not want to say anything and he is no more interested in the services of the employer. The Court observed as under:

It is no point laying strength on the principles of natural justice without understanding their scope of real manner. There are two essential elements of natural justice which are: (a) no man shall be a Judge in his own cause; and (b) no man shall be condemned either civilly or criminally without being afforded an opportunity of being heard in answer to the charge made against him. In course of time by various judicial pronouncements ...the Bank had followed the requirement (of law)... Under these circumstances, it was not necessary for the Bank to hold an enquiry before passing the order. An enquiry would have been necessary if Dayananda had submitted his explanation which was not acceptable to the Bank or contend that he did report for duty but was not allowed to join by the Bank. Nothing of the like has happened here. Assuming for a moment that enquiry was initiated, evidence led before the Tribunal clearly showed that notice was given to Dayananda and it is he who defaulted and offered no explanation for his absence from duty and did not report on duty within thirty days of the notice...It is undoubtedly relevant on the principles of natural justice by the Tribunal and even by the High Court has certainly led to a miscarriage of justice as far as the Bank is concerned. The conduct of Dayananda, as an employee of the Bank, had been outstanding.

13. In Punjab and Sindh Bank and Ors. v. Sakattar Singh 2001 (1) AWC 473 (SC) : (2001) 1 SCC 214, the Supreme Court impliedly approved the law laid in Syndicate Bank (supra) and held that if the employee has no intention to join duty and does not turn up in spite of notice, nor gives an explanation for his absence satisfying the management that he has not taken up another employment or avocation and that he has no intention of joining the duty, the employee will be deemed to have retired from service on expiry of the time fixed in the notice. If the employee furnishes satisfactory explanation and comes after expiry of the notice, he may be allowed to work without prejudice to the right of the employer to take action against him under the law. In such a case, termination of service will not amount to punishment but would be a discharge simpliciter from the service. The Court observed as under:

Thus, there is no punishment for misconduct but only to notice the realities of the situation resulting from long absence of employee from work with no satisfactory explanation thereto. The principles of natural justice cannot be examined in vacuum without reference to the fact-situation arising in the case... It also realises, the futility of continuation with a situation when no employee, without appropriate intimation to the Management, is playing truant. If the Respondent had submitted an explanation regarding his unauthorised absence or placed any material before the Court that he did report for duty but was not allowed to join the duty, enquiry may have been initiated but not otherwise.

14. In Dharmarathmakara Raibahadur Arcot Ramswamy Mudaliar Educational Institution v. Educational Appellate Tribunal and Anr. (1997) 7 SCC 332, the Supreme Court observed as under:

Giving an opportunity or an enquiry is a check and balanced concept that no one's right be taken away without giving him/her opportunity or when enquiry in a given case or where the statute requires. But this cannot be in a case where allegations and charges are admitted and no possible defence is placed before the authority concerned. What enquiry is to be made when one admits violations... In a case where the facts are almost admitted, the case reveals itself and is apparent on the face of the record, and in spite of opportunity no worthwhile explanation is forthcoming as in the present case, it would not be a fit case to interfere with the termination order.

15. In Aligarh Muslim University and Others Vs. Mansoor Ali Khan, , the Supreme Court has held that holding of enquiry in a case, where there can be no answer to the charges, would be useless formality. Similar view has been reiterated in Union of India and Another Vs. M/s. Mustafa and Najibai Trading Co. and Others, Dr. J. Shashidhara Prasad Vs. Governor of Karnataka and Another, ; ; M.C. Mehta Vs. Union of India (UOI) and Others, and Designated Authority Anti-Dumping Directorate Ministry Of Commerce Vs. M/s. Haldor Topsoe A/s.,

16. In H.C. Sarin Vs. Union of India (UOI) and Others, , the Supreme Court placed reliance upon the judgment of Lord Denning in R.v. Secretary of State for

the Home Department ex parte Mugal (1973) 3 All ER 796, wherein it has been observed as under:

The rule of natural justice must not be stretched too far. Only too often, the people who have done wrong seek to invoke "the rule of natural justice" so as to avoid the consequences.

17. Well-settled legal proposition is that every action complained of is to be tested and analysed on the touchstone of doctrine of prejudice. Vide Major G.S. Sodhi Vs. Union of India (UOI), ; State Bank of Patiala and others Vs. S.K. Sharma, ; S.K. Singh Vs. Central Bank of India and Others, ; Rajendra Singh Vs. State of Madhya Pradesh and others, ; Mansoor Ali Khan (Supra) and Manika Jain v. State of Rajasthan and Ors. 1998 (1) RLW 71.

18. In K.L. Tripathi Vs. State Bank of India and Others, , the Supreme Court observed as under:

It is not possible to lay down rigid rules, as to when the principles of natural justice are to apply, nor as to their scope and extent... there must also have been some real prejudice to the complainant, there is no such thing as a merely technical infringement of natural justice. The requirement of natural justice must depend on the facts and circumstances of the case, the nature of the enquiry, the rules under which the Tribunal is acting,, the subject matter to be dealt with, and so on so forth.

19. In view of the above, the law on the issue can be summarised as under:

For any misconduct, the employer must initiate disciplinary proceedings as per the law and conclude the same, even if the statutory provisions provide for automatic termination of service holding an enquiry is mandatory. In exceptional circumstances where the absence from duty becomes very long and it can be assumed that the employee had abandoned the service. No enquiry is necessary as it would be a case of abandonment of service voluntarily. In a case where the fact remains undisputed and undeniable, an employee cannot submit any reply, holding an enquiry would be a futile exercise where an employee is absent from duty and he is given notice by the employer to join the duty within a stipulated period and he has thus not joined the service, no enquiry is needed for passing the order of termination. As the facts stand proved and it would be assumed that the employer is no more interested to serve.

20. Rules of natural justice are not rigid rules, they are flexible and their application depends upon the setting and the background of statutory provision, nature of the right, which may be affected and the consequences which may entail, its application depends upon the facts and circumstances of each case. (R.S. Dass Ors. Vs. Union of India (UOI) and Others,

21. As observed by the Supreme Court in C.A. No. 990 of 1968, Suresh Koshi George v. University of Kerala, decided on 15.7.1968, the rules of natural justice are not embodied rules. What particular rule of natural justice should apply to a

given case must depend to a great extent on the facts and circumstances of that case, the framework of the law under which the inquiry is held and the constitution of the Tribunal or body of persons appointed for that purpose. The aim of the rules of natural justice is to secure justice or to put it negatively to prevent miscarriage of justice whenever a complaint is made before a Court that some principle of natural justice had been contravened the Court has to decide whether the observance of that rule was necessary for a just decision in the facts of that case. (A.K. Kraipak and Others Vs. Union of India (UOI) and Others,

22. The rules of natural justice are not embodied rules. The question whether the requirements of natural justice have been met by the procedure adopted in a given case must depend to a great extent to the facts and circumstances of the case in point, the constitution of the Tribunal and the rules under which it functions. Suresh Koshy George Vs. University of Kerala and Others,

23. The soul of audi alteram partem rule is fair-play in action. Its essence is good conscience in a given situation; nothing more but nothing less- Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others, . "Fairness itself is flexible, pragmatic and relative concept, not a rigid ritualistic or sophisticated abstraction", the Court observed in this case, and also added that there was no ground to be frightened of delay, inconvenience and expense, if natural justice grained access.

24. Situations in which "audi alteram partem" rule may be excluded has been observed in Union of India v. Tulsiram Patel AIR 1985 SC 1416, that not only, therefore, can the principles of natural justice be modified but in exceptional cases they can even be excluded. There are well defined exceptions to the nemo judex in causa sua rule as also to the audi alteram partem rule. The nemo judex in causa sua rule is subject to the doctrine of necessity and yields to it as pointed out by this Court in J. Mohapatra and Co. and Another Vs. State of Orissa and Another, So far as the audi alteram partem rule is concerned, it is well established that where a right to a prior notice and an opportunity to be heard before an order is passed would obstruct the taking of prompt action, such a right can be excluded where the nature of action to be taken, its object and purpose and the scheme of the relevant statutory provisions warrant its exclusion ; nor can the audi alteram partem rule be invoked if importing it would have the effect of paralysing the administrative process or where the need for promptitude or the urgency of taking action so demands, as pointed out in Maneka Gandhi (supra) at page 681. If legislation and the necessities of a situation can exclude the principles of natural justice including the audi alteram partem rule a fortiori so can a provision of the Constitution, for a Constitutional provision has a far greater and all-pervading sanctity than a statutory provision. (Para 101)

25. The writ will not be issued if the effect of issuing a writ would be to sustain or restore an illegal order, (Godde Venkateswara Rao Vs. Government of Andhra Pradesh and Others,

26. The equality clause cannot be invoked to perpetuate an illegal order, (State of Haryana v. Ram Kumar : JT (1997) 8 SC 171).

27. Non-observance of the rules of natural justice:

(a) An administrative body vested with quasi-judicial power is not bound to follow the rules of judicial procedure, such as to examine witnesses or even to hear the parties orally. (Local Government Board v. Arlidge : AIR 1951 SC 120 .

(b) But there is a minimum standard to be observed "by any one who decides anything", (Board of Education v. Rice (1911) AC 179).

(c) The requirements of natural justice vary with the varying Constitution of the different quasi-judicial authorities and the statutory provisions under which they function.

28. Hence, the question whether or not any rule of natural justice has been contravened in any particular case should be decided not under any preconceived notions, but in the light of the relevant statutory provisions, the Constitution of the Tribunal and circumstances of each case.

29. No rights or status can accrue from an order made by an authority not legally competent to make it in the light of judgment in State of Punjab Vs. Jagdip Singh and Others, , where the Supreme Court observed that where an appointment/promotion is made in contravention of the statutory rules or by an authority not competent to make it or the irregularity in making it goes to the very root for instance there were no vacancies, there is no legal foundation of the order and no rights are created.

30. A judgment or decree obtained by playing fraud on the Court is nullity in law as observed by the Supreme Court in S.P. Chengalvaraya Naidu (dead) by L.Rs. Vs. Jagannath (dead) by L.Rs. and others, , where the Supreme Court in para 1 observed as under:

Fraud avoids all judicial acts, ecclesiastical or temporal" observed Chief Justice Edward Coke of England about three centuries ago. It is the settled proposition of law that a judgment or decree obtained by playing fraud on the Court is a nullity and non-est in the eyes of law. Such a judgment/decreed-by the first court or by the highest court-has to be treated as a nullity by every court, whether superior or inferior. It can be challenged in any Court even in collateral proceedings.

31. Allegations of fraud has to be established by relevant material and evidence and mere suspicion is not sufficient as observed in AIR 1941 93 (Privy Council) . Fraud like any other charge of a criminal offence whether made in civil or criminal proceedings, must be established beyond reasonable doubt. A finding as to fraud cannot be based on suspicion and conjecture as observed in Svenska Handelsbanken Vs. M/s. Indian Charge Chrome and others, . Here in the present case, the administrative authorities including the Sub-Divisional Officer, Collector and the Chief Revenue Officer have found that the Petitioner has played fraud,

therefore, further rectification of an order obtained basically by fraud is not illegal.

32. Sri. Vikram Nath, learned Counsel for the Respondent Nos. 7 to 9 in respect of correction of wrong entry in the revenue records after consolidation operation referred and relied on *Vikram Singh Junior High School v. District Magistrate (F and R)* and ors. 2002 (2) AWC 1262 (SC) ;; *U.P. Junior Doctor's Action Committee v. Dr. B. Sheetal Nandwani* AIR 1991 SC 909 and *Rama Shankar v. State* 1991 (1) AWC 455 : 1991 RD 47.

33. In *Vikram Singh (supra)* the question arose whether the Collector is competent authority to delete any entry and correct revenue records in respect of correction of wrong entry in the revenue records after consolidation operation, where the Supreme Court observed as under:

The entry in the revenue record must have a legal basis. Further, there was no adjudication of dispute as regard continuance of the wrong entry. The Appellant could not have claimed any title over the land in dispute merely on the basis of wrong entry which continued in its favour through negligence or failure of the revenue officer or the consolidation officer to correct the record, in pursuance of the order of the Board of Revenue which had attained finality. In the consolidation proceedings, the Collector is also the District Deputy Director of Consolidation under the U.P. Consolidation of Holdings Act, 1953 and is authorized to correct any wrong entry continued in the consolidation record in that capacity in the exercise of power u/s 48 of the U.P. Consolidation of Holdings Act. Merely because a wrong provision was quoted by the Collector for exercising his power while deleting the name of the Appellant from the revenue record would not invalidate the order if it is shown that such an order could be passed under other provisions of the Act viz. u/s 48 of the U.P. Consolidation of Holdings Act. In that view of the matter, there is no infirmity in the order passed by the Collector.

34. In *U.P. Junior Doctor's Action Committee v. Dr. B. Sheetal Nandwani (supra)*, where for getting admission in post-graduate course a fake judgment of one Bench of High Court, Allahabad, aborting entrance examination was produced, pursuance to which an order was issued by an another Bench of the High Court, Allahabad (Lucknow Bench) thereby cancelling the examination of entrance to P.G. course and directing State Government to grant admission on the basis of M.B.B.S. results, such bogus judgment of earlier Bench was found not existent therefore, order issued pursuant thereto having been made on the basis of misrepresentation was set aside. The Supreme Court in para 5 of *B. Sheetal Nandwani (supra)* has observed as below:

5. We are satisfied that there is a deep-seated conspiracy which brought about the fake order from Allahabad, the principal seat of the High Court and on the basis thereof a subsequent direction has been obtained from the Lucknow Bench of the same High Court. The first order being non-existent has to be declared to

be a bogus one. The second order made on the basis of the first order has to be set aside as having been made on the basis of misrepresentation. We are alive to the situation that the persons who have been taken admission on the basis of the M.B.B.S. results are not before us. The circumstances in which such benefit has been taken by the candidates concerned do not justify attraction of the application of rules of natural justice of being, provided an opportunity to be heard.

35. It is also indicated on behalf of the Respondent that an administrative error can always be corrected in view of *Ram Awadh Prasad v. Union of India* SCJ 1987 (3) CAT 48, where it was observed, "it is well accepted maxim of law that an administrative error can always be corrected ; this can be done without giving opportunity to show cause etc., if the order has not been carried out or it has not resulted in accruing any legal right."

36. According to Respondent the order dated 23.8.1989, passed by the Additional Sub-Divisional Officer was an order as coram non-judice, i.e., was not passed by the appropriate authority as the authority, which was supposed to pass the same, has no authority to pass the same, therefore, it was correctly rectified at the command of competent authority the District Magistrate and consequently by the Sub-Divisional Magistrate.

37. I have heard learned Counsel for the parties. I find that the Petitioner has obtained an order from the authority, which suffers from principle of coram non-judice, therefore, illegal and erroneous order was rectified legally by the competent authority and for getting any remedy under Article 226 of the Constitution, which is equitable and discretionary remedy, the Petitioner has to demonstrate before the Court that there is equity in favour of the Petitioner and conduct of the Petitioner is fair. In these circumstances, this Court is not inclined to invoke its extraordinary discretionary jurisdiction under Article 226 of the Constitution, therefore, the writ petition is dismissed.