(2009) 05 AHC CK 0078

In the Allahabad High Court

Bachchu Ram Singh and Another — APPELLANT

Vs

Additional Commissioner (Judicial) and Others — RESPONDENT

Date of Decision : 06-05-2009

Acts Referred:
Constitution of India, 1950 — Article 226

Citation : (2009) 3 AWC 3017

Hon'ble Judges : S.P. Mehrotra, J

Bench : Single Bench

Final Decision : Allowed

Judgement

S.P. Mehrotra, J.—The present writ petition has been filed by the petitioners under Article 226 of the Constitution of India, inter-alia, praying for quashing the judgment and order dated 29.11.2005 (Annexure-6 to the writ petition) passed by the Additional Commissioner (Judicial), Allahabad Division, Allahabad (respondent No. 1) and the judgment and order dated 28.3.2005 (Annexure-4 to the writ petition) passed by the Sub-Divisional Officer, Khaga, Fatehpur (respondent No. 2).

2. It is, inter alia, averred in the writ petition that the land in question was initially recorded as naveen parti and by resolution of the Gaon Sabha dated 18.9.1969, the patta was granted for the School in question. Copy of the said Resolution dated 18.9.1969 of Gaon Sabha has been filed as Annexure-1 to the writ petition.

3. It is, inter alia, further averred in the writ petition that after the grant of the aforesaid patta, the name was also recorded in the revenue record by the order of the Sub-Divisional Officer, Khaga in Case No. 754, Junior High School v. Gaon Sabha. Copy of the order dated 28.7.1970 passed in Case No. 754 has been filed as Annexure-2 to the writ petition.

4. It is, inter alia, further averred in the writ petition that since then, the School in question is running over the land m question, and the Junior High School has

upgraded to intermediate College; and that for the welfare of the public at large in the locality, the Graduate College was opened, and the same has also been recognized by the State Government with Art subject; and that for the purposes of Degree College, namely Ram Swaroop Singh Mahavidyalaya Ayurveda Shiksha Snatak Mahavidyalaya, Arhauli, district Fatehpur, the land in question has been purchased after fulfilling all formalities through Gyan Singh, Manager of the Inter College on 4.9.2002 by registered sale deed, and the name has been mutated in the revenue records. Copy of the said sale deed dated 4.9.2002 has been filed as Annexure-3 to the writ petition, a perusal whereof shows that the said sale-deed was executed by Gyan Singh, Manager, Arhauli Inter College, Arhauli in favour of Bachchu Ram Singh, Ram Swaroop Singh Mahavidyalaya Ayurveda Shiksha Snatak Mahavidyalaya, Arhauli, district Fatehpur.

5. It is, inter alia, further averred in the writ petition that an order dated 28.3.2005 (Annexure-4 to the writ petition) was passed by the Sub-Divisional Officer, Khaga, Fatehpur (respondent No. 2). By the said order dated 28.3.2005, the name of Bachchu Ram Singh, Ram Swaroop Singh Mahavidyalaya Ayurveda Shiksha Snatak Mahavidyalaya, Arhauli, (petitioners) was directed to be expunged from the revenue record.

6. It is, inter alia, further averred in the writ petition that no notice or opportunity of hearing was given to the petitioners before passing the said order.

7. It is, inter alia, further averred in the writ petition that as soon as the said order dated 28.3.2005 came into the knowledge of the petitioners, a revision was immediately filed before the Commissioner, Allahabad Division, Allahabad. Copy of the memorandum of revision dated 20.5.2005 has been filed as Annexure-5 to the writ petition.

8. By the order dated 29.11.2005 (Annexure-6 to the writ petition), the respondent No. 1 dismissed the said revision filed by the petitioners.

9. Thereafter, the petitioners have filed the present writ petition seeking the reliefs as mentioned above.

10. A Supplementary-affidavit, sworn on 16.1.2006, was filed on behalf of the petitioners. Photostat copy of the sirdari patta dated 12.1.1970 granted in favour of Junior High School, pursuant to the Resolution dated 18.9.1969 of Gaon Sabha, has been filed as Annexure SA-1 to the said supplementary-affidavit. Photostat copy of khatauni for the period 1376-1378 fasli has been filed as Annexure SA-2 to the supplementary-affidavit, which shows amaldaramad over the land in question in favour of the Junior High School, Arhauli as sirdar on 10.9.1970.

11. A counter-affidavit on behalf of the respondent No. 4 (Gaon Sabha, Arhauli) has been filed.

12. A supplementary counter-affidavit has also been filed on behalf of the respondent No. 4.

13. It is, inter alia, averred on behalf of the respondent No. 4 in the supplementary counter-affidavit that during the year 1964, the consolidation proceedings took place in village Arhauli; and that since there was no play-ground for the children/students, as such, the land about 19 bighas was allotted in the name of the "School Farm" which was used as play-ground, and for Agriculture work and Bagwani by the students; and that the land is in use of/by Basic Primary School and by local youth as play-ground for a long time; and that the nakal khatauni of the "School Farm" issued by the Tehsildar, Khaga for 1411-1416 fasli shows 25 plots in the name of the "School Farm" out of which 12 plots were sold by Gyan Singh to Bachchu Ram Singh and Ram Swaroop Singh Mahavidyalaya Ayurveda Shiksha Snatak Mahavidyalaya, Arhauli, District-Fatehpur. Copy of the said nakal khatauni has been filed as Annexure SCA-1 to the said supplementary counter-affidavit.

14. A rejoinder-affidavit has been filed on behalf of the petitioners in reply to the aforesaid counter-affidavit and supplementary counter-affidavit. In the rejoinder-affidavit, the petitioners have reiterated the facts stated in the writ petition and the supplementary-affidavit. It is, inter alia, further stated in the rejoinder-affidavit that initially the land in question was reserved and allotted in the name of Junior High School/ Higher Secondary School, which was being run over the land in question and which was subsequently upgraded into the Degree College and it is on account of the aforesaid subsequent upgradation of the Junior High School into the Degree College that by Resolution dated 14.11.2001 (Annexure RA-2 to the rejoinder-affidavit) passed by the Management of the School, certain land was separated for construction of building and for other purposes of the Degree College, and as on date the Degree College is running and imparting education to several thousands of students.

15. I have heard Sri M. N. Singh, learned Counsel for the petitioners, the learned standing counsel appearing for the respondent Nos. 1, 2 and 3, and Sri B.N Singh appearing for the respondent No. 4, and perused the record.

16. It is submitted by Sri M. N. Singh, learned Counsel for the petitioners that before passing the order dated 28.3.2005 (Annexure-4 to the writ petition) whereby the names of the petitioners were expunged from the revenue records and the name of Gaon Sabha was directed to be recorded, no notice or opportunity was given to the petitioners. Sri Singh refers to paragraph 11 of the writ petition.

17. It is further submitted by Sri M. N. Singh that in any view of the matter, the impugned orders suffer from manifest illegality, and the findings recorded therein are perverse.

18. Sri B. N. Singh, learned Counsel for the respondent No. 4 submits that the Sub-Divisional Officer, Khaga, Fatehpur (respondent No. 2) in the order dated 28.3.2005 has found that the order of Naib Tehsildar dated 4.7.2003 (mentioned in Annexure-SCA1 to the supplementary counter-affidavit filed on behalf of the

respondent No. 4) was obtained by committing fraud, and was based on a void sale deed dated 4.9.2002, and the same was liable to be set aside.

19. The said order dated 28.3.2005, the submission proceeds, was upheld by the respondent No. 1 by its order dated 29.11.2005, passed in the revision filed by the petitioners. It is submitted that as the names of the petitioners were recorded by committing fraud, the impugned orders have rightly been passed by the respondent Nos. 1 and 2.

20. I have considered the submissions made by the learned Counsel for the parties.

21. In paragraph 11 of the writ petition, it is stated as under:

11. That, no notice of opportunity of hearing has been given to the petitioner before passing aforesaid order dated 28.3.2005 by the respondent No. 2 and as such, as soon as it came into knowledge of the petitioner, immediately a revision has been filed before the Commissioner, Allahabad Division, Allahabad.

22. The averments made in paragraph 11 of the writ petition have been replied to in paragraph 6 to the counter-affidavit as follows:

6. That the contents of paragraphs No. 9 to 11 of the writ petition are matter or record. However, it is submitted that the land in dispute belongs to Gaon Sabha and recorded in the khata of Gaon Sabha and as such, there is no need with regard to forged entry.

23. It will thus be noticed that the categorical averments made in paragraph 11 of the writ petition that no notice or opportunity of hearing was given to the petitioners before passing the said order dated 28.3.2005 by the respondent No. 2, have not been specifically denied in the counter-affidavit.

24. In the circumstances, it is evident that before passing the said order dated 28.3.2005, the Sub-Divisional Officer, Khaga, Fatehpur (respondent No. 2) did not give any notice to the petitioners. No opportunity of being heard was given to the petitioners before the said order dated 28.3.2005 was passed.

25. The respondent No. 2, as is evident from a perusal of the said order dated 28.3.2005, was of the view that in case any order had been obtained by committing fraud, no notice or opportunity of hearing was required to be given.

26. The respondent No. 1 in passing the order dated 29.11.2005 dismissing the revision filed on behalf of the petitioners held that no notice was required to be given before cancellation of the names of the petitioners recorded in the revenue records, and again recording the land in question as "sarvajanik bhumi".

27. I am of the opinion that the view of the respondent Nos. 1 and 2 that no notice or opportunity was required to be given to the petitioners before expunging their names from the revenue records on the ground that the same had been recorded by committing fraud, is not correct.

28. Admittedly, the entries in the revenue records had already been made in the names of the petitioners. In case the said entries were being expunged/cancelled on the ground of fraud or on any other ground, notice was required to be given to the petitioners to present their version. The recorded entries in the names of the petitioners could have been expunged/cancelled only after giving reasonable opportunity of being heard to the petitioners. This will be in accord with the basic requirements of the principles of natural justice.

29. In this regard, reference may be made to the decisions relied upon by Sri M. N. Singh, learned Counsel for the petitioners.

30. In Chaturgun and Others Vs. State of U.P. and Others, this Court laid down as under (Paragraphs 8 and 9 of the said RD):

8. Accordingly, it is held that whenever an entry in the revenue record is to be cancelled and substituted particularly when the entry is continuing for more than a year, notice must be given to the party in whose favour entry, stands even if prima facie authority/Court concerned (i.e., Deputy Collector/Sub-Divisional Officer in most of the cases) is of the opinion that the entry is result of fake order or fraud. Similarly if name of an asami pattedar is to be expunged from the revenue records on the ground of expiry of period of patta or any other ground, notice must be given to him before expunging his name. In a recent authority Hari Ram Vs. Collector and Others, it has been held by this Court that apart from suit for ejectment u/s 202 of U.P, Z.A. and L.R. Act, asami pattedar may be evicted after expunging his name from the revenue records u/s 34 of U.P.Z.A. and L.R. Act but it can be done only after providing opportunity of hearing to the pattedar/lessee. However if entry is expunged or any other order is passed without hearing the person affected then he is entitled to file an application for post decisional hearing and recall of the order before the Court/authority which passed the ex-parte order, if such an application is filed then the Court/authority concerned shall hear the applicant and in case it comes to the conclusion that the earlier order is not correct then the said order shall be set aside. In such situation it is not necessary to first set aside the order and then hear the party concerned. Alongwith such application such evidence must be filed which the party considers necessary for his case. It has been held by the Supreme Court in Aligarh Muslim University and Others Vs. Mansoor Ali Khan, that a person who complains about denial of opportunity of hearing must show that in case opportunity had been provided to him, what cause he would have shown or what defence he would have taken. (Similar view has been taken in S. L Gupta v. A. D. Gupta 2003 AIR SCW 7089 (para 29) and Canara Bank and Others Vs. Shri Debasis Das and Others, . Against ex-parte orders of expunging of names it is not proper to file revision and appeal etc. directly. However, if revision, appeal etc. is directly filed then revisional court/appellate court may also instead of deciding the revision or appeal on merit may grant leave to the affected party to apply for post decisional hearing and recall of order before the trial court/ authority. The revisional/ appellate authority may also decide the matter on merit

after providing opportunity of post decisional hearing (i.e., opportunity to show that earlier entry was not fake) as mentioned in the judgment of Supreme Court in Canara Bank (supra).

9. Revenue authorities/Courts must remember that a party can in some cases successfully show that entry of his name in the revenue record is correct and not fake or based upon fake order. This question can be decided only and only after hearing the party concerned and likely to be affected.

(Emphasis supplied)

31. This decision thus lays down that whenever an entry in the revenue record is to be cancelled and substituted, notice must be given to the party in whose favour entry stands even if prima facie the authority/Court concerned is of the opinion that the entry is result of fake order or fraud.

32. In Shardadeen Vs. State of U.P. and Others, this Court held as under (Paragraph 3 of the said AWC):

3. Today I have decided Writ Petition No. 14 of 2005, Chaturgun and Ors. v. State of U.P. and Ors. involving similar point. In the said judgment after discussing several decisions of Supreme Court I have held that even before cancelling allegedly farzi entries in revenue record it is necessary to hear the person in whose name entry is continuing. In the said judgment I have also held that in case revenue entry is cancelled without hearing person concerned then he can apply for post decisional hearing and recall of order.

(Emphasis supplied)

33. This decision thus lays down that even before cancelling allegedly farzi entries in revenue record, it is necessary to hear the person in whose name the entry is continuing.

34. In Rakesh and Others Vs. Collector/District Deputy Director, Consolidation and Others, , this Court laid down as under (Paragraphs 12 and 13 of the said ADJ):

12. It is no doubt correct that entries made in revenue records on the basis of forged or non-existing order cannot be allowed to continue as soon as the facts come to light. However; the question which arises for consideration is whether in such a situation the affected persons are entitled for an opportunity of hearing before the entries of their names could be expunged.

13. hWhether an entry in revenue record is fake or based on some forgery or fraud is a question of fact and is required to be established and proved like any other fact which necessarily implies an opportunity of hearing to the affected persons. Equally important is that any action based on fraud has to be set aside and the person cannot be allowed to take any advantage of his own misdeeds even for a moment. But the finding in respect of fraud or forgery cannot be recorded ex parte and it cannot be ruled that the principles of natural justice in

such cases have no application at all. It may be that the person affected be possessed of sufficient materials by which he may be able to establish that entries are not a result or based on any fraud or forgery. Thus, in accordance with principles of natural justice a notice and opportunity of hearing to the affected person is a must before expunging entry even in cases where the authority is prima facie of the opinion that entry was a result of some fraud, forgery or manipulation.

(Emphasis supplied)

35. This decision thus lays down that whether an entry in revenue record is fake or based on some forgery or fraud is a question of fact and is required to be established and proved like any other fact which necessarily implies an opportunity of hearing to the affected persons. The finding in respect of fraud or forgery cannot be recorded ex parte and it cannot be ruled that the principles of natural justice in such cases have no application at all. Thus, in accordance with principles of natural justice a notice and opportunity of hearing to the affected person is a must before expunging entry even in cases where the authority is prima facie of the opinion that entry was a result of some fraud, forgery or manipulation.

36. In view of the above, I am of the opinion that the orders dated 28.3.2005 and 29.11.2005 cannot be sustained, and the same are liable to be quashed.

37. Accordingly, the writ petition is allowed. The impugned order dated 28.3.2005 (Annexure-4 to the writ petition) passed by the respondent No. 2 and the impugned order dated 29.11.2005 (Annexure-6 to the writ petition) passed by the respondent No. 1, are quashed. The matter is sent back to the respondent No. 2 (Sub-Divisional Officer, Khaga, Fatehpur) for deciding the same afresh in accordance with law after giving reasonable opportunity of being heard to all concerned including the petitioners. The respondent No. 2 will decide the matter expeditiously, preferably, within a period of three months from the date the petitioners and the respondent No. 4 appear before him (Sub-Divisional Officer, Khaga, Fatehpur) alongwith certified copy of this order.

38. Sri ,M. N. Singh, learned Counsel for the petitioners and Sri B. N. Singh learned Counsel for the respondent No. 4 are agreed that their respective parties will appear before the Sub-Divisional Officer, Khaga, Fatehpur (respondent No. 2) on 13th July, 2009 alongwith certified copy of this order.

On the facts and in the circumstances of the case, there will be no order as to costs.

