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**(2003) 12 AHC CK 0113**  
**In the Allahabad High Court**  
**Case No : Reference Nos. 8 and 9 of 1997-98**

Chand Mohammad

APPELLANT

Vs

State

RESPONDENT

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**Date of Decision :** 03-12-2003

**Acts Referred:**

Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 167, 68A

**Citation :** (2003) 12 AHC CK 0113

**Hon'ble Judges :** R.R.Yadav, J

**Final Decision :** Allowed

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## Judgement

S.R. Yadav, Member.

1. This is a reference made by the Additional Commissioner, Bareilly Division, arising out of proceedings under Sections 167/168A of U.P.Z.A. and L.R. Act heard and decided by the Additional Collector, Pilibhit, whereby recommendation has been made on 18797 to remand the matter to Collector concerned to decide the same afresh.

2. Briefly the facts of the case are that the plot in Suit No. 122 area 3.41 acres situate in village Ghanshyampur, Pergana Bisalpur, Tehsil and District Pilibhit of which 1/2 area was agreed to be sold. In respect of which a report was made that the same was hit by Sections 167/168A of Z.A. & L.R. Act, because the area wherein the land in dispute situate was consolidated one and the above desired transfer of land would come under the purview of the fragmentation. Perhaps the original report was made to Collector, Pilibhit; later on the matter came before the Additional Collector who proceeded with the matter. Consequently objections were filed against the aforesaid report on 22794. The statement of the lekhpal was recorded. In the meantime the revisionist disappeared and the case was ordered to proceed exparte on 18894. In the result, the entire matter stood decided exparte on 25894 by the Additional Collector. Feeling aggrieved by that order, the revisionist moved restoration application where pleas were taken that the father of the revisionist was ill which resulted into non appearance before the

Court. The learned Additional Collector rejected the restoration application on 7696 holding therein that the revisionist has not filed any medical certificate as the proof of his father's illness. Aggrieved by the aforesaid orders two revisions were filed before the Commissioner, Bareilly Division, they have been heard jointly by the Additional Commissioner and a reference has been made to set aside the orders dated 25894 and 761996 passed by the Additional Collector and remand the entire matter to the trial Court for trial afresh. Now the same is being heard by this Court.

3. I have heard the learned Counsel for the parties and perused the relevant papers on file.

4. The main points involved in the matter are whether the revisionist disappeared without any cogent reasons or not and whether the evidence filed in support of restoration application were seen properly or not? So far as the first point is concerned the revisionist has categorically mentioned in the application supported by an affidavit that the disappearance took place due to illness of father. It is also clear that the restoration application supported by an affidavit has not been countered by way of the counter affidavit and it is surprising to note that the learned Additional Collector has not whispered a word with regard to affidavit filed by the revisionist. The main and most important piece of evidence in support of restoration application was the affidavit. It was the duty of the trial Court to have gone through the same and if it was not countered it's admissibility etc. ought to have been explained and finding thereon ought to have been recorded failing which the trial Court committed an error and as such commission and omission are against the principle of natural justice. In his recommendation the learned Additional Commissioner has touched the main points involved in the matter and thus, I do not find any apparent illegality, irregularity or jurisdictional error therein hence the same is liable to be accepted.

In the result, the recommendation is accepted, the revision is allowed and the impugned orders dated 25894 and 7696 are hereby set aside and the matter is sent to Collector, Pilibhit, to decide afresh after giving due opportunity of hearing to the parties concerned in the light of observations made above. Let a copy of this order be placed on reference No. 9 of 9798, Pilibhit also.

Revision allowed.