
(2016) 02 AHC CK 0061
In the Allahabad High Court

Case No : Misc. Single No. 2781 of 2013 With Misc. Single No. 8253 of 2014

Guddu and Others

APPELLANT

Vs

Commissioner, Lucknow Division, Lucknow and Others

RESPONDENT

Date of Decision : 24-02-2016

Acts Referred:

Citation : (2016) 131 RD 55

Hon'ble Judges : Ram Surat Ram (Maurya), J.

Bench : Single Bench

Advocate : Karunanidhi Yadav, Shashank Bhasin, Vibhanshu Srivastav, Advocates, Ram Kumar Singh, Advocate, for the Appellant; C.S.C, Gaurav Mehrotra, Jayesh Dutt Dwivedi, for the Respondent

Final Decision : Dismissed

Judgement

Ram Surat Ram (Maurya), J. - Heard Sri Prashant Chandra, Senior Advocate, assisted by Sri Shashank Bhasin, for the petitioners and Standing Counsel, for respondents-1 to 3 and Sri Gaurav Mehrotra, for respondents-4 and 5.

2. The writ petitions have been filed against the orders of Sub-Divisional Officer dated 18.03.2010, deleting the names of the petitioners from the land in dispute and Additional Commissioner dated 07.03.2013 and 11.02.2013 dismissing, revisions of the petitioners, against aforesaid order, in proceeding under Section 33/39 of U.P. Land Revenue Act, 1901 (hereinafter referred to as the Act).

3. On the applications of Special Nazul Officer (respondent-4) dated 02.09.2003 and 13.01.2004, proceeding under Section 33/39 of the Act, was started against the petitioners as well as several other persons. Notices were issued by Tahsildar, which were duly served upon petitioners-1, 6, 7, 8 and 9, while it could not be served upon petitioners-2, 3, 4 and 5 of Writ Petition No. 2781 (MS) of 2013. Petitioners-6 and 7 also appeared and filed their vakalatnama but did not file any written statement/ objection to the notice. Nazul land came to be recorded in the names of various other persons, to whom also notices were issued. Babu Lal

adopted son of Babu Ram, Mahavir and others and Sanatan Dharm Higher Secondary School filed reply to the notice and contested the matter.

4. Tahsildar after holding inquiry and hearing the parties submitted his report dated 24.02.2010, finding that land in dispute was Nazul land situated at two villages Barawan Khurd (of whom Bharat Lal Maurya is concerned) and Barikal (of whom the petitioners of Writ Petition No. 2781 (MS) of 2013 are concerned) were recorded as such in 1332 F, khatauni. The village Barikala was placed under consolidation operation in 1965, which was closed by notification dated 27.05.1995 under Section 52 of U.P. Consolidation of Holdings Act, 1953. The village Barawankhurd was placed under consolidation operation in 1962, which was closed by notification dated 31.07.1995 under Section 52 of U.P. Consolidation of Holdings Act, 1953. During consolidation, the names of various persons (including the petitioners) were recorded as sirdar over Nazul land, which were liable to be deleted.

5. Sub-Divisional Officer by order dated 18.03.2010 held that land in dispute was Nazul land. Sirdari right has been illegally conferred over it to various tenure holders during consolidation although no right can be given to them. On these findings he allowed the applications and directed for deleting the names of the petitioners from the disputed land and recording it as Nazul land. The petitioners filed a revision (registered as Revision No. 656 of 2009-10, Guddru and others v. State of U.P. and others) and (registered as Revision No. 55 of 2012-13 Ram Rakhan and others v. State of U.P. and others) from the aforesaid order. Additional Commissioner by order dated 11.02.2013 had dismissed Revision No. 55 of 2011-12. As such he by order dated 07.03.2013 dismissed Revision No. 656 of 2009-10 also. Hence these writ petition has been filed.

6. The names of Guddru (petitioner-1) was recorded over plots 571 (area 0.101 hectare), 597 (area 0.284 hectare) and 599 (area 0.118 hectare), Prem Kumar Sahu (petitioner-2) was on plot 559 (area 0.374 hectare), Om Prakash Sahu (petitioner-3) was on plot 560 (area 0.377 hectare), Ranjeet Kumar (petitioner-4) was recorded on plot 558 (area 0.407 hectare), Ashish Kumar (petitioner-5) was recorded over plot 558 (area 0.407 hectare), Sitaram (petitioner-6) was recorded over plot 456 (area 0.323 hectare), Shri Pal (petitioner-7) was recorded on plot 579 (area 0.126 hectare), Sanjeevan (petitioner-8) was recorded on plot 569 (area 0.190 hectare) and Brijnath (petitioner-9) was recorded on plot 563 (area 0.599 hectare) of village Barikala. Bharat Lal Maurya (petitioner of Writ Petition No. 8253 (MS) of 2014) was recorded over plots 98 (area 0-17-9 bigha) and 591-Sa/2 (area 8-15-0 bigha) of village Barawankhurd.

7. The counsel for the petitioners submitted that the petitioners have been in cultivatory possession of the land in dispute for about hundred years continuously, from the time of their ancestors and paying land revenue/lagan. Settlement khatauni of 1359 F of village Barikala is not available. In Settlement khatauni of village Barawankhurd, land in dispute was recorded in the name of "Sarkar Kaisre Hind" and the names of various persons were recorded as "non-

occupancy tenant or asami". On the basis of their long standing possession, their names were recorded as sirdar during consolidation operation in village. Chaks were carved out in their names without any objection to State of U.P., Gram Panchayat of the concern villages or Nagar Nigam Lucknow. The consolidation operation in both the village were finalised by notification under Section 52 of the Act dated 27.05.1995 and 31.07.1995. A part of the disputed land was acquired by State of U.P. for the purposes of Lucknow Development Authority by notification under Section 4 of Land Acquisition Act, 1895 dated 12.11.1981 and under Section 6 dated 30.07.1983 and compensation has been paid to the tenure holders. From this acquisition also it was proved that land in dispute was sirdari holdings of various tenure holders and not of State of U.P. as in later case, there would have no need of acquisition. Long standing entry in the revenue record, which has been approved during consolidation operation cannot be deleted exercising powers under Section 33/39 of the Act, under which error of clerical nature can only be corrected. The claim of respondents is barred under Section 49 of U.P. Consolidation of Holdings Act, 1953. Impugned orders have been passed without giving opportunity of hearing to the petitioners. Revision No. 55 of 2011-12 Ram Rakhan and others v. State of U.P. was a collusive revision and was highly time barred. It related to the land of another village. In any case, claim of different tenure holders of different villages were different and has to be decided on their own evidence in as much as there was no authentic evidence to prove that land of village Barikala was recorded as Nazul land. Additional Commissioner has illegally not decided Revision No. 656 of 2009-2010 on merit and dismissed only on the ground that Revision No. 55 of 2011-2012 has been dismissed by him. He relied upon judgments of this Court in Smt. Kunti and others v. Commissioner and others, 2009 (3) AWC 2613, Rishpal Singh v. State of U.P. 2010 (1) AWC 31 and Smt. Om Wati v. State of U.P., 2012 (30) LCD 2388, in which it has been held that before expunging long standing entry, opportunity of hearing was required to be given to the recorded tenure holders. Judgments of Supreme Court in Madan Mohan Mishra v. Chandrika Pandey, (2009) 3 SCC 720 and Narendra Singh v. Jai Bhagwan, (2005) 9 SCC 157, in which, it has been held that the claim fell within the ambit of Section 5(2) of U.P. Consolidation of Holdings Act, 1953 had to be adjudicated by the consolidation authorities. Since it was a matter falling within the scope of adjudicatory functions assigned to the consolidation authorities under the Act the jurisdiction of the civil court to entertain the suit in respect of the said matter was expressly barred by Section 49 of the Act. He submits that impugned orders are liable to be set aside.

8. I have considered the arguments of the counsel for the parties and examined the record. The respondents, in their Counter Affidavit have specifically stated that notices were issued by Tahsildar, which were duly served upon petitioners-1, 6, 7, 8 and 9, while it could not be served upon petitioners-2, 3, 4 and 5 of Writ Petition No. 2781 (MS) of 2013. Petitioners-6 and 7 also appeared and filed their vakalatnama but did not file any written statement/ objection to the notice. Copies of notices have also been filed. In proceedings under Section 33/39 of the

Act, the application has to be heard by Tahsildar before submitting his report and the parties are required to file their objection and evidence before Tahsildar. Thus the allegation that opportunity of hearing was not provided is not liable to be accepted.

9. This Court while exercising writ jurisdiction cannot interfere with the order of subordinate authority only on the ground of violation of principles of natural justice unless miscarriage of justice is shown. Supreme Court in *Sohan Lal Gupta v. Asha Devi Gupta*, (2003) 7 SCC 492 held that principles of natural justice is not a straight jacket formula. The person complaining violation of principles of natural justice must show resultant prejudice caused to him. In *Ashok Kumar Sonkar v. Union of India*, (2007) 4 SCC 54, it has held that however, it is well settled that it cannot put any straitjacket formula. It may not be applied in a given case unless a prejudice is shown. It is not necessary where it would be a futile exercise.

10. In *Municipal Committee, Hoshiarpur v. Punjab SEB*, (2010) 13 SCC 216, it has been held that the two rules of natural justice, namely, *nemo iudex in causa sua*, and *audi alteram partem* now have a definite meaning and connotation in law and their contents and implications are well understood and firmly established; they are nonetheless non-statutory. The court has to determine whether the observance of the principles of natural justice was necessary for a just decision in the facts of the particular case. There may be cases where on admitted and undisputed facts, only one conclusion is possible. In such an eventuality, the application of the principles of natural justice would be a futile exercise and an empty formality.

11. Supreme Court again in *P.D. Dinakaran (1) v. Judges Inquiry Committee*, (2011) 8 SCC 380, held that natural justice is a branch of public law. It is a formidable weapon which can be wielded to secure justice to citizens. Rules of natural justice are "basic values" which a man has cherished throughout the ages. Principles of natural justice control all actions of public authorities by applying rules relating to reasonableness, good faith and justice, equity and good conscience. Natural justice is a part of law which relates to administration of justice. Rules of natural justice are indeed great assurances of justice and fairness. The underlying object of the rules of natural justice is to ensure fundamental liberties and rights of subjects. They thus serve public interest. The golden rule which stands firmly established is that the doctrine of natural justice is not only to secure justice but to prevent miscarriage of justice.

The traditional English Law recognised the following two principles of natural justice:

"(a) *Nemo debet esse iudex in propria causa*: No man shall be a judge in his own cause, or no man can act as both at the one and the same time a party or a suitor and also as a Judge, or the deciding authority must be impartial and without bias; and

(b) Audi alteram partem: Hear the other side, or both the sides must be heard, or no man should be condemned unheard, or that there must be fairness on the part of the deciding authority."

However, over the years, the courts throughout the world have discovered new facets of the rules of natural justice and applied them to judicial, quasi-judicial and even administrative actions/decisions. At the same time, the courts have repeatedly emphasised that the rules of natural justice are flexible and their application depends upon the facts of a given case and the statutory provisions applicable, if any, nature of the right which may be affected and the consequences which may follow due to violation of the rules of natural justice.

12. It has been held by Sub Divisional Officer that the land in dispute was nazul land. The petitioners have neither specifically denied this fact nor they have filed any evidence to prove otherwise. The nazul property are confiscated estates and State holds nazul lands in trust and manages it with aid of local bodies as held by this Court in Satya Narain Kapoor v. State of UP and others, 1998 (1) AWC, 1 (DB). The nazul land used to be settled according to the provisions of Government Grants Act 1895. By UP Act No. 13 of 1960, the Government Grants Act 1895 has been amended in State of UP with retrospective effect. The entire amended provisions are quoted below :-

38. In So far as Uttar Pradesh is concerned, in reference to this very Act, that is, Government Grants Act 1895, an amendment Act was passed by the UP Legislature known as the Government Grants (UP Amendment) Act, 1960 (UP Act No. 13 of 1960). The Legislature for the applicability of the Government Grants Act 1895, provided thus:

"1. Short title - This Act may be called the Government Grants (UP Amendment) Act, 1960.

2. Amendment of Sections 2 and 3 of the Act XV of 1895. - For Sections 2 and 3 of the Government Grants Act, 1895 (hereinafter called the "Principal Act") the following shall be substituted, and be deemed always to have been substituted:

"2 (1). Transfer of Property Act, 1882, not to apply to Government Grants. -- Nothing contained in the Transfer of Property Act, 1882, shall apply or be deemed ever to have applied to any grant or other transfer of land or of any interest therein here to before made or hereafter to be made, by or on behalf of the Government to or in favour of any person whomsoever; and every such grant and transfer shall be construed and take effect as if the said Act had not been passed.

(2) UP Tenancy Act, 1939, and Agra Tenancy Act, 1926 not to affect certain leases made by or on behalf of the Government. - Nothing contained in the UP Tenancy Act, 1939, or the Agra Tenancy Act, 1926, shall affect, or be deemed to have ever affected any rights, created, conferred or granted, whether before or after the date of the passing the Government Grants (UP Amendment) Act,

1960, by leases of land by, or on behalf of, the Government in favour of any person; any every such creation, conferment or grant shall be construed and take effect, notwithstanding anything to the contrary contained in the UP Tenancy Act, 1939, or the Agra Tenancy Act, 1926.

(3) Certain leases made by or on behalf of the Government to take effect according to their tenor. - All provisions, restrictions, conditions and limitations contained in any such creation, conferment or grant referred to in Section 2, shall be valid and take effect according to their tenor; any decree or direction of a court of law or any rule of law, statute or enactment of the Legislature, to the contrary notwithstanding:

Provided that nothing in this section shall prevent, or be deemed ever to have prevented, the effect of any enactment relating to the acquisition of property, land reforms or the imposition of ceiling on agricultural land."

3. Repeal of UP Act IX of 1959 - The Government Grants (UP Amendment) Act, 1959, is hereby repealed with effect from the date of its enforcement and shall always be deemed to have been so repealed as if it had no force and effect at any time whatsoever; anything to the contrary in the UP General Clauses Act, 1904, or any other law for the time being in force notwithstanding."

13. Thus from the above provisions, it is clear that neither Transfer of Property Act, 1882 nor UP Tenancy Act 1939 were applicable over nazul property. Due to exclusion of nazul property within the meaning of land as defined under UP Tenancy Act 1939 or UP Zamindari Abolition and Land Reforms Act, 1950, neither the provisions of UP Tenancy Act 1939 nor UP Zamindari Abolition and Land Reforms Act, 1950 were applicable over it. Thus no tenurial right can be conferred to any person over nazul land.

14. The right over nazul land can be granted by a grant executed according to the provisions of Government Grants Act, 1895. None of the petitioners have produced any document to show that they have obtained lease/grant from Government according to the aforesaid provisions. The petitioners claimed their right only on the basis of continuous possession over the land in dispute. As stated above, neither the provisions of Transfer of Property Act, 1882, nor the provisions of UP Tenancy Act 1939, or UP Zamindari Abolition and Land Reforms Act, 1950, are applicable as such only on the basis of continuous possession no right can be conferred upon the petitioners. Even otherwise also the provisions of UP Consolidation of Holdings Act 1953 is not applicable. The consolidation authorities have no right to confer any right to the petitioners over the land in dispute and the papers prepared during consolidation in the names of the petitioners conferring them "sirdari" right are totally without jurisdiction.

15. Admittedly, no proceeding for correction of land record was taken under U.P. Consolidation of Holdings Act, 1953 and only the prior entries were maintained. Under provisions of U.P. Zamindari Abolition and Land Reforms Act, 1950, an "asami" cannot be conferred sirdari right. The counsel for the petitioners

submitted that after consolidation, their right cannot be challenged in view of Section 49 of the Act, which is quoted below:-

"49. Bar to civil jurisdiction. Notwithstanding anything contained in any other law for the time being in force, the declaration and adjudication of rights of tenure holders in respect of land lying in an area, for which a notification has been issued under sub-section (2) of Section 4 or adjudication of any other rights arising out of consolidation proceedings and in regard to which a proceeding could or ought to have been taken under this Act, shall be done in accordance with the provisions of this Act and no Civil or Revenue Court shall entertain any suit or proceeding with respect to rights in such land or with respect to any other matters for which a proceeding could or ought to have been taken under this Act."

16. Supreme Court in *Dina Nath v. State of U.P.*, (2010) 15 SCC 218, while upholding the direction of this Court for holding inquiry in respect of the entries made during consolidation over Government land held that the Court cannot be a silent spectator and is bound to perform its constitutional duty for ensuring that the public property is not frittered by unscrupulous elements in the power corridors and acts of grabbing public land are properly inquired into and appropriate remedial action taken.

17. In view of the aforesaid discussions, the writ petitions have no merit and it are dismissed.