
(2016) 04 AHC CK 0115
In the Allahabad High Court
Case No : Consolidation No. 290 of 1996.

Gurdwara Singh Sabha & another

APPELLANT

Vs

D.D.C. and Others

RESPONDENT

Date of Decision : 01-04-2016

Acts Referred:

Citation : (2016) 131 RD 505

Hon'ble Judges : Anil Kumar, J.

Bench : Single Bench

Advocate : H.S. Sahai, D.P. Singh, M.A. Khan, Mohiuddin Khan, Prashant Singh "Atal" and S. Chaudhary, Advocates, for the Appellant; C.S.C., D.C. Mukerji, N.N. Jaiswal and Umajeet Gupta, Advocates, for the Respondent

Final Decision : Allowed

Judgement

Anil Kumar, J. - Matter is taken in revised cause list.

2. None appeared on behalf of opposite party no. 2.

3. Heard Sri M.A. Khan, Senior Advocate assisted by Sri Mohiuddin Khan learned counsel for the petitioners, learned Standing Counsel for opposite party no.1 and perused the record.

4. By means of the present writ petition, petitioners have challenged the impugned order dated 24.4.1996 (Annexure no.7) passed by opposite party no. 1/Deputy Director of Consolidation, Gonda in Revision No. 6 (Ram Prasad v. Majeed and others) under Section 48 of the U.P. Consolidation of Holdings Act.

5. After hearing learned counsel for the petitioners and learned Standing Counsel and going through the record, the position which emerge out to the effect that Ram Prasad/opposite party no.2 challenged the order dated 11.3.1970 passed by Settlement Officer Consolidation in Appeal no. 335 by filing Revision No. 6 (Ram Prasad v. Majeed and others) under Section 48(1) of the U.P. Consolidation of Holdings Act before opposite party no. 1 along with other Revision No. 5 (Sadra

Colonel Singh v. Gaon Sabha), decided vide order dated 24.4.1996 with the following directions:-

"vr% ljdk duZy flag dh fuxjkuh [kkfjt dh tkrh gS rFkk jke izlkn dh fuxjkuh vkaf"kd :i ls Lohdkj dj xkVk la[;k 481@0 and 04 fM0 fuxjkuhdrkZ jke izlkn dks fn;k tkrk gS rFkk xkVk la[;k 979@1103 jdck 0 and 04 fM0 tks fuxjkuhdrkZ dk pd gS vkSj iqjkus xq:}kjs ds ikl gS ogkWa xq:}kjs dks ns fn;k tk,A okn vko";d dk;Zokgh i=koyh nk0n0 gksA bl vkns"k dh ,d izfr fuxjkuh la[;k 6 ij Hkh j[kh tk;sA"

6. Order dated 24.4.1996 passed by opposite party no. 1 has challenged by the petitioners in the present writ petition.

7. Mohd Arif Khan, learned Senior Advocate for the petitioners while challenging the impugned order submits that petitioners were not parties in the revision, so they are not able to place the case before opposite party no. 1/Deputy Director of Consolidation, Gonda that the land in question which is given to opposite party no.2/Ram Prasad by impugned order , cannot be given to him as the said land is reserved for Gurudwara/Dharmshala as per the provisions of Section 8(A) of the U.P. Consolidation of Holdings Act has not been challenged by any of the party by filing objection under Section 9 of the Act, so the same has become final as per the provisions of Section 9(b) of the U.P. Consolidation of Holdings Act , as such liable to be set aside.

8. As stated above, matter is taken in revised list. No one present on behalf of contesting respondent/opposite party no.2/Ram Prasad thus, after hearing learned counsel for the petitioners, learned Standing Counsel for opposite party no.1 and going through the record, the position which emerge out that the impugned order 24.4.1996 passed by opposite party no.1/Deputy Director of Consolidation, Gonda in Revision No. 6 (Ram Prasad v. Majeed and others) under Section 48(1) of the U.P. Consolidation of Holdings Act is an ex parte order passed behind the back of the petitioners without providing opportunity of hearing to them which is evident from the averments as made in para-4 of the counter affidavit filed on behalf of opposite party no. 2/Ram Prasad and by virtue of the same, land recorded in the revenue record as Gata No. 481/0-04 given to opposite party no. 2/Ram Prasad.

9. Further from the perusal of documents as annexed as annexure nos. 3 and 4 to the writ petition, the same is reserved for Gurudwara/Dharamshala, so in these circumstances petitioners should have given an opportunity of hearing before passing the impugned order, as the same has not been done hence the impugned order is in contravention of principles of natural justice and the denial of the same in a modern society is not acceptable. India has a progressive society and a modern constitution. Natural justice is a parameter of all the modern constitution of the world.

10. It is difficult to define natural justice. I find that Black J has most aptly described it as" Natural justice understandably meant no more than justice

without the adjective" (Green v. Blake,[1948]IR 242). Justice Krishna Iyer in Mohinder Singh Gill v. The Chief Election Commissioner, (1978) 1 SCC 405 has traced its root in Kautilya's Arthasastra in following terms,

"Indeed, from the legendary days of Adam -- and of Kautilya's Arthasastra -- the rule of law has had this stamp of natural justice which makes it social justice. We need not go into these deeps for the present except to indicate that the roots of natural justice and its foliage are noble and not new-fangled. Today its application must be sustained by current legislation, case-law or other extant principle, not the hoary chords of legend and history. Our jurisprudence has sanctioned its prevalence even like the Anglo-American system."

11. In the case of Bhagwan Shukla, v. Union of India and others 1994 (6) SCC 154 wherein paragraph no.3 (relevant portion)held as under:-

"The appellant has obviously been visited with civil consequence but he had been granted no opportunity to show cause against the reduction of his basic pay. He was not even put on notice before his pay was reduced by the department and the order came to be made behind his back without following any procedure known to law. There, has, thus been a flagrant violation of the principles of natural justice and the appellant has been made to suffer huge financial loss without being hears. Fair play in action warrants that no such order which has the effect of an employee suffering civil consequence should be passed without putting the employee concerned to notice and giving him a hearing in the matter. Since, that was not done, the order (memorandum) dated 25.7.1991, which was impugned before the Tribunal could not certainly be sustained and the Central Administrative Tribunal fell in error in dismissing the petition of the appellant."

12. In the case of Union of India v. Sandur Manganese and Iron Ores Ltd. and Ors. JT 2012 (10) SC 476, Hon"ble the Supreme Court in paragraph no. 3 held as under:-

"The principles of natural justice embody the right to every person to represent his interest to the court of justice. Pronouncing a judgment which adversely affects the interest of the party to the proceedings who was not given a chance to represent his/its case is unacceptable under the principles of natural justice."

13. For the foregoing reasons, the writ petition is allowed. The impugned order dated 24.4.1996 (Annexure no.7) passed by opposite party no. 1/Deputy Director of Consolidation, Gonda in Revision No. 6 (Ram Prasad v. Majeed and others) is set aside and the matter is remanded to the said authority to decide a fresh after giving opportunity of hearing to the parties including the petitioners of the present writ petition and also permit them to file oral and documentary evidence in support of their case . The said exercise shall be done by opposite party no. 1/Deputy Director of Consolidation, Gonda expeditiously, say within a period of one year from today.

14. For a period of one year or till the decision is taken by opposite party no. 1

whichever is earlier, parties shall maintain status quo, as exists today, in respect to the land in dispute. Order Date :- 1.4.2016 dk/

(C.M. Application No. 64614 of 2009)

15. Sri Mohd. Arif Khan, learned Senior Counsel for the petitioners after arguing at some length requests that the present application may be dismissed as not pressed.

16. Learned Standing Counsel has no objection to the above said requests.

17. Application under Section 340 of Criminal Code of Procedure is dismissed as not pressed.