

(2014) 02 AHC CK 0152
In the Allahabad High Court
Case No : Writ C No. 8589 of 2014

Mahendra Pal Singh and Another	Vs	APPELLANT
State of U.P. and Others		RESPONDENT

Date of Decision : 17-02-2014

Acts Referred:

Uttar Pradesh Land Revenue Act, 1901 — Section 33, 39
Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 132

Citation : (2014) 123 RD 38

Hon'ble Judges : Ran Vijai Singh, J

Bench : Single Bench

Advocate : Rajeev Sisodia and Shashank Kumar, Advocate for the Appellant;
Arun Kumar Srivastava, Advocate for the Respondent

Final Decision : Disposed Off

Judgement

Ran Vijai Singh, J.—Heard Sri Rajeev Sisodia, learned Counsel for the petitioners, learned standing Counsel for the State-respondents and Sri Abhishek Srivastava holding brief of Sri A.K. Srivastava, learned Counsel for the Gaon Sabha. It is contended by the learned Counsel for the petitioners that the impugned order expunging the names of the petitioners from the revenue record has been passed without affording an opportunity of hearing to the petitioners treating the land falling u/s 132 of the U.P. Zamindari Abolition and Land Reforms Act, 1950. In his further submissions, the order u/s 33/39 of the U.P. Land Revenue Act, 1901 cannot be passed without affording an opportunity of hearing to the other side or the person affected.

2. Learned Standing Counsel as well as the learned Counsel appearing for the Gaon Sabha submitted that the order impugned is revisable and the writ petition is not maintainable.

3. The Apex Court in Whirlpool Corporation Vs. Registrar of Trade Marks, Mumbai and Others, , has held that in case an order under challenge is without jurisdiction or has been passed in breach of principles of natural justice the writ

petition should not be thrown on the ground of alternative remedy. Here the impugned order has been passed without affording opportunity of hearing, therefore it is being entertained.

4. The learned Counsel for the petitioner may be right in his submissions that the order impugned suffers from breach of principle of natural justice but considering the fact that the order was passed way back in the year 2008, the petitioner is provided post-decisional hearing in view of the decisions of the Apex Court as well as of this Court. Reference may be given in *Mrs. Maneka Gandhi Vs. Union of India (UOI) and Another*, *Union of India and Another Vs. Tulsiram Patel and Others*, *I.J. Rao, Asstt. Collector of Customs and Another Vs. Bibhuti Bhushan Bagh and Another*, *Canara Bank Vs. V.K. Awasthy*, *Muzeeb v. Deputy Director of Consolidation and others 1996 (87) RD 66* and *Chaturgun and Others Vs. State of U.P. and Others*, .

5. For that purpose, the petitioner is at liberty to file an application along with his objection for recall of the order dated 30.12.2008 before respondent No. 2.

6. In case such an application is filed within a period of three weeks from today a reasoned order be passed by the respondent No. 2 in accordance with law after hearing all concerned expeditiously without granting any unnecessary adjournment. In case any adjournment is sought that may be granted only after imposing cost with the direction to deposit the cost by the next date fixed.

7. Till the petitioners' recall application is considered and decided, the petitioners shall not be evicted from the land in dispute in case he is still in the possession over the same.

8. It may be clarified that I have not addressed myself on the merit of the case and the respondent No. 2 is free to pass an independent order in accordance with law on its own merit. With the aforesaid observation/direction, this writ petition is disposed of.