

(2016) 05 AHC CK 0031

In the Allahabad High Court

Case No : Civil Misc. Writ Petition No. 5651 of 2009.

Noor Mohd. and Others

APPELLANT

Vs

Additional Commissioner, Meerut Division and Others

RESPONDENT

Date of Decision : 06-05-2016

Acts Referred:

Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 131-B, 195, 198(4)
Uttar Pradesh Zamindari Abolition and Land Reforms Rules, 1952 — Rule 173, 174, 175, 176

Citation : (2016) 5 ADJ 540 : (2016) 132 RD 126 : (2016) 2 RJ 1284

Hon'ble Judges : Amreshwar Pratap Sahi; Pramod Kumar Srivastava, JJ.

Bench : Division Bench

Advocate : Shakti Dhar Dube, Javed Habib and Neeraj Dube, Advocates and Vijay Pratap Singh, Advocate, for the Appellant; C.S.C., V.K. Singh, Advocate, for the Respondent

Final Decision : Allowed

Judgement

1. This Reference arises out of the difference of opinion expressed in the order dated 13.11.2014 by the learned Single Judge disagreeing with the final judgments arising out of the same impugned orders in Writ Petition Nos.3029 of 2009, 9837 of 2009 and 58188 of 2012.

2. The dispute relates to grant of lease of agricultural land under the management of the Gaon Sabha under the provisions of the then existing Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 [hereinafter referred to as "1950 Act"] with the Uttar Pradesh Zamindari Abolition and Land Reforms Rules, 1952. The provision that allowed such grant of leases under which the aforesaid proceedings were undertaken is Section 195 of the then 1950 Act. Section 195 of the 1950 Act reads as follows:-

"Section 195. Admission to land.-The Land Management Committee with the previous approval of the Assistant Collector incharge of sub-division shall have

the right to admit any person as bhumidhar with non-transferable right to any land (other than land falling in any of the classes mentioned in Section 132) where-

(a) the land is vacant land,

(b) the land is vested in the Gaon Sabha under Section 117, or

(c) the land has come into the possession of Land Management Committee under Section 194 or under any other provisions of this Act."

3. All the petitioners claim themselves to be allottees under a resolution dated 16.6.1984. The photostat copy and the typed copy of the said resolution that has been recorded in the Proceedings Register of the Gaon Sabha have been filed on record and it appears that the said proceedings were attended and signed by 10-members including the then Gram Pradhan, who was also the Chairman of the Land Management Committee. It also bears the seal and signature of the Gram Pradhan of the same date.

4. The aforesaid resolution according to the petitioners was forwarded to the Sub-Divisional Magistrate/Assistant Collector who vide order dated 2.7.1984 is said to have approved the said proposal consequent where to the petitioners were recorded in the revenue records on the strength of leases so approved and are in continuous possession thereafter. The respective forms of the leases of some of the petitioners as contemplated under Form 57- Kha and Form 58-Ka have also been brought on record which are only photostat copies. However, the contention of all the petitioners is that after approval their names were duly entered in the revenue records, namely, Khatauni (record of rights) and copies of the relevant Khataunis to evidence the same have also been filed on record.

5. The provision of Section 131-B of the 1950 Act came into force w.e.f. 14.1.1995. The same is extracted hereunder :-

"131-B. Bhumidhar with non-transferable rights to become bhumidhar with transferable rights after ten years ? (1) Every person who was a bhumidhar with non-transferable rights immediately before the commencement of the Uttar Pradesh Zamindari Abolition and Land Reforms (Amendment) Act, 1995 and had been such bhumidhar for a period of ten years or more, shall become a bhumidhar with transferable rights on such commencement.

(2) Every person who is a bhumidhar with nontransferable rights on the commencement referred to in sub-section (1) or becomes a bhumidhar with nontransferable rights after such commencement, shall become bhumidhar with transferable rights on the expiry of period of ten years from his becoming a bhumidhar with non-transferable rights.

(3) Notwithstanding anything in any other provision of this Act, if a person, after becoming a bhumidhar with transferable rights under sub-section (1) or subsection (2), Transfers the land by way of sale, he shall become ineligible for a

lease of any land vested in Gaon Sabha or the State Government or of surplus land as defined in the Uttar Pradesh Imposition of Ceiling on Land Holdings Act, 1960."

6. The petitioners allege that most of them had already been granted full Bhumidhari rights which is the highest class of tenure under the Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 and therefore, they were not mere lease holders but were tenants of the holdings in their own rights under the 1950 Act and were recorded as such. For this also, the relevant Khatauni extracts recording them as Bhumidhars of category 1 (A) has been brought on record. They continue to be in exclusive uninterrupted cultivatory possession.

7. It appears that some of the allottees out of the whole lot and leaseholders, who are not petitioners before us and had not been able to gain full rights as Bhumidhars, filed an application under Section 131-B of the 1950 Act on 12.7.2005 on an allotted public day of grievances before the Assistant Collector/ Sub-Divisional Magistrate of the area making a request for regularising their rights as Bhumidhars as other allottees had already been extended the aforesaid benefit keeping in view the provisions of Section 131-B of the 1950 Act. On this application having been moved, the same was registered on 23.9.2005 and notices were issued including the Gaon Sabha. It appears from the order of the Sub-Divisional Officer dated 31.5.2006, which is the bone of contention between the parties, that the then Gram Pradhan, who was there in 2005, raised objections on the grant of leases after 20 years and on his objections, the learned District Government Counsel (Revenue) was called upon to inspect the file and submit his opinion before the Sub-Divisional Magistrate.

8. Admittedly, none of the petitioners before us in all these three writ petitions were either appellants or parties to the said proceedings nor were they issued notices. It is only the application of Chajju and others under Section 131-B of the 1950 Act which was being considered together with the complaint of the Gram Pradhan that was taken up by the Sub-Divisional Magistrate.

9. At this juncture, it would be relevant to mention that in the year 1984 itself, the then Village Up-Pradhan along with three others instituted proceedings for cancellation of the leases before the learned Additional Collector of district Ghaziabad in which a large number of allottees, who were similarly placed as the petitioners, were made respondents. The petitioners do not appear to be arrayed therein. The plea raised therein was also the grievance about the irregularity in the same proceedings of the grant of leases that are also subject matter of these proceedings. A copy of the plaint has been filed as Annexure ? 3 to the supplementary affidavit in Writ Petition No.4416 of 2009. The same was registered and an enquiry was directed to be conducted by the Tahsildar by the Additional Collector, Ghaziabad vide order dated 20.10.1984, on which a report was submitted by the Tahsildar, and the matter was ultimately taken up in 1989 when an order was passed on 28.7.1989 that upon a perusal of the proceedings, the report is absolutely unclear and therefore, the entire file was returned back

to the Tahsildar for a fresh report. The matter remained pending and a report was submitted on 27.2.1990 indicating therein that a partial case for cancellation of some of the leases that was made out and therefore, proceedings under Section 198 (4) deserves to be undertaken against such allottees. The said report has also been filed on record along with the supplementary affidavit. The proceedings however were dismissed in default on 29.6.1992. A copy of the said order is on record along with the supplementary affidavit. A restoration was filed that was rejected in 1996. Consequently, those proceedings which were instituted in 1984 were ultimately consigned in 1996 in the circumstances indicated above. The leases were therefore not cancelled, even though the proceedings against some of the allottees had been recommended for cancellation.

10. The Assistant Collector/Sub-Divisional Magistrate, who proceeded with the present matter in the year 2005 after twenty years as indicated above, after having received the report by a 3- member committee of revenue officials appointed by him, proceeded to straightaway pass the order dated 31.5.2006 impugned in the writ petitions accepting the report of the Tahsildar dated 11.5.2006 and issued a direction to score out the names of all the allottees who had obtained the leases under the said resolution dated 16.6.1984 as approved by the Assistant Collector/Sub-Divisional Magistrate on 2.7.1984.

11. It is this order dated 31.5.2006 that was challenged by way of revisions and the revisions were also dismissed by the learned Additional Commissioner, Meerut Division vide order dated 14.11.2008 that is also impugned in the writ petitions. Aggrieved the petitioners filed the present writ petitions contending that the order of the Sub-Divisional Officer dated 31.5.2006 was invalid being in violation of principles of natural justice. Secondly, the order amounting to cancellation of the leases of the petitioners was without jurisdiction inasmuch as such cancellation was only permissible in proceedings under Section 198 (4) of the 1950 Act where the authority vested in the Collector of the Districts and not in the Sub-Divisional Officer and thirdly, the assumption of fakeness on the doubt expressed in the impugned orders is unsustainable inasmuch as the said conclusion has been arrived at without putting the petitioners to any notice or giving them any opportunity to controvert the report dated 11.5.2006 which has been made the basis for passing of the impugned orders. It is also urged that the learned Additional Commissioner who has rejected the revision has also ignored these aspects and has simply endorsed the findings recorded by the Sub-Divisional Magistrate.

12. On the merits of allotment, the contention of Sri Shakti Dhar Dube and Sri Javed Habib, learned counsel for the petitioners submit that some of the respective forms, namely Form 57-Kha and Form 58-Ka as filed in writ petition No.4416 of 2009 both reflect the signatures of the competent authority, namely, the Chairman of the Land Management Committee who is the Gram Pradhan and therefore, the assumption that they are doubtful as available on the records of

the file is a conclusion arrived at without looking into the documents of the petitioners which were never allowed to be produced before the Assistant Collector/Sub-Divisional Magistrate as no opportunity was admittedly given by him.

13. They further contend that if the leases could not be cancelled after five years, even if irregular, as per the provisions of Section 198 (6) (b) of the Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950, then in that event, the Assistant Collector could not have assumed the jurisdiction which he did not possess, that too even beyond the period of limitation as prescribed under the statute. It is further submitted that once the petitioners have already acquired bhumidhari rights, then their status of tenancy could not have been altered by a summary order of the Sub-Divisional Magistrate/Assistant Collector. Consequently, for all the aforesaid reasons, the assumption of an alleged fake proceeding is without any basis and against the record.

14. It is also submitted that proceedings for cancellation of some allottees were undertaken but were ultimately dismissed as narrated above. Secondly, the Assistant Collector could not have travelled beyond the said decision which has also been ignored and therefore, the order is vitiated.

15. Advancing their submissions on the opinion in the order of the learned Single Judge, learned counsel contend that the learned Single Judge was apprised of the three decisions that have been referred to in the order dated 13.11.2014 to urge that arising out of the same order, three writ petitions have already been allowed, but the learned Single Judge has drawn an erroneous distinction on the consideration of facts by the learned Judges who had delivered the said judgments and has arrived at a conclusion for referring the matter, which according to the learned counsel is not in accordance with the record and the reference was uncalled for.

16. For this, all the three judgments have been placed before us. The first judgment is in Writ Petition No.3029 of 2009, Brij Pal and others v. Additional Commissioner and others decided on 13.5.2011. The writ petition was allowed only on the ground that neither the Sub-Divisional Officer in the impugned order dated 31.5.2006 nor the learned Additional Commissioner while confirming the same have correctly appreciated the issue of violation of principles of natural justice. The writ petition was therefore allowed and the impugned orders, which are the same impugned orders herein, were quashed with liberty to the authorities to proceed in accordance with law.

17. The second decision is in Writ Petition No.58188 of 2012, Asghar and others v. Additional Commissioner and others, dated 2.9.2014 which simply follows the decision in the above mentioned writ petition whereby the writ petition was allowed with liberty to the concerned authority to proceed against the petitioners afresh in accordance with law.

18. The aforesaid orders however do not record any findings on merit relating to

limitation or otherwise or any of the contentions which have been raised by the petitioners herein.

19. The third decision however dated 1.11.2012 in Writ Petition No.2307 of 2009, Smt. Satyawati and others v. Additional Commissioner, Meerut Division and others and Writ Petition No.9837 of 2009, Inam and others v. Additional Commissioner, Meerut Division and others, proceeds to record the findings on merits and the writ petitions were allowed quashing the same impugned order of the Sub-Divisional Officer dated 31.5.2006 and the learned Additional Commissioner in Revision. The said judgment however did not remit the matter back to the authority concerned as had been done in the other two writ petitions. On merits, the learned Single Judge who delivered the aforesaid judgment came to the conclusion that if the leases require cancellation, then the Sub-Divisional Officer/Assistant Collector had no jurisdiction in the matter and the same could have been done only under Section 198 (4) and (5) where the Collector has the authority and that too even with notice an opportunity to the allottee. The learned Single Judge further held that the limitation of five years would also have to be taken into account and since the Sub-Divisional Magistrate and the learned Additional Commissioner have both failed to advert to the aforesaid issue, therefore the writ petitions deserved to be allowed. Accordingly, the impugned orders were quashed and the writ petitions were allowed.

20. Having noticed all the three judgments, the learned Single Judge in these writ petitions deferred with the view taken in the above mentioned judgments on the grounds that have been narrated in paragraphs 6 and 7 of the referring order. The same are extracted hereunder as we have to answer the aforesaid questions that have been raised by the learned Single Judge and have been placed before us under the orders of Hon"ble the Chief Justice dated 3.12.2014:-

"6. I have considered the arguments of the counsel for the parties and examined the record. In the judgments passed in the aforementioned writ petitions, it has been held that proceeding for cancellation of patta is provided under Section 198 (4) of the Act, before the Collector. Section 198 (5) provides for issue/serve a show cause notice to the allottee before passing any order in the proceedings for cancellation of patta and Section 198 (6) (b) prescribes five years period of limitation for issuing show cause notice. In this case, pattas were granted in the year 1984 and no proceedings for cancellation of patta has been initiated by the Collector under Section 198 (4) of the Act, within time. Sub-Divisional Officer has no jurisdiction to cancel the pattas. The impugned orders were passed by Sub-Divisional Officer without giving opportunity of hearing to the petitioners. Sub-Divisional Officer had no jurisdiction to constitute a committee for examination of the record and submit report and no reliance could be placed upon the report of the committee.

7. I respectfully do not agree with the aforementioned judgments. Reasons for disagreement are as follows:-

a. So far as the arguments that the petitioners were not given opportunity of hearing is concern, in these cases, the petitioners themselves filed applications for declaring them "bhumidhar with transferable right" of the land allotted to them. Report of the committee was obtained on the own applications of the petitioners. Impugned order was passed on the applications of the petitioners. As such the allegations that the petitioners were not given opportunity of hearing are incorrect.

b. Land Management Committee is authorised to admit any person as bhumidhar with non-transferable right with the previous approval of Assistant Collector in-charge of Sub-Division, under Section 195 of the Act. The procedures for allotment of the land by Land Management Committee are provided under Rules 173 to 176 of U.P. Zamindari Abolition and Land Reforms Rules, 1952. Relevant provisions are quoted below :-

"Section 195. Admission to land.--The Land Management Committee with the previous approval of the Assistant Collector incharge of sub-division shall have the right to admit any person as bhumidhar with nontransferable right to any land (other than land falling in any of the classes mentioned in Section 132) where--

(a) the land is vacant land,

(b) the land is vested in the Gaon Sabha under Section 117, or

(c) the land has come into the possession of Land Management Committee under Section 194 or under any other provisions of this Act."

Rule-173:- Sections 195, 197 and 198 :

Admission to land. - Whenever the Land Management Committee intends to admit any person to land under Section 195 or 197, it shall announce by beat of drum in the circle of the Gaon Sabha in which the land is situate at least seven days before the date of meeting for admission of land, the numbers of plots, their areas and the date on which admission thereto is to be made.

1. Grant of lease - Provisions not followed - In respect of resolution of Gaon Panchayat only 83 pattas were granted, complaints were made and inquiry conducted. It was found that pattas were granted on back date and in an irregular manner. Rule 173 of Rules was not followed. The Parganadhikari found that 25 pattas were granted against the rules to the persons who were not eligible. Hence, pattas were cancelled.

2. Non-following of Rules - Effect of - As per findings recorded by Additional Collector, the provisions of Rules 173 and 174 of the Rules, framed under the Act, were not followed, neither there was any beat announcement nor list of landless persons was prepared nor provisions under Rules 174, 175, 176 were followed, hence, such allotment was wholly illegal.

Rule-174:- On the said date, a meeting of the committee shall be held to select

persons for admission to land as sirdar or asami as the case may be. A list of all the persons who are present and who express their desire to be admitted to the land shall be prepared in Z. A. Form 57-A. The list shall be drawn up separately in respect of the land to be settled to a sirdar and land to be settled to an asami. The names of the persons shall be arranged in the list in the order of preference laid down in Section 198.

174-A. [***]

174-AA. [***]

174-B. [***]

Rule-175: - If the number of applicants does not exceed the number of intended to be settled on the land in respect of which announcement has been made under Rule 173, the Committee shall examine the eligibility of the person included in the list in Z.A. Form 57-A and take a decision regarding the plots of land to be settled with each such person. The Committee shall in the same meeting announce the names of the persons selected for settlement of land and also the revenue or rent to be fixed for the land proposed to be settled. If the number of applicants belonging to the categories mentioned in clauses (c), (d) and (e) of sub-section (1) of Section 198 is more than the number with whom land is intended to be settled, the list of applicants shall be placed before a meeting of the residents of the village called by the Land Management Committee and such of the applicants shall be selected for allotment as are considered to be the most suitable on merits on the basis of a consensus be arrived at the meeting so convened. If such a consensus cannot be arrived at, the Land Management Committee shall draw lots to determine the person or persons with whom the land should be settled.]

[176. - (1) After selecting the person or persons for admission to the land in accordance with Rule 175, the Committee shall prepare-

- (a) a list of persons so selected in Z.A. Form 57-B,
- (b) a certificate of admission to land in Z.A. Form 58, and
- (c) a counterpart in Z.A. Form 58-A.

(2) The documents referred to in clauses (a) and (b) of sub-rule (1) shall be duly signed by the Chairman of the Land Management Committee but the document referred to in clause (c) shall be signed by the person so selected for admission of land.

(3) The document referred to in sub-rule (1) shall then be forwarded to the Assistant Collector-in-charge of the Sub-Division along with-

- (a) a copy of the proceedings of the meeting of the Committee in which the decision to settle land was taken ; and
- (b) a certificate from the Lekhpal concerned to the effect that the particulars of

the land mentioned in the list are correct, and that the admission of the land is in accordance with the provisions of the Act and the Rules.

(4) The Assistant Collector-in-charge of the Sub Division shall, on receipt of the documents, referred to in sub-rule (3) scrutinise the decision taken by the Committee and if he is satisfied that the decision of the Committee is in accordance with the Act and the rules made thereunder, he shall record his approval on the list in Z.A. Form 57-B and return the papers to the Land Management Committee within a week of its receipt from the Chairman with the direction that the possession may be delivered to the lessees and the report of the mutation be submitted to the Supervisor Kannongo by the lekhpal immediately after delivery of possession.

(5) If the Assistant Collector in-charge of the Sub Division finds that the whole or part of the decision taken by the Committee is not in accordance with the provisions of the Act and Rules, he shall record his disapproval on the list in Z.A. Form 57-B and return the papers to the Chairman.]

[176-A. (1) On receipt of the list in Z.A. Form 57-B with the order of the Assistant Collector in-charge of the Sub-Division, the Chairman of the Land Management Committee shall call the person whose selection for allotment of land has been approved by the Assistant Collector in-charge of the Sub-Division and shall furnish to him a certificate in Z.A. Form 58 and shall get a counterpart in Z.A. Form 58-A executed by him. If the land sought to be allotted is a land referred to in Section 132, the person concerned shall be furnished with a certificate in Z.A. Form 59 and shall be asked to execute a counterpart in Z.A. Form 59-D :

Provided that no lease shall be made to an asami for a period exceeding five years.

(2) It shall be lawful for the Assistant Collector incharge of the Sub-Division to determine at any time the lease in favour of an asami and upon such determination, the asami shall not be entitled to any compensation.

(3) Every order of determination of lease under sub-rule (2) shall be effective from the commencement of the agricultural year following the date of the order.

(4) Where the decision of the Land Management Committee regarding admission to any land is not approved by the Assistant Collector in-charge of the Sub-Division, steps will be taken afresh for settlement of such land in accordance with the procedure laid down in sub-rule (1) read with Rules 173 to 176-A. All contracts relating to a lease, license or allotment of land shall be executed in duplicate. One copy of the contract shall be given to the lessee, licensee or allottee and the other copy shall be retained by the Land Management Committee for record.]

c. Thus under Rule 176 (2) ZA Form-57 Kha and ZA Form-58 are required to be signed by Chairman, Land Management Committee. In this case, Sub-Divisional

Officer, after examining the records relating to allotment of the land to the petitioners, categorically held that there is no separate ZA Form-57-Kha of the eligible persons. ZA Forms-58-Ka, relating to the patta granted to eligible persons, available in the record do not contain the signatures of Lekhpal, Pradhan or any other competent authority. Thus it was found that entire record was suspicious and fabricated. There was no resolution of Land Management Committee. The papers on the basis of which it is alleged that pattas were granted to the petitioners are fabricated papers. Gaon Sabha was contesting the matter.

d. A patta of the land belonging to the Goan Sabha has to be granted according to the procedure prescribed under the law. Fabricated record cannot be regarded as a valid proceeding for grant of patta nor any right can be conferred on its basis. Section 198 (4) provides for cancellation of irregular allotment. Fabricated record is no allotment and can be treated as void documents. Supreme Court in *Ajudh Raj v. Moti*, AIR 1991 SC 1600, held that if the order has been passed without jurisdiction, the same can be ignored as nullity, that is, non-existent in the eye of law and it is not necessary to set it aside. In *Dhurandhar Prasad Singh v. Jai Prakash University*, AIR 2001 SC 2552, held that the expression "void" has several facets. One type of void acts, transactions, decrees are those which are wholly without jurisdiction, ab initio void and for avoiding the same no declaration is necessary, law does not take any notice of the same and it can be disregarded in collateral proceeding or otherwise. In *U.P. State Sugar Corpn. Ltd. v. Dy. Director of Consolidation*, AIR 2000 SC 878, held that if Goan Sabha had no authority to grant lease then such a lease was a void document from the inception and, consequently, the jurisdiction of the Consolidation Authorities was not affected. It can ignore it.

e. Sub-Divisional Officer is competent authority under U.P. Land Revenue Act, 1901 to make correction in the Revenue Records. Under the Act also he is competent authority to grant declaration of the right. In this case, Sub-Divisional Officer found that there was no valid allotments in favour of the petitioners as such they had no right over the land in dispute. The impugned orders do not suffer from any error. Public property cannot be permitted to be grabbed by making forgery in the record."

21. The referring order firstly proceeds on the assumption that the documents relating to allotment of the petitioners were fake and forged. The second ground on which the reference has been made is that if the documents are fake and forged and are not in accordance with the procedure prescribed under law, then a fabricated record cannot be treated as a valid proceeding. Consequently, the proceedings being void ab initio, it is not necessary to give any notice or opportunity as the proceedings are a nullity. Thirdly, the learned Single Judge has opined that the Sub-Divisional Officer is the competent authority under the U.P. Land Revenue Act, 1901, as it then existed, to carry out corrections in the revenue records which is relatable to Sections 33/39 thereof. Consequently, if he

can correct the record and is also the authority to declare rights, then in the absence of any valid allotment in favour of the petitioners the orders which were impugned, namely, 31.5.2006 and that of the Additional Commissioner confirming the same do not suffer from any error and hence, the allotments can be ignored and consequently, according to him, the writ petitions deserve to be dismissed, but on account of the said difference as expressed in the order, the reference has been made to the Division Bench as indicated above.

22. We have considered the submissions raised both by the learned counsel for the petitioners and Sri P. P. Srivastava, learned Counsel for the state. We have also gone through the records as also the judgments that have been placed before us. A counter affidavit has been filed by Sri V. K. Singh on behalf of the Gaon Sabha.

23. The first question is with regard to the foundation of the assumption by the learned Single Judge about the documents that have been found to be allegedly ingenuine or suspicious by the Sub-Divisional Magistrate/Assistant Collector as expressed in the order dated 31.5.2006.

24. On a perusal thereof, we find that the doubt expressed about the non-availability of signatures on Form 58-Ka and the non-availability of Form 57-Kha, the petitioners have brought on record the forms of some of the tenure holders, particularly in Writ Petition No.4416 of 2009 and on a perusal thereof, we find that the said forms apparently do bear the signatures of the Chairman of the Land Management Committee, namely, the Gram Pradhan and also its seal.

25. The learned Single Judge was of the opinion that there was sufficient material before the Sub-Divisional Magistrate to treat the non-existence of such documents and consequently, any lease approval in favour of the petitioners was an outcome of such manipulation of fake documents.

26. A counter-affidavit was filed before the learned Single Judge by the Gaon Sabha reiterating the same but without any supporting documents whereas the petitioners have filed a supplementary affidavit bringing on record the proceedings of the Gaon Sabha, namely, the resolution dated 16.6.1984 which is the basis of the grant of the said lease.

27. The Sub-Divisional Magistrate while proceeding to pass the order dated 31.5.2006, referred to a report dated 11.5.2006. The said report has not been brought on record by the respondent's counsel with the counter affidavit filed on behalf of the Gaon Sabha or even by the State. What is also being disputed is the existence of the relevant Zamindari Abolition Rule Forms as per Rule 176. In our considered opinion, if the said resolution has been approved on 2.7.1984, then in that event, if there was any allegation of fraud or manipulation then the same ought to have been examined only after giving an opportunity to the allottees who were in continuous uninterrupted cultivatory possession for the last 20 years and their names were also recorded in the revenue records. They were also recorded as Bhumidhars which is the highest class of tenure under Uttar Pradesh

Zamindari Abolition and Land Reforms Act, 1950. Such rights having accrued in their favour could not have been dislodged by summary proceedings of record correction treating them to be an act that was allegedly on the basis of some fake documents without giving any opportunity to them.

28. The learned Single Judge has also indicated that the Sub-Divisional Magistrate being an authority to correct the records was within his jurisdiction to do so. We do not find this inference to be correct inasmuch as here the issue was the valid grant of lease and declaration of rights under Section 131-B and not a case instituted for correction of records. If the lease was an outcome of any fake or fraudulent transaction, then reversing it after 20 years did require the giving of at least a notice or opportunity to the petitioners who continuously stood recorded in the revenue records for twenty years. The State contends that the Forms which were issued pursuant to the said resolution and approval do not bear the signatures of the competent authority. The order of the Sub-Divisional Magistrate narrates the existence of three resolutions of the Gaon Sabha dated 18.5.1984, 16.6.1984, 16.7.1984. It is on the strength of these three resolutions that the Sub-Divisional Magistrate has drawn an inference about the genuineness and validity of the proceedings of allotment. These three resolutions are stated to be existing in the report dated 11.5.2006 which in turn refers to 139 names that were recorded in the resolution dated 18.5.1984, but 140 people were indicated as eligible on the strength of preparation of Form 57-Kha. The second fact noted is that the allotment dated 16.6.1984 records 153 names after noting Form 57-Kha that are stated to be not available on the file. What is available is Form 58-Ka, but 146 of the same do not bear the signature of either the Lekhpal or Village Pradhan. The resolution dated 16.7.1984 mentions 153 names that are recorded on 16.6.1984 but refers to Form Ka in favour of 198 persons.

29. In our opinion, if the report indicates the existence of such resolutions then the proceedings cannot be said to be fake. The proceedings can be wrong, irregular or invalid but they cannot be said to be fake. Secondly, the impugned order further records that the file appears to have been affected by termites and is also moistened by water. The top page of the file is unclear, except the order of the Sub-Divisional Magistrate and his signature to the effect "approved as proposed". This endorsement has been treated to be doubtful in the impugned order by the Sub-Divisional Magistrate but there is no finding that the signatures are not that of the then Sub-Divisional Magistrate, who had approved the same. It has been abruptly concluded by the Sub-Divisional Magistrate that since the aforesaid facts establish the proceedings to be doubtful (sandigd) the proceedings dated 16.6.1984 and the approval order dated 2.7.1984 are farzi (ingenuine). We cannot approve of this abrupt conclusion as the file does exist. If the enquiry was proceeding about the genuineness of the very file itself and the proceedings then the enquiry ought to have been made about the institution of the proceedings of approval by the Sub-Divisional Magistrate on the resolution of the Gaon Sabha in 1984 by verifying it from other records of the Sub-Division or at least putting the petitioners to notice about the same. The reason is that it is

on the strength of such proceedings which are being alleged as fake, the entries were duly made in favour of the petitioners and they continued to be recorded tenure holders in possession for more than 20 years when the impugned order came to be passed. The presumption of such genuineness and a long standing entry ought to have been rebutted, if at all, only after putting the petitioners to notice and making an enquiry that too even by the competent authority. This was not a case of mere correction of record at all.

30. In such a situation, to treat the entire proceedings to be fake and forged that too even without giving any notice or opportunity to the petitioners was not justified and therefore, the inference drawn by the learned Single Judge cannot be upheld.

31. The question now is that if such erroneous assumptions of fact cannot be made the basis of the reference, then in that event the legal status also deserves to be noticed that may require a consideration.

32. The first issue therefore is about the prescription of limitation of 5 years for cancellation of a lease as per Section 198 (6) (b) of the 1950 Act. For reference, see Subhag and another v. Board of Revenue and others [2011 (6) AWC 5481]. For this, we may put on record that if any proceedings are an outcome of any established fraud or misrepresentation, then no prescription of limitation can be said to be an impediment to proceed, but if the proceedings are merely irregular or voidable, then in that event, the prescription of limitation may have to be taken into account, that too by the competent authority in this regard. Even if in a statute where no prescription has been prescribed, the power must be exercised within a reasonable period. It has to be kept in mind that in the present matter the impugned action has been taken after 20 years.

33. We find that the learned Single Judge in the judgment of Smt. Satyawati and others v. Additional Commissioner and others decided on 1.11.2012, has indicated that if the lease has to be cancelled, then in that event it is the power conferred on the Collector which can be exercised and not by the Assistant Collector/Sub-Divisional Magistrate. The law therefore is clear that if proceedings of cancellation have to be undertaken then it can only be done under the aforesaid provisions and cannot be summarily concluded by exercising summary powers of correction of records by the Sub-Divisional Magistrate. The assumption of jurisdiction can only be on the strength of the nature of the lis. In the instant case, what we find is that the dispute began with one Chajju and others when they moved an application in proceedings under Section 131-B for declaration of their rights as bhumidhars. Thus, the Sub-Divisional Magistrate while passing the order dated 31.5.2006 was not supposed to exercise any summary jurisdiction of correction of records. It is during the said proceeding that the Gram Pradhan, who may be a disgruntled person, moved objections in the year 2005 after twenty years that the leases deserve to be cancelled on the allegation that have now been made the basis of the passing of the order dated 31.5.2006. The learned Single Judge while referring the matter has completely overlooked this

aspect and we therefore do not find ourselves in agreement on that issue as well inasmuch as the proceedings were under Section 131-B and not for correction of records.

34. Even assuming for the sake of arguments that it was for the correction of records under Sections 33/39 of the U.P. Land Revenue Act, then also the Sub-Divisional Magistrate was under a legal obligation to issue notices to the petitioners whose names were sought to be scored out. The same having not been done, the inference drawn by the learned Single Judge or about the assumption of jurisdiction by the Sub-Divisional Magistrate also does not appear to be correct.

35. The third issue is in relation to the violation of principles of natural justice having not been observed either by the Sub-Divisional Magistrate while passing the order dated 31.5.2006 or the said legal issue having not been appreciated by the Additional Commissioner while passing the impugned order. It is admitted on record that the petitioners were not given any notice or opportunity nor were they made parties to the proceedings before the Sub-Divisional Magistrate. The said proceedings were concluded on the strength of a report dated 11.5.2006, copy whereof was never supplied to the petitioners nor were they made aware of the basis of proceedings instituted to correct the records as inferred by the learned Single Judge in the referring order. In such a situation, we are of the considered opinion that principles of natural justice were clearly violated and it was the civil rights of the petitioners that were directly affected particularly their tenancy rights as stood secured under the Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 as Bhumidhars who were recorded as such.

36. The learned Single Judge appears to have inferred that since the documents of allotment of lease appear to be fabricated, therefore the proceedings in favour of the petitioners were not valid proceedings. The learned Single Judge treated the allotment to be a nullity. Even here, we do not find ourselves in agreement with the said opinion of the learned Single Judge in the referring order inasmuch as where the proceedings for grant or otherwise of leases are valid or not, falls within the jurisdiction of the Collector, subject to the provision of limitation, then the Assistant Collector could not have proceeded in the matter.

37. The case of the petitioners was not an absolute defenceless case and was a statable one. It is quite possible that the authority capable of exercising jurisdiction in such matters would have arrived at a conclusion that the proceedings were voidable and not absolutely void ab initio. This was possible only if the parties to the transaction were put to notice. Thus, to treat the entire proceedings to be invalid or a complete nullity does not appear to be a correct line of reasoning without any enquiry by the competent authority. The presumption of the continuous possession and the revenue records standing in the name of the petitioners for 20 years long was sufficient to at least have a bearing on the issue for which the petitioners were entitled to a notice. There is a distinction between invalid or irregular proceedings and fake proceedings. The

Sub-Divisional Magistrate who passed the impugned order does not appear to have appreciated this distinction and consequently, the learned Single Judge does not appear to be correct in treating the said order to be a valid exercise of power. If it was a case of fraud or misrepresentation or fake documents, then fraud and misrepresentation are not phrases of ornament. They entail serious consequences and they take away certain rights which a person claims to have vested in him by virtue of any statutory act. It is not the case of the State that fraud was practised by the petitioners to their advantage nor there is any evidence indicated in the impugned orders to that effect. It is also not the case established that the petitioners had misrepresented any fact before the Sub-Divisional Magistrate or were otherwise guilty of any constructive fraud in obtaining the approval on 2.7.1984. Such an issue at a belated stage of 20 years therefore could not have been treated to be an established case of fraud so as to treat the entire proceedings to be a nullity or non est. The documents evidencing the allotment namely the resolution, the approval and the forms have been indicated as doubtful (lafnX/k) by the State.

38. In the present case, the petitioners were claiming their Bhumidhari tenure rights which they claim to have acquired under the 1950 Act on the basis of such proceedings which they allege to be valid. Thus, fraud and misrepresentation could not have been assumed behind their back. The learned Single Judge was therefore not right in treating the proceedings to be a nullity on the mere assumption that the entire proceedings were fraudulent. We may put on record that even the Sub-Divisional Magistrate while accepting the report dated 11.5.2016 has used the word "doubtful" (lafnX/k). In such circumstances, to treat the entire proceedings to be a nullity was not the correct approach and we do not find ourselves in agreement with the opinion of the learned Single on this issue.

39. However, it will be appropriate to concur with the view taken by the two other Judges in the cases of Brij Pal and others v. Additional Commissioner and others, Writ Petition No.3029 of 2009 decided on 13.5.2011 and Writ Petition No.58188 of 2012, Asghar and others v. Additional Commissioner and others decided on 2.9.2014 where the writ petitions were allowed on the ground of violation of principles of natural justice and the very same impugned orders which are under challenge in the present petitions were quashed with liberty to the authority to proceed in accordance with law.

40. Consequently, we answer the reference by holding that violation of principles of natural justice is clearly established on the facts of the present case and therefore, the views expressed by the two learned Single Judges in Writ Petition Nos.3029 of 2009 and Writ Petition No.58188 of 2012 are correct. To the said extent the judgment in Writ Petition Nos.2307 of 2009 and 9837 of 2009 decided on 1.11.2012 is also correct. We therefore do not find the reasons to be available for accepting the reference, as the grounds mentioned by the learned Judge are not legally sound.

41. We would however put in a modification to the judgment dated 1.11.2012, Smt. Satyawati and others (supra) while concurring with the issue of violation of the principles of natural justice that the matter deserves to be remitted back for decision afresh on all legal issues, particularly with regard to the jurisdiction of the Sub-Divisional Magistrate/Assistant Collector or the Additional Commissioner to proceed in the matter in the light of the observations made here-in-above as also the correct position of law as now exists keeping in view of the provisions of Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 and U.P. Revenue Code, 2006 and consequently, all the three writ petitions in our opinion deserve to be allowed.

42. Learned Single Judge in the operative part in para 8 observed as under :-

"8. In view of the aforesaid discussion, the record of these writ petitions be placed before Hon"ble Chief Justice for nominating the Division Bench for hearing/deciding the writ petitions."

43. On the said request of the learned Single Judge in exercise of the powers available with Hon"ble the Chief Justice under the Allahabad High Court Rules, 1952, since a petition cognisable by a learned Single Judge can also be directed to be disposed of by the Division Bench, Hon"ble the Chief Justice has been pleased to pass the following order on 3.12.2014 :-

"Place before the Division Bench presided over by Hon"ble A. P. Sahi J."

44. Since the writ petitions have been placed in their entirety before us under the orders of Hon"ble the Chief Justice dated 3.12.2014, we therefore proceed to dispose of all the three writ petitions finally as well.

45. For all the reasons here-in-above, we accordingly allow writ petition Nos.5651 of 2009, 4416 of 2009 and 60151 of 2014 and set aside the order dated 31.5.2006 of the Sub-Divisional Magistrate and the order of the Additional Commissioner dated 14.11.2008 leaving it open to the competent authority to proceed only in accordance with law and after putting the petitioners to notice with any material that is proposed to be used against them. The authority will be obliged to examine its authority and jurisdiction to proceed in the matter before doing so including the prescription of limitation as well.

46. The Reference stands answered accordingly and the writ petitions are allowed as above.