
(2012) 10 AHC CK 0148
In the Allahabad High Court
Case No : Writ Petition No.1906 (MIS) of 2012

Om Wati and Others

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 12-10-2012

Acts Referred:

Citation : (2012) 10 AHC CK 0148

Hon'ble Judges : Anil Kumar, J

Final Decision : Allowed

Judgement

Anil Kumar, J.

Heard Shri Ajay Pratap Singh, learned counsel for the petitioners, learned State Counsel and perused the record.

Shri Ajay Pratap Singh, learned counsel for the petitioners submits that the controversy involved in the present case is squarely covered by judgment and order dated 22.11.2010 passed by this Court in Writ Petition No.4731 of 2011 "Muni Raj vs. State of U.P.", the same on reproduction reads as under:

"Heard Shri Deepak Kumar Singh learned Advocate holding brief of Shri Ajay Pratap Singh and learned Standing counsel.

The petitioner has challenged the order dated 27.11.2009 passed by the S.D.M. Dhampur, District Bijnore in Case No. 10 of 2009, State of U.P. Vs Tarawati under Section 33/39 L.R.Act. The petitioner alleges that he was alleged lease holder through Annexure No.3. The lease was granted in his favour on 02.02.1972. By the impugned order of the S.D.M. Dhampur dated 27.11.2009, the said lease has been cancelled and the entries in Revenue record in favour of petitioner has also been cancelled. The petitioner has challenged the order solely on one ground that no opportunity of hearing is given in the enquiry conducted by the Tahsildar. He says that only one side enquiry has been allegedly conducted by the Tahsildar and the findings have come which are prejudicial to the petitioner. He says that

any order which effect Civil right of the petitioner adversely should be decided on the principles of natural justice. From time immemorial, it has been the law that no body should be condemned without a hearing. In the present case petitioner were in possession since 1972. Prior to coming to conclusion that entries are forged and fraud have committed, the authorities ought to have given an opportunity of hearing to petitioner which has not been done.

The learned Standing Counsel has supported the order of the S.D.M. Dhampur and stated that fraud vitiates everything. He says order passed by S.D.M. is in great detail. Enquiry has been conducted. More over all the Revenue records are not available. S.D.O, gave categorically findings that the entries have been forged and Amaldaramad has been based on non existent orders.

Be that as it may. The court feels that opportunity of hearing is must. The petitioner should not have been deprived of their rights without affording him opportunity of hearing. The petitioner has relied upon judgment reported in 2005 (98) Rd 244 Chaturgun and others Vs State of U.P. and others. In para 6,7 and 8 his Lordship has observed;

"6. Whether an entry in the revenue record is fake or fraudulent is a question of fact and can be found to be proved like any other fact only after providing opportunity of hearing to the parties concerned and likely to be affected by the ultimate order/judgment. It is correct that action taken on the basis of fraud has to be set aside and any entry on the basis of fake order has to be expunged. (Vide United India Insurance Co. V. rajendra Singh) (Para 3) wherein it has been held (approved) that " no judgment of a Court, no order of a Minister can be allowed to stand if it has been obtained by fraud, for, fraud unravals everything"). However, finding in respect of fraud cannot be recorded exparte. The Supremal Court in Sevenska Handelsbanken V. M/s India Charge Chrome, placing reliance upon A.L.N. Narayanam Chettivar V. Official Assignee, held in para 44 as under: ".... fraud like any other charge of a criminal proceedings, must be established beyond reasonable doubt. A finding as to fraud cannot be based on suspicion and conjecture."

7. In the following authorities the Supreme Court has held that even before passing administrative orders affecting rights of parties opportunity of hearing shall be granted:

1. Ashok V. Union of India (It was a case of ban of particular insecticides). 2. Sahi Ram V.Awtar Singh (It was a case of mining lease). 3. G. Pharmaceuticals V. State of U.P. (It was a case of black listing of contractor). 4. H.A. Shakoor V. Unio of India. (It was a case of reduction of category of a contractor). 5. Director General of Police V. M. Sarkar (In this case constables were discharged from service on the ground that they produces a fake list from Employment Exchange without providing opportunity of hearing. Supreme Court approved the order of High Court setting aside discharge order on the ground of denial of opportunity of hearing). 6. All India S.C. & S.T. Empl. Assocn. v. A.A.Jeen. (In this case

hundreds of employees were affected hence Supreme Court held that they might be served in representative capacity). 7. *Codawat Pan Masala Products V. Union of India* (In this case it is held that notification prohibiting manufacture and sale etc. of pan masala and gutka was bad in law as it had been issued without providing opportunity to the manufacturers of meeting the facts relied upon in the notification in respect of injurious effects of pan masala and gutka). 8. *Canara bank V. S.D. Das* (In this authority Several Principles of natural justice expressed in Latin words have been discussed in detail giving their history, (since 1215), scope and applicability).

Regarding first principle of natural justice that no person shall be punished unheard (*audi alteram partem*) it has been held that if appellate authority (it was a case of punishment of an employee) grants post decisional hearing then it may be sufficient compliance of requirement of hearing. In this regard reference has been made to *C.L. Salm V. Union of India* (concept of useless formality theory has also been adverted to in para 22 but no final opinion in that regard has been expressed).

8. Accordingly, it is held that whenever an entry in the revenue record is to be cancelled and substituted particularly when the entry is continuing for more than a year, notice must be given to the party in whose favour entry, stands even if *prima facie* authority/Court concerned (i.e. Deputy Collector/sub Divisional Officer in most of the cases) is of the opinion that the entry is result of fake order or fraud. Similarly if name of an Asami pattedar is to be expunged from the revenue records on the ground of expiry of period of patta on any other ground, notice must be given to him before expunging his name. In a recent authority *Hari Ram V. Collector*, it has been held by this Court that apart from suit for ejection under section 202 of U.P.Z. & L.R. Act, asami pattedar may be evicted after expunging his name from the revenue records under section 34 of U.P.Z.A. & L.R. Act but it can be done only after providing opportunity of hearing to the pattedar/lessee. However, if entry is expunged or any other order is passed without hearing the person affected then he is entitled to file an application for post decisional hearing and recall of the order before the Court/authority which passed the *ex parte* order, if such an application is filed then the Court/authority concerned shall hear the applicant and in case it comes to the conclusion that the earlier order is not correct then the said order shall be set aside. In such situation it is not necessary to first set aside the order and then hear the party concerned. Along with such application such evidence must be filed which the party considers necessary for his case. It has been held by the Supreme Court in *A.M.U. Aligarh V. M.A. Khan* that a person who complains about denial of opportunity of hearing must show that in case opportunity had been provided to him, what cause he would have shown or what defence he would have taken. (Similar view has been taken in *S.L. Gupta V. A.D. Gupta* and *Canara bank*, *supra* Against *ex parte* orders of expunging of names it is not proper to file revision and appeal etc. directly. However, if revision, appeal etc is directly filed then revisional Court/appellate Court may also instead of deciding the revision or

appeal on merit may grant leave to the affected party to apply for post decisional hearing and recall of order before the Trial Court/authority. the revisional/ appellate authority may also decide the matter on merit after providing opportunity of post decisional hearing (i.e. opportunity to show that earlier entry was not fake) as mentioned in the judgment of supreme Court in Canara Bank (supra)."

Accordingly, the order dated 27.11.2009 is hereby set aside. The matter is remanded back to S.D.O. Dhampur for deciding it afresh after giving notice to petitioner and affording him opportunity of hearing. The matter may be decided within maximum period of three months from the date of certified copy of this order is placed before him. Till a fresh decision is taken the Statusquo as existing today shall be maintained."

He further submits that thereafter on the basis of the said judgment, an order dated 8.2.2012 has been passed in Writ Petition No.879 (MS) of 2012 "Smt. Shashi Prabha and others vs. State of U.P. and others", the same is reproduced as under:

"Learned counsel for the petitioners submits that the order impugned has already been dealt with by this Court in W.P.No. 4731 (MS) of 2011 and the same has been set aside being in violation of the principles of natural justice with the direction to the S.D.O. Dhampur for fresh decision providing opportunity of hearing to the petitioner. Therefore, in light of the said order, the petitioners" case is also liable to be considered for fresh decision.

Learned Standing Counsel opposes the submission of learned counsel for the petitioners and submits that the entry made in favour of the petitioners in revenue record is without basis. Therefore, the same can be examined by this Court.

However, keeping in view the fact that this Court has already formed one opinion on the said matter, there is no occasion to form different opinion by me.

Thus, the order impugned is hereby quashed with the direction that the S.D.O. Dhampur shall also provide opportunity of hearing to the petitioners before taking any decision in Case No. 10 of 2009 State Vs. Taravati .

Petitioners undertake to cooperate in the proceeding without taking any adjournment unnecessarily.

Till fresh decision is taken by the S.D.O. status quo as on today shall be maintained with respect to the land in dispute.

In the aforesaid terms, the writ petition stands disposed of."

Accordingly, a request has been made by learned counsel for the petitioner to grant the same benefit to the present petitioners also.

Further, by order dated 5.10.2012, time was granted to learned State Counsel to

verify the said position.

Shri Vinay Bhushan, learned Addl. Chief Standing Counsel submits that the abovesaid prayer made by the petitioners is correct.

For the foregoing reasons, the impugned order dated 27.11.2009 (Annexure No.2) passed by opposite party no.3/Sub Divisional Officer, Dhampur, DistrictBijnore is set aside and the the petitioners are entitled for the same benefit which has been given by this Court by order dated 22.11.2011 passed in Writ Petition No.4731 of 2011 "Muni Raj vs. State of U.P." and the matter is remanded to the said authority to decide afresh expeditiously preferably within a period of four months from the date of receiving a certified copy of this order after hearing the parties in accordance with law.

For the period of four months or till the decision is taken by the said authority, parties are directed to maintain status quo as exits today.

With the above observations, the writ petition is allowed.