

---

**(2006) 10 AHC CK 0038**  
**In the Allahabad High Court**

Ramesh Chandra Saboo

APPELLANT

Vs

The Collector and Others

RESPONDENT

---

**Date of Decision :** 18-10-2006

**Acts Referred:**

**Citation :** (2006) 10 ADJ 404 : (2007) 6 AWC 6189 : (2006) 2 RD 858

**Hon'ble Judges :** S.N. Srivastava, J

**Bench :** Single Bench

**Final Decision :** Allowed

---

## Judgement

S.N. Srivastava, J.—Impugned order in the present writ petition is the order dated 21.4.2003 passed by Additional District Magistrate (Finance and Revenue), Sonbhadra, Annexure-7 to the writ petition, by which certificate dated 23 November 2002 granted by Collector( Stamp) for payment of stamp of Rs. 18,440/- for registration of award of Rs. 18.38 lacs was cancelled. An appeal preferred against the said order was held not maintainable.

2. Heard learned Counsel for the petitioner and learned Standing Counsel.

3. Learned Counsel for the petitioner urged that impugned order of cancellation was passed by Additional District Magistrate without issuing notice or giving opportunity of hearing to petitioner. He further urged that order granting certificate was rightly passed in accordance with law and the order cancelling aforesaid certificate suffers from error of law on several grounds including that petitioner was not given opportunity before passing the impugned order of cancellation of certificate. He referred to paragraph 10 of the writ petition. He further urged that in compliance of the said order petitioner presented stamp before Sub Registrar on 27.11.2002 for registration. Thus the order impugned is vitiated and is liable to be quashed.

4. In reply, learned Standing Counsel referred paragraph 12 of the counter-affidavit and urged that notices were sent to petitioner by registered post as well as by ordinary post and petitioner avoided to be present himself, in the

circumstances, notices were published in Daily Newspaper Amar Ujala and order impugned was passed after giving opportunity of hearing. Learned Counsel for the petitioner referred paragraph 12 of the rejoinder affidavit and denied the averments made in counter-affidavit

5. After considering arguments as well as materials on record, this Court is satisfied that before passing the impugned order by Additional District Magistrate (F and R ), no opportunity was given to petitioner. The averments made in paragraph 12 of the counter-affidavit do not mention any date of issuance of notice or its service or the date when steps were taken and also no relevant material/paper has been annexed with counter-affidavit to fortify the averments made in said paragraph of the counter-affidavit. The allegations In the said paragraph is vague and such allegations cannot be relied upon. Pleading in writ petition must be supported by materials.

6. As settled by Hon''ble Supreme Court in the case reported in Bharat Singh and Others Vs. State of Haryana and Others, that principles of pleadings of suit will be applicable so far as writ petitions are concerned with distinction that in case of a writ petition or a counter affidavit, if any averment is made, it must be supported by materials which shall be deemed to be a part of pleadings. In the present case there is no specific averment in the counter-affidavit to show the date of issuance of notice or its service to petitioner. In paragraph 12 of counter-affidavit, vague averments without any material in support thereof cannot be accepted. Relevant paragraphs of Bharat Singh's case (supra) is extracted below:

In our opinion, when a point which is ostensibly a point of law is required to be substantiated by facts, the party raising the point, if he is the writ petitioner, must plead and prove such facts by evidence which must appear from the writ petition and if he is the respondent, from the counter-affidavit. If the facts are not pleaded or the evidence in support of such facts is not annexed to the writ petition or to the counter-affidavit, as the case may be, the court will not entertain the point. In this context, it will not be out of place to point out that in this regard there is a distinction between a pleading under the CPC and a writ petition or a counter-affidavit. While in a pleading, that is, a plaint or a written statement, the facts and not evidence are required to be pleaded, in a writ petition or in the counter-affidavit not only the facts but also the evidence in proof of such facts have to be pleaded and annexed to it. So, the point that has been raised before us by the appellants is not entertainable. But, in spite of that, we have entertained it to show that it is devoid of any merit.

7. In view of the above law laid down by apex court, the impugned order of cancellation of certificate issued by Collector Stamp to petitioner which had created a right in favour of petitioner who deposited said amount mentioned in the certificate also in compliance to the said certificate was passed without giving opportunity of hearing and was violative of principles of natural justice. In the facts of the case, this Court is of the view that writ petition deserves to be allowed and impugned orders are liable to be quashed.

8. With the result, writ petition succeeds and is allowed. Impugned order dated 21.4.2003, Annexure-7 to the writ petition, passed by Additional District Magistrate ( Finance and Revenue), Sonbhadra. and consequential order dated 28.7.2004 passed by Assistant Commissioner Stamp, Sonbhadra are quashed. The Collector Sonbhadra is directed to pass appropriate orders within three months from the date of production of a certified copy of this order in accordance with law after hearing to the petitioner. It is further directed that petitioner shall not seek any adjournment. It is made clear that this Court has not expressed any opinion on the merit of the case.

9. No order as to costs.