Neutral Citation No. - 2025:AHC-LKO:61912

[RESERVED]

A.F.R.

HIGH COURT OF JUDICATURE OF ALLAHABAD
LUCKNOW

WRIT-C No.1002036 of 2003

Hanif Khan and others ……Petitioners.

Versus

Additional Commissioner Lucknow and others.

….Respondents.

Counsel for Petitioner(s) : Govind Saran Nigam, Hari Om Rana, Mohd. Aslam Khan
Counsel for Respondent(s) : C.S.C., Vijay Kumar Pandey, Yogendra Nath Yadav

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- :: A N D ::-

WRIT – C No.-1001836 of 2003

Israt Jahan.

...Petitioner.

Versus

Additional Commissioner Lucknow and Others.

…Respondents.

Counsel for Petitioner(s) : Govind Saran Nigam, Mohd. Aslam Khan
Counsel for Respondent(s) : C.S.C., Vijay Kumar Pandey, Yogendra Nath Yadav

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-:: **A N D ::-**

WRIT - C No. - 1001637 of 2003

Sujauddin Khan And Another. …. Petitioners.

Versus

Additional Commissioner Administration Lko Division Lko.

….Respondents.

Counsel for Petitioner(s) : Govind Saran Nigam, Diwakar Nath Tiwari, Mohd. Aslam Khan,Yogendra Nath Yadav

Counsel for Respondent(s) : C.S.C., Dilip Kumar Pandey,Vijay Kumar Pandey

-:: A N D ::-

WRIT - C No. - 1001638 of 2003

Smt.Jubeda Begum And 3 Ors. ...Petitioners.

Versus

Additional Commissioner Administration Lko Division Lko.

...Respondents.

Counsel for Petitioner : Govind Saran Nigam, Hari Om Rana, Mohammad Aslam Khan, Mohd.Aslam Khan,Yogendra Nath Yadav

Counsel for Respondent : C.S.C.,Vijay Kumar Pandey

-:: A N D ::-

WRIT - C No. - 1002037 of 2003

Karam Ali And Another. …. Petitioners

Versus

Additional Commissioner Lucknow And Others.

….Respondents

Counsel for Petitioner : Govind Saran Nigam, Hari Om Rana, Yogendra Nath Yadav

Counsel for Respondent : C.S.C., Vijay Kumar Pandey

-:: A N D ::-

WRIT - C No. - 1002065 of 2003

Dr. Minhazuddin Khan And Others 4 …. Petitioners

Versus

Addl. Commissioner Admn. Lucknow And Others 2

....Respondents

Counsel for Petitioner : G.S.Nigam,Hari Om Rana,Yogendra Nath Yadav

Counsel for Respondent : C.S.C.,Vijay Kumar Pandey

Court No. 4

HON'BLE IRSHAD ALI, J.

1. Heard Shri M.A. Khan, learned Senior Advocate assisted by Shri Mohd. Aslam Khan, learned counsel for the petitioners as well as Shri Shadab Khan, learned Advocate in **Case:-** WRIT-C No.1002036 OF 2003, 1001836 OF 2003, 1001637 OF 2003, 1001638 OF 2003 and Shri Hari Om Rana, learned counsel for the petitioners in **Case:-**WRIT-C No.1002037 OF 2003 and 1002065 OF 2003 and learned Standing Counsel for the respondents-State.

2. This bunch of writ petitions is being decided by means of a common judgment and order treating Writ-C No.1002036 of 2003 to be leading writ petition and the judgment and order passed therein, shall be equally applicable to all the connected writ petitions.

3. The petitioners have prayed for issuance of a writ in the nature of Certiorari, quashing the orders dated 31.3.2003 and 16.8.1996 passed by respondent nos.1 and 2 contained in Annexure Nos.1 and 4 respectively.

4. Factual matrix of the case is that in realisation of certain outstanding amount of loan/ land revenue against Sri Amir Singh, son of Maya Ram and others, their land including Plot No.61 area 12.50 acres situate at village Shri Nagar, Pargna Palia, old Tahsil Nighasan (present Tahsil Palia), District Lakhimpur Kheri was put to auction and sale on 18.9.1961 and the petitioner no.1 and the predecessor of the petitioner nos.1 and 2 and predecessor of the petitioner nos.3 to 5, Sri Hasnu, son of Dildar Khan were declared auction purchasers and the said auction was confirmed by Sub Divisional Officer on 1.1.1963.

The land under auction was subject to diluvial and alluvial action and at the time of the aforesaid auction dated 18.9.1961, a part of the land was under the bed of river Sharda, as such the possession of the said land was not delivered immediately thereafter nor sale certificate was issued. However, in the year 1995, the land re-appeared from the bed of river and thereafter sale certificate was issued to the petitioners and their predecessor and mutation was also affected in the name of the petitioners deposited land revenue also which was assessed against their khata.

During the pendency of the revision before respondent no.1 Mahboob Khan, the father of the petitioner nos.3 to 5 expired and they have succeeded his rights in the land in question. For the aforesaid mutation orders when the parwana amaldaramad was sent to Tahsildar, he himself gave a report to U.P. Ziladhikari, Nighasan, District Lakhimpur Kheri expressing his doubt over the proceedings mainly on the ground that the file of the auction proceedings could not be traced out by him and on the ground of his suspicion in the absence of the concerned file, he recommended that parwana amaldaramad be cancelled and on the same day dated 16.8.1996, U.P. Ziladhikari, Nighasan ordered cancellation of entries made in the record.

The order of Pargna Adhikari, Palia, the report of Tahsildar, Nighasan and also the order of the Sub Divisional Officer, Nighasan dated 16.8.1996 are behind the back of the petitioners. Before making the aforesaid record, Nighasan and before passing the aforesaid order, Sub Divisional Officer, Nighasan never made any enquiries from the petitioners or any other auction purchaser nor the Sub Divisional Officer, Nighasan called upon the petitioners or any other auction purchaser to explain the circumstances under which Tahsildar, Nighasan was making recommendation for cancellation of the entries. The entire proceedings are contrary to the principles of natural justice and are totally surreptitious.

While looking into the matter, U.P. Ziladhikari, Nighasan, on 15.5.1996 had directed the then Rajaswa Lipik, Sri Dev Narain Mishra to produce the concerned file relating to the aforesaid auction with the clear warning that on failure of producing the concerned files, the matter would be reported to the Collector. However, nothing appears to have been done inspite of the said direction.

Having come to know about the aforesaid order dated 16.8.1996, petitioners filed a revision under Section 219, Land Revenue Act., Revisions No.1304/1995-96 before respondent no.1 who vide his order dated 19.8.2000 allowed the same and set aside the order and directed the petitioners to move restoration application before the learned court below and issued directions to the trial court to dispose of the said restoration application treating the same within limitation on merits.

The petitioners, in compliance of the aforesaid directions of the respondent no.1 applied for restoration and setting aside the order dated 16.8.1996 passed by U.P. Ziladhikari/ Pargna Adhikari, Palia. During the pendency of the said, Pargna Adhikari, Nighasan directed Sri Dev Narain Mishra, the Clerk concerned through Tahsildar, Nighasan to produce the files relating to the said auction with the warning to initiate criminal proceedings on his failure to comply the order. However, inspite of the aforesaid direction, Pargna Adhikari, Nighasan even without waiting for the compliance, rejected the restoration application on the same ground that the original file was not traceable.

Feeling aggrieved by the aforesaid order of U.P. Ziladhikari/ Pargna Adhikari, Palia passed on his surmises and conjectures and purely on his suspicion, petitioners filed a revision under Section-219, Land Revenue Act before Commissioner, Lucknow Division, Lucknow. However, the same has been rejected by the respondent no.1 on the ground that the dates in the sale certificates have been changed which makes it suspicious and further in the proceedings under Section-33/39, Land Revenue Act such point cannot be raised. He rejected the revision by his order dated 31.3.2003 without entering into the merits of the case and without making any categorical finding as to whether there has been any auction proceedings with respect to the land in question or not. He has also not confirmed the order of the trial Court on the ground that the file of the case was not traceable as such the proceedings are suspicious but has rejected the revision on the ground that the order of the trial Court is quite delayed hence no intereference was needed on his behalf.

None of the Courts Below have come to the categorical finding that the auction proceedings had not taken place, as such the sale certificate was wrongly issued. Rather they have expressed their suspicion on the ground that the auction proceedings had been held in the year 1961 and the sale certificate was issued in the year 1995 which cannot be a ground for its cancellation particularly in the circumstances when none of the Courts Below ever ordered production of file relating to the issue of sale certificate nor any report has been obtained from the record room or from the lower staff as to whether any such file was ever existed or not.

The sale certificates have been cancelled by the respondent no.2 in purported exercise under Section-33/39, Land Revenue Act, as such the observation of the respondent no.1 that the point raised in the revision against the order of the respondent no.2 cannot be take into consideration in the proceedings under Sction 33/29, Land Revenue Act, is contrary to the entire proceedings and on this ground alone the revision deserves to be allowed.

During the pendency of the revision before the respondent no.1 the operation of the order of admitted the revision and summoning the lower courts records. The petitioners are in possession over the land in question, Khasra Plot No.1/3M situate in the village Shri Nagar, Pargna & Tahsil, Palia, District Lakhimpur Kheri, hence the interest of justice requires that the operation of the order dated 31.3.2003 be kept suspended.

5. Shri M.A. Khan, learned Senior Advocate appearing for the petitioners submitted that the impugned order has been passed without notice and giving opportunity of hearing to the petitioners, reference of which has been drawn from the order of the Commissioner dated 19.8.2000.

6. Learned Senior Advocate next submitted that the orders impugned are wholly illegal and without jurisdiction after confirmation of sale as in the auction proceeding Sub Divisional Magistrate has no power to cancel it under Rule 285-A of the U.P. Zamindari Abolition and Land Reforms Rules, 1952 and it is the Commissioner who can cancel the auction sale.

Learned Senior Advocate, in support of his submissions, relied upon a judgment rendered in the case of **Chaturgun and others v. State of U.P. and others** reported in **2005(27) RCR (Civil) 247.**

7. On the other hand, learned Standing Counsel accepted that the orders impugned have been passed without notice and opportunity of hearing, so that the matter should be remanded to the competent Authority to pass an appropriate order.

8. Learned Standing Counsel, on the point of want of jurisdiction, submitted that the Rules provide that against the cancellation of confirmation of auction sale, the power vests in the Commissioner.

9. I have considered the rival submissions advanced by learned counsel for the parties and gone through the material available on record as well as case-law cited by the learned Senior Advocate.

10. To resolve the controversy involved in the present writ petition, Rule 285-A of the U.P. Zamindari Abolition and Land Reforms Rules, 1952 is quoted hereinbelow:

> *"**285-A.** Every sale under Sections 284 and 286 shall be made either by the Collector in person or by an Assistant Collector specially appointed by him in this behalf. No such sale shall take place on a Sunday or other gazetted holiday proclamation under Rule 282 was issued."*

11. Learned counsel also relied upon judgment rendered in the case of **Chaturgun (supra)** wherein the following has been held in paragraphs 8 and 9:

> "***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 or any other ground, notice must be given to him before expunging his name. In a recent authority in **Hari Ram v. Collector, 2004(2) RD 360,** it has been held by this Court that apart from suit for ejectment under Section 34 of U.P.Z.A. and 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 the 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, Alongwith 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, 2000(4) AWC 2993 (SC); AIR 2000 Supreme Court 2783,*** *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, 2003 AIR SCW 7089 (para29)*** *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).*

9. *Revenue, authorities/ courts must remember that a party can in some cases successfully show that entry of his name in the revenue record is correct and not fake or based upon fake order. This question can be decided only and only after hearing the party concerned and likely to be affected."*

12. Perusal of the above-extracted Rule 285-A of the Act shows that the auction can be conducted either by the Collector in person or by an Assistant Collector, specially appointed by him in this behalf. It is also evident from perusal of the judgment in the case of **Chaturgun (supra)** that Revenue authorities/ courts must remember that a party can in some cases successfully show that entry of his name in the revenue record is correct and not fake or based upon fake order. This question can be decided only after hearing the party concerned and likely to be affected.

In the present case, none of the Courts Below have come to the categoric finding that the auction proceedings had not taken place, as such the sale certificate was wrongly issued. Rather they have expressed their suspicion on the ground that the auction proceedings had been held in the year 1961 and the sale certificate was issued in the year 1995 which cannot be a ground for its cancellation particularly in the circumstances when none of the Courts Below ever ordered production of file relating to the issue of sale certificate nor any report has been obtained from the record room or from the lower staff as to whether any such file was ever existed or not. The Commissioner rejected the revision by his order dated 31.3.2003 without entering into the merits of the case and without making any categorical finding as to whether there has been any auction proceedings with respect to the land in question or not. He has also not confirmed the order of the trial Court on the ground that the file of the case was not traceable as such the proceedings are suspicious but has rejected the revision on the ground that the order of the trial Court is quite delayed hence no interference was needed on his behalf.

13. It is not in dispute that the impugned order has been passed by the trial Court without notice and giving opportunity of hearing to the petitioners, reference of which has been drawn from the order of the Commissioner dated 19.8.2000 as also admitted by learned Standing Counsel.

14. It is the first principle of natural justice that no adverse order shall be passed against a person without hearing him even in administrative matters which affect the rights of persons. Grant of opportunity of hearing in administrative matters is comparatively a recent doctrine. As far as judicial matters are concerned since the time when Courts were established it has been the most essential ingredient of procedural law that no order shall be passed without hearing parties concerned. Removal and substitution of entry in revenue records under Section 34 of Land Revenue Act or any other provision is a judicial matter making it all the more necessary to provide opportunity of hearing to the party concerned.

15. In the above view of the matter, this Court is of the opinion that the Commissioner should have remanded the matter to the concerned Court and gave specific direction to decide the matter while giving opportunity of hearing to the parties. But, in this matter, neither any direction has been given nor order of the trial Court has been confirmed. Under the Rule 285-A, it is the Commissioner who can cancel the auction sale.

16. The orders of the Courts Below have been passed without giving opportunity of hearing to the petitioner, therefore the orders being passed in violation of principles of natural justice are liable to be set aside.

17. 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 or any other ground, notice must be given to him before expunging his name.

In the present case, no endeavour was made to call for the record in regard to auction proceedings and its confirmation from the record room and only on the presumption, assumption has been drawn otherwise. Therefore, the orders passed by the trial Court as well as revisional Court are not sustainable in law and are liable to be set aside.

18. Considering in totalities of facts and circumstances of the case, orders dated 31.3.2003 and 16.8.1996 passed by respondent nos.1 and 2 contained as Annexure nos.1 and 4 to the present writ petition respectively are hereby quashed.

19. Accordingly, the matter is remanded to the trial Court to pass a fresh order after calling for the record from the record room in regard to auction proceeding made in favour of the petitioner expeditiously.

20. In the result, the writ petitions succeed and are **allowed**.

(Irshad Ali, J.)

October 8, 2025

GK Sinha