

Court No. - 18

Case :- WRIT - C No. - 1945 of 2023

Petitioner :- Rizwan Ahmad

Respondent :- State Of U.P. Thru. Additional Commissioner (Administration) , Lucknow Division, Lko. And Others

Counsel for Petitioner :- Mohd. Asif, Mohammad Aslam Beg

Counsel for Respondent :- C.S.C., Akhilesh Kumar, Dilip Kumar Pandey

Hon'ble Saurabh Lavania, J.

1. Heard learned counsel for the petitioner, Shri Arun Pratap Singh, learned Chief Standing Counsel for the State, Shri Dilip Kumar Pandey, learned counsel for opposite party no. 3-Gaon Sabha and Shri Dilip Pandey, learned counsel for private opposite party no. 4 namely B.N. Singh.

2. In view of order proposed to be passed and that this Court finds that no prejudice would be caused to opposite party no. 5, upon whom the service of notice is not sufficient, with the consent of learned counsels present before this Court, this Court proceeded to decide the instant writ petition.

3. By means of the present petition, the petitioner has assailed the order dated 22.12.2022 (Annexure No. 2 to the petition) passed by opposite party no. 2- Additional District Magistrate (Finance & Revenue), District - Lucknow in Case No. RST/4925/2022 (B.N. Singh Vs. Mohd. Rizwan) under Section 28 of U.P. Land Revenue Act, 1901 (in short "Act, 1901") as also the order dated 23.01.2023 (Annexure No. 1 to the petition) passed by the opposite party no. 1 - Additional Commissioner (Administration) , Lucknow Division, Lucknow in the revision registered as Case No. 100/2023 (Computerized Case No. C202310000000100 , Mohd. Rizwan Vs. B.N. Singh) under Section 219 of Act, 1901.

4. Assailing the impugned orders, brief facts, as stated, are to the effect that an application, under Section 28 of Act, 1901, preferred for correction of map regarding Gata No. 534 Sa situated at Village-

Khadauha, Pargana - Malihabad, District - Lucknow by the petitioner in the year 2015 was registered as Case No. 7384/2015 (Computerized Case No.D20151046007384 , Mohd. Rizwan Vs. Ram Nath and Ors.) and in the same, a report dated 11.04.2016 was forwarded by Tehsildar concerned on 10.05.2016 (Annexure No. 6 to the petition) and the based upon the same, the case was not concluded at relevant point of time.

5. He further submitted that during the pendency of the case of the petitioner, the opposite party no. 4- B.N. Singh S/o late Chandbali Singh preferred an application for correction of map regarding Gata No. 532 adjacent to Gata No. 534 under Section 30 of U.P. Revenue Code, 2006 (in short "Code, 2006") and the same was registered as Case no. 6948/2017 (Computerized Case No. D2017104606948, B.N. Singh Vs. Gaon Sabha Khadauha and Ors.). In this case, a report dated 06.07.2021 (Annexure No. 7 to the petition) was submitted.

6. He further submitted that the dispute of correction of map relates to Gata(s) No. 532 and 533. Gata No. 534 belongs to the petitioner and Gata No. 532 belongs to opposite party no. 4. Both the gatas are adjacent to each other.

7. He further submitted that it appears from the final order dated 26.07.2021 (Annexure No. 8 to the petition) passed in the case of the petitioner, which was recalled vide impugned order dated 22.11.2022 affirmed vide impugned order dated 23.01.2023 that fresh report was called and thereafter a report dated 06.07.2021 was submitted, which is favorable to the petitioner and opposite party no. 4.

8. On being asked, as to whether the statement of learned counsel for the petitioner is correct, Shri Dilip Pandey, learned counsel for opposite party no. 4 could not dispute the same.

9. A perusal of the report dated 06.07.2021 indicates that the same is

favorable to the petitioner and opposite party no. 4. Relevant portion of report dated 06.07.2021, mentioned above, is quoted below:

"भू-चित्र में गाटा संख्या 529, 531, 532 एक सीध में बने हुए हैं जिसका भू - चित्र संशोधन गाटा संख्या 529 में बिन्दु A से B = 28 मी०, बिन्दु B से C = 26 मी०, बिन्दु C से D = 28 मी०, बिन्दु D से A = 24 मी० जिसका क्षेत्रफल 0.070 हे० पर गाटा संख्या- 529 स्थापित तथा बिन्दु F से B = 25 मी०, बिन्दु B से C = 26 मी०, बिन्दु C से E = 15 मी०, बिन्दु E से F = 28 मी०, जिसका क्षेत्रफल 0.040 हे० पर गाटा संख्या- 531 स्थापित तथा बिन्दु G से F = 49.5 मी०, बिन्दु F से E = 28 मी०, बिन्दु E से H = 49.5 मी०, बिन्दु H से G 32 मी०, जिसका क्षेत्रफल 0.148 हे० पर गाटा संख्या- 532 स्थापित करते हुए बिन्दु L से G = 15 मी०, बिन्दु G से H = 32 मी०, बिन्दु H से K = 29 मी०, बिन्दु K से L = 32 मी०, जिसका क्षेत्रफल 0.070 हे० होता है को गाटा संख्या- 534 में शामिल कर दिया जाए।

उपरोक्तानुसार भू - चित्र संशोधन करने पर गाटा 529 व 531 व 532 का भू - चित्र अपने अपने अभिलेखीय क्षेत्रफल के बराबर हो जाएगा और इन गाटा संख्याओं के भू - चित्र के आकारों जो क्षेत्रफल अधिक है वह गाटा संख्या 534 में शामिल हो जाएगा । गाटेवार आख्या व नजरी नक्शा संलग्न है।

भू-राजस्व अधिनियम की धारा 30 के अन्तर्गत नक्शा / भू - चित्र संशोधन किए जाने हेतु आख्या प्रेषित।"

10. Learned counsel for the petitioner further submitted that the concerned authority after considering the report dated 06.07.2021 decide both the cases, indicated above, on 26.07.2021 itself and the operative portion of both the orders is verbatim same. At this stage, he has drawn the attention of the Court on the operative portion of the order(s) dated 26.07.2021(Annexure Nos. 8 & 9 to the petition).

11. The operative portion of the order dated 26.07.2021 passed in the Case No. 7384/2015 (case instituted by the petitioner) reads as under:

"एतद्द्वारा तहसीलदार मलिहाबाद की उक्त आख्या दिनांक 06-7-2021 एवं उसके साथ संलग्न प्रस्तावित संशोधित नजरी नक्शा के अनुसार प्रश्नगत गाटा नम्बरान 534, 532, 531, 529 स्थित ग्राम खड़ौहा परगना व तहसील मलिहाबाद, जनपद लखनऊ का प्रस्तावित संशोधित भूचित्र जो लालमसि से प्रदर्शित किया गया है, के अनुसार मानचित्र संशोधित किये जाने के आदेश दिये जाते हैं। तहसीलदार मलिहाबाद की उक्त आख्या दिनांक 06.07.2021 एवं उसमें प्रदर्शित प्रस्तावित संशोधित नक्शा इस आदेश का अंग होगा। आदेश की प्रति उप जिलाधिकारी/तहसीलदार, मलिहाबाद/ प्रभारी अधिकारी(राजस्व अभिलेखालय) को अभिलेखों में अनुपालन हेतु भेजी जाय। बाद आवश्यक कार्यवाही पत्रावली दाखिल दफ्तर हो।"

12. The operative portion of the order dated 26.07.2021 passed in the

Case No. 6948/2017 (Case instituted by opposite party no. 4) reads as under:

"एतद्द्वारा तहसीलदार मलिहाबाद की उक्त आख्या दिनांक 06-7-2021 एवं उसके साथ संलग्न प्रस्तावित संशोधित नजरी नक्शा के अनुसार प्रश्नगत गाटा नम्बरान 534, 532, 531, 529 स्थित ग्राम खडौहा परगना व तहसील मलिहाबाद, जनपद लखनऊ का प्रस्तावित संशोधित भूचित्र जो लालमसि से प्रदर्शित किया गया है, के अनुसार मानचित्र संशोधित किये जाने के आदेश दिये जाते हैं। तहसीलदार मलिहाबाद की उक्त आख्या दिनांक 06.07.2021 एवं उसमें प्रदर्शित प्रस्तावित संशोधित नक्शा इस आदेश का अंग होगा। आदेश की प्रति उप जिलाधिकारी/तहसीलदार, मलिहाबाद/ प्रभारी अधिकारी(राजस्व अभिलेखालय) को अभिलेखों में अनुपालन हेतु भेजी जाय। बाद आवश्यक कार्यवाही पत्रावली दाखिल दफ्तर हो।"

13. Learned counsel for the petitioner further submitted that the opposite party no. 4 is well-connected person and just to harass the petitioner, the opposite party no. 4 had preferred an application for recall of order dated 26.07.2021 passed in the case of the petitioner alleging it to be an ex-parte order, which was allowed vide order dated 22.12.2022 and the revision filed against the same was dismissed on 23.01.2023.

14. He further submitted that order dated 26.07.2021 passed in the case of the petitioner was not required to be recalled in view of the fact that the said order dated 26.07.2021 was passed after taking note of the report of the revenue official dated 06.07.2021 and based upon the same report, the order in the case of opposite party no. 4 was passed thus, recalling of order and re-hearing the matter would be "futile exercise" as such, the impugned order dated 22.12.2022 passed is hit by the "principle of useless formality" and this aspect was also not taken note of by the opposite party no. 1 while passing the impugned order dated 23.01.2023 as such both the orders are also liable to be interfered with.

15. He further submitted that by order dated 26.07.2021 passed in the case of the petitioner, which recalled by the impugned order dated 22.12.2022 and affirmed vide order dated 23.01.2023, no prejudice would be caused to the opposite party no. 4 in view of specific

directions given by the opposite party no. 2 in both the order(s) dated 26.07.2021 which are verbatim same and as such the indulgence of this Court is required in the matter and the impugned order(s) are liable to be set aside and the order dated 26.07.2021 is liable to be restored.

16. Shri Arun Pratap Singh, learned Chief Standing Counsel for the State, Shri Dilip Kumar Pandey, learned counsel for opposite party no. 3-Gaon Sabha and Shri Dilip Pandey, learned counsel for private opposite party no. 4 namely B.N. Singh opposed the present petition, however, they could not dispute the fact that report dated 06.07.2021 relied upon by the opposite party no. 2 while passing the order(s) on 26.07.2021 in both the cases, respectively, is the same and the directions given by the opposite party no. 2 in both these orders are verbatim same.

17. Considered the submissions advanced by the learned counsel for the parties and perused the record.

18. Undisputed relevant facts are as under:

(i) In the case instituted by the petitioner, a report dated 11.04.2016 was forwarded by Tehsildar concerned on 10.05.2016 (Annexure No. 6 to the petition) and the same was taken note of by the opposite party no. 2 while passing the order dated 26.07.2021 and it further appears from the order dated 26.07.2021 that a fresh report was called upon and in response to the same, a report dated 06.07.2021 was submitted. It further reflects that from the order dated 26.07.2021 including the operative portion, quoted above, that the basis of order dated 26.07.2021 passed by opposite party no. 2 is the report dated 06.07.2021.

(ii) From the order dated 26.07.2021 passed in the case

instituted by the opposite party no. 4, it is apparent including the operative portion that the same is also based upon the report dated 06.07.2021.

(iii) The fact that while passing the order dated 26.07.2021 in both the cases, the opposite party no. 2 relied upon the report dated 06.07.2021 and according to the same the correction in map related to the gatas, in issue i.e. Gata No. 532 (belongs to the opposite party no. 4) and Gata No. 534 (belongs to the petitioner) is required.

19. In **Aligarh Muslim University vs. Mansoor Ali Khan** reported in **(2000) 7 SCC 529**, the Hon'ble Apex Court after referring to several cases, and after considering the theory of "useless" or "empty formality" and noting "admitted or undisputed" facts, held that the only conclusion which could be drawn was that "had the petitioner been given notice", it "would not have made any difference" and, hence, no prejudice has been caused. The relevant portion of the report reads as under:

"Point 5

20. This is the crucial point in this case. As already stated under Point 4, in the case of Mr Mansoor Ali Khan, notice calling for an explanation had not been issued under Rule 5(8)(i) of the 1969 Rules. Question is whether interference is not called for in the special circumstances of the case.

21. As pointed recently in M.C. Mehta v. Union of India [(1999) 6 SCC 237] there can be certain situations in which an order passed in violation of natural justice need not be set aside under Article 226 of the Constitution of India. For example where no prejudice is caused to the person concerned, interference under Article 226 is not necessary. Similarly, if the quashing of the order which is in breach of natural justice is likely to result in revival of another order which is in itself illegal as in Gadde Venkateswara Rao v. Govt. of A.P. [AIR 1966 SC 828 : (1966) 2 SCR 172] it is not necessary to quash the order merely because of violation of principles of natural justice.

22. In M.C. Mehta [(1999) 6 SCC 237] it was pointed out that at one time, it was held in Ridge v. Baldwin [1964 AC 40 : (1963) 2 All ER

66 (HL)] that breach of principles of natural justice was in itself treated as prejudice and that no other "de facto" prejudice needed to be proved. But, since then the rigour of the rule has been relaxed not only in England but also in our country. In *S.L. Kapoor v. Jagmohan* [(1980) 4 SCC 379] Chinnappa Reddy, J. followed *Ridge v. Baldwin* [1964 AC 40 : (1963) 2 All ER 66 (HL)] and set aside the order of supersession of the New Delhi Metropolitan Committee rejecting the argument that there was no prejudice though notice was not given. The proceedings were quashed on the ground of violation of principles of natural justice. But even in that case certain exceptions were laid down to which we shall presently refer.

23. Chinnappa Reddy, J. in *S.L. Kapoor* case [(1980) 4 SCC 379] laid down two exceptions (at SCC p. 395) namely, if upon admitted or indisputable facts only one conclusion was possible, then in such a case, the principle that breach of natural justice was in itself prejudice, would not apply. In other words if no other conclusion was possible on admitted or indisputable facts, it is not necessary to quash the order which was passed in violation of natural justice. Of course, this being an exception, great care must be taken in applying this exception.

24. The principle that in addition to breach of natural justice, prejudice must also be proved has been developed in several cases. In *K.L. Tripathi v. State Bank of India* [(1984) 1 SCC 43 : 1984 SCC (L&S) 62] Sabyasachi Mukharji, J. (as he then was) also laid down the principle that not mere violation of natural justice but *de facto* prejudice (other than non-issue of notice) had to be proved. It was observed, quoting *Wade's Administrative Law* (5th Edn., pp. 472-75), as follows: (SCC p. 58, para 31)

"[I]t is not possible to lay down rigid rules as to when the principles of natural justice are to apply, nor as to their scope and extent. ... There must also have been some real prejudice to the complainant; there is no such thing as a merely technical infringement of natural justice. The requirements of natural justice must depend on the facts and circumstances of the case, the nature of the inquiry, the rules under which the tribunal is acting, the subject-matter to be dealt with, and so forth."

Since then, this Court has consistently applied the principle of prejudice in several cases. The above ruling and various other rulings taking the same view have been exhaustively referred to in *State Bank of Patiala v. S.K. Sharma* [(1996) 3 SCC 364 : 1996 SCC (L&S) 717] . In that case, the principle of "prejudice" has been further elaborated. The same principle has been reiterated again in *Rajendra Singh v. State of M.P.* [(1996) 5 SCC 460]

25. The "useless formality" theory, it must be noted, is an exception. Apart from the class of cases of "admitted or indisputable facts

leading only to one conclusion" referred to above, there has been considerable debate on the application of that theory in other cases. The divergent views expressed in regard to this theory have been elaborately considered by this Court in M.C. Mehta [(1999) 6 SCC 237] referred to above. This Court surveyed the views expressed in various judgments in England by Lord Reid, Lord Wilberforce, Lord Woolf, Lord Bingham, Megarry, J. and Staughton, L.J. etc. in various cases and also views expressed by leading writers like Profs. Garner, Craig, de Smith, Wade, D.H. Clark etc. Some of them have said that orders passed in violation must always be quashed for otherwise the court will be prejudging the issue. Some others have said that there is no such absolute rule and prejudice must be shown. Yet, some others have applied via media rules. We do not think it necessary in this case to go deeper into these issues. In the ultimate analysis, it may depend on the facts of a particular case.

26. It will be sufficient, for the purpose of the case of Mr Mansoor Ali Khan to show that his case will fall within the exceptions stated by Chinnappa Reddy, J. in S.L. Kapoor v. Jagmohan [(1980) 4 SCC 379] , namely, that on the admitted or indisputable facts, only one view is possible. In that event no prejudice can be said to have been caused to Mr Mansoor Ali Khan though notice has not been issued."

20. For the reasons aforesaid and taking note of the undisputed facts, indicated above, this Court finds that no fruitful purpose would be served in providing an opportunity of hearing to the respondent no. 4 and being so the order(s) dated 23.01.2023 and 22.12.2022 are liable to be interfered with.

21. Accordingly, the order(s) dated 23.01.2023 and 22.12.2022 (Annexure Nos. 1 & 2 to the petition, respectively) are hereby set aside and the order dated 26.07.2021 (Annexure No. 8 to the petition) passed in the case of the petitioner, is restored. The concerned authority is directed to correct the revenue map in terms of order(s) dated 26.07.2021 passed in both the cases.

22. With the aforesaid, the present petition is **allowed**.

Order Date :- 1.11.2023/Mohit Singh/-