

Court No. - 7**Case :-** WRIT - B No. - 20823 of 2019**Petitioner :-** Sunil Kumar And Ors.**Respondent :-** Deputy Director Consolidation Hardoi And Ors.**Counsel for Petitioner :-** Deepak Chandra Jain**Counsel for Respondent :-** C.S.C.,Ajay Kishore Pandey,Ravi Shanker Tewari,Yogendra Nath Yadav

AND

Case :- WRIT - B No. - 20780 of 2019**Petitioner :-** Smt. Anuradha Gupta**Respondent :-** Deputy Director Of Consolidation Hardoi And Ors.**Counsel for Petitioner :-** Uma Shankar Sahai,Amit Kumar Singh**Counsel for Respondent :-** C.S.C.,Ajay Kishor Pandey,Ajay Kishore Pandey,Yogendra Nath Yadav**Hon'ble Saurabh Lavania,J.**

1. Heard Sri Uma Shankar Sahai and Sri Deepak Chandra Jain, learned Counsel appearing for the petitioner(s), Sri Ravi Shanker Tiwari and Sri Ajay Kishore Pandey, learned Counsel for the contesting respondent(s) and Sri Hemant Kumar Pandey, learned Counsel for the State.

2. In both the above indicated writ petitions, the orders under challenged are the order dated 22.06.2019 passed by Additional District Magistrate (Finance and Revenue)/Deputy Director of Consolidation, Hardoi (in short 'D.D.C.') in Revision No. 33 of 2019, Computerized Case No. 2014531033000061 (Sunil Kumar Versus Hari Shankar and Others) and Revision No. 32 of 2019, Computerized Case No. 2014531033000060

(Smt. Anuradha Gupta Versus Vijay Kumar alias Bablu) and the order dated 20.03.2014 passed by Settlement Officer Consolidation, Hardoi (in short 'S.O.C.') in Appeal No. 217 (Sunil Versus Hari Shankar and Others) as also the order dated 28.03.2012 passed by Consolidation Officer, Harpalpur (in short 'C.O.') in Case No. 760 (Hari Shankar Versus Ram Swaroop and Others).

3. The authorities under the Act of U.P. Consolidation and Holdings Act, 1953 have passed the impugned orders. Undisputedly, the revisional authority/D.D.C., in view of the scheme of the Act particularly Section 48 of the Act of 1953 is empower to consider law and facts both.

4. Brief facts of the case are to the effect that property in dispute is Khata No. 115 situated at Village Kursi, Tehsil Sandila, District Hardoi. This Khata No. 115 was recorded in the name of Hari Shankar son of Satya Dev Singh. One Radhey Lal (predecessor-in-interest of petitioner(s) namely Sunil Kumar, Sanjay Kumar, Sumit Kumar and Anuradha Gupta (transferrer of legal heirs of Radhey Lal) before the C.O., claimed his rights over Khata No. 115 on the basis of plea of adverse possession.

5. It would be apt to indicate at this stage that other successors/legal heirs of Radhey Lal (claimant) have not challenged the orders in issue and they have impleaded as respondents in both the above indicated petitions and taking

note of the same in their absence this Court is proceeded to decide both these petitions.

6. C.O., vide order dated 12.07.1990 decided the case in favour of Radhey Lal. The order dated 12.07.1990 passed by C.O. was set aside by S.O.C. and matter was remanded vide order dated 14.09.2011 passed in Appeal No. 374/353 instituted by Hari Shanker Singh (respondent no.2) under Section 11(1) of the Act of 1953.

7. Thereafter, C.O. passed the impugned order dated 28.03.2012. The relevant portion of order dated 28.03.2012 reads as under:-

"पत्रावली के अवलोकन से स्पष्ट है कि अभिलेखीय साक्ष्य में वर्ग-9 के खातेदार राधेलाल द्वारा मात्र आधार वर्ष खतौनी (फसली 1395-1400) खाता 115 ही दाखिल की गयी है, जिसमें खाता सं. 115 में हरीशंकर सिंह पुत्र सत्यदेव सिंह कौम ठाकुर निवासी रेलवेगंज हरदोई के नाम गाटा सं० 3, 4, 18, 61 अंकित पाये जाते हैं तथा इसी फसली वर्ष को वर्ग-9 भाग-2 खतौनी खाता 12 प्रस्तुत की गयी है, जिसमें राधेलाल पुत्र छेदीलाल निवासी बेनीगंज गाटा 3, 4, 18, 61 पर (मुद्दत 1377 फसली) अंकित पाया जाता है। इसके अतिरिक्त न तो प्रारम्भिक खतौनी जिसमें वर्ग-9 इन्द्राज प्रथम बार दर्ज किया गया हो, प्रस्तुत की गयी है और न ही कब्जे के बावत किसी भी वर्ष का कोई खसरा दाखिल किया गया है तथा न ही पं०क- 10 की पर्ची ही प्रस्तुत की गयी है, जो कि वर्ग-9 इन्द्राज सिद्ध करने, के लिये मुख्य साक्ष्य होते हैं। पत्रावली के अवलोकन से यह भी स्पष्ट है कि न्या० चकबन्दी अधिकारी द्वारा वर्ग-9 खातेदार राधेलाल के पक्ष में स० भूमिधर कायम करने का जो आदेश दिनांक 12.7.90 को पारित किया था, उस समय की वर्ग-9 खातेदार राधेलाल द्वारा कब्जे के आधार पर स०भूमिधर कायम करने हेतु कोई आपत्ति/प्रार्थना पत्र नहीं दिया था, जिसका उल्लेख भी आदेश दिनांक 12.7.90 के आदेश में किया गया है कि किसी पक्ष द्वारा कोई आपत्ति प्रस्तुत नहीं की गई है, फिर भी बिना आपत्ति/प्रार्थना पत्र के ही अवैध कब्जेदार राधेलाल को संकृमणीय भूमिधर घोषित कर दिया गया है।

इस प्रकार उपरोक्त वर्जित स्थितियों एवं साक्ष्यों के आधार पर मैं इस निष्कर्ष पर पहुँचता हूँ कि वर्ग-9 काथेदार द्वारा अपने दावे के समर्थन में न तो कभी कोई दावा प्रस्तुत किया गया है और न ही वर्ग-9 इन्द्राज को साबित करने हेतु किसी प्रकार का साक्ष्य ही प्रस्तुत किया गया है। अतः वर्ग-9 इन्द्राज विधि सम्मन नहीं कहा जा सकता है, तदनुसार प्रतिवादी विजय आदि के पूर्वाधिकारी राधेलाल का प्रश्रुत खाता सं. 115 में अंकित श्रेणी- 9 इन्द्राज प्रथम दृष्ट्या निरस्त होने योग्य है तथा आपत्तिकर्ता हरिशंकर सिंह का नाम बतौर संकृमणीय भूमिधर पूर्ववत दर्ज रहने योग्य है। अतः तदनुसार आदेश दिया जाता है कि।

आदेश

ग्राम कुर्सी के आधार वर्ष खतौनी (फसली 1395-1400) के खाता सं 115 में दर्ज खातेदार हरिशंकर सिंह पुत्र सत्यदेव सिंह निवासी रेलवे गंज हरदोई का नाम बतौर संकृमणीय भूमिधर यथावत दर्ज रखा जाय तथा वर्ग-9 इन्द्राज राधेलाल पुत्र छेदीलाल वादहू वारिसान विजय कुमार व अजय कुमार व सुनील कुमार पुत्रगण राधेलाल तथा संजय व संदीप व शोभित पुत्रगण रामस्वरूप व श्रीमती रामेश्वरी पत्नी रामस्वरूप तथा अनिल कुमार पुत्र राधेलाल मृतक वादहू वारिस प्रसव नाबालिग उम्र 15 वर्ष पुत्र अनिल सांरक्षिका रामेश्वरी देवी निवासी बेनीगंज पर० तहसील सण्डीला का नाम निरस्त किया जाता है। पत्रावली वाद अमलदरामद दाखिल दफ्तर हो।"

8. Appeal No. 217 challenging the order dated 28.03.2012 was dismissed vide impugned order dated 20.03.2014 passed by S.O.C. and the two revision(s) filed by the petitioner(s) i.e. Revision No. 33 of 2019, Computerized Case No. 2014531033000061 (Sunil Kumar Versus Hari Shankar and Others) and Revision No. 32 of 2019, Computerized Case No. 2014531033000060 (Smt. Anuradha Gupta Versus Vijay Kumar alias Bablu), were dismissed vide impugned order dated 22.06.2019. The relevant portion of order dated 22.06.2019 reads as under:-

"निगरानीकर्तागण एवं उत्तरदातागण की लिखित बहस के अवलोकन से मौखिक बहस सुनने से स्पष्ट है कि विवाद आधार वर्ष खतौनी खाता सं० 115 जो कि हरीशंकर सिंह पुत्र सत्यदेव सिंह निवासी रेलवेगंज हरदोई के वर्ग -9 में राधेलाल पुत्र छेदी लाल नाम दर्ज होने के सम्बन्ध में है। चकबंदी अधिकारी बेनीगंज के आदेश दिनांक 12.07.90 द्वारा अंकित खातेदार हरिशंकर का नाम खारिज कर वर्ग 9 में काश्तकार राधेलाल को भूमिधर घोषित किया। इस आदेश के विरुद्ध हरिशंकर ने बंदोबस्त अधिकारी चकबंदी के न्यायालय में अपील योजित की। जो अपीलीय न्यायालय के आदेश दिनांक 14.09. 11 द्वारा अपील स्वीकार कर वाद च० अ० हरपालपुर को प्रत्यावर्तित किया गया। चकबंदी अधिकारी हरपालपुर द्वारा दिनांक 28.03.12 हरीशंकर पुत्र सत्यदेव सिंह का नाम पूर्ववत दर्ज करते हुए वर्ग 9 के काश्तकार राधेलाल वादहू वारिसान विजय कुमार आदि के नाम खाते से खारिज कर दिए। जिसके विरुद्ध भी अपील दायर की गयी। जो बंदोबस्त अधिकारी चकबंदी ने दिनांक 20.03.14 को निरस्त करते हुए चकबंदी अधिकारी हरपाल पुर के आदेश दिनांक 28.03.12 कि पुष्टि की है।

निगरानीकर्तागण द्वारा वर्ग 9 की प्रविष्टि से समर्थित कोई अभिलेख प्रस्तुत नहीं किया गया जैसे नकल खसरा, बारह साला, सिचाई लगान की रसीदें, प०क० 10, प० क० 24 आदि। सबसे महत्वपूर्ण तथ्य यह है कि खतौनी के

दोनों भागों की नकल आदेश दिनांक 12.07.90 के उपरांत दिनांक 31. 07.90 को जारी की गयी। उसके उपरांत भी पीठासीन अधिकारी द्वारा इन पर के० ओ० एफ० अंकित कर दिनांक रहित हस्ताक्षर अंकित किया गया। वर्ग 9 के इन्द्राज को संदेह जनक एवं अविधिक स्पष्ट करता है। पत्रावाली पर उपलब्ध साक्ष्यों से राधेलाल का निरंतर बारह साला का अनाधिकार कब्जा विवादित भूमि पर सिद्ध नहीं है। वर्ग 9 के सम्बन्ध में उत्तर दाता के विद्वान अधिवक्ता द्वारा आर० डी० 2003 (94) पेज 535 साधूसरन बनाम ए० डी० सी० गोरखपुर की ओर ध्यान आकृष्ट किया गया जिसमें माननीय उच्च न्यायालय द्वारा प्रतिपादित व्यवस्था में यह अवधारित किया गया है कि लैण्ड रिकार्ड मैनुअल पैरा-ए-80, ए-81, ए-82 एवम 102 प०क 0-10 का जारी न होना वर्ग-9 का इन्द्राज बिना किसी सक्षम अधिकारी के आदेश के किया गया अवैध इन्द्राज स्वत्व प्रदान नहीं करता का सिद्धान्त अवधारित किया गया है। (Land Record Manual – Paragraph A-80 A-81 A-82 And 102 P.A. 10-No Issueance Of –Entery Of Class IX-Made Without Order Of Any Competent Authority-Effect Of-Illegal Entries Does Not Confer Title Concurrent finding no interference warranted). Para 7

उत्तरदातागण के अधिवक्ता गण का कथन है कि आदेश चकबंदी अधिकारी दिनांक 28.03.12 उपलब्ध तथ्यों एवं साक्ष्यों पर आधारित है। यदि साक्ष्य का अवसर प्रदान करने के उपरांत भी यदि वही परिणाम आने कि सम्भावना है तो सुनवाई एवं साक्ष्यों का अवसर प्रदान करना आवश्यक नहीं है। इस सम्बन्ध में मेरा ध्यान आर डी० 2012 (117) पेज 710 श्रीमती कैलाशो देवी बनाम डी० डी० सी० बरेली की ओर से आकर्षित करते हुए तर्क दिया है कि मा० उच्च न्यायालय द्वारा यह व्यवस्था प्रतिपादित की है कि नैसर्गिक न्याय का सिद्धान्त स्पष्टित फिर भी यदि सुनवाई का अवसर प्रदान करने के उपरांत यदि वही परिणाम आने वाला है। बिना सुनवाई का अवसर प्रदान किये ही आदेश पारित किया। ऐसे आदेश में मात्र इस आधार पर हस्तक्षेप नहीं किया जायेगा कि सुनवाई का अवसर प्रदान नहीं किया गया।

आर० डी 2009 (106) पेज 784 हेमाजी बागजी बनाम भीखा भाई खेंन गरवी हरिजन एवं अन्य में मा० उच्चतम न्यायालय द्वारा प्रतिपादित व्यवस्था की ओर आकर्षित किया है। जिसमें उल्लिखित है कि विपरीत अध्यासन का सिद्धान्त विपरीत अध्यासन का अविचन भार उस व्यक्ति पर है। जो उसे स्थापित करे इसमें यह भी स्पष्ट किया गया है कि विपरीत अध्यासन का विधि लाभ नहीं होगा उस व्यक्ति को जो संपत्ति का अध्यासन सत्यस्वामी से चोरी छिपे प्रकार से लेता है- विधि का उल्लंघन करके। (Adverse Possession – Principle Of Pleading of adverse possession-burder on person on establish it.) Para 21

Adverse Possession-Law Of-Not To Benefit A Person who clandestine maner takes possession of the property of owner in contravention of law. (Para 38)

उत्तर दाता गण के विद्वान अधिवक्तागणों द्वारा मौखिक बहस में कहा फ्राड इंट्री के आधार पर राधेलाल व उनके वारिसानों को कोई स्वत्व प्रदान नहीं किये जा सकते हैं। इस सम्बन्ध में मा० उच्च न्यायालय द्वारा आर० डी० 2010 (110) पेज 794 अन्त्योदय सेवा समिति बनाम डी. डी. सी. / कलेक्टर एटा में यह व्यवस्था दी है कि इन्द्राज किसी आदेश द्वारा समर्थित नहीं – उचित विलोपित किया-हस्तक्षेप की आवश्यकता नहीं है। प्रस्तुत प्रकरण में वर्ग 9 के सम्बन्ध में कोई आदेश नहीं पाया गया है। इस प्रकार वर्ग 9 की प्रविष्टि फर्जी है।

इसी प्रकार आर डी 2006 (101) 26 राम नगीना बनाम डी०डी०सी० देवरिया में मा० उच्च न्यायालय द्वारा यह व्यवस्था प्रतिपादित की है। राजस्व अभिलेखों में अंकित बिना आदेशों से समर्थित प्रविष्टि, फर्जी प्रविष्टि है।

मा० उच्च न्यायालय इलाहबाद द्वारा हरिराम ब० श्रीमती बिट्टू (2012(30)LCD 2292) के बाद में प्रक्रिया का दुरुप्रयोग करते हुए वाद को लम्बा खींचने एवं निस्तारित न होने देने में संदिग्ध एवं भ्रामक प्रक्रिया अपनाने जाने पर आपत्ति कर्ता के ऊपर एक लाख का जुर्माना लगाया गया।

मा० उच्चतम न्यायालय द्वारा टी अरविंददाम व टी० वी० सत्यपाल व अन्य (AIR 1977 SC 2421) में अभिनिर्धारित किया गया है कि तीक्ष्ण व्यवहार और विधिक बाजीगरी से न्यायालय प्रक्रिया में डिक्री को प्रभाव हीन बनाने की प्रवृत्ति को विधि के लम्बे हाथों से समुदाय के विधिक व्यवस्था में साख और विश्वास अक्षुण्ण रखने के लिए कुचल दिया जाना चाहिए।

मा० उच्चतम न्यायालय द्वारा हनामंथा राणोजी ब० महादेव चन्नाबासप्पा (2000 SC FB RC 321) एवं रविंदर कौर ब० अशोक कुमार व अन्य (2003 AIR SCW 7158) में उपयुक्त मत की पुष्टि की गयी है। जिसमें अभिनिर्धारित किया गया है कि बहुतेरे अनैतिक याचीगण संदिग्ध एवं भ्रामक तरीके से न्यायालय के आदेशों को रोकते हैं। ऐसी प्रवृत्तियों को गंभीरता से ग्रहण करते हुए यथोचित आदेश द्वारा न्यायालय दमन करे। न्यायालय द्वारा सावधानी पूर्वक ऐसी प्रवृत्तियों एवं न्याय को धता बताने वाली प्रक्रियाओं को दरकिनारा किया जाना चाहिए एवं उक्त प्रवृत्तियों पर अंकुश लगाना चाहिए जिससे न्यायिक प्रक्रिया तंत्र का नाम बदनाम न हो।

इस सम्बन्ध में माननीय सर्वोच्च न्यायालय ने 2014 (1) सिविल अपील रिपोर्ट्स पृष्ठ 434 में संदर्भित मनोहरण बनाम शिव राजन एवं अन्य के मामले में व्यक्त किया गया है कि सारवान न्याय और तकनीकी विचार एक दूसरे के सामने हो तो सारवान न्याय को वरीयता देनी चाहिए। किसी के हितों के विरुद्ध अन्याय नहीं होना चाहिए और मामले का निस्तारण गुण दोष के आधार पर होना चाहिए। (When substantial justice and technical consideration are pitted against each other, cause of substantial justice deserve to be preferred for the other side cannot claim to have vested right in Justice being done because of non deliberate delay).

पत्रावली के अवलोकन एवं मौखिक बहस सुनने के उपरांत मैं इस निष्कर्ष पर पहुंचता हूँ कि निगरानी कर्ता के अधिवक्ता वाद को विधिक बाजीगरी से न्याय निर्णयन को विलंबित तथा अंतिम रूप न देने से न्यायिक प्रक्रिया को विफल करना चाहते हैं। माननीय उच्चतम न्यायालय द्वारा ऐसी प्रवृत्तियों पर रोक लगते हुए यथोचित आदेश पारित किये जाने का दृष्टांत दिया गया है। निगरानी कर्ता गण वर्ग 9 की फर्जी प्रविष्टि को विधिक प्रविष्टि सिद्ध करने के समर्थन में कोई विधिक तथ्य एवं ठोस अभिलेखीय साक्ष्य प्रस्तुत करने में विफल रहे। अतः प्रस्तुत निगरानी बल हीन होने के कारण निरस्त होने योग्य है। बन्दोबस्त अधिकारी चकबंदी का आदेश दिनांक 20.03.14 व चकबंदी अधिकारी हरपालपुर का आदेश दिनांक 28.03.12 विधिरांगत एवं न्याय संगत है। इसमें किसी प्रकार के हस्तक्षेप की आवश्यकता नहीं है। अतः आदेश हुआ कि :-

आदेश

उपरोक्त विवेचना के आधार पर निगरानी सुनील कुमार आदि व श्रीमती अनुराधा दिनांकित क्रमशः 27.03.14 व 26.03.14 बल हीन होने के कारण निरस्त की जाती है और बन्दोबस्त अधिकारी चकबंदी का आदेश दिनांक 20-

03-14 व् चकबंदी अधिकारी हरपालपुर का आदेश दिनांक 28-03-12 यथावत अक्षुण्ण रहे।

पत्रावली बाद आवश्यक कार्यवाही दाखिल दफ्तर हो।"

9. In the aforesaid background of the case, the present petition has been filed.

10. The impugned orders as per the submissions advanced by learned Counsel for the petitioner(s) have been assailed broadly on the ground(s) that procedure as prescribed under the U.P. Consolidation of Holdings Rules, 1954 was not followed as also that proper opportunity of hearing was not provided to the legal heir/ legal representation of Radhey Lal (claimant), predecessor-in-interest of the petitioner(s), after remanding of case vide order dated 14.09.2011 passed by S.O.C. On the aforesaid aspect, reliance has been placed on Rule 26 of the Rules, according to which issues ought to have framed.

11. Per contra, it is stated that in the admitted position that Radhey Lal (claimant), predecessor-in-interest of petitioner(s), failed to prove the plea of adverse possession before the authorities under the Act including before the C.O. and accordingly there is no requirement to interfere in the matter on the ground based upon Rule 26 and also on the ground that proper opportunity was not given to the concerned. It is also stated that providing an opportunity of hearing to the petitioner(s) would be a futile exercise for the reason that Radhey Lal (original claimant) failed to prove the plea of adverse possession before the authorities under the Act of 1953. It is also stated that before this Court no document/evidence

has been placed on record based upon which it can be deduced that Radhey Lal (claimant), predecessor-in-interest of petitioner(s), matured his rights on account of possession over the property in issue.

12. Considered the aforesaid and perused the record.

13. From a perusal of the impugned orders, it is apparent that Radhey Lal (claimant), predecessor-in-interest of petitioner(s), failed to prove the plea of adverse possession as required under the law.

14. At the stage, learned Counsel for the petitioners stated that plea of adverse possession was not opposed and as such the same was not proved by Radhey Lal (claimant), predecessor-in-interest of petitioner(s).

15. Admittedly, the plea claiming rights over Khata No. 115 was of adverse possession. Adverse possession, in view of the law laid down by this Court, has to be proved by the person, who claims his rights based upon the plea of adverse possession, by adducing appropriate evidence.

16. In the case of ***Sabhai and another versus D.D.C. Faizabad in Writ-B No. 2255 of 1982***, this Court considered the judgment(s) passed in following cases:-

- (i) **Shashi Prabha vs. Dy. Director Of Consolidation Budaun And 3 Others; 2020 SCC OnLine All 636;**
- (ii) **Hazari vs. Mathura; 1991 SCC OnLine BoR (UP) 27; 1992 RD 79;**

(iii) writ Petition No. 2141 (Consolidation) of 1981 (Heshamullah And Others vs. Chakbandi, Pratapgarh And Others The U.P. Sanchalak);

(iv) Mangu vs. D.D.C & Others; 2010 SCC OnLine ALL 3233;

(v) Bramhanand Rai And Anr. vs. Dy. Director Of Consolidation, Ghazipur & Others; 1986 SCC OnLine ALL 84;

(vi) Azadar Hussain Khan And Others vs. Deputy Director Of Consolidation, Faizabad And Others; 2021 SCC OnLine All 580;

(vii) Gurmukh Singh and Ors. vs. Dy. Director of Consolidation/A.D.M. (F. and R.) and others; 1996 SCC OnLine All 823;

(viii) Jamuna Prasad vs. The Deputy Director of Consolidation and Ors.; 1980 SCC OnLine All 569;

(ix) Balchan and Ors. Versus Dy. Director of Consolidation Mau and 2 Ors.; 2015 SCC OnLine All 1080;

(x) Mata Badal Singh And Others vs. District Deputy Director Of Consolidation/Collector And Others; 2015 SCC Online All 7855;

(xi) Ram Naresh Misra vs. Sita Ram and Ors.; 2021 SCC OnLine All 425;

(xii) Indrapal Singh vs. The Deputy Director of Consolidation, Kheri and Ors.; 2019 SCC OnLine All 4553;

(xiii) Sattan and Ors. vs. D.D.C. and Ors.; 2017 SCC OnLine All 1829;

(xiv) Shambhoo and Others vs. Deputy Director of Consolidation, Faizabad and Another; 2014 SCC OnLine All 15517;

(xv) Hazari vs. Mathura (B.R.), 1991 SCC OnLine BoR (UP) 27; 1992 RD 79;

17. This Court in the case of Sabhai (Supra) after considering the above quoted judgment(s) observed that burden of proof is

upon the person claiming rights over the land on the basis of plea of adverse possession.

18. Paragraph 35 of the judgment passed in the case of Sabhai (Supra) being relevant reads as under:-

"35. With regard to entries in Khasra or Khatauni the settled view is that:-

(i) In order to rely upon khasra or khatauni entry in column-9, for possession burden is upon the person relying upon it to prove that entry was made after following the procedure of U.P. Land Records Manual. Paragraph-102-C, whereof requires issue/service of PA-10 to the recorded tenure holder and chairman of Land Management Committee.

(ii) If an entry has been made in column-9 of the Khatauni without issuing and service of PA-10 on the recorded tenure holder then such an entry was illegal and has no evidentiary value. The burden to prove that PA-10 was issued and served on the tenure holder is lying upon the person relying on the column-9.

(iii) The entries in the revenue papers not prepared by following the procedure prescribed under the U.P. Land Records Manual and PA-10 notice was not served on the main tenant, such entries are of no evidentiary value and would not confer any right.

(iv) The entries will have no evidentiary value if they are not in accordance with the provisions of U.P. Land Records Manual and the burden to prove is on the person who is asserting the possession on the basis of adverse possession.

(v) Unless it is proved that the Lekhpal had made the entry under Column 9 strictly in accordance with the provisions of the U.P. Land Records Manual and thereafter, a notice was sent to the recorded tenure holder in P.A.-10, no claim for adverse possession, could have been decreed."

19. It would be apt to indicate that as per settled principle the plaintiff has to prove his case and he can succeed on the strength of his own legs and not on the weakness of side opposite. In the case of **Rangammal v. Kuppuswami, (2011) 12 SCC 220**, the Hon'ble Apex Court observed that "Thus, the Evidence Act has clearly laid down that the burden of proving a fact always lies upon the person who asserts it. Until such burden is discharged, the other party is not required to be called upon to prove his case. The court has to examine as to whether the person upon whom the burden lies has been able to discharge his burden. Until he arrives at such conclusion, he cannot proceed on the basis of weakness of the other party.

20. Admittedly, Radhey Lal (claimant), predecessor-in-interest of petitioner(s), claimed his right over Khata No. 115 on the basis of plea of adverse possession and undisputedly the said plea was not proved before the C.O. by Radhey Lal (claimant), predecessor-in-interest of petitioner(s), and as per law Radhey Lal (claimant), was under obligation to prove his claim, which he failed to prove before the authorities under the Act of 1953. Before this Court also no document or evidence has been placed on record to establish the plea of adverse possession. Thus, this Court is of the view that claim of the petitioners on the basis of the plea of adverse possession has no force.

21. Further, in view of the aforesaid admitted position, this Court is of the firm view that the present case stands covered by 'useless formality theory' and no fruitful purpose would be served in interfering in the impugned order(s) on the ground(s)

that procedure as prescribed under the U.P. Consolidation of Holdings Rules, 1954 was not followed as also that proper opportunity of hearing was not provided to the legal heir/ legal representation of Radhey Lal (claimant), predecessor-in-interest of the petitioner(s), after remanding of case vide order dated 14.09.2011 passed by S.O.C.

22. 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."

23. In ***Dharampal Satyapal Ltd. Versus Deputy Commissioner of Central Excise and Others*** reported in (2015) 33 GSTR 1, the Hon'ble Apex Court observed as under:-

38. In *Escorts Farms Ltd. v. Commissioner***, this court, while reiterating the position that rules of natural justice are to be followed for doing substantial justice, held that, at the same time, it would be of no use if it amounts to completing a mere ritual of hearing without possibility of any change in the decision of the case on merits. It was so explained in the following terms :

* (2005) 5 EC 481. ** (2004) 4 SCC 281.

"64. Right of hearing to a necessary party is a valuable right. Denial of such right is serious breach of statutory procedure prescribed and violation of rules of natural justice. In these appeals preferred by the holder of lands and some other transferees, we have found that the terms of Government grant did not permit transfers of land without permission of the State as grantor. Remand of cases of a group of transferees who were not heard, would, therefore, be of no legal consequence, more so, when on this legal question all affected parties have got full opportunity of hearing before the High Court and in this appeal before this court. Rules of natural justice are to be followed for doing substantial justice and not for completing a mere ritual of hearing without possibility of any change in the decision of the case on merits. In view of the legal position explained by us above, we, therefore, refrain from remanding these cases in exercise of our discretionary powers under article 136 of the Constitution of India."

24. Upon due consideration of the aforesaid including the law referred above as also that Radhey Lal (claimant), predecessor-in-interest of petitioner(s), failed to prove the plea of adverse possession before the authority under the Act of 1953, though Radhey Lal (claimant), was under obligation to prove the plea of adverse possession, this Court is of the view that in the impugned order(s) no interference is required including on the ground(s) to the effect that proper procedure was not followed and proper opportunity of hearing was not provided to the legal heirs and legal representative of Radhey Lal (claimant).

25. Thus, petition lacks merit and both the petitions are hereby ***dismissed***. No order as to costs.

Order Date :- 25.01.2024

Jyoti/-