

IN THE HIGH COURT OF JUDICATURE AT ALLAHABAD

WRIT - A NO. 17707 OF 2023

Amar Pal Singh

....Petitioner

Versus

State of U.P. and others

....Respondents

Appearance :-

For Petitioner : Mr. Ramesh Upadhyay, Senior Advocate along with Mr. Rajan Upadhyay, Advocate

For Respondents : Ms. Monika Arya, Additional C.S.C. along with Mr. Roopesh Tiwari, Standing Counsel

HON'BLE J.J. MUNIR, J.

The petitioner is a member of the Provincial Civil Service¹ of the State. He is aggrieved by initiation of disciplinary proceedings against him and prays that the charge-sheet dated 18.08.2023 issued to him by the State Government, initiating proceedings under Rule 7 of the Uttar Pradesh Government Servants (Discipline and Appeal) Rules, 1999² be quashed. There is another prayer, which says that a *mandamus* be issued to the respondents, ordering them to conclude the disciplinary proceedings initiated against the petitioner expeditiously. Though the second prayer is not expressed to be one made in the alternative, but, the

1 'PCS' for short

2 'Rules of 1999' for short

two are so diametrically opposed to each other that they have to be regarded as prayers made in the alternative.

2. The petitioner was selected to the PCS of the State by the Uttar Pradesh Public Service Commission³ and appointed a Sub-Divisional Magistrate⁴ on 04.06.2005. He is an officer of the 2004 batch of the UPPSC. He was next promoted to the post of a City Magistrate in the year 2015, and then, an Additional District Magistrate in the year 2016. He was posted as an Additional Commissioner in the year 2022 and since then, is working as the Additional Commissioner (Administration), Chitrakoot Dham Division, Banda in the Divisional Commissionerate there.

3. A charge-sheet was issued to the petitioner on 18th August, 2023 under Rule 7 of the Rules of 1999. The substance of the charge carried in the charge-sheet against the petitioner is that while posted as the Additional District Magistrate (Administration), Lucknow, he granted permission under Section 98 of the Uttar Pradesh Revenue Code, 2006⁵ to *bhumidhar* belonging to the Scheduled Caste⁶ to transfer land to persons other than members of the SC, ignoring the report of the SDM that there was no description of the land held by the vendor, the medical necessity certificate and the non-encumbrance certificate. In one of the files relating to transfer, there was no report by the SDM. The imputation further goes that though these certificates are enclosed with the relevant files moved to seek permission for transfer, there is neither mention of these certificates nor the report of the SDM, saying that the certificates are not there in the order passed by the petitioner, permitting transfers. The transferees from the members of the SC later on sold off their land to the Uttar Pradesh Expressways Industrial Development Authority⁷ for valuable

3 'UPPSC' for short

4 'SDM' for short

5 'Code' for short

6 'SC' for short

7 'UPEIDA' for short

consideration, causing loss on one hand to the *Gaon Sabha* by transferring land belonging to the *Gaon Sabha*, unauthorizedly and deceitfully, and on the other, loss to the exchequer. The charge ultimately is that if the petitioner had been vigilant in granting permission for transfer, carefully examining the record of *Gaon Sabha*, the land in question would not have been sold and loss of money to the exchequer eschewed. The act, according to the charge-sheet, constituted gross negligence and serious irregularity, showing the petitioner to be *prima facie* guilty of misconduct under Rule 3 of the Uttar Pradesh Government Servant Conduct Rules, 1956⁸.

4. The petitioner says that this is a case where no charge worth inquiry is disclosed against him, and therefore, the charge-sheet ought be quashed. It is the petitioner's case that he has not committed any misconduct and performed his duties with utmost sincerity and honesty. He passed orders permitting transfer, after considering the entire material available on record, following the rules and regulations in a quasi-judicial capacity. It is emphasized that the powers under Section 98 of Code read with Rule 99 of the Uttar Pradesh Revenue Code Rules, 2016⁹ that have been exercised in this matter are quasi-judicial in nature, and therefore, by settled principle, the petitioner cannot be punished merely for an error of judgment, if any.

5. It is the petitioner's case that the issue of charge-sheet was preceded by a preliminary inquiry by a committee presided over by the Commissioner, Lucknow Division, Lucknow. This preliminary inquiry was held on the complaint of Mr. Vinay Kumar Singh and Mr. Shobhit Shukla, Advocates. The complaint is one dated 24.09.2021, addressed to the Chairman, Board of Revenue, U.P. Lucknow. It appears that a preliminary inquiry report was submitted by the Commissioner, Lucknow

8 'Rules of 1956' for short

9 'Rules of 2016' for short

Division, Lucknow to the Commissioner and Secretary, Board of Revenue, U.P., Lucknow through a memo dated 16.01.2023. In the preliminary inquiry, the petitioner was indicted. The Commissioner and Secretary, Board of Revenue submitted a memo dated 21.04.2023 to the Additional Chief Secretary, Department of Appointment and Personnel, Government of U.P., Lucknow, requesting that for the purpose of initiation of disciplinary proceedings against the SDMs Surya Kant Tripathi, Dr. Santosh Kumar and Shambhu Sharan, besides Manish Kumar Nahar, Dharmendra Singh and Sandeep Kumar, former Additional District Magistrate (Administration), permission in accordance with rules may be granted.

6. Some directions were issued by the Government on 10.05.2023 to the Board of Revenue, pursuant where to, the Commissioner, Lucknow Division, Lucknow submitted an amended inquiry report along with his letter dated 12.06.2023 to the Board. It is on the basis of the said inquiry report that disciplinary proceedings were instituted against the petitioner *vide* order dated 03.08.2023 issued by the Government, nominating the Commissioner, Kanpur Division, Kanpur as the *ex-officio* Inquiry Officer. It was directed by the same order that a charge-sheet would be issued in accordance with Rules. It is thus that the impugned charge-sheet dated 18.08.2023 came to be issued jointly signed by the Commissioner, Kanpur Division, Kanpur and the Additional Chief Secretary, Department of Appointment and Personnel, Government of U.P., Lucknow. The said charge-sheet was served upon the petitioner on 14.09.2023 through a letter of the Commissioner, Kanpur Division, Kanpur on the last mentioned date. It is also the petitioner's case that a Selection Committee was convened on 21.08.2023 to draw up a select list of candidates for promotion from the State PCS to the Indian Administrative Service in the year 2022. By the said date, no charge-sheet was issued to the petitioner,

but in the select list, juniors to the petitioner have been promoted to the central service.

7. Aggrieved by the impugned charge-sheet and the initiation of disciplinary proceedings against the petitioner, this petition has been instituted under Article 226 of the Constitution.

8. A counter affidavit on behalf of respondent No. 1 dated 17.01.2024 was filed, to which, the petitioner filed a rejoinder dated 07.05.2024. The petitioner filed a supplementary affidavit dated 06.07.2024 and another dated 21.07.2024. A counter affidavit has also been filed by the Special Secretary, Department of Appointment and Personnel, Government of U.P., in compliance with this Court's order on 19.08.2024, to which the petitioner has filed a rejoinder on 21.08.2024. This petition was admitted to hearing on 31.08.2024, which proceeded forthwith. The matter was heard further on 24.09.2024, and finally, on 27.09.2024, when judgment was reserved.

9. Heard Mr. Ramesh Upadhyay, learned Senior Advocate assisted by Mr. Rajan Upadhyay, learned Counsel for the petitioner and Ms. Monika Arya, learned Additional Chief Standing Counsel along with Mr. Roopesh Tiwari, learned Standing Counsel appearing on behalf of the State.

10. It is submitted by Mr. Ramesh Upadhyay, learned Senior Advocate that the inquiry report submitted by the Commissioner, Lucknow Division, Lucknow employs the words "विधि विरुद्ध" (against the law) for condemning the petitioner's act in granting permission under Section 98 of the Code as a misconduct. Which provision of the law has been violated by the petitioner while granting permission under reference has not been mentioned anywhere in his findings. It is urged that the orders made by the petitioner, granting permission, was an exercise of quasi-judicial powers under Section 98 of the Code. The permission was granted

as all conditions enumerated in Section 98 were fulfilled by the applicant. Section 98, according to the learned Senior Advocate, provides for grant of permission, and Rule 99 of the Rules of 2016 provides the conditions subject to which permission is to be granted. Mr. Upadhyay has drawn the Court's attention to the rejoinder affidavit dated 21.08.2024 and pointed out that copies of applications, which have been moved before the petitioner to seek the requisite permission for transfer of land, would go to show that all ingredients necessary for grant of permission were satisfied. There was no occasion for the petitioner to have refused permission. It is emphasized that there is an allegation in the Commission's preliminary inquiry report that the petitioner retained the file for sufficiently long period of time, during which, he got it completed, that is to say, caused all deficiencies to be made good, and then granted the requisite permission for sale. It is submitted that this imputation is *ex-facie* fit to be rejected, because the petitioner has brought on record a copy of the order-sheet, which shows that all the cases assigned to him were decided by the petitioner on the day following that he received these by transfer from the District Magistrate. It is pointed out by the learned Senior Advocate that in compliance with the order dated 11.12.2023 passed by the Lucknow Bench of this Court for the conduct of a fresh preliminary inquiry, a fresh preliminary inquiry under the chairmanship of the Chairman, Board of Revenue was held. An inquiry report dated 13.08.2024 was made, wherein, with regard to the petitioner, it was remarked that the permission granted by him was against the law (विधि विरुद्ध). There is also a remark in the said report made by the Chairman, Board of Revenue that the petitioner should have taken more care before granting permission. In the aforesaid inquiry report, it has been said of Dharmendra Singh, who was the Additional District Magistrate, Land Acquisition, at the relevant time posted at Lucknow, alongside the petitioner, that he had colluded with others like revenue officials in the *tehsil* to distribute compensation,

causing financial loss to the Government. Dharmendra Singh too was charge-sheeted on 13.09.2023. These proceedings were withdrawn on 18.09.2023 and Dharmendra Singh promoted to the Indian Administrative Service.

11. Mr. Upadhyay has emphasized that by preponderant authority, it has been held by this Court that departmental proceedings cannot be instituted against an officer exercising quasi-judicial powers only on the ground of error of judgment, carelessness, or negligence in the performance of his duties. It can be instituted only if it involves moral turpitude, unlawful behaviour, forbidden act etc. He has relied on the authority of **Raj Kumar Dwivedi v. State of U.P. through Additional Chief Secretary, Appointment, Lucknow and another**¹⁰, besides **Shri Prakash Gupta v. State of U.P. through Additional Chief Secretary, Appointment, Lucknow and others**¹¹. It is also pointed that **Shri Prakash Gupta (supra)** has been affirmed by the Division Bench upon an appeal in **State of U.P. through Additonal Chief Secretary, Department of Appointment, Government of U.P., Civil Secretariat, Lucknow and another v. Shri Prakash Gupta and others**¹². Further reliance has been placed upon **Shivani Singh v. State of U.P. through Chief Secretary, Government of U.P., Lucknow and others**¹³. The thrust of these decisions, which rely on the authority of the Supreme Court as well, is that unless there are some extraneous considerations in the rendering of a quasi-judicial order, mere error of judgment, mistake or even negligence would not give rise to a charge against an officer, exercising quasi-judicial powers. The submission, therefore, is that disciplinary proceedings of this kind, and on the charge that these have been initiated against the petitioner, ought be quashed at the threshold.

¹⁰ 2024:AHC-LKO:60811

¹¹ Writ - A No. 29828 of 2021, decided on 13.07.2022

¹² 2022:AHC-LKO:59147-DB

¹³ 2024:AHC-LKO:54832

12. Ms. Monika Arya, learned Additional Chief Standing Counsel and Mr. Roopesh Tiwari, learned Standing Counsel, on the other hand, submit that a preliminary inquiry was held under the orders of this Court passed in **Jamuna and others v. State of U.P. through Additional Chief Secretary, Principal Secretary, Revenue Civil Secretariat, Lucknow and others**¹⁴. A copy of the report, a voluminous document, has been annexed as Annexure No. CA-3 to the counter affidavit dated 20.08.2024 filed on behalf of the State. It is submitted by the learned Counsel for the State that the SDM made a report that non-encumbrance certificates, proof of land being held by the sellers and medical certificates were not there. The petitioner, knowing all these relevant facts, granted permission to transfer in favour of persons who were got up to act as vendors by causing them to be regarded as *bhumidhar* with transferable rights within the period of 2-3 months. In the records of the Additional District Magistrate, that is to say, the petitioner, who granted the permission on some files, requisite medical certificates, non-encumbrance certificates and proof of land held by the sellers are attached. It is submitted by the learned Counsel for the State that the petitioner did not see that while these certificates were there on record in some of the files, they did not come attached with the report of the SDM. He did not care to examine as to how these certificates appeared on the files, when they were not forwarded by the SDM. It is also emphasized by the learned State Counsel that some allottees of *patta* of *Gaon Sabha* land, who were declared *bhumidhar* with transferable rights a few days prior to the making of the application for permission too were granted permission to transfer. In some cases, the application for permission to sell was made even before the vendor was declared a *bhumidhar* with transferable rights. Some of the alleged allottees holding land on *patta* gave false statement that they had not entered into any contract, that is to say, before the authority who was to declare them *bhumidhar*, whereas, the records show that contract and agreements to sell

¹⁴ 2023:AHC-LKO:81272-DB

were entered into between them before enlargement of their rights into *bhumidhari* with transferable rights.

13. It is also argued that Rule 99(4) of the Rules of 2016 mandate that an inquiry be done by an officer not below the rank of a *Naib Tehsildar*, regarding the circumstances, entitling a *bhumidhar* belonging to the SC to transfer land to a person not of that category, but no such inquiry was done, despite the circumstances being very suspicious. It is particularly argued that Rule 99(8)(b) of the Rules of 2016 provide that if a *bhumidhar* or any member of his family is suffering from a fatal disease and a certificate in this regard has been issued by a physician or a surgeon, the Collector may take into consideration the fact while granting permission for transfer. Here, the petitioner neither conducted any investigation into these relevant facts himself nor caused it to be inquired if the sellers or members of their family were suffering from any fatal disease, as contemplated under the Rules. It is argued further that the permission to transfer/sell was granted on papers, where the medical certificate appeared on the file in a suspicious manner, which, imperatively, required investigation, as mandated under the Rules, by the *Naib Tehsildar* or an officer above that rank. It is argued that the permission was granted without inquiry or verification and either in the absence of the requisite certificates and documents or in the presence of documents, whose presence on the record was unexplained. It was all a conspiracy to usurp compensation for land that was the *Gaon Sabha*'s. If the essentials of the statutory requirements were adhered to, the entire conspiracy could be exposed and the exchequer spared the loss that it suffered. It is also emphasized that the act of the petitioner in granting permission without complying with the provisions of the Statute, both the Act and the Rules, in a cursory manner, followed by distributing government funds received from the UPEIDA, reveals ill-will and

collusion on his part, together with other officers, for extraneous considerations.

14. We have carefully considered the rival submissions advanced by learned Counsel for the parties. The point that arises for consideration in this case is if the petitioner, *prima facie*, exercised his powers to grant permission under Section 98 of the Code, committing a mere error of judgment on facts or law, or may be, a gross error, or went perverse with his reasoning or did he act out of improper motive or for extraneous considerations.

15. It is true that a quasi-judicial authority like a judicial officer is to be protected about the orders that he makes, that are flawed indeed in law or facts. Such orders, even if perverse, like orders that are wrong, are to be corrected by the appellate and the revisional fora. But, a quasi-judicial officer or a judicial officer, who reasons wrongly on facts and law, or even perversely, is not to be penalized by charging him for misconduct. If his errors or even perversities were to be regarded as misconduct, punishable in the disciplinary jurisdiction, the wheels of dispensation of justice or disposal of quasi-judicial business would come to a standstill. It would, most certainly, slow down to a snail's pace, never to achieve the purpose for which it is there. This, however, does not mean that where, apparently, a quasi-judicial officer has acted out of improper motive or due to extraneous consideration, his conduct is not to be inquired into. It is quite another matter that appearances may be false, and on the holding of a departmental inquiry, what appears to be an action borne out of improper motive or based on extraneous consideration may be no more than negligence. Even negligence in the performance of his quasi-judicial functions by an administrative authority or a judicial officer may not lead to the initiation of any disciplinary proceedings.

16. Section 98 of the Code reads :

98. Restrictions on transfer by bhumidhars belonging to a scheduled caste- (1) Without prejudice to the provisions of this Chapter, no bhumidhar belonging to a scheduled caste shall have the right to transfer, by way of sale, gift, mortgage or lease any land to a person not belonging to a scheduled caste, except with the previous permission of the Collector in writing:

Provided that the permission by the Collector may be granted only when-

(a) the bhumidhar belonging to a scheduled caste has no surviving heir specified in clause (a) of sub-section (2) of Section 108 or clause (a) of Section 110, as the case may be; or

(b) the bhumidhar belonging to a scheduled caste has settled or is ordinarily residing in the district other than that in which the land proposed to be transferred is situate or in any other State for the purpose of any service or any trade, occupation, profession or business; or

(c) the Collector is, for the reasons prescribed, satisfied that it is necessary to grant the permission for transfer of land.

(2) For the purposes of granting permission under this section, the Collector may make such inquiry as may be prescribed.

17. Rule 99 of the Rules of 2016, which guide the exercise of power under Section 98 of the Code, reads :

99. Collector's permission for transfer of Scheduled Caste bhumidhar's land. (Section 98)- (1) An application under Section 98 (1) or under section 98 (1) read with section 107, for permission to transfer land by way of sale or gift or for permission to bequeath land by Will, as the case may be, shall be made by a Bhumidhar with transferable rights belonging to Scheduled Caste to the Collector in R.C. Form-27.

(2) An application under Section 98 (1), for permission to mortgage his interest in the land shall be made by a bhumidhar, belonging to a Scheduled Caste to the Collector in R.C. Form-28.

(3) An application under Section 98 (1), for permission to let out land shall be made by a bhumidhar belonging to a Scheduled Caste to the Collector in R.C. Form-29.

(4) On receipt of an application under section 98 (1), the Collector shall make such inquiry as he may, in the circumstances of the case, deem necessary. He may also depute an officer not below the rank of Naib Tahsildar for:

(a) verification of the facts stated in the application; and

(b) reporting the circumstances in which permission for transfer is sought.

(5) The inquiry officer referred to in sub-rule (4) of this rule shall submit the report in duplicate within the period of fifteen days, from the date of receiving the order of such inquiry.

(6) A copy of the report shall be supplied to the applicant free of charge, from the office of the Collector where such report has been submitted.

(7) The applicant may file objection against the report submitted by the inquiry officer within the period of seven days from the date of receipt of the copy of the report.

(8) After receiving the report submitted under sub-rule (3) and the objection, if any, if the Collector is satisfied that-

(a) the conditions of clause (a) or clause (b) of sub-section (1) of Section 98 are fulfilled; or

(b) the tenure holder or any member of his family is suffering from any fatal disease regarding which the certificate has been issued by any physician or surgeon specialist in the disease concerned and the permission for transfer is necessary to meet out the expenses for the treatment of such disease; or

(c) the applicant is seeking permission under Section 98(1) of the Code for the proposed transfer to purchase any other land from the consideration of such proposed transfer and the facts in this regard in the application are supported with certified copy of a registered agreement to sell in favour of the applicant; or

(d) the area of land held by the applicant on the date of application does not, after such transfer, reduce to less than 1.26 hectares, and

(e) if the permission is being sought for transfer by sale the consideration for the transfer of the land is not below the amount calculated as per the circle rate fixed by the Collector;

he may grant the permission by recording the reasons.

Explanation—For the removal of doubt it is hereby clarified that if the condition enumerated in clause (d) of this sub-rule is not fulfilled but any condition enumerated in clauses (a) to (c) of this rule is fulfilled the permission under Section 98(1) of the Code may be granted by Collector.

(9) An application referred to in sub-rule (2) or sub-rule (3) of Rule 99 for permission to mortgage or to let out land, as the case may be, may be granted by the Collector on his being satisfied that the mortgage or letting out, as the case may be, is not possible in favour of a person belonging to a Scheduled Caste or Scheduled Tribe.

(10) An application referred to in sub-rule (1) of Rule 99 for permission to bequeath land by Will, may be granted by the Collector on his being satisfied that the bequeath of the land was not possible in favour of the person belonging to a Scheduled Caste or a Scheduled Tribe.

(11) The Collector shall make an endeavour to dispose of the application under Section 98(1) within the period of fifteen days from the date of receiving the report submitted by the inquiry officer and if the application is not disposed of within such period the reason for the same shall be recorded.

18. As noticed at the outset, much authority has been relied upon by the learned Senior Advocate appearing for the petitioner, mostly Bench decisions and Judges of this Court sitting singly to hold that quasi-judicial authorities, for the errors they commit in judgment, may be gross or negligent, are not to be visited with penal consequences, after holding disciplinary proceedings against them, dubbing those errors as misconduct. It is true, as we would presently see, that in most of those decisions, the principle is that for errors of judgment on law or facts, or even perverse conclusions or negligence of a quasi-judicial officer or a judicial officer, is not to be proceeded with in the disciplinary jurisdiction. It is to be remarked that in the decisions relied upon, the facts show that officers were already proceeded with in the disciplinary jurisdiction and inflicted with penalties, when they came to Court, laying challenge. With the full course of the disciplinary proceedings wide open and all evidence there, the Court, no doubt, concluded in those authorities that disciplinary proceedings should never have been initiated. It is also true that if disciplinary proceedings ought not be initiated, there is no point in permitting them to run their full course and then arrive at a conclusion, as if in repentance, that the proceedings should never have commenced. It is, perhaps, on account of the said reason that the petitioner, being convinced

that he has committed no more than error of judgment, gross or trivial, that he has moved this Court, seeking to quash the charge-sheet. Essentially, he seeks quashing of proceedings. May be, he could have applied for a Prohibition, instead of a *Certiorari*. But, insistence on forms in contemporary times is not much favoured by the law in the writ jurisdiction, so long as there is a remedy to seek on a good cause of action, and the writ petition maintainable.

19. It would be of immense profit to briefly survey the authority relied upon on behalf of the petitioner in **Raj Kumar Dwivedi**. The facts are not very copiously set out, but, what appears from a reading of the judgment, is that the petitioner in that case, was an officer empowered to decide applications under Section 33/39 of the Uttar Pradesh Land Revenue Act, 1901¹⁵. He made some orders, which were said to be erroneous. The orders were challenged before the Deputy Director of Consolidation under Section 48(3) of the Uttar Pradesh Consolidation of Holdings Act, 1953 and the false entries expunged. The order made by the petitioner in **Raj Kumar Dwivedi** on 22.01.2016 was set aside for reason that the documents relied upon by him, while passing the aforesaid order, were forged. After his order was set aside, the petitioner was placed under suspension on 25.01.2018 and suspension from service pending inquiry was later on revoked on 07.09.2021. He was, later on, punished by inflicting some penalty, that is not mentioned in the judgment. It is in the context of these facts that it was observed :

7. The Apex Court in re: **Zunjarrao Bhikaji Nagarkar (supra)** in para no. 29 has held that if the revenue officer in quasi-judicial adjudication has wrongly exercised his jurisdiction that wrong can be corrected in Appeal. That cannot always form a basis for initiating disciplinary proceedings against an officer while he is acting as a quasi-judicial authority. It must be kept in mind that being a quasi-judicial authority, he is always subject to judicial supervision in appeal.

15 'Act of 1901' for short

8. Learned Senior Advocate has further submitted that if any quasi judicial authority passes any order which is appellable or revisable, that order may not be treated as misconduct and if the conduct of an employee is not treated as misconduct, he may not be subjected to the departmental proceedings.

9. The Hon'ble Apex Court in re: Abhay Jain vs. High Court of Judicature of Rajasthan and Another, 2022 SCC Online Supreme Court 319 has held as under:

"71. We concur with the view of this Court in the aforesaid case that merely because a wrong order has been passed by the appellant or the action taken by him could have been different, this does not warrant initiation of disciplinary proceedings against the judicial officer.

*.....
74. In light of the above judicial pronouncements, we hold that the appellant may have been guilty of negligence in the sense that he did not carefully go through the case file and did not take notice of the order of the High Court which was on his file. This negligence cannot be treated to be misconduct....."*

10. In the present case, the petitioner has passed the orders under Sections 33/39 of U.P. Land Revenue Act, 1901 and against those orders, the statutory remedies are available. In paragraph no. 34 of the writ petition, the specific recital has been given to the effect that those orders have been challenged before the Deputy Director of Consolidation/District Collector under Section 48(3) of the U.P. Consolidation of Holdings Act and false entries were expunged and the order being passed by the petitioner on 22.01.2016 was set aside vide order dated 17.11.2017 for the reason that the documents relied upon by the petitioner while passing the aforesaid order were forged.

11. Therefore, in the light of what has been considered above, it is clear that the order passed by the petitioner on 22.01.2016 was set aside by the superior quasi judicial authority on 17.11.2017 and later on, the petitioner was placed under suspension on 25.01.2018. However, the aforesaid suspension order has been revoked on 07.09.2020.

12. Hence, in the light of the settled proposition of law laid down by the Apex Court in catena of cases, some of them has been referred above, the impugned order dated 14.08.2024 passed by the opposite party no.2 is patently illegal, arbitrary and uncalled for, therefore, the same is hereby set aside/quashed.

20. It does not truly appear if the misconduct attributed to the petitioner was a mere error of law in deciding the application under Section 33/39 of the Act of 1901 or even gross error or a perverse order, or the charge went beyond, that is to say, that it was an order made with improper motive or due to extraneous considerations. Thus, in our opinion, **Raj Kumar**

Dwivedi would not be of assistance in a case where, as here it is urged that the order was made out of improper motive or due to extraneous considerations, of course, to be inferred from circumstances too difficult to ignore.

21. The next is the authority in **Shri Prakash Gupta**, where, from a reading of the report, it appears that the petitioner was a Deputy Collector posted at Tehsil Sadar, District Mau in the year 1999. An application was made before him under Section 33/39 of the Act of 1901, seeking conversion of land from non-*Zamindari* Abolition to *Zamindari* Abolition. The petitioner, after inviting objections and report from the *Tehsildar*, and considering the entire material available on record, allowed the application by means of his order dated 07.11.2009. The facts in **Shri Prakash Gupta** can further on be best recapitulated in the words of his Lordship, as these appear in the report :

6. It has been submitted by learned counsel for the petitioner that while deciding the said application, it was mentioned that certain fraudulent entires have been made and corrected. The said land which was infact ZA land was recorded non ZA land and only to rectify and correct the revenue records, the petitioner was called upon to exercise power under Section 33/39 of Land Revenue Act.

7. Order dated 17.11.2009, passed by the petitioner was subjected to revision before the Commissioner, who allowed the said revision and set aside the order passed by the petitioner. While allowing the said revision the Commissioner held that petitioner did not had any jurisdiction to exercise power under Section 33/39 of the Land Revenue Act for converting non ZA land to ZA land. While setting aside the order passed by the petitioner, the Commissioner also recorded that copy of his judgment be placed before the Chief Secretary, Appointments for conducting an inquiry in the said matter. It is on the basis of direction issued by the Additional Commissioner that disciplinary proceedings were initiated against the petitioner and charge sheet was issued to him on 05.02.2018. The charge sheet was issued by the Commissioner, Azamgarh Division, Azamgarh who was appointed inquiry officer.

8. The inquiry proceedings concluded and inquiry report was submitted on 19.06.2018, exonerating the petitioner of all the charges. Finding was returned in the inquiry report

that there was no malafide intention neither it can be alleged nor can be proved for which the petitioner in exercise of his judicial functions could be charged.

9. On the inquiry report dated 19.06.2018, opinion was sought from Board of Revenue, in pursuance to which Board of Revenue also gave its opinion on 22.03.2019, for dropping the proceedings against the petitioner.

10. In the aforesaid backdrop of the facts, where the inquiry officer has also recorded finding in favour of the petitioner and even Board of Revenue had gave finding that there is no infirmity with the order passed by the petitioner, the matter was considered by the State Government and surprisingly by means of order dated 31.07.2019, the inquiry officer was asked to give his report specifically stating that on what facts guilt of the petitioner could not be proved during the said inquiry.

11. Learned counsel for the petitioner has submitted that said order on the face of it speaks of malafide on the part of respondents as the said order on the face of it is without jurisdiction and once inquiry officer has passed an order he becomes functus officio and only in case of direction for re-inquiry, he cannot have any jurisdiction in his capacity as inquiry officer, to submit a fresh inquiry report. Such a exercise of jurisdiction is alien to the service jurisprudence.

12. In view of the order of the State Government, the inquiry officer again submitted his report to the State Government, where he slightly deferred from his earlier opinion and now he stated that order passed by the petitioner was erroneous. Even in the second inquiry report there is no allegation that the petitioner has either misconducted himself or there was any extraneous consideration for deciding the said application. In the said report it was also recorded that all aspects of the matter which have been considered by the inquiry officer there are various judgments of Hon'ble Supreme Court and High Court and therefore, it was stated that legal opinion in this regard be taken by the Law Department of the State Government.

13. In pursuance to the second inquiry report, opportunity of hearing was given to the petitioner and consequently, impugned order dated 02.12.2021, has been passed imposing minor punishment of 'censure' to the petitioner.

22. The learned Judge in Shri Prakash Gupta proceeded to hold :

18. In the entire material either in the inquiry report, charge sheet, second inquiry report, there is not even an iota of allegation that petitioner's misconducted himself or there was any overt act or omission, which may entail initiation of disciplinary proceedings. It is submitted that law in this regard has been settled in series of judgments of Apex Court and most of them have been

considered in the recent judgment of Apex Court in the case of **Abhay Jain Vs. High Court of Judicature of Rajasthan and Another, 2022 SCC OnLine Supreme Court 319**, wherein the Court has held as under :

"71. We concur with the view of this Court in the aforesaid case that merely because a wrong order has been passed by the appellant or the action taken by him could have been different, this does not warrant initiation of disciplinary proceedings against the judicial officer.

.....

74. In light of the above judicial pronouncements, we hold that the appellant may have been guilty of negligence in the sense that he did not carefully go through the case file and did not take notice of the order of the High Court which was on his file. This negligence cannot be treated to be misconduct."

.....

20. From entire proceedings it cannot be seen from any material that there was any extraneous consideration while passing the said order by the petitioner. The petitioner had exercised his jurisdiction under Section 33/39 of the Land Revenue Act, it may be a case that appear to decide the said application specifically in view of the fact that the said land was non ZA land and its conversion to ZA land may not be permissible under the jurisdiction held by the petitioner, but this fact in itself cannot be the sole basis for initiation of disciplinary proceedings against the petitioner.

21. Hon'ble Apex Court in the case of **Zunjarrao Bhikaji Nagarkar Vs. Union of India and Others, (1999) 7 SCC 409, in para 29** has observed as under :

"29. In State of Punjab v. Ex-Constable Ram Singh this Court referred to the definition of "misconduct" as given in Black's Law Dictionary and Aiyar's Law Lexicon and said as under :

"6. Thus it could be seen that the work 'misconduct' though not capable of precise definition, on reflection receives its connotation from the context, the delinquency in its performance and its effect on the discipline and the nature of the duty. It may involve moral turpitude, it must be improper or wrong behaviour; unlawful behaviour, wilful in character; forbidden act, a transgression of established and definite rule of action or code of conduct but not mere error of judgment, carelessness or negligence in performance of the duty; the act complained of bears forbidden quality or character. Its ambit has to be construed with reference to the subject-matter and the context wherein the terms occurs, regard being had to the scope of the stature and the public purpose it seeks to serve.""

22. Considering various judgments of the Apex Court as stated above, present case is squarely covered by the aforesaid judgment of Apex Court and hence inquiry proceedings could not have been initiated against the

petitioner considering the fact that he passed the said order in exercise of his quasi judicial functions.

23. Upon the State's appeal to the Division Bench, it was remarked by their Lordships :

14. Accordingly, when we examine the charge sheet dated 05.02.2018, what we find is that the respondent no.1-petitioner was charged for committing some error while passing the order in judicial proceedings drawn by him on an application preferred by the aggrieved person, under Section 33/39 of the U.P. Land Revenue Act. It may be observed that in case any officer is to be charged in relation to his duties and functions performed or discharged by him in judicial matters, mere error of process or even error of judgment will not constitute any misconduct, unless, of course, such exercise of duty or power, even in a judicial matter, is coloured with proven extraneous consideration on which the decision of such an officer may be based.

15. When we consider the charge sheet dated 05.02.2018 on the touchstone of the aforesaid legal principles, we find that none of necessary the ingredients are available in charge no.1 so as to constitute any misconduct even in terms of the provision contained in Rule 3 of the U.P. Government Servant Conduct Rules, 1956. Rule 3 of 1956 Rules is general in nature which provides that every Government servant shall all times maintain absolute integrity and devotion to duty and further that every government servant shall conduct himself in accordance with specific or implied orders of the Government regulating behaviour and conduct, which may be in force.

16. The charge sheet dated 05.02.2018 does not disclose any allegation that the respondent no.1-petitioner had passed the order under Section 33/30 of the U.P. Land Revenue Act in the case concerned on any extraneous considerations or for any extraneous reasons. The only allegation as per charge sheet is that in the proceedings under Section 33/39 of the U.P. Land Revenue Act, long standing entries in the revenue record could not have been corrected, which is meant only for correction of clerical and arithmetical error and as such the respondent no.1-petitioner had acted unlawfully. The charge further states that the revenue entries in respect of non ZA land could not be corrected under Section 33/39 of the U.P. Land Revenue Act; rather such errors can be corrected under the provisions of U.P. Urban Area Zamindari Abolition Act and as such respondent no.1-petitioner had acted without jurisdiction while passing the order correcting the revenue records on the application preferred by the person concerned.

17. The order passed by the respondent no.1-petitioner may be incorrect or even unlawful, which is always subject to correction and examination by the superior

appellant/revisional courts. Under the scheme of U.P. Land Revenue Act, any person aggrieved by an order passed under Section 33/39 of the U.P. Land Revenue Act has a remedy of two fold revision petitions, firstly, he can file revision petition before the Commissioner of the Division and thereafter he if he is still aggrieved, he can invoke the revisional jurisdiction of the Board of Revenue.

18. Accordingly, even before adverting to the procedure as followed in this case for punishing the respondent no.1-petitioner with censor (*sic*) entry, we may opine that charge itself did not constitute any misconduct in absence of any allegation regarding the respondent no.1-petitioner having acted on extraneous considerations or for extraneous reasons.

.....

24. We have already observed that even the charge against the respondent no.1-petitioner did not contain any allegation of misconduct to the effect that the respondent no.1-petitioner had acted for some extraneous reasons or on extraneous considerations. Even during the course of inquiry no material could be gathered which could point out, in any manner, that the respondent no.1-petitioner while passing the order in judicial proceedings had acted for extraneous considerations. Hon'ble Supreme Court in the case of **Abhay Jain (*supra*)** has clearly opined that merely because a wrong order has been passed or merely because action taken by the charged officer would have been different, will not warrant initiation of disciplinary proceedings. Hon'ble Supreme Court in the said case of **Abhay Jain (*supra*)** has conducted a review of entire law relating to charging an officer in respect of discharge of his duties in judicial matters.

25. We have already noticed that neither in the charge was there any allegation regarding respondent no.1-petitioner having acted for extraneous reasons nor there is any material available on record of the disciplinary proceedings which may establish that he had acted on extraneous considerations. Even the Inquiry Officer as also the disciplinary authority did not find any such material which can lead to even suspicion of respondent no.1-petitioner having acted on extraneous consideration.

(emphasis by Court)

24. The last authority that was pressed in aid on behalf of the petitioner, to wit, **Shivani Singh (*supra*)** is also not very eloquent on facts to show how the principle was applied. It is difficult, therefore, to follow it. However, so far as the law laid down by the learned Judge in **Shri Prakash Gupta** and, of course, by the Division Bench in appeal arising out of the

judgment in **Shri Prakash Gupta** is concerned, the principles are of far-reaching consequence. The crux of the matter, that has been noticed both by the learned Judge and their Lordships of the Division Bench, clearly is that an error of judgment by a quasi-judicial authority, howsoever gross, may be even the result of a perverse finding, would not invite blame against the officer or expose him to the peril of disciplinary proceedings. But, it is only so long as it is not the charge that the officer acted for extraneous considerations or extraneous reasons or improper motive.

25. It is true that though the charge against the petitioner formally indicts him of gross negligence and serious irregularity, punishable under Rule 3 of the Rules of 1956, but that is the face or the façade of the charge. The substance of the imputations carried in the charge-sheet go a much longer way to say that in Village Bhatgaon, Tehsil Sarojaninagar of District Lucknow, land for the defence corridor was in the process of acquisition, and with the intention of illegally extracting crores of rupees in consideration for the *Gaon Sabha* / Government land, employees of the Revenue Department and some land *mafiosi* got bogus *patta* files constructed and caused bogus entries to be made in the revenue records regarding non-existent rights. These discrepancies were reported by Mr. Vinay Kumar Dubey and Mr. Shobhit Shukla, Advocates. This complaint was entrusted by the Board of Revenue, Uttar Pradesh, Lucknow for inquiry to a committee headed by the Commissioner, Lucknow Division, Lucknow. According to the report of the Committee, bogus *patta* in Village Bhatgaon, Sarojaninagar, Lucknow were shown executed in favour of certain persons in the year 1985, after constructing bogus *patta* related files. These persons were conferred *bhumidhari* with non-transferable rights, and then with transferable rights, by orders made by the *Tehsildar* and the SDM illegally. Out of these persons, the allottees or their heirs, whose names figure at Serial Nos. 8, 48 (02 files), 53 and 56 made applications for transfer of their lands to vendees other than

members of the SC. These *patta* holders upgraded to *bhumidhar* were members of the SC, as already said. They needed permission of the Collector, before they transferred their land to a vendee not belonging to the SC.

26. Upon applications seeking permission to transfer in favour of vendees not belonging to the SC, the SDM made a note to the effect that the land held by the vendor does not carry its description, besides the absence of a medical certificate and non-encumbrance certificate. In one of the files, the SDM had made no note or report. In the last mentioned file, the certificates noted to be absent in the other files are annexed, but, in the order made by the petitioner permitting transfer, there is no mention of the available certificates. The imputation goes that *prima facie*, these facts show that before receiving the certificates and without taking cognizance of the SDM's report, where available, the petitioner permitted sale of land held by members of the SC to vendees of other classes. Those vendees purchased the land, which they later on sold to the UPEIDA for valuable sale consideration. The imputation goes further on to say that in this fashion, land belonging to the *Gaon Sabha* on one hand was unauthorizedly and fraudulently sold, and on the other, loss was caused to the exchequer. It is in this background that the charge says that if the petitioner had been vigilant towards his duties and duly scrutinized the records with care and caution, *Gaon Sabha* land would not have been sold and the loss caused to the exchequer avoided.

27. Read as a whole, the charge against the petitioner, *prima facie*, is not one of a simple error of judgment, irregularity or mere negligence in the making of a quasi-judicial order. It is not even *prima facie* a case of a perverse order being passed. The charge is about the petitioner's involvement, apparently for extraneous reasons or on account of improper motive. This Court does not wish to say that the charge is true in the least

measure. It is for the respondents to establish the charge by evidence led during hearing before the inquiry. It is for the respondents to bear the burden to produce both documentary and oral evidence to prove charge and it is not for the petitioner to dispel it. Nevertheless, we do not agree with the petitioner that this is a case of mere error of judgment, mistake or even negligence in the passing a quasi-judicial order by him. At least, that is not the charge against him. It is true that the way the charge is worded at the tail-end and in its formal close, it does appear to be nothing more than an allegation of negligence in the discharge of his quasi-judicial functions by the petitioner. But, as already pointed above, the charge is way beyond it, with ample statement of imputations in the body thereof, that are suggestive of both an improper motive and extraneous consideration in the exercise of quasi-judicial powers by the petitioner in the grant permission to transfer. The petitioner may not have been around in the year 1985, when bogus *patta* were granted in favour of the land holders, through whom it is claimed that the land belonging to the *Gaon Sabha* was transferred to vendees not belonging to the SC and then sold to the UPEIDA, but he was certainly around, as it appears, when rights of many of the *patta* holders were enlarged by conniving revenue officials. On facts such as these, he passed order granting transfer of land held by *bhumidhar* of the SC to vendees not of that class, without looking into the report of the *Tehsildar* or the SDM or without considering the fact that some files had the relevant certificates, but not placed through the SDM's report. Therefore, the charge cannot be said to be one that is just about an error of judgment, mistake or mere negligence in the passing of his quasi-judicial orders by the petitioner.

28. We once more emphasize that we do not say that the charge is correct or true. What we emphasize is that this charge is one which, in the gravamen of it, carries imputations about the petitioner acting in the manner he did in the discharge of his quasi-judicial orders out of improper

motive or extraneous consideration, though not said in the formal words charging him. The imputations, that are the basis of the charge, nevertheless, cannot be ignored, or allegations of that kind. Therefore, the principles, on which the learned Senior Advocate relies, as laid down in **Raj Kumar Dwivedi, Shri Prakash Gupta and State of U.P. v. Shri Prakash Gupta and others** (*supra*), may not be of much assistance to the petitioner. It also has to be borne in mind that most of these cases, on which the petitioner has relied on facts, have seen the inquiry go through with all material on record. Here, the petitioner wants the charge-sheet to be quashed and the proceedings nipped in the bud. It is certainly possible in a case if on the face of it, the charge is no more than an error of judgement or mere negligence or even perversity in decision making by a quasi-judicial authority. But, that is not the case here. This is a charge which is required to be determined at the inquiry, which will have to take its own course. Thus, it is perhaps for this reason that the petitioner has come up with the alternative prayer to the effect that a *mandamus* be issued to conclude the disciplinary proceedings against him expeditiously. While we are of opinion that the charge-sheet in this case cannot be quashed at the threshold, considering the fact that the petitioner's promotion is due, it is imperative that the disciplinary proceedings (not just the inquiry) be expedited.

29. We would, therefore, direct the disciplinary proceedings against the petitioner to be concluded within a period of eight weeks from the date of receipt of a copy of this order by the Additional Chief Secretary (Revenue), Government of U.P., Lucknow in accordance with law and the guidance in this judgment about the the manner of holding the inquiry. Final orders shall be passed in the disciplinary matter within a period of eight weeks and the petitioner shall cooperate with the proceedings.

30. This petition stands **disposed of** in terms of the aforesaid orders.

31. There shall be no order as to costs.

32. The Registrar (Compliance) is directed to communicate this order to the Additional Chief Secretary (Revenue), Government of U.P., Lucknow through the learned Chief Judicial Magistrate, Lucknow.

Allahabad

February 07, 2025

I. Batabyal

(J.J. MUNIR)
JUDGE

Whether the order is speaking : Yes

Whether the order is reportable : Yes