



2025:AHC:161958-DB

HIGH COURT OF JUDICATURE AT ALLAHABAD

WRIT - C No. - 30775 of 2025

Rashid Husain And Another

.....Petitioner(s)

Versus

State Of U.P. And 2 Others

.....Respondent(s)

Counsel for Petitioner(s)	:	Arvind Kumar Srivastava, Virendra Singh
Counsel for Respondent(s)	:	Aditya Kumar Singh, C.S.C.

Court No. - 40

**HON'BLE SARAL SRIVASTAVA, J.
HON'BLE AMITABH KUMAR RAI, J.**

1. Heard learned counsel for the petitioners, learned Standing Counsel for the State-respondents and Shri Aditya Kumar Singh, learned counsel for respondent No. 3.
2. The petitioners, being aggrieved by the order dated 23.8.2025, have preferred the present writ petition, by which they have been directed to remove the construction raised by them on Gata No. 1091, area 0.051 hectare.
3. Shri Aditya Kumar Singh, learned counsel for respondent No. 3, states that respondent No. 3 does not propose to file any counter affidavit, as the instructions given to him have already been supplied to this Court.
4. The contention advanced by learned counsel for the petitioners is that the petitioners purchased 145 square meters of land of Gata No. 1090 situated in Sarai, Qasba, Pargana and Tehsil Faridpur, District Bareilly, by a registered sale deed dated 20.6.2011. The petitioners desired to construct a house over the said plot and accordingly submitted an application to respondent No. 2 for demarcation of their plot, inasmuch as the plot adjacent to the petitioners i.e. Gata No. 1091 is recorded as Naveen Parti. On their application, demarcation was done on 24.1.2020, which was approved by the Tehsildar by order dated 25.1.2020. It is evident from the said order that no construction was standing on Gata No. 1091 nor any encroachment was found on the said land. Thereafter, the petitioners constructed

their house on the plot purchased by them.

5. It is submitted that a notice was issued to the petitioners on 11.2.2020 calling upon them to remove the construction. The petitioners submitted their reply, but without considering the same, the respondent-authority issued another notice, which was challenged by the petitioners in Writ-C No. 20452 of 2025. The said writ petition was disposed of by judgment and order dated 1.7.2025, whereby the respondent was directed to consider the reply of the petitioners and pass appropriate orders.

6. However, before the said order dated 1.7.2025, an ex parte demarcation proceeding was conducted on 19.6.2025, which was approved by the Tehsildar by order dated 27.6.2025. Relying upon the said ex parte report, the respondent-authority passed the impugned order. It is contended that no notice or opportunity of hearing was afforded to the petitioners before passing the impugned order and in such view of the matter, the impugned order cannot be sustained.

7. Learned counsel for the respondents, on instructions, which are taken on record, submitted that the petitioners have encroached upon the land of respondent after 2020, and the impugned order is based upon the report of the Lekhpal approved by the Tehsildar, showing that the petitioners have encroached upon plot No. 1091 recorded as *Naveen Parti*.

8. Be that as it may, the fact remains that before raising any construction, the petitioners had applied for demarcation. On their application, demarcation was conducted by the *Lekhpal* on 24.1.2020 and was approved by the *Tehsildar* on 25.1.2020, wherein no encroachment was found. This report has not been denied by the respondents. Thus, it is evident that on the date of demarcation conducted on 24.1.2020, there was no encroachment on plot No. 1091. Yet, despite the petitioners' reply to the notice dated 11.2.2020, another notice was issued without considering their reply, the issuance of successive notice was not approved by this Court in Writ-C No. 20452 of 2025.

9. The relevant extract of the order in Writ-C No. 20452 of 2025 reads

as under:

"Be that as it may, once a notice has already been issued to the petitioners on 11.2.2020 under the same provisions to which the petitioners have submitted a detailed reply, it is expected that the authority will deal with such reply before proceeding any further in the matter. There is nothing on record to show that the petitioners' reply is taken note of or any orders are passed upon it. We cannot approve of issuance of successive notices without adverting to the reply earlier submitted in the matter by the petitioners.

In that view of the matter, we dispose of this petition with the liberty granted to Nagar Palika Parishad, Tehsil Faridpur, District Bareilly to proceed, in accordance with law and pass appropriate orders pursuant to the notice issued earlier to the petitioners on 11.2.2020.

It is clarified that without adverting to petitioners' reply and passing appropriate orders it would not be open for the authorities to successively issue notices in that regard. In order to facilitate consideration of petitioners' reply to the earlier notice we provide that till appropriate orders are passed in the matter, no further action would be taken pursuant to the impugned notice dated 16.6.2025."

10. In view of the order dated 1.7.2025 passed in Writ-C No. 20452 of 2025, it was expected from respondent No. 3 to adhere to the principles of natural justice and provide proper notice and opportunity of hearing to the petitioners before passing any order. Instead, respondent No. 3 arbitrarily conducted ex parte demarcation proceedings on 19.6.2025, which were approved ex parte by the Tehsildar.

11. From the record, it appears that the said demarcation order was never supplied to the petitioners, and reliance was placed upon it in passing the impugned order. The impugned order does not take into account the earlier report of the Lekhpal dated 24.1.2020 approved by the Tehsildar on 25.1.2020, which clearly records no encroachment. Thus, reliance upon the subsequent ex parte demarcation report dated 19.6.2025 is erroneous.

12. From perusal of the impugned order, it appears that no proper notice or opportunity of hearing was afforded to the petitioners. In

such view of the matter, the impugned order cannot be sustained in law and is accordingly set aside, with liberty to the respondent-authorities to pass a fresh order after giving due notice and opportunity of hearing to the petitioners. In case the respondent-authorities are of the considered view that a fresh demarcation proceeding is required, the same shall be undertaken in the presence of the parties for proper adjudication of their respective rights. Such proceedings shall be initiated only after issuing due notice to the petitioners, and a copy of the demarcation report shall be supplied to them. The competent authority, while undertaking such demarcation, shall strictly follow the procedure contemplated under Section 24 of the U.P. Revenue Code, 2006, and thereafter determine the rights of the parties afresh in accordance with law

13. With the aforesaid observations and directions, the impugned order is set aside.

14. The writ petition is allowed with no order as to costs.

September 12, 2025
Sumaira

(Amitabh Kumar Rai,J.) (Saral Srivastava,J.)