Lakhraj vs Addl. Commissioner (Judicial), ... on 2 January, 2025

Author: Jaspreet Singh

Bench: Jaspreet Singh

HIGH COURT OF JUDICATURE AT ALLAHABAD, LUCKNOW BENCH

?Neutral Citation No. - 2025:AHC-LKO:36

Court No. - 8

Case :- WRIT - C No. - 10013 of 2024

Petitioner :- Lakhraj

Respondent :- Addl. Commissioner (Judicial), Ayodhya Division, Ayodhya And Others

Counsel for Petitioner :- Noel Victor

Counsel for Respondent :- C.S.C.,Mohan Singh

Hon'ble Jaspreet Singh,J.

Heard learned counsel for the petitioner and Sri Tomar learned counsel for the State respondents.

Under challenge is the order dated 28.09.2024 passed by the respondent no.1 whereby the revision of the petitioner was dismissed affirming the order passed by the respondent no.2 dated 19.07.2007, correcting the entries in proceedings under Section 33/39 of the U.P. Land Revenue Act, 1901.

The primary submission of the learned counsel for the petitioner is that the property-in-question had been allotted to the petitioner who has been in possession thereof since 1977. It is also urged that the State had initiated proceedings under Section 33/39 of the Act of 1901 wherein an exparte order dated 19.07.2007 was passed. The respondent no.2 while expunging the entry which was subsisting in favour of the petitioner, has been done so without issuing any notice or even without

calling for a reply from the petitioner and in this view of the matter the order is completely without jurisdiction and is against the principles of natural justice.

It is further urged that the said order dated 19.07.2007 was assailed by filing a revision and the revisional court also dismissed the same, however, it did not delve into the issue as to whether appropriate hearing was given to the petitioner and in this view of the matter, the order of dismissal of the revision is also against the principles of natural justice and substantial injury would be caused to the petitioner who is under an eminent threat of dispossession at the behest of State Authorities.

Sri Tomar learned Standing counsel and Sri Mohan Singh learned counsel for the Gaon Sabha have made submissions that from a perusal of the averments made in the writ petition itself, it would indicate that the petitioner was granted an asami Patta which was in the year, 1977, and the said Patta at best could continue only for a period of five years and not beyond that hence, no right could accrue to the petitioner.

It is further urged that even though the petitioner may not have been granted any opportunity of hearing by the Court of first instance but nevertheless, the petitioner was heard by the revisional court and there is nothing on record to indicate that what clinching evidence or averments, documents or plea was taken by the petitioner before the revisional court which they did not or could not take before the Court of first instance. Accordingly, even if the revisional court after considering the case of the petitioner afresh on the basis of submissions made upheld the order dated 19.07.2007, the grounds that the petitioner was not granted any opportunity falls into insignificance as the petitioner raised all objections before the revisional court and in this view, once an opportunity has been granted coupled with the fact that on the own showning of the petitioner, he could not continue to have any right over the property beyond five years from the date of asami Patta, hence, the aforesaid plea of the petitioner that he has been deprived of an opportunity of hearing does not come to his aid and the petition be dismissed.

The Court has considered the rival submissions and also perused the material on record.

The Court finds that in paragraph-2 and 4, the petitioner has taken a specific ground that they are in possession of the property in question since 1977 in pursuance of asami Patta. This being the admitted position and even though the petitioner may not have been granted opportunity of hearing before the respondent no.2 yet he contested the proceedings before the revisonal court where he raised all the objections which were available with him. The revisional court also noticed the fact that beyond a period of five years the petitioner could not have got better rights, hence, merely because an opportunity has not been granted would not render the order bad in the eyes of law.

A Division Bench of this Court in Durgawati Singh and ors vs Deputy Registrar Firms, Societies & Chits Lko & Ors; (2022) 2 ALL LJ 200 had the occasion to consider the plea raised by a party regarding non grant of an opportunity of hearing viz-a-viz the prejudice caused and after taking note of the string of decisions rendered by the Apex Court, the Division Bench came to the conclusion that even though if an opportunity of hearing is not granted yet the aggrieved party must indicate what prejudice has been caused and unless real prejudice is pleaded and made out till then such plea

cannot be sustained. The relevant portion of the said decision as under:-

> "33. Lately, the Apex Court in State of U.P. v. Sudhir Kumar, 2020 SCC OnLine SC 847 had the occasion to consider the issue once again and after noticing a large number of authorities and previous decisions, culled out the following principles noted in Para 39, which reads as under:?
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> "39. An analysis of the aforesaid judgments thus reveals:
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> (1) Natural justice is a flexible tool in the hands of the judiciary to reach out in fit cases to remedy injustice. The breach of the audi alteram partem rule cannot by itself, without more, lead to the conclusion that prejudice is thereby caused.
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> (2) Where procedural and/or substantive provisions of law embody the principles of natural justice, their infraction per se does not lead to invalidity of the orders passed. Here again, prejudice must be caused to the litigant, except in the case of a mandatory provision of law which is conceived not only in individual interest, but also in public interest.
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> (3) No prejudice is caused to the person complaining of the breach of natural justice where such person does not dispute the case against him or it. This can happen by reason of estoppel, acquiescence, waiver and by way of non-challenge or non-denial or admission of facts, in cases in which the Court finds on facts that no real prejudice can therefore be said to have been caused to the person complaining of the breach of natural justice.
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> (4) In cases where facts can be stated to be admitted or indisputable, and only one conclusion is possible, the Court does not pass futile orders of setting aside or remand when there is, in fact, no prejudice caused. This conclusion must be drawn by the Court on an appraisal of the facts of a case, and not by the authority who denies natural justice to a person.
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> (5) The "prejudice" exception must be more than a mere apprehension or even a reasonable suspicion of a litigant. It should exist as a matter of fact, or be based upon a definite inference of likelihood of prejudice flowing from the non-observance of natural justice."

Applying the proposition as held by the Division Bench which is based on the decisions of the Apex Court, this Court finds that mere submission that opportunity of hearing was not granted may not come to the aid of the petitioner for the reason that he was granted an opportunity of fair hearing before the revisional court. To that extent, it cannot be said that the petitioner has not received any opportunity of hearing. Neverthless, this Court is exercising powers under Article 226 of the Constitution of India and it is well settled that it is a discretionary jurisdiction. It could not be disputed that the entry of the petitioner was on the basis of anasami Patta which at best was for a

period of five years. There is nothing on record to indicate that after the lapse of five years, what special rights have accrued in favour of the petitioner which permits him to claim a right over the land in question and no real prejudice has been established. Mere reference to entries recorded in Form CH-41 and 45 of the U.P. CH Act will not come to the aid of the petitioner as the basis of all entries as per the petitioner himself is traceable to the asami Patta which could not have a life beyond five years and, thereafter, there is no material either pleaded or brought on record to establish the right of the petitioner.

For the aforesaid reasons, this Court is not inclined to entertain the petition to remand the matter simplicitor on the ground that an opportunity of hearing was not granted as this Court does not pass futile orders. Even if an opportunity is granted at this stage yet the fact remains that the petitioner cannot have a better right than what has been pleaded in para-2 and 4 of the writ petition.

For the aforesaid reasons, this Court is of the view that there is no merit in the petition which is, accordingly, dismissed.

Costs are made easy.

Order Date :- 2.1.2025 Harshita