

# **Ram Bachan Yadav And Anr vs State Of U.P. Through Its Principal ... on 4 April, 2018**

**Equivalent citations: AIRONLINE 2018 ALL 1074**

**Author: Mahesh Chandra Tripathi**

**Bench: Mahesh Chandra Tripathi**

HIGH COURT OF JUDICATURE AT ALLAHABAD

?AFR

Court No. - 18

Case :- WRIT - C No. - 6934 of 2018

Petitioner :- Ram Bachan Yadav And Anr

Respondent :- State Of U.P. Through Its Principal Secretary And Ors

Counsel for Petitioner :- Bhola Nath Yadav, Sanjay Kumar Yadav

Counsel for Respondent :- C.S.C., Manoj Kumar Yadav, Ritesh Srivastava

Hon'ble Mahesh Chandra Tripathi, J.

Heard Shri Bhola Nath Yadav, learned counsel for the petitioners and learned Standing Counsel. Shri Manoj Kumar Yadav appears for respondent nos.5 and 6 and Shri Ritesh Srivastava appears for caveator-respondent.

By means of present writ petition, the petitioners have prayed for following reliefs:-

"1. To issue a writ, order or direction in the nature of certiorari calling for the record and quashing the impugned order dated 12.10.2017 passed by Addl. Commissioner (Judicial-II), Varanasi Division, Varanasi in Revision No.C20161400001176 of 2016 (Ram Bachan Yadav & Anr. V. Ram Gopal & ors.), the impugned order dated 29.03.2016 passed by Up-Ziladhikari Saidpur distt. Ghazipur and the impugned order dated 29.06.2011 passed by Up-Ziladhikari Saidpur, Ghazipur (Annexure No.1, 2 and 3 respectively).

2. To issue a writ, order or direction in the nature of mandamus directing the respondents not to interfere into the peaceful possession of the petitioners over the land aforesaid."

Vide order dated 15.3.2018, following prayer was also permitted to be added in the memo of writ petition:-

"1.A. Issue a writ, order or direction in the nature of certiorari calling for the record and quashing the impugned order dated 12.10.2017 passed by Addl. Commissioner, Judicial-II, Varanasi Division, Varanasi in Revision No. C20161400001175 of 2016 (Ram Bachan Yadav & Anr. V. Gopal) (Annexure No.19 to the writ petition)."

This much is reflected from the record in question that Hriday Narayan Singh s/o Vansh Lochan Singh, the eighth respondent was in the Indian Army and due to Shaurya Parakram (Gallantry Award), the Old Plot No.3649 area 8 Biswa 17 Dhoor, Old Plot No.3650 area 5 Biswa 3 Dhoor and Old Plot No.150 area 7 Biswa 10 Dhoor (total three plots), total area 1 Bigha 1 Biswa 10 Dhoor of Village Belahari, Tehsil Saidpur, Distt. Ghazipur was allotted to Hriday Narayan Singh (eighth respondent) as per the provisions of law after fulfilling all the requirements prescribed for the purpose and the certificate in Form ZA-58 dated 30.03.1966 was issued to eighth respondent, which has been signed by the Secretary of Land Management Committee and Chairman of Land Management Committee and has been attested by Supervisor Kanoongo as per the provisions of UPZA & LR Rules, 1952 (in short "the Rules of 1952"). It also appears that village in question was also under consolidation operation vide notification dated 2.10.1956 under Section 4 of UPCH Act, 1953 (in short "CH Act") and thereafter the name of Hriday narayan Singh was recorded in the revenue record in compliance of the order dated 12.08.1966 passed in the Case No.55/66 by Asstt. Consolidation Officer under Section 5 of CH Act regarding old plot no.3649, 3650 and 150, which has been renumbered as 1779, 1780 and 59 respectively. CH Form 41 and 45 regarding aforesaid plots have been appended as Anneuxre No.6 and 7 to the writ petition. It is contended that during the course of time Hriday Narayan Singh became bhumidhar with transferable rights of aforesaid plots. He executed registered sale deed dated 1.3.2004 regarding Plot No.1779 area 0.112 hect. and Plot No.1780 area 0.065 hect. (total two plots) area 0.177 hectare i.e. 14 biswa in favour of the petitioners. Immediately possession was also handed over in favour of the petitioners and their names were also recorded in khatauni in compliance of the order dated 19.11.2010 passed in Case No.84/554 by Tehsildar, Judicial, Saidpur. The relevant khatauni is also brought on record as Anneuxre No.9 to the writ petition.

It appears that meanwhile one Ram Gopal, the seventh respondent moved an application under Section 33/39 of U.P. Land Revenue Act, 1901 (in short "LR Act") on 29.12.2010 in the court of Up-Ziladhihari Saidpur, Distt. Ghazipur, which was registered as Case No.165 (Ram Gopal v. Hriday Narayan) to the effect that the name of Hriday Narayan be expunged from plot nos.1779 and 1780. It is contended that in the said proceeding report was called from the Revenue Officers and exparte report was submitted on 24.5.2011 and finally the exparte order was passed on 29.6.2011 without issuing any notice or summoning the petitioners or even to Hriday Narayan (erstwhile owner) and the name of Hriday Narayan Singh recorded in pursuance of the order dated 12.8.1966 was directed

to be expunged. After coming knowledge of the aforesaid exparte order dated 29.6.2011 the restoration application dated 27.7.2012 was moved before the Up-Ziladhikari Saidpur, Ghazipur for setting aside the said order. It was contended that the complainant had moved the aforesaid application under Section 33/39 of the LR Act just only to harass the petitioners due to animosity and local political rivalry and the same was not maintainable. It is contended that thereafter impugned order dated 29.3.2016 was passed again without affording opportunity of hearing to the petitioners and the restoration application dated 27.7.2012 was rejected. The said order was assailed by way of revision under Section 219 of LR Act before the Commissioner, Varanasi Region and the same has also been rejected vide order dated 12.10.2017.

In this backdrop, Shri B.N. Yadav, learned counsel for the petitioners submits that the orders impugned are illegal, perverse and unsustainable under the aforementioned facts and circumstances. Exparte report had been submitted by the Naib Tehsildar contrary to material available on record and against the entries recorded in CH Form and khatauni and without affording any opportunity of hearing or to file any objection against the said report and the impugned order dated 29.6.2011 has been passed, which is cryptic and non-speaking and is unsustainable in the eyes of law.

It is also submitted that initial order dated 12.8.1966 was passed by the Asstt. Consolidation Officer in Case No.55/66 during the first round of consolidation regarding which the de-notification under Section 52 was issued on 24.5.1969 and thereafter second round of consolidation operation was started in the year 1983, which was cancelled by notification dated 14.7.2010 under Section 6 (1) of CH Act and as such the application under Section 33/39 of LR Act is barred by Section 49 of CH Act. It is further submitted that three plots were allotted to Hriday Narayan Singh and only two entries pertaining to petitioners' plot has been expunged but so far as remaining one plot being plot no.59 is concerned, the same is still recorded in the name of Hriday Narayan Singh. The question whether the entries are forged or not can be decided only after hearing the person in whose name entry is continuing. So far as the entry in favour of Hriday Narain Singh is concerned, the same is subsisting since 1966 and even the names of petitioners were also mutated against two plots in question in the year 2010. As such once entry was continuing for substantial more than 50 years, then no adverse order can be passed against him without providing opportunity of hearing to him. It is pleaded before this Court that the initial order dated 29.6.2011 under Section 33/39 of LR Act had been passed exparte without according opportunity to the petitioners, hence the matter has to be decided against the authorities concerned.

Learned counsel for the petitioners has contended that opportunity of hearing ought to have been given to the petitioners before recalling order of mutation and, therefore, impugned order is illegal being in violation of principles of natural justice. It is submitted that even if the order has been obtained by fraud or misrepresentation, it was incumbent upon by the person concerned, who alleges fraud or misrepresentation, to prove the same and it could not have been done ex parte without hearing the other side. He placed reliance on this Court's decision in Chaturgun & others Vs. State of U.P. & others 2005 (98) RD 244, Smt. Kunti and others Vs. Commissioner, Meerut Division, Meerut and others 2009 (107) RD 405, Bachchu Ram Sing Vs. Addl. Commissioner (J) Allahabad Division, Allahabad 2009 (107) RD 552, Civil Misc. Writ Petition No. 3268 of 2006 (Sanskrit Gram

Nirman Sahkari Samiti Vs. State of U.P. & others) decided on 19.8.2009, Civil Misc. Writ Petition No. 44128 of 2009 (Riz Pal Singh Vs. State of U.P. & others) decided on 3.9.2009, Civil Misc. Writ Petition No. 38874 of 2010 (Shri Durgadevi Rural and Educational Society Vs. State of U.P. & others) decided on 7.7.2010, and, Civil Misc. Writ Petition No. 13757 of 2011 (Dal Chand & others Vs. State of U.P. & others) decided on 8.3.2011.

Learned counsel for the petitioners in support of his submissions has further placed reliance on the judgments in *M. Sankaranarayanan v. Deputy Commissioner, Bangalore & Ors.*, 2017 (173) AIC 93 (SC); *Harjas Rai Makhija v. Pushparani Jain & Anr.*, (2017) 2 SCC 797; *Suresh Giri & Ors. v. Board of Revenue, U.P. Allahabad & Ors.*, 2010 (2) ADJ 514; *Ram Krishna Misra v. State of U.P. through Collector, Lucknow & Ors.*, 2017 (134) RD 569; *Durga Devi Rural and Educational Development Society, Kaushambi v. State of U.P. & Ors.*, 2015 (129) RD 34; *Gorakh Nath Singh & Anr. v. State of U.P. & Ors.*, 2010 (109) RD 234 and *Ram Ujagir v. State of U.P. & Ors.*, 2016 (133) RD 434.

On the other hand, learned counsel for the respondents have vehemently opposed the writ petition and submitted that once authority was of the view that the entry was forged and fictitious, then the authority has every right to intervene in the matter and expunge the entry. Even the revisional authority has not intervened in the matter and as such the writ petition is liable to be dismissed on the ground that the entries in the revenue record was forged. However, learned counsel for the respondents could not dispute that the order impugned in this writ petition was adverse to the interest of the petitioners and has been passed without giving opportunity of being heard to the petitioners.

Heard rival submissions and perused the record.

In several revenue matters Deputy Collectors/Sub-Divisional Officers and other revenue authorities and courts are passing orders particularly of removal of names from revenue records without hearing the parties which are effected by the said orders placing reliance upon the authority of the Supreme Court in *Uttar Pradesh Junior Doctors Action Committee v. Dr. B. Sheetal Nandwani*, AIR 1991 SC 909. It is the first principle of natural Justice that no adverse orders shall be passed against a person without hearing him even in administrative matters which affect the rights of persons. Grant of opportunity of hearing in administrative matters is comparatively a recent doctrine. As far as judicial matters are concerned since the time when Courts were established it has been the most essential ingredient of procedural law that no order shall be passed without hearing parties concerned. Removal and substitution of entry in revenue records under Section 34 of Land Revenue Act or any other provision is a judicial matter making it all the more necessary to provide opportunity of hearing to the party concerned. The aforesaid authority of the Supreme Court is a rare exception to the Rule. In the said authority the facts were that innumerable medical students on the basis of a fake order of this High Court had obtained admission in higher classes. The Supreme Court enquired the matter from Registrar of this Court. The Registrar sent the original file to the Supreme Court with the report that in the said case no such order was passed. As innumerable persons had obtained benefit under an order which was not in existence and as the original file with the report of Registrar of this High Court was available before the Supreme Court hence the Supreme Court held that in view of peculiar facts and circumstances of the case it was not necessary

to hear those innumerable students who had obtained admission in different medical colleges of Uttar Pradesh on the basis of the said order. There is one more point of distinction in the aforesaid authority of the Supreme Court. The fake order of the High Court Stated that the order was being passed on the basis of an earlier judgment of the Supreme Court. The Supreme Court had later on modified the said judgment. The said judgment of the Supreme Court cannot therefore be applied to such revenue cases where entries in revenue records are to be cancelled and substituted particularly when entries are continuing for a long time, i.e., more than a year. In some cases it is found that entries continuing for several decades have been cancelled without hearing the person affected on the basis of the aforesaid Supreme Court authority. The Board of Revenue in *Chandra Datt v. State* 1992 RD 160, has also taken similar view. In the said authority it has been held that:

"When men get their name incorporated by deceitful means they do not turn up when process is issued to them. In avoiding the summons they hope to prolong continuance of their names in record. They sit like an eagle over a lonely crag surveying the proceeding. Immediately after the order is passed, they will descent on the scene to lodge their protest in revision." (Para-6).

Whether an entry in revenue record is fake or fraudulent is a question of fact and can be found to be proved like any other fact only after providing opportunity of hearing to the parties concerned and likely to be affected by the ultimate order/judgment. It is correct that action taken on the basis of fraud has to be set aside and any entry on the basis of fake order has to be expunged. [Vide *United India Insurance Co. v. Rajendra Singh*, [2000]2SCR264, wherein it has been held (approved) that "no judgment of a court, no order of a Minister can be allowed to stand if it has been obtained by fraud, for, fraud unravels every thing"). However, finding in respect of fraud cannot be recorded ex-parte. The Supreme Court in *Sevenska Handelsbanken v. India Charge Chrome*, AIR 1994 SC 626, placing reliance upon *A.L.N. Narayanan Chettiyar v. Official Assignee*, held in para 44 as under :

"Fraud like any other charge of a criminal proceedings, must be established beyond reasonable doubt. A finding as to fraud cannot be based on suspicion and conjecture."

In the following authorities the Supreme Court has held that even before passing administrative orders affecting rights of parties opportunity of hearing shall be granted :

- (1) *Ashok v. Union of India*, AIR1997SC2298 (It was a case of ban of particular insecticides).
- (2) *Sahi Ram v. Awtar Singh*, AIR1999SC2169 (It was a case of mining lease).
- (3) *G. Pharmaceuticals v. State of U. P.*, AIR2001SC3707 (It was a case of black listing of contractor).

(4) H.A. Shakoor v. Union of India, AIR2002SC2423 (It was a case of reduction of category of a contractor).

(5) Director General of Police v. M. Sarkar, [1996]3SCR530 (In this case constables were discharged from service on the ground that they produces a fake list from Employment Exchange without providing opportunity of hearing. Supreme Court approved the order of High Court setting aside discharge order on the ground of denial of opportunity of hearing).

(6) All India S.C. and S.T. Employees Association v. A.A. Jeen, [2001]2SCR1183 (In this case hundreds of employees were affected hence Supreme Court held that they might be served in representative capacity).

(7) Godawat Pan Masala Products v. Union of India, AIR2004SC4057 (In this case it was held that notification prohibiting manufacture and sale etc. of pan masala and gutka was bad in law as it had been issued without providing opportunity to the manufactures of meeting the facts relied upon in the notification in respect of injurious effects of pan masala and gutka).

(8) Canara Bank v. Debasis Das, (2003)IILLJ531SC (In this authority several principles of natural justice expressed in Latin words have been discussed in detail giving their history (since 1215), scope and applicability).

Regarding first principle of natural justice that no person shall be punished unheard (audi alteram partem) it has been held that if appellate authority (it was a case of punishment of an employee) grants post decisional hearing then it may be sufficient compliance of requirement of hearing. In this regard reference has been made to C.L. Sahu v. Union of India, AIR1990SC1480 . (Concept of useless formality theory has also been adverted to in para 22 but no final opinion in that regard has been expressed).

Accordingly, it is held that whenever an entry in the revenue record is to be cancelled and substituted particularly when the entry is continuing for more than a year, notice must be given to the party in whose favour entry stands even if prima facie, authority/court concerned (i.e. Deputy Collector/Sub Divisional Officer in most of the cases) is of the opinion that the entry is result of fake order or fraud.

Revenue, authorities/courts must remember that a party can in some cases successfully show that entry of his name in the revenue record is correct and not fake or based upon fake order. This question can be decided only and only after hearing the party concerned and likely to be affected.

In the aforesaid facts and circumstances, the orders impugned cannot sustain and are accordingly set aside. The matter is remitted back to fourth respondent to decide the matter afresh in accordance with law expeditiously and preferably within three months from the date of production of certified copy of this order but certainly after giving opportunities to the parties concerned.

The writ petition is allowed accordingly.

Order Date :- 4.4.2018 SP/