

Smt. Indra Mishra and Others Vs State of U.P. and Others

Court: Allahabad High Court

Date of Decision: Jan. 9, 2009

Acts Referred: Constitution of India, 1950 " Article 226

Citation: (2009) 2 AWC 1462 : (2009) 106 RD 479

Hon'ble Judges: Ran Vijai Singh, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

Ran Vijai Singh, J.

This writ petition has been filed by the petitioners challenging the order dated 16.9.2006 and consequential notice

dated 22.9.2006. From the perusal of the order dated 16.9.2006 passed by Sub-Divisional Officer, Jhansi it transpires that the Plot No. 1670 is

recorded as a pond but the petitioners have got their name entered in the khatauni fraudulently. After an enquiry this fact has transpired and a

decision was taken for expunging their name from khatauni. While passing this order an opportunity of post decisional hearing was offered to the

petitioners. Pursuant thereto a notice was issued to the petitioners on 22nd September, 2006 requiring their presence on 6.10.2006 before the

Sub-Divisional Officer, Jhansi to produce the relevant materials in support of their case.

2. The petitioners instead of appearing before the Sub-Divisional Officer, Jhansi have filed the present writ petition, in which this Court has stayed

the operation of the order dated 16.9.2006 and further directed the respondent not to interfere in the possession of the petitioners.

3. I have heard Sri Harish Chandra Mishra learned Counsel for the petitioners, learned standing counsel for respondent No. 2 and Sri V.K. Rai for

U.P. Jal Nigam.

4. Learned Counsel for the petitioners submits that: the impugned order dated 16.9.2006 is an ex parte order as no opportunity of hearing was

given to the petitioners, therefore, it deserves to be quashed. In his submissions the petitioners are in possession over the land in dispute for a quite

long time and on that basis their names have been recorded in khatauni and they are cultivating the land. Therefore, no order for expunging their

name could be passed without affording an opportunity of hearing. From the perusal of the order dated 16.9.2006 it transpires although a decision

was taken for expunging of their name but an opportunity of post decisional hearing was offered to the petitioners but instead of filing their reply

before Sub-Divisional Officer the petitioners have chosen to challenge the said notice through this writ petition.

5. From the perusal of the notice dated 16.9.2006 it transpires that the notice has been issued u/s 33/39 of U.P. Land Revenue Act requiring the

petitioners to produce the relevant material in support of their case. It is settled law that the proceeding under the U.P. Land Revenue Act are

summary in nature and it do not decide any right or title of the parties and the writ petitions are not generally maintainable in such matters.

6. The main thrust of the argument of the learned Counsel for the petitioner is the breach of principle of natural justice before passing the impugned

order dated 16.9.2006. In his submissions the long standing revenue entries cannot be expunged outrightly without affording an opportunity of

hearing. This Court in the Writ Petition No. 5101 of 1998, decided on 27.8.2008 has taken the view that when the order impugned leads to the

civil consequences affecting the right of the other persons then opportunity of hearing is necessary to be given before passing such order, but

simultaneously it is also settled law that opportunity of hearing is not a ritual which should be given in each and every case. If in a case even after

giving an opportunity of hearing same result is likely to come and the order has been passed without affording an opportunity of hearing then in that

circumstances the order passed should not be interfered with under Article 226 of the Constitution of India.

7. The Apex Court in the case of A.M.U., Aligarh v. M.A. Khan 2000 (4) AWC 2993 (SC), has ruled that a person complaining about denial of

opportunity of hearing must show that in case opportunity would have been provided to him what cause he would have shown or what defence he

would have taken. Here in the present case there is no concrete averment in the writ petition with regard to the right and title over the property in

dispute. Therefore, impugned order cannot be faulted.

8. Otherwise also the authority concerned while passing the impugned order has given a post decision hearing to the petitioners on 22.6.2006. The

principle of post decisional hearing is a well recognised principle under the judicial process, in view of the decision of the Apex Court in the case of

Union of India and Another Vs. Tulsiram Patel and Others, I.J. Rao, Asstt. Collector of Customs and Another Vs. Bibhuti Bhushan Bagh and

Another, Canara Bank Vs. V.K. Awasthy, ; Canara Bank v. V.K. Awasthi 2005 (5) AWC 4410 (SC), Muzeeb v. Deputy Director of

Consolidation and Ors. 1996 (87) RD 66 : 1995 (2) AWC 698 and Chaturgun and Others Vs. State of U.P. and Others,

In Chaturgun's case, following observation has been made by the Court:

However, if entry is expunged or any order is passed without hearing the person affected then he is entitled to file an application for post decisional

hearing and recall of the order before the Court/Authority which pass the ex parte order if such an application is filed then the Court/Authority

concerned shall hear the applicant and in case it comes to the conclusion that the earlier order is not correct then the said order shall be set aside.

In such a situation, it is not necessary to first set aside the order and then hear the party concerned.

9. In view of that I do not find any illegality in the order impugned, the writ petition fails and is hereby dismissed. The petitioners are directed to file

their reply to the show cause notice dated 22.9.2006 within six weeks from the date of receipt of the certified copy of the order. The office may

issue certified copy of the order to the petitioners if applied on payment of usual charges within a week from the date of receipt of this file in the

office.

10. In case such reply as desired by the notice dated 22.9.2006 is filed that may be considered and decided by the respondent No. 2 within a

further period of three months from the date of receipt of the reply alongwith the certified copy of the order of this Court.

11. It may be clarified that I have not addressed myself on the merit of the case and in case any observation has been made on the merit of this

case the authority concerned will not be influenced by the said observation and pass independent order after considering the reply of the petitioners

to the show cause notice dated 22.9.2006 in accordance with law.

12. This Court while entertaining the writ petition has passed an interim order in favour of the petitioners, therefore, it will be appropriate to direct

the parties to maintain status quo with regard to the nature and possession over the land in dispute till the decision is taken by the respondent No. 2

on the reply of the petitioners.