

## Sukhwasi and Others Vs Commissioner, Kanpur Division and Others

**Court:** Allahabad High Court

**Date of Decision:** Aug. 21, 2007

**Citation:** (2007) 4 AWC 3310 : (2007) 103 RD 496

**Hon'ble Judges:** S.U. Khan, J

**Bench:** Single Bench

### Judgement

S.U. Khan, J.

Heard learned Counsel for the parties.

2. Property in dispute is situate in a village of Tehsil Chibra Mau. Before 17.9.1997 the said Tehsil was included in District Farrukhabad and

thereafter it was included in District Kannauj. On 17.9.1997 a recommendation was made by Additional District Magistrate to the District

Magistrate, Farrukhabad and on the next date, i.e., 18.9.1997 District Magistrate, Farrukhabad passed an order which is contained in Annexure-3

to the writ petition. In the said order it is mentioned that Pradhan of the village had given an application stating therein that about two to two and

half years before previous Pradhan and previous lekhpal had prepared a fake allotment file of land of Gram Sabha of the said village and

proceedings were being initiated on the basis of the said file at the time of giving the. application by Pradhan. Report was called for from the

tehsildar who submitted the report on 12.9.1997 and stated that allotment in favour of 49 persons was shown to have been approved by R. N.

Singh, Deputy Collector on 22.2.1995 while at that time the job of the Deputy Collector was being performed by the then Additional District

Magistrate. The District Magistrate held that from the perusal of file it was clear that entire file had subsequently been prepared in a forged and

fake manner (farji) hence it was not possible to affect mutation and delivery of possession on the basis of the said file.

3. According to the petitioners Land Management Committee passed the resolution on 7.2.1995 allotting different portions of Gram Sabha land to

49 selected persons. This writ petition has been filed by 72 persons, i.e., by the surviving allottees and legal representatives of deceased allottees.

Through Annexure-5 to the writ petition copies of reports of lekhpal, Supervisor Kanoongo, order of Tehsildar, Second report of Supervisor

Kanoongo, Second order of Tehsildr, order of R.N. Singh have been filed. Copies of some more documents pertaining to allotment like Z.A. form

No. 57B have also been filed.

4. Thereafter petitioners filed restoration application for recalling the order dated 18.9.1997. The application was filed on 24.2.1998. Alongwith

restoration application stay application was also filed. Collector, Kannauj dismissed the stay application through order dated 3.8.1998. Against the

said order rejecting the stay application revision was filed being Revision No. 34 of 1998. On the revision notice was issued by Commissioner,

Kanpur Division, Kanpur on 11.8.1998 and it was directed that stay application would be considered after receipt of the file of the court below.

Afterwards the revision was dismissed as not maintainable on 29.10.1998. Said order has been challenged through this writ petition. Orders

passed by Collectors, Farrukhabad and Kannauj dated 18.9.1997 and 3.8.1998 have also been challenged through this writ petition.

5. Learned Counsel are not aware about the fate of restoration application filed by the petitioner.

6. In the counter-affidavit in para 18 it has been stated that the land has been allotted to 52 deserving candidates by Land Management Committee

through resolution dated 30.3.1998.

7. It is correct that if allotment proceedings have been forged or fake then absolutely no relief can be granted to the petitioners. Besides that

petitioner will also be liable to be prosecuted. However, even while cancelling or setting aside forged fake proceedings or declaring proceedings as

forged and fake it is necessary to hear the affected persons. I have discussed this aspect in detail in the authority in. Chaturgun and Others Vs.

State of U.P. and Others,

8. Accordingly, it is directed that Collector, Kannauj shall after hearing the petitioners or such petitioners who appear before him and after hearing

Land Management Committee/Gram Sabha and taking assistance of concerned Revenue Officers and officials shall decide as to whether any

genuine allotment took place in 1995 as alleged by the petitioners or not. The subsequent 52 allottees may also be heard. In case Collector,

Kannauj after hearing the petitioners finds that the earlier proceedings were fake and forged then not only the said proceedings shall be cancelled

but first information report shall also be at once lodged against all the allottees and such revenue officials/officers who are found involved therein.

However, in case the earlier allotment is found to be genuine then possession must be delivered to the petitioners.

9. Until decision of the Collector, petitioners shall not interfere in the possession of the subsequent 52 allottees. All the petitioners are directed to

appear before Collector, Kannauj on 30.10.2007 alongwith certified copy of this order. Petitioners are also directed to get published in dally Hindi

news paper Dalnik Jagran the information containing sufficient details to the effect that matter would be heard by the Collector, Kannauj on

30.10.2007 in pursuance of this order and the 52 subsequent allottees whose names must be mentioned therein can also appear before the

Collector on 30.10.2007. Advertisement must be published in the news paper of any date of September, 2007. Copy of the news papers shall

also be annexed alongwith the application and certified copy of this judgment. In case Collector after hearing the petitioners or those petitioners

who appear before him finds that the earlier allotment was fake, forged or farji then criminal proceedings shall be initiated only against those

petitioners/alleged allottees of 1995 who file application and appear before the Collector. If any allottee/petitioner does not file application before

the Collector, criminal proceedings need not be launched against him, however allotment of 1995 in his favour even if genuine, shall stand

automatically cancelled.

10. Writ petition accordingly disposed of.

11. Officer is directed to supply a copy of this order free of cost to Shrl N.P. Pandey, learned standing Counsel for communication to Collector,

Kannauj within two weeks.