Neutral Citation No. - 2023:AHC:214446

A.F.R.

Judgment Reserved on 16.10.2023

Judgment Delivered on 08.11.2023

Court No. - 47

Case :- WRIT - C No. - 33655 of 2023

Petitioner :- Radhasoami Satsang Sabha
Respondent :- State Of U.P. And 6 Others
Counsel for Petitioner :- Ujjawal Satsangi
Counsel for Respondent :- C.S.C.

Hon'ble Manish Kumar Nigam,J.

1. This writ petition has been filed for following prayer:

   (a) *Issue a writ, order or direction by calling for records and setting aside the Impugned Notices dated 14.09.2023 passed in Case No. T202301010103629 pertaining to Khasra No. 309 and 320, Jaganpur Mustakil, Tehsil Sadar District Agra;*

   (b) *Issue a writ, order or direction to the respondents not to interfere with the peaceful possession of the property situated at Khasra No. 297/473 Jaganpur Mustakil, Tehsil Sadar, District Agra, Khasra No. 309 Jaganpur Mustakil, Tehsil Sadar, District Agra, Khasra No. 310 Jaganpur Mustakil, Tehsil Sadar, District Agra, Khasra No. 311 Jaganpur Mustakil, Tehsil Sadar, District Agra, and Khasra No. 273, Khaspur Mustakil, Tehsil Sadar, District Agra and permit the Petitioner to restore the walls and gates demolished by the Respondents;*

(c) *Issue a writ, order or direction to the respondents to compensate the Petitioner for the demolition taken place at Khasra No. 297/473 Jaganpur Mustakil, Tehsil Sadar, District Agra, Khasra No. 309 Jaganpur Mustakil, Tehsil Sadar, District Agra, Khasra No. 310 Jaganpur Mustakil, Tehsil Sadar, District Agra, Khasra No. 311 Jaganpur Mustakil, Tehsil Sadar, District Agra, and Khasra No. 273, Khaspur Mustakil, Tehsil Sadar, District Agra and for the Police action taken against the Karsewaks on 24.09.2023 by the Respondents;*

(d) Issue a writ, order or direction for judicial enquiry against the Respondents for the action of demolition taken upon the properties of Petitioner on 23.09.2023 and 24.09.2023 and punish them for the illegal act.

(e) Issue any other suitable writ, order or direction, which this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.

(f) Award costs to the petitioner.

(g) Pass any such other order/s as may be deemed fit and proper.

2. During the pendency of the aforesaid writ petition, an amendment application was filed by the petitioner on 27.09.2023 seeking addition of para no. 64A to 65H after para no. 64 in the writ petition and also for adding relief No. H, I & J after the relief No. 'G' and certain other amendments.

3. The amendment application filed by the petitioner was allowed by this Court vide order dated 27.09.2023 and, thereafter, the amendments were incorporated in the writ petition. Newly added relief i.e. relief No. H, I & J are quoted as under:

(h) issue an appropriate writ, order or direction calling for the record and quashing the impugned notices dated 14.09.2023 passed in pursuance of Khasra No. 105, 252 and 256 of Village

Khaspur, Tehsil Sadar District Agra and Khasra No. 297M of Jaganpur Mustakil, Tehsil Sadar, District Agra respectively.

(i) Issue an appropriate writ, order or direction calling for record and quashing the impugned orders dated 22.09.2023 passed in Case No. 3627/2023 (CIN No. T202301010103627) (Local Administration v Radhasoami Satsang Sabha) and Case No. 3629/2023 (CIN No. T202301010103629) (Local Administration v Radhasoami Satsang Sabha).

(j) Issue an appropriate writ, order or direction to the Respondent to ensure medical treatment and issuance of injury report/Medico legal certificate to the Karsewaks of the Petitioner, who sustained injuries in the Police Action of 24.09.2023.

4. Brief facts of the case as alleged in the writ petition are that the petitioner Radha Swami Satsang Sabha, Dayal Bagh, Agra is a religious and charitable society duly registered with its head-quarter at Dayal Bagh, Agra. The petitioner claims to be the owner in possession of land measuring 1500 acres in village Sikandrapur, Khaspur, Jaganpur and Ghatwasan, Tehsil and District Agra, out of which 1200 acres is agricultural land. In order to provide water to their agricultural field, for irrigation purpose, an agreement was entered into between the petitioner and the Government of United Provinces on 14.09.1935, giving liberty to the petitioner to pump water from river Yamuna subject to certain terms and conditions mentioned in the agreement.

5. In pursuance of the aforesaid agreement, the petitioner constructed and opened a private water course (nahar) running from river Yamuna of 3.5Km long with a maintenance track of either sides in the land of Khasra Nos. 326, 330, 364 in village Jaganpur, Khasra No. 205 in village Sikandrapur and also through certain plots of village Khaspur and the petitioner is in continuous possession and

enjoyment of the nahar and its maintenance track for more than 85 years.

6. Under a tripartite agreement between Agra Municipal Corporation, Yamuna Pollution Control Unit, U.P. Jal Nigam, Agra and the petitioner, the petitioner sold the land to the extent of 2.43 hectares in village Jaganpur for construction of sewage treatment plant and on a commitment given by the Agra Municipal Corporation to the effect that the Corporation would supply free of cost treated sewage water from the Sewage Treatment Plant to the extent of 40 MLD to the petitioner for its irrigation purposes.

7. In the year 2010, the District Administration of District Agra wanted to construct a road by illegally occupying the maintenance track in Khasra no. 205 of village Sikandrapur, Tehsil Sadar, District Agra. The petitioner, therefore, filed Original Suit No. 1435 of 2010 impleading State and Public Works Department for the relief for permanent injunction in the court of Civil Judge, Senior Division, Agra, being Suit No. 1435 of 2010 which was decreed in favour of the petitioner by a judgment and decree dated 31.03.2012. Against the aforesaid judgment, appeal was filed by the defendants in the suit and the aforesaid appeal is pending in the court of Additional District Judge, Court No. 14, Agra being appeal no. 68/2016. On 11.01.2020, the respondent no. 3 i.e. Sub Divisional Magistrate, Sadar, Agra using police force entered the premises of the petitioner forcibly and demolished the gate of the petitioner. The petitioner, thereafter, filed execution application under Order 21 Rule 32 C.P.C. seeking execution of the decree passed in his favour. Since the executing court was vacant, the petitioner approached Hon'ble High Court in proceedings under Article 227 of Constitution of India i.e. Matters under Article 227 No. 574 of 2020 where initially an order of status quo was passed by the Hon'ble Court. The aforesaid proceedings under Article 227 of the Constitution of India were later

on withdrawn by the petitioner as the executing court became functional in Agra on 26.04.2023. The aforesaid execution case is still pending.

8. On the basis of report submitted by respondent no. 5 i.e. Lekhpal/Revenue Inspector, Tehsil Sadar, Agra, the respondents claimed that the property in dispute is in unauthorized possession of the petitioner, which is required to be removed. The petitioner again approached this Hon'ble Court by filing Writ petition No. 22582 of 2023 (Radha Swami Satsang Sabha v. State of U.P. and 4 others) and this Hon'ble Court vide its order dated 14.07.2023, passed an order of status quo on the spot as on today which was later on extended. Thereafter, certain FIRs were also lodged against the office bearers of the petitioner by the District Administration which was challenged by the petitioner by filing Criminal Misc. Writ Petition No. 15299 of 2023 and 15301 of 2023 which are pending consideration. In the meantime, a notice dated 14.09.2023 was received by the petitioner in Case No. T202301010103629 (hereinafter referred to as "Case No. 3629"), under Section 26 U.P. Revenue Code, 2006 regarding the Bhukhand No. 309 recorded as Rasta Shreni 6-2 in village Jaganpur, Tehsil Sadar, District Agra, mentioning therein that the petitioner has encroached the land of public utility and directing the petitioner to remove encroachment and appear before the court of Tehsildar Sadar, Agra on 22.09.2023 to explain that why rasta was encroached by petitioner, failing which, ex-parte proceedings may be drawn against the petitioner. A similar notice dated 14.09.2023, in Case No. 3629, under Section 26 of U.P. Revenue Code, 2006 regarding Bhukhand No. 320, recorded as Rasta Shreni 6-2, village Jaganpur, Tehsil Sadar, Agra, was received fixing 22.09.2023. The aforesaid notices are annexed at page no. 197 & 198 of the paper book. On 22.9.2023, the petitioner appeared in the court of Tehsildar and prayed for 15 days time to file

objection. The aforesaid application for grant of time was rejected by the Tehsildar and the petitioner was directed to file their objection and evidence, if any, in support of his case by 04:00PM on 22.09.2023. The petitioner, thereafter, filed a reply on 22.09.2023, stating therein that the respondent no. 4 Tehsildar has no jurisdiction in the matter, since the land in dispute comes within the territorial jurisdiction of Nagar Panchayat, Dayal Bagh, Agra and Provisions of U.P. Revenue Code, 2006 are not applicable and as such, the notice issued to the petitioner is without jurisdiction. Copy of the objection filed by the petitioner are annexed at page no. 200 of the paper book.

9. In the early morning of 23.09.2023, the respondents came along with police personnel and started demolishing the wall and gate of the property of the petitioner. On the evening of 24.09.2023, the carsewaks of the petitioner gathered in their field and the police force lathi charged the carsewaks of the petitioner in which several carsewaks were injured including several women and children. At this stage, the present writ petition was filed.

10. In the amended writ petition, it has been asserted by the petitioner that after the demolition and police action on 23.09.2023 and 24.09.2023, the petitioner was handed over with two more notices dated 14.09.2023 issued under Section 26 of U.P. Revenue Code, 2006 as well as two orders passed under Section 26 of U.P. Revenue Code, 2006 dated 22.09.2023, in respect of the aforesaid notices. By amendment, the petitioner has challenged the orders dated 22.09.2023 passed in Case No. T-202301010103627, (hereinafter referred to as “Case no. 3627”) and order dated 22.09.2023 passed by the respondent no. 4 in Case No. 3629 under Section 26 of the U.P. Revenue Code, 2006.

11. Though there are several reliefs claimed in writ petition by the petitioner, learned counsel for the petitioner has confined his arguments regarding the order dated 22.09.2023 passed

in Case No. 3627 & Case No. 3629 in proceedings under Section 26 of the U.P. Revenue Code, 2006.

12. Since, the learned counsel for the petitioner has confined his relief only against the orders passed under Section 26 of U.P. Revenue Code, 2006 and since the original record of the aforesaid cases have been summoned and perused by this Court with the help of learned counsel for the parties, the writ petition is being decided at the admission stage itself without calling for a counter affidavit. Learned Chief Standing Counsel Sri J. N. Maurya appearing for the respondents has stated that there is no necessity of filing counter affidavit and the writ petition be decided at the admission stage itself. Therefore, with the consent of the parties, I am proceeding to decide this writ petition.

13. Learned counsel for the petitioner contended that though the petitioner was served with notice dated 14.09.2023, in Case No. 3629 in proceedings under Section 26 of U.P. Revenue Code, 2006 regarding Bhukhand No. 309, situated in village Jaganpur and Bhukhand No. 320 situated at village Jaganpur, the orders have been passed regarding the Bhukhand no. 105, 252, 256, situated at village Khaspur, Tehsil Sadar, Agra (in Case No. 3627) and regarding the Bhukhand 326, 330, 364, 371, 271, 309, 320, 297 situated at village Jaganpur (in Case No. 3629) and as such, the orders impugned are ex-parte against the petitioner without serving any notice to show cause regarding the aforesaid Bhukhand numbers. The orders impugned are passed in violation of principle of natural justice.

14. It is further contended by learned counsel for the petitioner that even in respect of Bhukhand situated at village Jaganpur for which notice was served on 14.09.2023, the petitioner appeared before the court and when came to know that the proceedings are with regard to other numbers also, prayed for grant of 15 days time to file objections and evidence in support of his case but the aforesaid application of the

petitioner was rejected by respondent no. 4 and respondent no. 4 has directed the petitioner to submit his reply and file evidence in support of his case by 04:00 P.M. on 22.09.2023.

15. It is further contended by learned counsel for the petitioner that grant of a week's time to file reply and coupled with fact that the respondent no. 4 has taken cognizance of other land of the petitioner for which no notice was given to the petitioner, the insistence of the respondent no. 4 directing the petitioner to submit reply and evidence in support of his case by 04:00PM, is nothing but denial of opportunity to the petitioner to contest the case and as such, is violative of principle of natural justice. Learned counsel for the petitioner further contended that on 22.09.2023, the objections were filed by the petitioner as to maintainability of the proceeding but the same has not been considered by the respondent no. 4 and has proceeded in undue haste to pass the order dated 22.09.2023, directing for removal of construction of the petitioner.

16. It has been contended by learned counsel for the petitioner that the petitioner has not encroached the public land and the entire proceedings against the petitioner are arbitrary and violative of principle of natural justice.

17. Per contra, learned Additional Advocate General appearing for the State made following submissions:

(a) The proceedings under Section 26 of the U.P. Revenue Code, 2006 are summary in nature and does not require an elaborate procedure for proceeding under Section 26 of the U.P. Revenue Code, 2006. Learned Additional Advocate General relied upon Section 225 A of U.P. Revenue Code, 2006 that all the questions arising for determination in any summary proceedings under this Code shall be decided upon affidavits in the manner prescribed. Sub Rule (2) of Rule 192 of Uttar Pradesh Revenue Code Rules,

2016 provides that proceeding regarding removal of obstacle under Section 26 of U.P. Revenue Code, 2006, shall be treated as summary proceedings.

(b) From the perusal of Section 26 of U.P. Revenue Code, 2006, it is clear that the section does not contemplate issuance of any notice before proceeding under Section 26 of U.P. Revenue Code, 2006. In the present case, the order impugned has been passed after giving notice to the petitioner regarding all the Khasra numbers and as such it cannot be said that the orders have been passed in violation of principle of natural justice.

(c) On 22.09.2023, on an application moved by the petitioner, time was granted to the petitioner till 04:00P.M. to file his objections and produce all the evidence/material in support of his case but except for the objection, no material or evidence has been produced by the petitioner in support of his claim.

(d) The petitioner has encroached upon a public land and the same is liable to be removed and the respondents has rightly passed the order for removal of the encroachment made by the petitioner from the public land.

(e) The petitioner has an alternative remedy of filing revision under Section 27 of U.P. Revenue Code, 2006 before the Sub Divisional Officer and in view of availability of alternative remedy, this writ petition should not be entertained.

18. Before considering the rival submissions made by the parties, it would be appropriate to look into the statutory provisions as contained in U.P. Revenue Code, 2006.

19. Section 26 of U.P. Revenue Code, 2006 provides for removal of obstacles and is quoted as under:

"**26. Removal of obstacle.-** If the Tahsildar finds that any obstacle impedes the free use of a public road, path or common land

of a village or obstructs the road or water-course or source of water, he may direct the removal of such obstacle and may, for that purpose, use or cause to be used such force as may be necessary and may recover the cost of such removal from the person concerned in the manner prescribed."

Section 225A of U.P. Revenue Code, 2006 provides for determination of question in summary proceedings and is quoted as under:

[*Section 225A. Determination of questions in summary proceeding.-* *Notwithstanding anything contained in other provisions of this Code, all the questions arising for determination in any summary proceeding under this Code shall be decided upon affidavits, in the manner prescribed:*

Provided *that if Revenue Court or Revenue Officer is satisfied that the cross-examination of any witness, who has filed affidavit, is necessary, it or he may direct to produce the witness for such cross-examination*.]

20. Section 27 of U.P. Revenue Code, 2006 provides for the revisional powers of the Sub Divisional Officer and is quoted as under:

> "**27. Revisional powers of Sub-Divisional Officer.-** The Sub-Divisional Officer may call for the record of any case decided by the Tahsildar under Section 25 or 26, for the purpose of satisfying himself as to the legality or propriety of such decision, and may, after affording opportunity of hearing to the parties concerned, pass such orders as he thinks fit (substituted by U.P. Act No. 4 of 2016)."

21. First of all this Court has to decide whether a notice is required to be given to the petitioner in proceedings under Section 26 of U.P. Revenue Code, 2006. Contention of the learned counsel for the petitioner is that requirement of giving notice is implicit in the provision as the order passed therein is of civil consequences affecting the rights of the petitioner. Per contra, learned Additional

Advocate General submitted that from reading of provision it is clear that proceeding under Section 26 of U.P. Revenue Code, read with Section 225A, are summary in nature and Section 26 of U.P. Revene Code, 2006 in terms do not contemplate issuance of notice to the person found to be causing obstacle impeading the free use of pathway etc.

22. The question has often arisen whether the adjudicating authority is bound to follow the principle of natural justice, even though the statute under which the adjudicating authority is exercising power do not provide for the same. The law is well settled. **Byles J. in Kooper v. Wandsworph Board of Works** reported in **(1863) 14 CB (NS) 180** observed as under: (page-194)

"(A) Long course of decisions, beginning with Dr. Bentley's case and ending with some recent cases, establish that although there is no positive words in the statute requiring that the party shall be heard, yet the justice of the common law will supply the omission of the legislature."

D. Smith (Judicial Review of administrative action, 5th Edition at page 383) state that where an statute authorizing interferes with the property or civil rights was silent on the question of notice and hearing, the courts will apply the rule as it is "of universal application and founded on the plainest principles of natural justice". The above principle is accepted in India also.

23. In case of **State of Orrisa v. Dr. Veenapani** reported in **AIR 1967 SC 1269**, the Hon'ble Apex Court has held that where exercise of power results in civil consequences unless the statute specifically rules out, the principles of natural justice would apply. In case of **Liberty Oil Mills v. Union of India** reported in **AIR 1984 SC 1271,** the Hon'ble Supreme Court held that it is not permissible to interpret any statutory instrument so as to exclude natural justice unless

language of the instrument leaves no option to the court. Procedural fairness embodying natural justice is to be implied whenever action is taken effecting the rights of the parties. (para 15 at page 1283, 1284).

24. In case of **Menka Gandhi v. Union of India** reported in **(1978) 1 SCC 248**, it has been observed by Beg, C.J. that it is well established that even where there is no specific provision in the statute or the rules made thereunder for showing cause against action proposed to be taken against an individual which effects the right of that individual, the duty to give reasonable opportunity to be heard will be implied from the nature of the function to be performed by the authority which has the power to take punitive or damaging action. (at page 402).

25. It has been further contended by learned Additional Advocate General that power under Section 26 of U.P. Revenue Code, 2006 is administrative and not judicial or quasi judicial and therefore, there is no requirement of giving notice to the person causing obstacle impeding the free path way etc. Refuting the contention of learned Additional Advocate General, learned counsel for petitioner contended that there is no difference between administrative and quasi judicial proceeding and if the result of the proceeding is of civil consequences, affecting the right of the person observance of principles of natural justice is mandatory.

26. In case of **A. K. Kraipak v. Union of India** reported in **AIR 1970 SC 150,** (para 2001 page 156), Hegde J. propounded “the aim of the rules of natural justice is to secure justice or to put it negatively to prevent miscarriage of justice. These rules can operate only in areas not covered by any law validly make. In other words, they do not supplant the law of the land but supplement it. (at page no. 272).

27. In case of **Olga Tellis v. Bombay Municipal Corporation** reported in **(1985) 3 SCC 545**, the Apex Court held that any action taken by a public authority which is invested with statutory powers has, therefore, to be tested by the application of two standards: The action must be within the scope of the authority conferred by law and secondly, it must be reasonable. If any action, within the scope of the authority conferred by law, is found to be unreasonable, it must mean that the procedure established by law under which that action is taken is itself unreasonable. The substance of the law cannot be divorced from the procedure which it prescribes for, how reasonable the law is, depends upon how fair is the procedure prescribed by it. (Para 40 page 577).

28. In case of **K.I. Shephered v. Union of India** reported in **AIR (1988) SC 686**, the Apex Court relying upon the aforementioned judgments held as under: (para-12 at page 693)

"12. Mullan in 'Fairness: The New Natural Justice' has stated:-

> "Natural justice co-exists with, or reflected, a wider principle of fairness in decision-making and that all judicial and administrative decision-making and that all judicial and administrative decision-makers had a duty to act fairly. "

In the case of State of Orrisa v. Dr. (Miss) Binapani Dei & ors., [1967] 2 SCR 625 this Court observed:-

> "It is true that the order is administrative in character but even an administrative order which involves civil consequences as already stated, must be made consistently with the rules of natural justice after informing the first respondent of the case of the State, the evidence in support thereof and after giving an opportunity to the first respondent of being heard and meeting or explaining the evidence. No such steps were admittedly taken; the High Court was, in our judgment, right in setting aside the order of the State."

ln A.K Kraipak & ors. v. Union of India & ors., [1970] 1 SCR 457 a Constitution Bench quoted with approval the observations of Lord Parker in Re: (H) K (an infant) (supra). Hegde, J. speaking for the Court stated:

"Very soon thereafter a third rule was envisaged and that is that quasi-judicial enquiries must be held in good faith, without bias and not arbitrarily or unreasonablly. But in the course of years many more subsidiary rules came to be added to the rules of natural justice. Till very recently it was the opinion of the courts that unless the authority concerned was required by the law under which it functioned to act judicially there was no room for the application of the rules of natural justice. The validity of that limitation is now questioned. If the purpose of the rules of natural justice is to prevent miscarriage of justice one fails to see why those rules should be made inapplicable to administrative enquiries. Often times it is not easy to draw the line that demarcates administrative enquiries from quasi-judicial enquiries. Enquiries which were considered administrative at one time are now being considered as quasi-judicial in character. Arriving at a just decision is the aim of both quasi-judicial enquiries as well as administrative enquiries. An unjust decision in an administrative enquiry may have more far reaching effect than a decision in a quasi-judicial enquiry."

These observations in A.K. Kopak's (supra) case were followed by another Constitution Bench of this Court in Chandra Bhavan Boarding and Lodging, Bangalore v. The State of Mysore & Anr., l 19701 2 SCR 600. In Swadeshi Cotton Mills v. Union of India, [1981] 2 SCR 533 a three-Judge Bench of this Court examined this aspect of natural justice. Sarkaria, J. who spoke for the Court, stated:-

> "During the last two decades, the concept of natural justice has made great strides in the realm of administrative law. Before the epoch- making decision of the House of Lords in Ridge v. Baldwin, it was generally thought that the rules of natural justice apply only to judicial or quasi-judicial proceedings; and for the purpose, whenever a breach of the rule of natural justice was alleged, Courts in England used to ascertain whether the impugned action was taken by the statutory authority or tribunal in the exercise of its administrative or quasi-judicial power. In India also, this was the position before the decision of this Court in Dr. Bina Pani Dei's case (supra); wherein it was held that even an administrative order or decision in matters involving civil consequences, has to be made consistently with the rules of natural justice. This supposed distinction between quasi-judicial and

> administrative decisions, which was perceptibly mitigated in Bina Pani Dei's case (supra) was further rubbed out to a vanishing point in A.K. Kraipak's case (supra) ..... ".

On the basis of these authorities it must be held that even when a State agency acts administratively, rules of natural justice would apply. As stated, natural justice generally requires that persons liable to be directly affected by proposed administrative acts, decisions or proceedings be given adequate notice of what is proposed so that they may be in a position (a) to make representations on their own behalf; (b) or to appear at a hearing or-enquiry (if one is held); and (c) effectively to prepare their own case and to answer the case (if any) they have to meet."

29. In case of **Assistant Collector Customs v. Vibhuti Bhushan** reported in **(1989) 3 SCC 202**, the Apex Court held (at page 208) "the right to notice, flows not from the mere circumstance that there is a proceeding of a judicial in nature, but indeed it goes beyond to the basic reason which gives to the proceedings, its character, and that reason is that a right of a person may be affected and there may be prejudice to that right if he is not affording an opportunity to put forward his case in the proceedings."

30. In case of **Mohinder Singh Gill v. Chief Election Commissioner** reported in **(1978) 1 SCC 405,** the Apex Court held (at page 440) "what is a civil consequence, let us ask ourselves, by passing verble booby-traps? 'civil consequence', undoubtedly, cover infraction of not merely property or personal rights but of civil liberties, material deprivation and non pecuniary damages. In its comprehensive commopation, everything that effects the citizen in his civil life, inflects a civil consequence".

31. Thus, in view of law laid down by Apex Court referred above, I am of the view that the contention of the learned Additional Advocate General that Section 26 of U.P. Revenue Code, 2006 does not contemplate issuance of notice or hearing before passing an order

under Section 26 of U.P. Revenue Code, 2006 is not tenable as the principles of natural justice are implicit in proceeding under Section 26 of U.P. Revenue Code, 2006.

32. Furthermore, though, the Section 26 of U.P. Revenue Code, 2006 does not in so many word incorporates the observance of principles of natural justice in proceedings under Section 26 of U.P. Revenue Code, 2006, it would be relevant to refer to rule 186 of the U.P. Revenue Code, 2016 which is as under:

> "**186. Non-applicability of CPC (Section 214).-** The provisions of the Code of Civil Procedure, 1908 shall not be applicable to the summary proceedings under the Code or these rules, but the principles enshrined in the Code of Civil Procedure, 1908 and the principles of natural justice shall be observed in the disposal of such proceedings."

33. Rules of U.P. Revenue Code 2016 has been framed in exercise of powers conferred of Section 233 of U.P. Revenue Code, 2006, Sub Clause XVII of U.P. Revenue Code, 2006 provides that State Government may by notification make rules for duties of any officer or authority having jurisdiction under this code and the procedure to be followed by him. Section 233 is quoted as under:

> "**233. Rules.-** (1) The State Government [may, by] notification make rules for carrying for the purposes of this Code.
>
> (2) Without prejudice to the generality of the foregoing power, such rules may also provided for-
>
> (i)…...
>
> (ii)……
>
> …….
>
> (xvii) the duties of any [officer or authority] having jurisdiction under this Code and the procedure to be followed by him;..."

34. Thus, the Rules 186 contemplates that even summary proceedings, the authorities are bound to comply with the principle of Civil Procedure Code as well as the principle of nature justice.

35. Now reverting to second submission of learned counsel for the petitioner that the orders impugned are vitiated for non observance of principles of natural justice. Refuting the submission made by learned counsel for the petitioner, learned Additional Advocate General contended that the orders impugned had been passed after complying the principles of natural justice. Learned Additional Advocate General further contended that fair hearing does not stipulate that proceeding be as formal as in a court. Natural justice is not a replica of the court procedure at the level of adjudicatory bodies. Before considering the rival submissions it would be useful to consider the ingredients of principles of natural justice.

36. Natural justice can be described as “fairplay in action”. The doctrine of natural justice seeks not only to secure justice but also to prevent miscarriage of justice. Natural justice is an important concept in administrative law. It is not possible to define precisely and scientifically the expression “Natural Justice”. The principle of natural justice or fundamental rules of procedure of administrative action, are neither fixed nor prescribed in any code.

37. By all standards, rules of natural justice are great assurances of justice and fairness. By developing the principle of natural justice, courts have devised a kind of code of fair administrative procedure.

38. The traditional English law as well as Indian law recognized two principles of natural justice:

(1) Nemo debet esse judex in propria causa: No man shall be a judge in his own cause, or a man cannot act as judge and at the same time a party or suitor; or the deciding authority must be impartial and have bias; and

(2) Audi Alteram Partem: Hear the other side, or both the sides must be heard, or no man should be condemned unheard, or that there must be fairness on the part of the deciding authority.

39. However, due to rapid development and growth of constitutional law as well as administrative law, a third principle of natural justice has also emerged i.e. speaking orders or reasoned decisions.

40. In the present case, we are mainly concerned with a violation of second and third Rule i.e. Audi Alteram Partem i.e. no one should be condemned unheard and also that all the orders should be supported by reasons.

41. The second fundamental principle of natural justice is Audi Alteram Partem i.e. no men should be condemned unheard or both the parties must be heard before passing any order. This is the basic requirement of rule of law. It had also been described as foundational and fundamental concept. It lays down the norms which has to be implemented by all the courts and tribunals on national as well as international level. While the civil courts are bound by rules of procedure contained in Civil Procedure Code and the criminal courts by procedure as laid down in the Criminal Procedure Code, and the Indian Evidence Act. There is no such uniform body of procedure norms to be followed by adjudicatory bodies, functioning outside the regular court hierarchy. By developing the principles of natural justice, courts have devised a kind of code of fair administrative procedure.

42. Generally, no provision is found in most of the statutes requiring observance of the principles of natural justice by adjudicating authorities. Generally the maxim Audi Alteram Partem includes two elements (i) notice and (ii) hearing.

43. The principle of natural justice require that before any action likely to effect a person is taken, he must be given a notice to show cause

why proposed action should not be taken against him. The authority must inform such person, the allegation against him and seek his explanation. This is one of the basic facets of natural justice and is a sine-qua-non of the right of fair hearing. This is the starting point of adjudicating process. If, this first step is missing, all the consequential action would be declared null and void. Only if the party has knowledge about the allegations levelled against him that he may be able to controvert them and defend himself effectively. Without notice, a right of hearing will become illusory and an empty formality. The notice to be valid and effective, must be properly served on the concerned person. It must give sufficient time to enable the individual to prepare his case. Not giving sufficient time amounts to denial of notice. It depends upon facts of each case whether the individual was allowed sufficient time to make representation against the notice issued to him.

44. Coming to the facts of the present case, it has been pointed out by the learned counsel for the petitioner that a notice dated 14.09.2023 issued by the respondent no. 4 was received by the petitioner on 15.09.2023. The aforesaid notices have been annexed at page no. 195 & 196 of the paper book. From the perusal of the same, it is clear that the aforesaid notices were issued in Case No. T-202301010103629 under Section 26 of U.P. Revenue Code, 2006 regarding village Jaganpur, Tehsil Sadar, District Agra for Bhukhand No. 309 recorded as Rasta Shreni 6-2, area 0.807 hectare and regarding Bhukhand No. 320 recorded as Rasta Shreni 6-2, area 0.1040 hectare whereas, the respondents authorities have registered two separate cases i.e. Case No. T202301010103629 under Section 26 of U.P. Revenue Code, 2006 and Case No. T-202301010103627 under Section 26 of U.P. Revenue Code, 2006.

45. In paragraph no. 64A of the writ petition, it has been stated by the learned counsel for the petitioner that after the demolition and police

action conducted on 23.09.2023 & 24.09.2023, the petitioner was handed over two more notices dated 14.09.2023 issued under Section 26 of U.P. Revenue Code, 2006 pertaining to Khasra No. 105, 252 & 256 of village Khaspur, Tehsil Sadar, District Agra and Khasra No. 297M of village Jaganpur, Mustakil, Tehsil Sadar, District Agra.

46. In paragraph no. 64B of the writ petition, it has been stated that the petitioner was also given two order passed under Section 26 of U.P. Revenue Code, 2006 dated 22.09.2023. The aforesaid orders and the notices, referred above, are annexed at page no. 221 to 226 of the paper book (annexure no. 25 to the writ petition).

47. Per contra, learned Additional Advocate General contended that the petitioners were given notice regarding all the Gata Nos/Khasra for which order was passed on 22.09.2023.

48. This Court by order dated 10.10.2023 summoned the original record of the proceeding under Section 26 of U.P. Revenue Code, 2006. From the perusal of the original record, it transpires that in Case No. T202301010103629, there are five notices dated 14.09.2023 available in the original record. In the first notice regarding the Bhukhand No. 297Mi Rasta Shreni 6-2 area 0.0690 hectare, there is endorsement that the petitioners refused to take the notice. The second notice which is regarding the Bhukhand No. 271 village Jaganpur recorded as Rasta Shreni 6-2, area 0.0920 hectare, also contains an endorsement of refusal. The third notice, regarding Bhukhand No. 309 village Jaganpur, Rasta Shreni 6-2, area 0.8070 hectare and fourth notice dated 14.09.2023 regarding Bhukhand No. 320 village Jaganpur Rasta Shreni 6-2, area 0.1040 hectare are received by the petitioners, which is also admitted to the petitioner. The fifth notice regarding Bhukhand No. 326, 330Mi, 364, 371 village Jaganpur, Nahar Shreni 6-1, area 1.5330 hectare also bears an endorsement of refusal. In Case No. T202301010103627 there is only one notice dated 14.09.2023, on record regarding Bhukhand

Nos. 105, 252 & 256 village Khaspur, Sadak Bypass Shreni 6-2, area 0.2300, 1.6610 & 1.9010 hectare bearing endorsement of refusal.

49. Contention of the learned counsel for the petitioner is that only two notices were served upon the petitioner and the same were received by the petitioner and it has been further contended that there is no reason that petitioner will receive two of the notices on the same day but will refuse rest of the notices. In paragraph no. 64A of the writ petition it is mentioned that after the order was passed, two more notices were handed over to the petitioner by the respondents. Learned Additional Advocate General could not suggest any reasons to the Court as to why the petitioner who received two notices and would refuse the rest of the notices.

50. From the perusal of the orders impugned dated 22.09.2023, it is clear that though the notices were served upon the petitioner regarding two Khasra Nos. of village Jaganpur i.e. Khasra No. 309 & 320, order has been passed for Khasra Nos. 326, 330, 364, 371, 271, 309, 320, 297 of village Jaganpur and Khasra No. 105 of village Khaspur in Case No. T202301010103629 and regarding Khasra No. 105, 252 & 256 of village Khaspur in Case No. T202301010103627, thus, it is clear from the record that the petitioner was not served notice of the proposed action under Section 26 of U.P. Revenue Code, 2006 except for the two Khasra Nos. 309 & 320 of village Jaganpur, Tehsil Sadar, District Agra.

51. Thus, I am of the view that the impugned action by the respondent against the petitioner is without adequate notice to the petitioner and is in violation of principle of natural justice.

52. It has also been contended by learned counsel for the petitioner that on 22.09.2023, the petitioner appeared before the respondent no. 4 and prayed that 15 days' time may be given to the petitioner to file detailed objection to the proposed proceedings under the provisions

of Section 26 of U.P. Revenue Code, 2006 as the petitioner was only served with two notices whereas the proceedings were initiated regarding other numbers of village Jaganpur and Khaspur for which no notice was served upon the petitioner. It is further submitted by learned counsel for the petitioner that the petitioner is a registered society governed by bye-laws and it was not possible for the office bearers of the society to file objections in such a short time as granted to the petitioner by the notice dated 14.09.2023.

53. Learned Additional Advocate General refuted the submissions made by learned counsel for the petitioner and submitted that by notice dated 14.09.2023, sufficient time was granted to the petitioner to submit its reply by 22.09.2023 and as such there was no illegality committed by respondent no. 3 in declining the request of the petitioner for extension of time.

54. The natural justice is nothing but procedural fairness. Considering the consequences which are likely to result if allegations are proved against the petitioner. It cannot be said that the procedure adopted by the respondent no. 4 is in consonance with the requirements of a fair trial. In **R. V. South West London Supplementary Benefit Appeal Tribunal**, Ex ‘p.’ Bullen, **(1976) 120 Sol Jo 437** it was held that to fail to accede to a request for an adjournment may amount to a failure to give a hearing and thus to a failure of natural justice or fairness.

55. In considering reasonableness of the request for extension of time, it is not possible to ignore that a registered society is not an individual, who has to act on its own and therefore, involving a simple process of application of mind. A registered society is governed by its bye-laws and is composed of many members. The society and the office bearers of the society has a duty to defend the society and also the individual who constituted it after observing the due procedure as

provided by the bye-laws of the society which required more time in contrast to individual who has to take a decision of its own.

56. The Supreme Court in case of **Canara Bank and others v. Debasis Das and others** reported in **(2003) 4 SCC 557** in paragraph no. 15 has held that the time given for the reply should be adequate so as to enable the person to make his representation. Paragraph no. 15 of the Canara Bank (Supra) is quoted as under:

> "15. The adherence to principles of natural justice as recognized by all civilized States is of supreme importance when a quasi-judicial body embarks on determining disputes between the parties, or any administrative action involving civil consequences is in issue. These principles are well settled. The first and foremost principle is what is commonly known as audi alteram partem rule. It says that no one should be condemned unheard. Notice is the first limb of this principle. It must be precise and unambiguous. It should appraise the party determinatively the case he has to meet. Time given for the purpose should be adequate so as to enable him to make his representation. In the absence of a notice of the kind and such reasonable opportunity, the order passed becomes wholly vitiated. Thus, it is but essential that a party should be put on notice of the case before any adverse order is passed against him. This is one of the most important principles of natural justice. It is after all an approved rule of fair play. The concept has gained significance and shades with time. When the historic document was made at Runnymede in 1215, the first statutory recognition of this principle found its way into the "Magna Carta". The classic exposition of Sir Edward Coke of natural justice requires to "vocate interrogate and adjudicate". In the celebrated case of Cooper v. Wandsworth Board of Works (1963) 143 ER 414, the principle was thus stated:

> "Even God did not pass a sentence upon Adam, before he was called upon to make his defence. "Adam" says God, "where art thou has thou not eaten of the tree whereof I commanded thee that though should not eat".
>
> Since then the principle has been chiselled, honed and refined, enriching its content. Judicial treatment has added light and luminosity to the concept, like polishing of a diamond."

57. An attempt was made by learned Additional Advocate General to justify the rejection of request for extension on the ground that in such matters expedition is called for. Expedition is a laudable object. Since an important aspect of reasonable opportunity, in the present context, would be, whether the respondent no. 4 has any compulsion to turn down a reasonable request for extension of time. True, the requirement of reasonable opportunity is of universal application but what will be a reasonable opportunity in different sets of circumstances is flexible concept. While the person affected must be heard, the scope and content of hearing could be suitably, moderated or tailored to the peculiar requirement of a situation. Thus, the situational modification of the opportunity has been recognized in law. Ordinarily, a reasonable opportunity must mean, the fullest possible opportunity having regard to the totality of the circumstances. In emergency conditions, or where there are other compulsions, the scope of opportunity could be reasonably restricted. It is necessary in all such situations that the respondent no. 4 to act in a manner which would strike a reasonable balance between requirement of a reasonable opportunity and the compulsion of given situation. Was there any emergency or other urgency in the present case which could have justified the rejection of reasonable request for extension?

58. I looked in vain for any such factor. Learned Additional Advocate General who sought to justify the order passed by the respondent was unable to give any satisfactory explanation, I, am therefore, unable to see any reason why the respondent no. 4 rushed through specially when the notice regarding other khasra numbers was not served upon the petitioner coupled with the fact that the petitioner is not an individual but a society. Therefore, I am of the view that the petitioner society had not been given a reasonable opportunity of being heard and, in any event, in view of the rejection of its reasonable request for extension, it could not be said by any process of reasoning that it appeared that the opportunity was reasonable. In any event, even if, one had any reasonable doubt, if reasonable opportunity had been denied or reasonable request for extension was turned down or whether reasonable opportunity had been given or would appear to have been given, one would rather resolve the doubt in favour of person affected rather than in favour of authority which exercise the power more particularly in case like this with unusual features. A cryptic reply turning down request was wholly arbitrary.

59. It has been contended by learned counsel for the petitioner that once the application for extension of time was denied by respondent no. 4 and time was granted till 04:00P.M. to submit its reply, the petitioner filed objections before the respondent no. 4. The petitioner filed objections specifically raising plea that the respondent authorities has no jurisdiction to proceed under Section 26 of U.P. Revenue Code, 2006 as the land in question is within the jurisdiction of Nagar Panchayat Dayal Bag, Agra and provision of U.P. Revenue Code, 2006 are not applicable.

60. It has been further contended by learned counsel for the petitioner that while deciding the application under Section 26 of U.P. Revenue Code, 2006, the respondent no. 4 has not considered or given any finding to the objection raised by the petitioner. No reason has been

given by the respondent no. 4 for rejecting the objection filed by the petitioner.

61. Learned Additional Advocate General refuted the submissions made by learned counsel for the petitioner. From the perusal of the original record of the case, it is clear that an objection was filed by the petitioner on 22.09.2023 which is at page no 2 of the record wherein though the petitioner has stated that it is not possible for them to submit reply in such a time but in paragraph no. 7 of the aforesaid objection, a legal plea was raised by the petitioner that the property in dispute comes within the jurisdiction of Nagar Panchayat, Dayalbag, Agra and therefore, Chapter IV of U.P. Revenue Code, 2006 is not applicable. The notice under Section 26 of U.P. Revenue Code, 2006 is therefore, without jurisdiction.

62. In the order impugned, there is no reference to the objections raised by the petitioner as to jurisdiction and non applicability of U.P. Revenue Code, 2006 to the present proceedings. No finding has been recorded by the respondent no. 4 and has straightway passed the order for eviction.

63. The Supreme Court in case of in case of **Raghbir Singh Sehrawat v. State of Haryana and others** reported in **(2012) 1 SCC 792** has held (para 40, page 805): recommendations by Land Acquisition Officer must reflect objective application of mind to the objections filed by the land owners or other interested persons. Para 40 of the Raghbir Singh Sehrawat (Supra) is quoted as under:

> "**40.** Though, it is neither possible nor desirable to make a list of the grounds on which the landowner can persuade the Collector to make recommendations against the proposed acquisition of land, but what is important is that the Collector should give a fair opportunity of hearing to the objector and objectively consider his plea against the acquisition of land. Only thereafter, he should make recommendations supported by brief reasons as to why the particular piece of land should or should not be acquired and whether or not the

plea put forward by the objector merits acceptance. In other words, the recommendations made by the Collector must reflect objective application of mind to the objections filed by the landowners and other interested persons."

64. Again in case of **Nareshbhai Bhagubhai and others v. Union of India and others** reported in **(2019) 15 SCC 1** along with other case, the Supreme Court in paragraph no. 20 of the aforementioned judgment has held as under:

> "**20.** The limited right given to a landowner/interested person to file objections, and be granted a personal hearing under Section 20-D cannot be reduced to an empty formality, or a mere eyewash by the competent authority. The competent authority was duty-bound to consider the objections raised by the appellants, and pass a reasoned order, which should reflect application of mind to the objections raised by the landowners. In the present case, there has been a complete dereliction of duty by the competent authority in passing a reasoned order on the objections raised by the appellants."

65. Coming to the facts of the present case, what to say about consideration of limited objections which were filed as to the application of the Act and jurisdiction of the authority to proceed has not even been mentioned in the order impugned. Therefore, I am of the view that the order impugned is vitiated for non consideration of objections raised by the petitioner.

66. Thus, the order impugned has been passed in utter disregard to the principles of natural justice as notice was not given to the petitioner, time given for reply was not sufficient time and the respondent no. 4 has erroneously rejected the application filed by the petitioner for extension of time for filing the objections. The respondent no. 4 in order impugned has not at all considered the objection which was filed by the petitioner after his application for extension of time was rejected and the order contains no reasons.

67. So far as the contention of the learned Additional Advocate General that the petitioner has alternative remedy of filing revision under Section 27 of U.P. Revenue Code, 2006 is also devoid of merits as I have already held that the order impugned has been passed in violation of principles of natural justice.

68. The Hon'ble Apex Court in case of **Whirlpool Corporation Vs. Registrar of Trade Marks, Mumbai and others** reported in **(1998) 8 SCC 1**, (in Paragraph Nos.14 and 15 of the Judgment at Page 9 & 10) has held that alternative remedy would not operate as a bar in at least three contingencies, namely, where the writ petition has been filed for the enforcement of any of the Fundamental Rights or where there has been a violation of principle of natural justice or where order or proceedings are wholly without jurisdiction or the vires of an Act is challenged. Paragraph Nos. 14 and 15 of the judgment in case of Whirlpool Corporation (supra) is quoted as under :-

> *14. The power to issue prerogative writs under Article 226 of the Constitution is plenary in nature and is not limited by any other provision of the Constitution. The power can be exercised by the High Court not only for issuing writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari for the enforcement of any of the Fundamental Rights contained in Part III of the Constitution but also for "any other purpose".*
>
> *15. Under Article 226 of the Constitution, the High Court, having regard to the facts of the case, has a discretion to entertain or not to entertain a writ petition. But the High Court has imposed upon itself certain restrictions one of which is that if an effective and efficacious remedy is available, the High Court would not normally exercise its jurisdiction. But the alternative remedy has been consistently held by this Court not to operate as a bar in at least three contingencies, namely, where the writ petition has been filed for the enforcement of any of the Fundamental Rights or where there has been a violation of principle of natural justice or where order or proceedings are wholly without jurisdiction or the vires of an Act is challenged. There is*

a plethora of case-law on this point but to cut down this circle of forensic whirlpool, we would rely on some old decisions of the evolutionary era of the constitutional law as they still hold the field."

69. Recently in case of **Uttar Pradesh Power Transmission Corporation Ltd and another Vs. CG Power and Industrial Solutions Ltd and another** reported in **(2021) 6 SCC 15**, (in paragraph 67 of the judgment at Page 52), the Apex Court has held as under :-

67. It is well settled that availability of an alternative remedy does not prohibit the High Court from entertaining a writ petition in an appropriate case. The High Court may entertain a writ petition, notwithstanding the availability of an alternative remedy, particularly (1) where the writ petition seeks enforcement of a fundamental right; (ii) where there is failure of principles of natural justice or (iii) where the impugned orders or proceedings are wholly without jurisdiction or (iv) the vires of an Act is under challenge. Reference may be made to Whirlpool Corporation v. Registrar of Trade Marks, Mumbai and Ors. reported in AIR 1999 SC 22 and Pimpri Chinchwad Municipal Corporation and Ors Vs. Gayatri Construction Company and Ors, reported in (2008) 8 SCC 172, cited on behalf of Respondent No.1.

70. Again in case of **Ghanashyam Mishra and Sons Private Ltd through the Authorised Signatory Vs. Edelweiss Asset Reconstruction Company Ltd through the Director and others** reported in **(2021) 9 SCC 657** (in Paragraph 137 at Page 726), the Apex Court has reiterated the same which is quoted as under :-

"137. As held by this Court in catena of cases including in the cases of Babu Ram Prakash Chandra Maheshwari vs. Antarim Zilla Parishad Muzaffar Nagar reported in AIR 1969 SC 556, Whirlpool Corporation vs. Registrar of Trade Marks, Mumbai & Ors. Reported in (1998) 8 SCC 1, Nivedita Sharma vs. Cellular Operators Association of India & Ors. Reported in (2011) 14 SCC 337, Embassy Property Developments Pvt. Ltd. vs. State of Karnataka and Others reported in (2020) 13 SCC 308 and recently in the case of Kalpraj Dharamshi Vs. Kotak Investment Advisors Ltd., that nonexercise of jurisdiction under

Article 226 is a rule of self-restraint. It has been consistently held that the alternate remedy would not operate as a bar in at least three contingencies, namely,

(1) where the writ petition has been filed for the enforcement of any of the Fundamental Rights;

(2) where there has been a violation of the principle of natural justice; and

(3) where the order or proceedings are wholly without jurisdiction or the vires of an Act is challenged."

71. In view of the same and considering the facts and circumstances of the present case I am of the opinion that relegating to the petitioner to the alternate remedy would serve no purpose.

72. Accordingly, the writ petition, is **allowed**.

73. The order dated 22.09.2023 passed by respondent no. 4, passed in Case No. 3627/2023 (CIN No. T202301010103627) (Local Administration v Radhasoami Satsang Sabha) and Case No. 3629/2023 (CIN No. T202301010103629) (Local Administration v Radhasoami Satsang Sabha), are hereby quashed.

74. However, it will be open for the respondent to pass fresh orders after providing opportunity of hearing to the petitioners, in accordance with law without being prejudiced by any of the findings recorded by this Court as I have not considered the merits of the claim of the petitioner.

75. This writ petition has been allowed only on the ground of non observance of principle of natural justice and I have not considered the other reliefs claimed by the petitioner in the present writ petition, therefore, it will be open for the petitioner to claim such other reliefs as and when the occasion arise for the same.

Order Date :- 08.11.2023
Ved Prakash

(Manish Kumar Nigam, J.)