AFR
Neutral Citation No. -
2025:AHC-LKO:67880

HIGH COURT OF JUDICATURE AT ALLAHABAD
LUCKNOW

WRIT - C No. - 1000182 of 1998

Pyarey Lal and others

…..Petitioner(s)

Versus

Addl. Commissioner Lucknow and others

…..Respondent(s)

Counsel for Petitioner(s)	:	D.c.mukerjee, Jai Prakash Yadav, Mohammad Aslam Khan
Counsel for Respondent(s)	:	C.S.C., Alok Sinha, R.n.gupta, Rajeiu Kumar Tripathi, Ambrish Singh Yadav

Court No. - 4

HON'BLE IRSHAD ALI, J.

1. Heard Shri M.A. Khan, learned Senior Advocate assisted by Mohd. Aslam Khan, learned counsel for the petitioners and Shri Divesh Misra, learned Standing Counsel for the respondents-State and Shri Rajeiu Kumar Tripathi, learned counsel for the respondents assisted by Shri Ambrish Singh Yadav, learned Advocate.

2. By means of the present writ petition, the petitioner has prayed for issuance of a writ in the nature of Certiorari quashing the impugned judgment and order dated 9.11.1997 passed by opposite party no.1 as contained in Annexure no.1 to the writ petition, with further prayer for issuance of a writ in the nature of Mandamus commanding the opposite parties except the opposite party no.4 not to interfere in the peaceful possession at the petitioner and also not to transfer the land in question to any one else.

3. Facts of the case are that the opposite party nos.2 and 3 filed a suit for declaration of their rights in respect of agricultural plot no.601(k), 601 and 639 situated at Village Gouri Tehsil and District Lucknow before the Sub-Divisional Officer, Lucknow and subsequently transferred to the court of Additional Sub Divisional Officer, Lucknow arraying the petitioners and opposite party nos.4 to 6 as defendants in the

said suit. No notice or summons were ever served on the petitioner and opposite party no.4 to 6 and finally the suit was ex parte decreed.

The opposite party no.4 in the present writ petition was also arrayed as defendant alongwith the petitioners and he also moved application alongwith the petitioner under order 9 rule 13 C.P.C. for setting aside the ex parte judgment and decree dated 22.3.90 but since in connection with employment he is presently residing at Delhi, as such he had not been able to join as petitioner in the present writ petition and as has been arrayed as opposite party no.4 in the present writ petition.

In respect of these very agriculture plots the rights and title of the petitioners and opposite parties have been finally decided by consolidation authorities during the consolidation operation which took place in village in the year 1975 decided by the Consolidation Officer against which the opposite party nos.2 and 3 who went up in appeal which was dismissed by the Settlement Officer Consolidation of 5-5-75 and the revision of the opposite party nos.2 and 3 was also dismissed on 6.5.1977 by the Deputy Director, Consolidation and the final record of C.H. form 45 was prepared in the names of the petitioners and opposite party no.4. Thus, the matter between the parties become final as regard the right and title of the plots mentioned above ijn respect of which the suit out of which the present proceedings have been arisen was filed.

That the petitioners and the opposite party no.4 had no knowledge about the suit or about the ex parte judgment dated 22.3.1990 which for the first time came to their knowledge on 15.9.1991/17.9.1991 when the certified copy of the Khatauni containing the reference of the ex parte judgment and decree was brought on record in another Civil Suit No.385-1991 pending in the Court of Munsif Hawali, Lucknow which was instituted by opposite party nos.2 and 3 against the petitioner for a decree for permanent injunction. This was revealed when the petitioners appeared in the said civil suit their counsel Sri P.D. Verma, Advocate, Lucknow who inspected the file.

On getting this information on 15.9.91 the petitioners and opposite party no.4 got the file inspected of the case under Section 229(B) of the Act and it was found that the service on the petitioners were deemed sufficient on the basis of publication in the news paper 'Nav Jeevan' dated 7.6.89. It is also important to mention here that the service of the notice through the court as well as through the registered post were not accepted to be sufficient service by the learned trial Court.

The petitioners and opposite party no.4 without wasting any time moved an application on 18.9.91 under order 9 rule 13 C.P.C. for setting aside ex parte decree. A perusal of the said application will show that factum of service of summon and notice were specifically denied and it was specifically asserted that the petitioners and opposite paryt no.4 never refused to accept the summons and notice. It was further asserted that suit itself was barred by Section 49 of the U.P.C.H. Act as the dispute in respect of plots involved in the suit had finally being decied

by the Consolidation Authorities and the said suit was not maintainable in law.

On 14.9.1993 the petitioners also filed their affidavit for condonation of delay in moving the application in case it is found to be delayed. Against the application for setting aside ex parte decree the opposite party nos.2 and 3 filed an objection denying the allegation made in the application.

Learned Trial Court after hearing both the parties by a detailed order dated 26.8.1994 allowed the application of the petitioners and set aside the ex parte judgment and decree dated 22.3.90 and restored the suit to its original number and directed the opposite party nos.2 and 3 for making the necessary amendments in the plaint and taking steps for service on State of U.P. and directed the petitioner for filing written statement on 26.9.94.

The opposite party nos.2 and 3 filed a revision under Section 333 of the Act before the Commissioner, Lucknow Division, Lucknow against the order dated 31.8.1994 passed by the learned trial Court. The said revision was transferred to the Court of opposite party no.1 who after hearing both the parties by his impugned order dated 5.11.1997 erroneously and by non-speaking order allowed the said revision and set aside the order dated 31.8.1994 and restored the ex parte the judgment and decree dated 20.3.90 against well settled principles of law.

4. Learned Senior Advocate submits that conclusion of the order is heartbeat of recording reason and in the order of the revisional Court, no reason has been recorded in regard to finding recorded by the trial Court.

5. Learned counsel for the petitioner next submits that the impugned order passed by the opposite party no.1 is a non-speaking order which neither considered the reasons recorded by the learned trial Court nor recorded his own reason differing from those of the learned trial Court.

6. Learned counsel for the petitioner next submits that the opposite party no.1 did not consider that in view of final adjudication made by the consolidation proceeding, the suit was fully not maintainable and the effect of restoring the said ex parte judgment and decree will result in setting at naught the final decision of the consolidation authorities which is legally not permissible.

7. Learned counsel for the petitioner submits that it is the responsibility of the plaintiff to prove that notice was served which has never been done at any point of time. It is also submitted by learned counsel for the petitioner that newspaper on which reliance has been placed is only a 'City Edition' and the petitioner resides in a village Gouri Bazar, therefore the said paper has no wide circulation in Gouri Bazar, therefore presumption cannot be drawn that by publication notice was assumed to be served upon the petitioner.

8. In support of his submission, learned counsel for the petitioenr has placed reliance upon the following judgments.

"(i) Ramji Dass and others v. Mohan Singh reported in MANU/SC/0533/1978

(ii) Sant Lal Gupta and others v. Modern Cooperative Group Housing Society Limited and others reported in (2010) 13 Supreme Court cases 336
(iii) Secretary and Curator, Victoria Memorial Hall v. Howrah Ganatantrik Nagrik Samity and others reported in (2010)3 Supreme Court Cases 732.

(iv) Maya Devi (Dead) through Lrs. v. Smt. Raj Kumari Batra (dead) through L.Rs. And others reported in 2011 (112) RD 372

(v) Rabindra Singh v. Financial Commissioner, Cooperation, Punjab and others reported in (2008) 7 Supreme Court Cases 663.

(vi) Babita Kasaudhan v. State of U.P. and others reported in (2016)2 UPLBEC 1040.

(vii) Smt. Vinod Rani Lamba and another v. Babu Ram Yadav and others reported in 2017 (135) RD 427."

9. Learned counsels for the respondents submitted that in view of provisions contained in Section 27, there is provision in regard to service of summons and also relied on the provisions of order 5 rule 20 sub-rule 1(1) and sub-rule 2 and second proviso to order 9 rule 13 and on the said basis, submission of learned counsel for the respondents is that there was sufficient service of summons upon the petitioner. They also invited intention on paragraph 22 of the counter affidavit and pointed out that through registered post notices were sent to the private respondents and publication was made in the daily newspaper 'Nav Jeevan' dated 7.6.1991, therefore notices upon the private respondents were duly served and in spite of that, he did not appear in the case and the case was decided ex parte vide order dated 20.3.1990.

10. Submission of learned counsel for the respondents is that the order of the revisional Court setting aside the order of the trial Court does not suffer from any infirmity or illegality. He has rightly recorded that notices were duly serviced upon the petitioner and thereafter order was passed on 22.9.1990, therefore the order passed was not ex parte and does not suffer from infirmity or illegally.

11. Submission of learned counsel for the respondents is that notice of service was found to be sufficient upon the defendants who were party to the suit and thereafter, the order dated 22.3.1990 was passed which does not suffer from infirmity or illegality, therefore the revisional Court has set aside the order passed by the trial Court setting aside the order dated 22.3.1990.

12. Learned counsel for the respondents has placed reliance upon certain judgment on the point of summons to be served upon the petitioner which are given below:

"(i) Prashant Singh and others v. Meena and others reported in (2024)6 Supreme Court Cases 818

(ii) My Palace Mutually Aided Co-operative Society v. B. Mahesh and others reported in (2022) 19 Supreme Court Cases 806.

(iii) Electrosteel Castings Limited v. UV Asset Reconstruction Company Limited and others reported in (2022) 2 Supreme Court cases 573

(iv) Ram Prakash Agarwal and another v. Gop Krishan (Dead through Lrs) and others reported in (2013) 11 Supreme Court Cases 296

(v) Vijay Singh v. Shanti Devi and another reported in (2017)8 Supreme Court Cases 837

(vi) Mahabir Singh v. Subhash and others reported in (2008) 1 Supreme Court Cases 358

(vii) Basant Singh and another v. Roman Catholic Mission reported (2002) 7 Supreme Court Cases 531

(viii) Parimal v. Veena @ Bharti reported in (2011) 3 Supreme Court Cases 545

(ix) Sunil Poddar and others v. Union Bank of India reported in (2008)2 Supreme Court Cases 326."

13. Perusal of the material available on record shows that opposite party nos.2 and 3 filed a suit for declaration of their rights in respect of agriculture plots no.601 and 639 situated at the Village Gouri. Petitioner and opposite party no.4 moved an application under order 9 rule 13 for setting aside ex parte decree dated 22.3.90. In the year 1975 consolidation operation took place, in which the right and title has been finally decided by consolidation authority on 5.5.75. Appeal and revision also dismissed by the Dy. Director of Consolidation.

Petitioner also filed their application for condonation of delay on 14.9.1993. Opposite party also filed objection. On 26.8.94, the trial Court allowed the application of the petitioner and set aside judgment and decree and restored to suit to its original number and directed to opposite party no.2 and 3 for making necessary amendments in the plaint and directed the petitioners to file written statement. On 31.8.1994, opposite party nos.2 and 3 filed a revision under Section 333 of the Act before the Commissioner, Lucknow Division, Lucknow. On 5.11.1997 the opposite party no.1 allowed the revision of the opposite party nos.2 and 3 and set aside the order dated 31.8.1994 passed by the learned trial Court and restored the judgment and decree dated 20.3.90 passed ex parte.

14. Learned counsel for the petitioner relied upon the various judgments, operative portion of which are extracted hereinbelow:-

(i) Ramji Dass (supra):-

1. An ex parte decree passed eight years ago was set aside by the court which passed it and the order was confirmed in revision by the District Court The High Court, in exercise of its powers Under Section 115, Civil Procedure Code, set aside on various grounds. After having heard counsel, we are inclined to the view that, as far as possible, Courts' discretion should be exercised in favour of hearing and not to shut out hearing. Therefore, we think that the order of the High Court should not have been passed in the interests of Justice which always informs the power Under Section 115 Civil Procedure Code. We, therefore, set aside that order and also the ex parte decree. We direct the trial court to take back the suit on file and proceed forthwith to trial. The suit is very old and it should be disposed of within six months from the receipt of this order by the trial court. We further direct that as a condition for setting aside the ex parte decree, the Appellants shall pay to the Respondent, within one month from today a sum of Rs. 250/- by way of costs.

(ii) Sant Lal Gupta (supra):-

27. It is a settled legal proposition that not only administrative but also judicial orders must be supported by reasons recorded in it. Thus, while deciding an issue, the court is bound to give reasons for its conclusion. It is the duty and obligation on the part of the court to record reasons while disposing of the case. The hallmark of order and exercise of judicial power by a judicial forum is for the forum to disclose its reasons by itself and giving of reasons has always been insisted upon as one of the fundamentals of sound administration of the justice delivery system, to make it known that there had been proper and due application of mind to the issue before the court and also as an essential requisite of the principles of natural justice.
"3. ... The giving of reasons for a decision is an essential attribute of judicial and judicious disposal of a matter before courts, and which is the only indication to know about the manner and quality of exercise undertaken, as also the fact that the court concerned had really applied its mind."

The reason is the heartbeat of every conclusion. It introduces clarity in an order and without the same, the order becomes lifeless. Reasons substitute subjectivity with objectivity. The absence of reasons renders an order indefensible/unsustainable particularly when the order is subject to further challenge before a higher forum. Recording of reasons is the principle of natural justice and every judicial order must be supported by reasons recorded in writing. It ensures transparency and fairness in

decision making. The person who is adversely affected must know why his application has been rejected.

(iii) Secretary and Curator, Victoria Memorail Hall (supra):-

41. *Reason is the heartbeat of every conclusion. It introduces clarity in an order and without the same, it becomes lifeless. Reasons substitute subjectivity by objectivity. Absence of reasons renders the order indefensible/ unsustainable particularly when the order is subject to further challenge before a higher forum. (Vide Raj Kishore Jha v. State of Bihar, SCCp. 527, para 19; Vishnu Dev Sharma v. State of U.P., SAIL v. STO, State of Uttaranchal v. Sunil Kumar Singh Negi, U.P.S.R.T.C. v. Jagidsh Prasad Gupta, Ram Phal v. State of Haryana, Mohd. Yusuf v. Faij Mohammad and State of H.P. v. Sada Ram.)*

(iv) Maya Devi (supra):-

16. In appeal against the order dated 30-8-1979 passed by the executing court, the learned Single Judge of the High Court affirmed the view taken by the executing court and declared that a compromise could be recorded even in execution proceedings and that the bald allegations suggesting a fraud were wholly untenable. The dismissal of the letters patent appeal and the special leave petition against the said orders by this Court has placed all these aspects beyond the pale of any further challenge or controversy. It follows that all contentions relating to the validity of the confirmation of sale in favour of the decree-holder and the issue of a sale certificate in her favour which stand finally determined against the appellants in terms of the judgments and orders of the executing court and the High Court in the first round, stand concluded and cannot be reagitated. Reliance upon the decisions of this Court cited by Mr Kapoor, is therefore of no assistance to him.

17. In the second round which started with a fresh set of objections raised by the judgment-debtor, the executing court once again examined the matter and rejected the objections by an order dated 25-9-1984. The executing court held that the questions raised by the judgment-debtor stood answered by the earlier orders passed by the executing court and upheld by the High Court in appeal. The contention that the compromise between the parties extinguished the decree and was a complete adjustment within the meaning of Order 21 Rule 2 was also repelled. The court held that the decree continued to subsist till the judgment-debtor delivered possession of the premises in terms of the compromise. The court accordingly issued warrants for delivery of possession to the decree-holder. It is common ground that the view taken by the executing court in the said order has also attained finality as no appeal or other proceedings were filed against the same. In the above background, any effort to rekindle

the controversy surrounding aspects which stand finally decided must necessarily fail.

(v) Rabindra Singh (supra):-

18. The Tahsildar, in his judgment, has resorted to a peculiar logic. According to him, the provisions of review were attracted and not under Order 9 Rule 13 for setting aside the ex parte proceeding. Even if that be so, the ex parte decree, in our opinion, could have been set aside. He could have exercised his power of review. The commentary on which reliance was placed, was made on the basis of a decision of the Financial Commissioner in Hukam Chand v. Malak Ram [(1932) 11 Lah LT 42] . The said decision, with respect, does not lay down the correct law. All courts in a situation of this nature have the incidental power to set aside an ex parte order on the ground of violation of the principles of natural justice. We will deal with this aspect of the matter a little later.

25. Knowledge on the part of the constituted attorney would not be such which would come on the way of the appellant in maintaining an application for setting aside an ex parte decree. Such a contention cannot be raised in a proceeding for setting aside an ex parte decree. The Collector as also the Financial Commissioner, therefore, while exercising their appellate and revisional jurisdiction respectively posed unto themselves wrong questions and, thus, misdirected themselves in law. The Commissioner, as also the High Court, in our opinion, committed a serious error insofar as they proceeded on the basis that the appellant had not suffered any prejudice.

(vi) Babita Kasaudhan (supra):-

23. *A bare reading of proviso goes to show that where the conditions mentioned therein are satisfied, the president of the municipality shall cease to perform and discharge financial and administrative powers until he is exonerated of charges mentioned in the notice till the finalization of the proceedings. In order to attract the proviso, the conditions required to be fulfilled are:*

> *(i) State Government must have reason to believe that allegations do not appear to be groundless.*
>
> *(ii) State Government must have reason to believe that president is prima facie guilty of any of the grounds contained in the sub-section which has resulted into the proceedings for removal.*
>
> *(iii) Notice to show cause must contain the charges.*

29. *In the case of Ravi Yashwant Bhoir v. Collector1, the Hon'ble Apex Court in the case of removal of president, has reiterated that*

proceedings are quasi-judicial in nature and has emphasized on recording of reasons as follows:

"43. In Krishna Swami v. Union of India, this Court observed that the rule of law requires that any action or decision of a statutory or public authority must be founded on the reason stated in the order or borne-out from the record. The Court further observed:

> *"47…. Reasons are the links between the material, the foundation for their erection and the actual conclusions. They would also demonstrate how the mind of the maker was activated and actuated and their rational nexus and synthesis with the facts considered and the conclusions reached. Lest it would be arbitrary, unfair and unjust, violating Article 14 or unfair procedure offending Article 21."*

44. This Court while deciding the issue in Sant Lal Gupta v. Modern Cooperative Group Housing Society Ltd2, placing reliance on its various earlier judgment held as under:

> *"27. It is a settled legal proposition that not only administrative but also judicial order must be supported by reasons, recorded in it. Thus, while deciding an issue, the Court is bound to give reasons for its conclusion. It is the duty and obligation on the part of the Court to record reasons while disposing of the case. The hallmark of order and exercise of judicial power by a judicial forum is for the forum to disclose its reasons by itself and giving of reasons has always been insisted upon as one of the fundamentals of sound administration of the justice delivery system, to make it known that there had been proper and due application of mind to the issue before the Court and also as an essential requisite of the principles of natural justice.*

3. "The giving of reasons for a decision is an essential attribute of Judicial and judicious disposal of a matter before Courts, and which is the only indication to know about the manner and quality of exercise undertaken, as also the fact that the Court concerned had really applied its mind."

The reason is the heartbeat of every conclusion. It introduces clarity in an order and without the same, the order becomes lifeless. Reasons substitute subjectivity with objectivity. The absence of reasons renders an order indefensible/unsustainable particularly when the order is subject to further challenge before a higher forum. Recording of reasons is principle of natural justice and every judicial order must be supported by reasons recorded in writing. It ensures transparency and fairness in

decision making.The person who is adversely affected must know why his application has been rejected."

45. In Institute of Chartered Accountants of India v. L.K. Ratna1, this Court held that on charge of misconduct the authority holding the inquiry must record reasons for reaching its conclusion and record clear findings. The Court further held:

> *"30. In fairness and justice, the member is entitled to know why he has been found guilty. The case can be so serious that it can attract the harsh penalties provided by the Act. Moreover, the member has been given a right of appeal to the High Court under section 22-A of the Act. The exercise his right of appeal effectively he must know the basis on which the Council has found him guilty. We have already pointed out that a finding by the Council is the first determinative finding on the guilt of the member. It is a finding by a Tribunal of first instance. The conclusion of the Disciplinary Committee does not enjoy the status of a "finding". Moreover, the reasons contained in the report by the Disciplinary Committee for its conclusion may or may not constitute the basis of the finding rendered by the Council. The Council must, therefore, state the reasons for its finding".*

46. The emphasis on recording reason is that if the decision reveals the ' 'inscrutable face of the sphinx', it can be its silence, render it virtually im possible for the Courts to perform their appellate function or exercise the power of judicial review in adjudging the validity of the decision. Right to reason is an indispensable part of a sound judicial system, reasons at least sufficient to indicate an application of mind of the authority before the Court. Another rationale is that the affected party can know why the deci sion has gone against him. One of the salutary requirements of natural jus tice is spelling out reasons for the order made. In other words, a speaking out, the inscrutable face of the sphinx is ordinarily incongruous with a judi cial or quasi-judicial performance."

***35.** This view finds support from the following observations of the Hon'ble Apex Court in the case of Krishna Swami v. Union of India1, "that the Rule of law requires that an action or decision of a statutory or public authority must be founded on the reason stated in the order or borne-out from the record."*

Part IX A of the Constitution contains provisions in relation to munici palities introduced by 74th Amendment to the Constitution. Municipalities are local self-Government having a constitutional status having well defined powers, duties and responsibilities.

They are institutions of self-governance having been conferred with the degree of autonomy. They are not merity ad ministrative agency of the State and, thus, the control which the agencies of the State exercise over institutions of local self-Government must conform to the constitutional standards. In Ravi Yashwant Bhoir (supra), the Hon'ble Apex 'Court while emphasising the importance of Parts IX and IX-A of the Constitution in respect of position of the elected head of a local self-governing institution, observed as follows:

"Amendment in the Constitution by adding Parts IX and IX-A confers upon the local self-Government a complete autonomy on the basic democratic unit unshackled from official control. Thus, exercise of any power having effect of destroying the Constitutional institution besides being outrageous is dangerous to the democratic set-up of this country. Therefore, an elected official cannot_be_permitted to be removed unceremoniously without following the procecdure prescribed by law, in violation of the provisions of Article 21 of the Constitution, by the State by adopting a casual approach and resorting to manipulations to achieve ulterior purpose. The Court being the custodian of law cannot tolerate any attempt to thwart the institution."

Dealing with the aspect of observing the principles of natural justice, the Supreme Court held that:

"There can also be no quarrel with the settled legal proposition that removal of a duly elected member on the basis of proved misconduct is a quasi-judicial proceeding in nature. [Vide: Indian National Congress (I) v. Institute of Social Welfare]. This view stands further fortified by the Constitution Bench judgments of this Court in Bachhitar Singh v. State of Punjab and Union of India v. H.C. Goel. Therefore, the principles of natural justice are required to be given full play and strid compliance should be ensured, even in the absence of any provision providing for the same. Principles of natural justice require a fair opportunity of defence to such an elected office bearer."

(vii) Smt. Vinod Rani Lamba (supra):-

5. *have considered the arguments of Counsel for the parties and examined the record. It is admitted that there was no personal service of the summons and service of summons has been effected through publication, which is substituted service. Within the meaning of Explanation to Article 123 of Limitation Act, it is not due service. On the basis of publication, the presumption regarding service was made. Bench of three Hon'ble Judges of Supreme Court in Puumda Venkates-wara Rao v. Chidamam Venkata Ramarn,1 had held that the presumption stood rebutted*

on its denial. In this case, the petitioner has denied service of summons or knowledge of the suit, thus, on denial, the presumption stood rebutted and burden shifted upon the plaintiff-respondents to prove that summons were served upon them, but the plain-tiff-respondents could not lead any evidence in this respect. This judgment has been followed subsequently in A. Rama Rao v. Raghunath Patnaik,2 State of West Bengal v. E.1.T.A India Ltd.,3 V.S. Krishmn v. M/s. Westfort Hi-Tech Hospital Ltd.1 and M.S. Madhusoodhanan v. Kerala Kaumudi Pvt. Ltd..2 The Counsel for the respondents relied upon the judgment of this Court in Mohd. Sadab v. Naseetn Ahmad,3 in which, it has been held that the presumption could not be rebutted on denial. The law laid down in this case is contrary to the law laid down by Supreme Court in the aforementioned case, which has been subsequently followed in aforementioned four cases. This Court respectfully disagrees to follow the judgment of Hon'ble Single Judge.

***8.** In the result, the petition succeeds and is allowed. The orders of Additional Civil Judge (JD), Kanpur Nagar dated 28.8.2015 as well as Additional District Judge dated 19.1.2016, are set aside. The ex parte decree passed in O.S. No. 813/2012 dated 30.11.2013 is also set aside. The suit is restored to its original number.*

15. Learned counsel for the respondents relied upon the following judgment:

(i) Prashant Singh (supra):-

***13.** The object of the 1953 Act is to prevent fragmentation of the land holdings and consolidate them in such a fair and equitable manner that each tenure-holder gets nearly equivalent land rights in the same revenue estate [Attar Singh v. State of U.P., 1958 SCC OnLine SC 165 : 1959 Supp (1) SCR 928, para 3 : AIR 1959 SC 564] . The duty of a Consolidation Officer under Section 49 of the 1953 Act is to prevent fragmentation and consolidate the different parcels of land of a tenure-holder. Such a power can be exercised only in respect of those persons who are already the tenure-holders of the land. Conversely, the power under Section 49 of the 1953 Act cannot be exercised to take away the vested title of a tenure-holder. No such jurisdiction is conferred upon a Consolidation Officer or any other authority under the 1953 Act [Amar Nath v. Kewla Devi, (2014) 11 SCC 273, para 17 : (2014) 4 SCC (Civ) 85] .*

***14.** The power to declare the ownership in an immovable property can be exercised only by a civil court save and except when such jurisdiction is barred expressly or by implication under a law.*

Section 49 of the 1953 Act does not and cannot be construed as a bar on the jurisdiction of the civil court to determine the ownership rights.

15. *Having held so, it is not difficult to explain that Kalyan Singh had acquired ancestral rights as a tenure-holder. He was co-owner in the suit land much before the consolidation proceedings commenced. Hence, the only declaration and adjudication of rights of Ramji Lal or Kalyan Singh that a Consolidation Officer could undertake under Section 49 of the 1953 Act was to avoid the fragmentation of their respective land holdings and consolidate or redistribute the parcels of land among them. As analysed above, the provision does not enable the Consolidation Officer to grant ownership to Ramji Lal in respect of a property, which, before the consolidation proceedings, never vested in him. Vice versa, the Consolidation Officer could not take away the ownership rights of Kalyan Singh which he had already inherited much before the commencement of the consolidation proceedings.*

(ii) My Palace Mutually Aided Co-operative Society (supra):-

29. *The respondents in the present case had access to recourse under Section 96CPC, which allows for appeals from an original decree. It must be remembered that the present matter was being heard by the High Court exercising its original jurisdiction. The High Court was in effect conducting a trial, and the final decree passed by the High Court on 19-9-2013 [Anish Constructions Co. v. Sultan Jahan Begum, Application No. 837 of 2013, order dated 19-9-2013 (AP)] was in effect a decree in an original suit. As such, there existed a right of appeal under Section 96CPC, for the respondents. Though they were not parties to the suit, they could have filed an appeal with the leave of the Court as an affected party.*

31. *Sections 96 to 100CPC deal with the procedure for filing appeals from original decrees. A perusal of the above provision makes it clear that the provisions are silent about the category of persons who can prefer an appeal. But it is well-settled legal position that a person who is affected by a judgment but is not a party to the suit, can prefer an appeal with the leave of the Court. The sine qua non for filing an appeal by a third party is that he must have been affected by reason of the judgment and decree which is sought to be impugned.*

(iii) Electrosteel Castings Limited (supra):-

7. We have heard the learned Senior Counsel appearing on behalf of the respective parties at length.

7.1. It is the case on behalf of the plaintiff-appellant herein that in the plaint there are allegations of "fraud" with respect to the assignment agreement dated 30-6-2018 and it is the case on behalf of the plaintiff-appellant herein that assignment agreement is "fraudulent" inasmuch as after the full payment as per the approved resolution plan under IBC and the original corporate debtor is discharged, there shall not be any debt by the plaintiff-appellant herein as a guarantor and therefore assignment deed is fraudulent. Therefore, it is the case on behalf of the plaintiff-appellant herein that the suit in which there are allegations of "fraud" with respect to the assignment deed shall be maintainable and the bar under Section 34 of the SARFAESI Act shall not be applicable.

7.2. However, it is required to be noted that except the words used "fraud"/"fraudulent" there are no specific particulars pleaded with respect to the "fraud". It appears that by a clever drafting and using the words "fraud"/"fraudulent" without any specific particulars with respect to the "fraud", the plaintiff-appellant herein intends to get out of the bar under Section 34 of the SARFAESI Act and wants the suit to be maintainable. As per the settled proposition of law mere mentioning and using the word "fraud"/"fraudulent" is not sufficient to satisfy the test of "fraud". As per the settled proposition of law such a pleading/using the word "fraud"/"fraudulent" without any material particulars would not tantamount to pleading of "fraud".

8. In Bishundeo Narain [Bishundeo Narain v. Seogeni Rai, 1951 SCC 447 : 1951 SCR 548] in para 22, it is observed and held as under : (SCC p. 454)

> *"22. ... Now if there is one rule which is better established than any other, it is that in cases of fraud, undue influence and coercion, the parties pleading it must set forth full particulars and the case can only be decided on the particulars as laid. There can be no departure from them in evidence. General allegations are insufficient even to amount to an averment of fraud of which any court ought to take notice however strong the language in which they are couched may be, and the same applies to undue influence and coercion. See Order 6 Rule 4, Civil Procedure Code."*

8.1. Similar view has been expressed in Ladli Parshad Jaiswal [Ladli Parshad Jaiswal v. Karnal Distillery Co. Ltd., (1964) 1 SCR 270 : AIR 1963 SC 1279] and after considering the decision of the Privy Council in Bharat Dharma Syndicate Ltd. v. Harish Chandra [Bharat Dharma Syndicate Ltd. v. Harish

Chandra, 1937 SCC OnLine PC 24 : (1936-37) 64 IA 143] , it is held that a litigant who prefers allegation of fraud or other improper conduct must place on record precise and specific details of these charges. Even as per Order VI Rule 4 in all cases in which the party pleading relies on any misrepresentation, fraud, breach of trust, wilful default, or undue influence, particulars shall be stated in the pleading. Similarly in K.C. Sharma & Co. [Union of India v. K.C. Sharma & Co., (2020) 15 SCC 209] it is held that "fraud" has to be pleaded with necessary particulars. In Ram Singh [Ram Singh v. Gram Panchayat Mehal Kalan, (1986) 4 SCC 364] , it is observed and held by this Court that when the suit is barred by any law, the plaintiff cannot be allowed to circumvent that provision by means of clever drafting so as to avoid mention of those circumstances by which the suit is barred by law of limitation.

8.2. In T. Arivandandam v. T.V. Satyapal [T. Arivandandam v. T.V. Satyapal, (1977) 4 SCC 467] , it is observed and held in para 5 as under : (SCC p. 470)

> *"5. We have not the slightest hesitation in condemning the petitioner for the gross abuse of the process of the court repeatedly and unrepentantly resorted to. From the statement of the facts found in the judgment of the High Court, it is perfectly plain that the suit now pending before the First Munsif's Court, Bangalore, is a flagrant misuse of the mercies of the law in receiving plaints. The learned Munsif must remember that if on a meaningful — not formal — reading of the plaint it is manifestly vexatious, and meritless, in the sense of not disclosing a clear right to sue, he should exercise his power under Order 7 Rule 11 CPC taking care to see that the ground mentioned therein is fulfilled. And, if clever drafting has created the illusion of a cause of action, nip it in the bud at the first hearing by examining the party searchingly under Order 10 CPC. An activist Judge is the answer to irresponsible law suits."*

8.3. A similar view has been expressed by this Court in the recent decision in P. Selathal [Canara Bank v. P. Selathal, (2020) 13 SCC 143] .

9. Having considered the pleadings and averments in the suit more particularly the use of word "fraud" even considering the case on behalf of the plaintiff, we find that the allegations of "fraud" are made without any particulars and only with a view to get out of the bar under Section 34 of the SARFAESI Act and by such a clever drafting the plaintiff intends to bring the suit

maintainable despite the bar under Section 34 of the SARFAESI Act, which is not permissible at all and which cannot be approved. Even otherwise it is required to be noted that it is the case on behalf of the plaintiff-appellant herein that in view of the approved resolution plan under IBC and thereafter the original corporate debtor being discharged there shall not be any debt so far as the plaintiff-appellant herein is concerned and therefore the assignment deed can be said to be "fraudulent".

10. The aforesaid cannot be accepted. By that itself the assignment deed cannot be said to be "fraudulent". In any case, whether there shall be legally enforceable debt so far as the plaintiff-appellant herein is concerned even after the approved resolution plan against the corporate debtor still there shall be the liability of the plaintiff and/or the assignee can be said to be secured creditor and/or whether any amount is due and payable by the plaintiff, are all questions which are required to be dealt with and considered by the DRT in the proceedings initiated under the SARFAESI Act.

11. It is required to be noted that as such in the present case the assignee has already initiated the proceedings under Section 13 which can be challenged by the plaintiff-appellant herein by way of application under Section 17 of the SARFAESI Act before the DRT on whatever the legally available defences which may be available to it. We are of the firm opinion that the suit filed by the plaintiff-appellant herein was absolutely not maintainable in view of the bar contained under Section 34 of the SARFAESI Act. Therefore, as such the courts below have not committed any error in rejecting the plaint/dismissing the suit in view of the bar under Section 34 of the SARFAESI Act.

12. In view of the above and for the reasons stated above, the present appeal fails and the same deserves to be dismissed and is accordingly dismissed. However, it will be open for the appellant herein to initiate appropriate proceedings before the DRT under Section 17 of the SARFAESI Act against the initiation of the proceedings by the assignee-Respondent 1 herein under Section 13 of the SARFAESI Act inter alia on the ground : (1) that the assignee cannot be said to be secured creditor so far as the appellant is concerned; (2) that there is no amount due and payable by the plaintiff-appellant herein on the ground that in view of the proceedings under IBC against the corporate debtor and the corporate debtor being discharged after the approved resolution plan, there shall not be any enforceable debt against the appellant. If such an application is filed within a period of two weeks from today the same be considered in accordance with law

and on merits after complying with all other requirements which may be required while filing the application under Section 17 of the SARFAESI Act.

(iv) Ram Prakash Agarwal (supra):-

13. Section 151 CPC is not a substantive provision that confers the right to get any relief of any kind. It is a mere procedural provision which enables a party to have the proceedings of a pending suit conducted in a manner that is consistent with justice and equity. The court can do justice between the parties before it. Similarly, inherent powers cannot be used to re-open settled matters. The inherent powers of the Court must, to that extent, be regarded as abrogated by the legislature. A provision barring the exercise of inherent power need not be express, it may even be implied. Inherent power cannot be used to restrain the execution of a decree at the instance of one who was not a party to suit. Such power is absolutely essential for securing the ends of justice, and to overcome the failure of justice. The Court under Section 151 CPC may adopt any procedure to do justice, unless the same is expressly prohibited.

14. The consolidation of suits has not been provided for under any of the provisions of the Code, unless there is a State amendment in this regard. Thus, the same can be done in exercise of the powers under Section 151 CPC, where a common question of fact and law arise therein, and the same must also not be a case of misjoinder of parties. The non-consolidation of two or more suits is likely to lead to a multiplicity of suits being filed, leaving the door open for conflicting decisions on the same issue, which may be common to the two or more suits that are sought to be consolidated. Non-consolidation may, therefore, prejudice a party, or result in the failure of justice. Inherent powers may be exercised ex debito justitiae in those cases, where there is no express provision in CPC. The said powers cannot be exercised in contravention of, or in conflict with, or upon ignoring express and specific provisions of the law.

15. In exceptional circumstances, the Court may exercise its inherent powers, apart from Order 9 CPC to set aside an ex parte decree. An ex parte decree passed due to the non-appearance of the counsel of a party, owing to the fact that the party was not at fault, can be set aside in an appeal preferred against it. So is the case, where the absence of a defendant is caused on account of a mistake of the court. An application under Section 151 CPC will be maintainable, in the event that an ex parte order has been obtained by fraud upon the court or by collusion. The provisions of Order 9 CPC may not be attracted, and in such a case the court may either restore the case, or set aside the ex parte order in the exercise of its inherent powers. There may be an order of dismissal of a suit for default of appearance of the plaintiff, who

was in fact dead at the time that the order was passed. Thus, where a court employs a procedure to do something that it never intended to do, and there is miscarriage of justice, or an abuse of the process of court, the injustice so done must be remedied, in accordance with the principle of actus curiae neminem gravabit—an act of the court shall prejudice no person.

(v) Vijay Singh (supra):-

12. We are only concerned with clause (a), which provides that if summons are duly served and the defendant does not put in appearance, the court may make an order that the suit would be heard ex parte. In this case, this was the procedure followed and an ex parte decree was passed. There is no manner of doubt that an ex parte decree is also a valid decree. It has the same force as a decree which is passed on contest. As long as the ex parte decree is not recalled or set aside, it is legal and binding upon the parties.

17. It would be pertinent to mention that the mere fact that the ex parte decree has been executed does not disentitle the defendant from applying under Order 9 Rule 13CPC to get the same set aside. Reference may be made to Sankaribala Dutta v. Asita Barani Dasi [Sankaribala Dutta v. Asita Barani Dasi, 1976 SCC OnLine Cal 185 : AIR 1977 Cal 289] and Fatima Khatoon v. Swarup Singh [Fatima Khatoon v. Swarup Singh, 1984 SCC OnLine Cal 53 : AIR 1984 Cal 257] . Once the decree is set aside, restitution or restoration can be ordered.

(vi) Mahabir Singh (supra):-

6. The approach of the High Court, in our opinion, was not correct. There exists a presumption that the official act was being done in ordinary course of business. Admittedly, an ex parte decree was passed. The defendant for getting it set aside was required to establish that either no summons was served on him or he had sufficient cause for remaining absent on the date fixed for hearing the suit ex parte.

7. Article 123 of the Limitation Act, 1963 provides for 30 days' time for filing such an application. The said provision reads thus:

8. Thus, even assuming for the sake of argument that no proper step was taken by the appellant herein for service of summons upon the respondent and/or the service of summons was irregular, evidently, it was for the respondent-defendant to establish as to when he came to know about the passing of the ex parte decree. Even in his cross-examination, the first respondent has categorically admitted that he had approached the appellant herein for not giving effect thereto one-and-a-half years prior to

filing of the application, and, thus, he must be deemed to have knowledge about passing of the said ex parte decree. The period of limitation would, thus, be reckoned from that day. As the application under Order 9 Rule 13 of the Code of Civil Procedure was filed one-and-a-half years after the first respondent came to know about passing of the ex parte decree in the suit, the said application evidently was barred by limitation.

9. In terms of Section 3 of the Limitation Act, 1963, no court shall have jurisdiction to entertain any suit or application if the same has been filed after expiry of the period of limitation. The High Court could not have ignored the said jurisdictional fact.

(vii) Basant Singh (supra):-

6. Regarding the contention of the counsel for the appellants that the summons were not duly served, as the substituted service has been published in the local daily Aacharan instead of Dainik Bhaskar, we may point out that it is in the evidence on record that both Aacharan and Dainik Bhaskar are local dailies and are widely circulated in the area. In ordinary circumstances, if both the local dailies are widely circulated in the area the change of the name of the local daily from Dainik Bhaskar to Aacharan would not materially affect the service of notice by way of substituted service, deemed to have been served, and would not invalidate the effect of substituted service just because the notice for substituted service has been published in the local daily which is not ordered by the court. It is the specific contention of the plaintiff-respondent that the notice has been published in the local daily Aacharan on 9-8-1986 and the said local daily is widely circulated in the area and the substituted service would construe as sufficient notice upon the defendants. We are also of the view that it is inherently probable that publication in the local daily Aacharan which is widely circulated in the area would have constituted a sufficient notice to the defendants.

8. Second proviso to Order 9 Rule 13 casts an embargo on the court that a decree passed ex parte shall not be set aside merely on the ground that there has been an irregularity in the service of summons.

9. Order 5, proviso to sub-rule (2) of Rule 19-A CPC provides that where the summons are properly addressed, prepaid and duly sent by registered post with acknowledgement due, notwithstanding the fact that the acknowledgement having been lost or mislaid, or for any other reason, has not been received by the court within thirty days from the date of the issue of the summons, the court shall presume that notice is duly served. Further, Section 27 of the

General Clauses Act, 1897 (in short "the Act") provides similar provision. The presumptions are rebuttable. It is always open to the defendants to rebut the presumption by leading convincing and cogent evidence.

(viii) Parimal (supra):-

12. It is evident from the above that an ex parte decree against a defendant has to be set aside if the party satisfies the court that summons had not been duly served or he was prevented by sufficient cause from appearing when the suit was called on for hearing. However, the court shall not set aside the said decree on mere irregularity in the service of summons or in a case where the defendant had notice of the date and sufficient time to appear in the court. The legislature in its wisdom, made the second proviso mandatory in nature. Thus, it is not permissible for the court to allow the application in utter disregard of the terms and conditions incorporated in the second proviso herein.

13. "Sufficient cause" is an expression which has been used in a large number of statutes. The meaning of the word "sufficient" is "adequate" or "enough", inasmuch as may be necessary to answer the purpose intended. Therefore, word "sufficient" embraces no more than that which provides a platitude which when the act done suffices to accomplish the purpose intended in the facts and circumstances existing in a case and duly examined from the viewpoint of a reasonable standard of a cautious man. In this context, "sufficient cause" means that the party had not acted in a negligent manner or there was a want of bona fide on its part in view of the facts and circumstances of a case or the party cannot be alleged to have been "not acting diligently" or "remaining inactive". However, the facts and circumstances of each case must afford sufficient ground to enable the court concerned to exercise discretion for the reason that whenever the court exercises discretion, it has to be exercised judiciously.

16. In order to determine the application under Order 9 Rule 13 CPC, the test that has to be applied is whether the defendant honestly and sincerely intended to remain present when the suit was called on for hearing and did his best to do so. Sufficient cause is thus the cause for which the defendant could not be blamed for his absence. Therefore, the applicant must approach the court with a reasonable defence. Sufficient cause is a question of fact and the court has to exercise its discretion in the varied and special circumstances in the case at hand. There cannot be a straitjacket formula of universal application.

(ix) Sunil Poddar (supra):-

16. We are also inclined to uphold the argument of learned counsel for the Bank that in view of the fact that the appellants were appearing before the civil court, it was not necessary for the Bank to get summonses published in a newspaper after the matter was transferred in accordance with law to DRT, Jabalpur. But even that step was taken by the respondent Bank. In Nav Bharat Times, a Hindi newspaper having wide circulation in Bombay and Raipur, summonses were published. It cannot be argued successfully that the appellants were not the subscribers of the said newspaper and were not reading Nav Bharat Times, Hindi edition. But even otherwise, such contention is wholly irrelevant. As to bills said to have been produced from the newspaper agent, to us, both the Tribunals were right in observing that such a bill can be obtained at any time and no implicit reliance can be placed on that evidence. It is immaterial whether the appellants were subscribers of the said newspaper and whether they were reading it. Once a summons is published in a newspaper having wide circulation in the locality, it does not lie in the mouth of the person sought to be served that he was not aware of such publication as he was not reading the said newspaper. That ground also, therefore, does not impress us and was rightly rejected by the Tribunals."

16. Perusal of the judgments relied upon by learned counsel for the petitioners shows that the giving of reasons for a decision is an essential attribute of judicial and judicious disposal of a matter before courts, and which is the only indication to know about the manner and quality of exercise undertaken, as also the fact that the court concerned had really applied its mind. Reason is the heartbeat of every conclusion. It introduces clarity in an order and without the same, it becomes lifeless. Reasons substitute subjectively by objectively. Absence of reasons renders the order indefensible/ unsustainable particularly when the order is subject to further challenge before a higher forum.

17. Hon'ble Supreme Court while dealing with issue of deciding ex parte order in the case of **Rabindra Singh (supra)** held that the Tahsildar, in his judgment, has resorted to peculiar logic. According to him, the provisions of review were attracted and not under Order 9 Rule 13 for setting aside the ex parte proceeding. Even if that be so, the ex parte decree, in our opinion, could have been set aside. He could have exercised his power of review. The said decision, with respect, does not lay down the correct law. All courts in a situation of this nature have the incidental power to set aside an ex parte order on the ground of violation of the principles of natural justice.

18. The Hon'ble Supreme Court dealt with issue of service of summons in the case of **Vinod Rani Lamba (supra)** that in this case, the petitioner has denied service of summons or knowledge of the suit, thus on denial, the presumption stood rebutted and burden shifted upon the plaintiff-respondents to prove that summons were served upon them, but the plaintiff-respondents could not lead any evidence in this respect.

In the said case, the Hon'ble Supreme Court allowed the petitioner and orders of the Additional Civil Judge as well as Additional District Judge set aside. The ex parte decree passed in original suit is also set aside.

19. From perusal of the above-extracted judgments it is also crystal clear that reasons are the links between the materials, the foundation for their erection and the actual conclusions. They would also demonstrate how the mind of the maker was activated and actuated and their rational nexus and synthesis with the facts considered and the conclusions reached. Lest it would be arbitrary, unfair and unjust, violating Article 14 or unfair procedure offending Article 21. It also shows that principles of natural justice require a fair opporuntiy of defence.

20. Perusal of the above-extracted judgments relied upon by learned counsel for the respondents shows that an ex parte decree against a defendant has to be set aside if the party satisfies the Court that summons had not been duly served or he was prevented by sufficient cause from appearing when the suit was called on for hearing.

21. It also shows that once a summons is published in a newspaper having wide circulation in the locality, it does not lie in the month of the person should be to be served that he was not aware of such publication as he was not reading the said newspaper.

22. It also shows that if summons are duly served and the defendant does not put in appearance, the court may make an order that the suit would be heard ex parte. Mere mentioning and using the word |"fraud"/ "fraudulent" is not sufficient to satisfy the test of "fraud". As per the settled proposition of law such a pleading/ using the word "fraud"/ "fraudulent" without any material particulars would not tantamount to pleading of "fraud".

23. It also shows that the power to declare the ownership in an immovable property can be exercised only by a civil court save and except when such jurisdiction is barred expressly or by implication under a law. Section 49 of the 1953 Act does not and cannot be construed as a bar on the jurisdiction of the civil court to determine the ownership rights.

24. I have examined the material on record in the light of the judgments relied upon by learned counsel for the parties.

25. On examination, it is found that opposite party nos.2 and 3 filed a suit for declaration of their right which was decreed ex parte in favour of opposite party nos.2 and 3. The petitioner and opposite party no.4 filed application under Order 9 Rule 13 C.P.C. for setting aside ex parte decree and also filed application for condonation of delay in moving the application under Order 9 Rule 13 C.P.C. The Trial Court set aside ex parte judgment and decree dated 22.3.1990. Against the said order, a revision has been filed which has been allowed.

26. The trial Court after hearing the parties recorded the finding that the summons or the notices sent through the registered post were never

served on the petitioners and opposite party no.4; and even no notices were ever issued to the State of U.P. and Gaon Sabha and set aside ex parte judgment and decree.

27. At this juncture, it is important to note that the question of sufficiency or insufficiency of service of notice or summons and the knowledge about pendency of the suit were the questions of facts which could not be interfered with in exercise of the power unless the revisional court recorded specific finding that the findings recorded by the learned trial Court were perverse and was based on no evidence. The revisional Court neither recorded any such finding nor recorded any reason in regard to finding of trial court.

28. In regard to submission that publication was made in the daily newspaper 'Nav Jeevan' dated 7.6.1991, therefore notices upon the private respondents were duly service, on examination, it is found that the newspaper on which reliance has been placed is only a 'city edition' and the petitioner resides in a village Gouri Bazar, therefore the said newspaper has no wide circulation in Gouri Bazar. In this view of the matter, the submission made by learned counsel for the respondents is totally misconceived.

29. It is admitted between the parties that in respect of agricultural plots, the rights and title of the petitioners and opposite parties have been finally decided by the Consolidation Authority during the consolidation operation which took place in the village in the year 1975, against which the opposite party nos.2 and 3 went up in appeal which was dismissed by the Settlement Officer, Consolidation on 5.5.1975 and against the said order, opposite party nos.2 and 3 filed revision which was also dismissed on 6.5.1977 by the Deputy Director, Consolidation and the final record of C.H. Form 45 was prepared in the names of the petitioners and opposite party no.4. Therefore, the matter between the parties become final as regard the right and title of the plots in question.

30. It has been repeatedly held by this Court as well as by the Hon’ble Supreme Court that the matters of setting aside ex parte judgment and order and condonation of delay should be dealt with leniently and insofar it is possible the case should be decided on merits after opportunity of hearing to both the parties subject to securing their due diligence. The opposite party no.1 was completely ignored the above well settled principles of law especially in view of fact that the suit itself was barred by Section 49 of the U.P.C.H. Act as the rights and titles of the parties have already been adjudicated finally by the Consolidation Authorities. In this view of the matter, the judgments relied upon by learned counsel for the petitioner are fully applicable the facts and circumstances of the case.

31. It is a settled legal proposition that not only administrative but also judicial orders must be supported by reasons recorded in it. Thus, while deciding an issue, the court is bound to give reasons for its conclusions. It is the duty and obligation on the part of the court to record reasons while disposing of the case. The hallmark of order and exercise of

judicial power by a judicial forum is for the forum to disclose its reason by itself and giving a reasons has always been insisted upon as one of the fundamentals of sound administration of the justice delivery system to make it known that there had been proper and due application of mind to the issue before the court and also as an essential requisite of the principles of natural justice. In this view of the matter, the revisional Court did not record any reason in regard to finding recorded the trial Court. Therefore, the order passed by the revisional Court is contrary to the law laid down by this Court as well as Hon'ble Supreme Court.

32. The publication in the daily newspaper 'Nav Jeevan' is only a city edition and has no wide circulation in Gorui Bazar, therefore the judgment relied upon by learned counsel for the respondents in regard to service of summons is not applicable to the present facts and circumstances of the case.

33. Considering in totalities of facts and circumstances of the case, the order dated 9.11.1997 passed by the opposite party no.1 is set aside.

34. In the result, this writ petition succeeds and is **allowed**.

35. Needless to say that the opposite parties except the opposite party no.2 shall not interfere with the peaceful possession of the petitioner.

36. No order as to costs.

(Irshad Ali,J.)

October 16, 2025
GK Sinha

Digitally signed by :-
GAUTAM KUMAR SINHA
High Court of Judicature at Allahabad,
Lucknow Bench