HIGH COURT OF JUDICATURE AT ALLAHABAD

WRIT – C No.43026 of 2025

Mohammad Khalid Ameer …..Petitioners(s)

Versus

State of U.P. And 9 Others …..Respondents(s)

Counsel for Petitioners(s) :Arpit Malviya, Awadhesh Kumar Malviya
Counsel for Respondent(s) :Bhupendra Kumar Tripathi, C.S.C., Dharmendra Kumar, Shahbaz Ahmad Khan, Shailendra Kumar

---

Court No. -6
AFR

HON'BLE DR. YOGENDRA KUMAR SRIVASTAVA, J.

1. Heard Sri Awadhesh Kumar Malviya, learned counsel for the petitioner, Sri Abhishek Shukla, learned Additional Chief Standing Counsel appearing for the State-respondents and Sri Dharmendra Kumar, learned counsel appearing for the private respondent nos.6 to 10.

2. The petitioner contends that he is a tenure-holder of the adjoining Plot No. 2566, while the demarcation proceedings in respect of Plot No. 2565 were carried out *ex parte* against him. The Revenue Inspector is stated to have submitted a report dated 06.04.2023 without conducting any spot inspection or issuing notice to the petitioner. Relying solely on the said report, the Sub-Divisional Magistrate passed an *ex parte* order dated 02.06.2023.

3. Upon acquiring knowledge of the *ex parte* order, the petitioner filed a recall application dated 06.06.2023, which is stated to have been

rejected on 19.12.2023 on hyper-technical grounds, without adjudicating his objections on merits.

4. Aggrieved thereby, the petitioner preferred two appeals - Appeal No. 2903 of 2023 against the order dated 02.06.2023, and Appeal No. 2904 of 2023 against the rejection of the recall application. Both appeals were dismissed by the Additional Commissioner, Varanasi Region, vide common order dated 06.11.2025.

5. The petitioner asserts that being tenure-holder of a contiguous plot, he was entitled to notice and opportunity of hearing prior to any demarcation order under Section 24 of the U P Revenue Code, 2006[1] read with Rule 22 of the U.P. Revenue Code Rules, 2016[2]. The impugned orders, passed without such notice, stand vitiated for breach of natural justice.

6. It is contended that the demarcation having been conducted in violation of the mandatory provision of Rule 22 of the Rules, 2016, which requires notice to tenure-holders of contiguous plots, the entire proceedings and resulting orders stand vitiated for breach of *audi alteram partem*, an integral limb of the principles of natural justice enshrined under Article 14 of the Constitution.

7. Learned counsel for the petitioner further points out that proceedings under Section 28 of the Code for correction of the revenue map concerning the same plot are pending before the competent authority and remain protected by an interim order. Thus, permitting the *ex parte* demarcation to operate would create inconsistency between two contemporaneous revenue proceedings.

8. Learned counsel for the State respondents and for the private respondents do not dispute the *ex parte* nature of the Section 24

1 Code, 2006
2 Rules, 2016

proceedings, nor the petitioner's entitlement, as an adjoining tenure-holder, to notice and hearing under Rule 22.

9. Section 24 of the Code empowers the Sub-Divisional Officer to decide boundary disputes through summary inquiry. However, Rule 22(2) of the Rules mandates that tenure-holders of adjoining or contiguous plots be issued notice and given an opportunity of hearing before determination. Failure in this regard amounts to violation of *audi alteram partem*, which forms an integral component of Article 14 of the Constitution.

10. This procedural safeguard ensures fairness and transparency in boundary determination. Land boundaries have direct bearing on proprietary and possessory rights; thus, ignoring the participation of adjoining tenure-holders fundamentally undermines the legitimacy of such a demarcation. It is a well-settled proposition that violation of a mandatory procedural requirement, designed to ensure fairness, results in illegality rather than a mere irregularity.

11. The rationale underlying Rule 22 resonates with the constitutional requirement of *audi alteram partem*, meaning "hear the other side." The principles of natural justice are not mere formality but a substantive guarantee that no one shall be condemned unheard. The doctrine underscores that every administrative or quasi-judicial authority exercising statutory power must provide affected persons with a fair chance of representation before passing any order that may prejudice their rights. The absence of notice and opportunity to the petitioner, an adjoining tenure-holder, therefore strikes at the very root of the proceedings.

12. The next question is whether, in the absence of an express provision for recall under the Code, the Sub-Divisional Officer was

competent to recall an *ex parte* demarcation order when the petitioner approached him immediately upon knowledge of such order. This issue stands squarely answered by this Court in **Tarkeshwar and 2 Others v. State of U.P. and 5 Others**[3]. The Court held that while there may not exist an express statutory provision for recall under Section 24, such power inheres in every judicial or quasi-judicial authority to correct its own procedural errors when the order impugned has resulted in denial of opportunity. This power, described as procedural recall, is distinct from a review on merits as contemplated under Section 24 (4).

13. The principle of procedural recall received authoritative elucidation in **Grindlays Bank Ltd. v. Central Government Industrial Tribunal**[4], wherein the Supreme Court held that even in the absence of specific statutory authority, a tribunal has the inherent power to recall an *ex parte* award if an affected party establishes that it was deprived of an opportunity of hearing. The Court reasoned that such recall does not amount to review but is rather an exercise of correcting a procedural defect *ex debito justitiae*— in discharge of a duty owed to justice itself.

14. Similarly, in **Kapra Mazdoor Ekta Union v. Birla Cotton Spinning & Weaving Mills Ltd.**[5], the Supreme Court reiterated that a tribunal or court retains the jurisdiction to recall an order that has been passed in violation of natural justice so long as it continues to be seized of the matter, and is not rendered *functus officio*. Such a power exists to prevent miscarriage of justice resulting from procedural errors.

15. The aforesaid principles were comprehensively applied by this Court in ***Tarkeshwar*** (supra), while construing Section 24 of the U.P. Revenue Code, 2006 and Rule 22 of the Rules framed thereunder. It was held that tenure-holders of contiguous plots are necessary parties to

3 2023 (5) AWC 4303
4 (1980) Supp SCC 420
5 (2005) 13 SCC 777

demarcation proceedings, and non-service of notice upon them vitiates the entire exercise. It was further observed that where an *ex parte* demarcation order has been passed without notice, the affected tenure-holder is entitled to seek recall, and the authority concerned is not powerless to entertain such application. The failure to entertain or allow such procedural recall would perpetuate injustice and frustrate the very object of fair adjudication contemplated by the Code.

16. In the present case, the admitted facts disclose a clear violation of Rule 22. The Sub-Divisional Officer proceeded to determine the boundary dispute without issuing notice or affording hearing to the petitioner, a recorded holder of the adjoining plot. The resultant demarcation thereby suffers from a procedural illegality of a fundamental character. The plea of natural justice cannot be brushed aside on the ground that subsequent appellate remedies exist, for the violation is not curable by appeal; it vitiates the proceeding itself.

17. Applying the above principles, it must be held that the demarcation proceedings culminating in the order dated 02.06.2023 suffered from a foundational procedural illegality. The petitioner, though a necessary party under Rule 22, was denied notice and opportunity of hearing, thereby offending *audi alteram partem* and the mandate of the Rules. Such violation goes to the root of the jurisdiction exercised and renders the resultant order legally vulnerable.

18. Once the petitioner, upon gaining knowledge, moved a recall application dated 06.06.2023 specifically alleging denial of notice, the Sub-Divisional Officer was duty bound, in the light of **Tarkeshwar** (supra), to examine that grievance as a matter of procedural recall and to correct the error *ex debito justitiae*. The rejection of the recall application on hyper technical grounds, without addressing the core plea of violation

of Rule 22 and natural justice, is contrary to the law declared in **Tarkeshwar** (supra) and cannot be sustained.

19. The appellate authority, in turn, failed to appreciate that the defect was not a mere irregularity curable in appeal, but a structural breach of a mandatory procedural safeguard that vitiated the entire proceedings. By affirming the *ex parte* demarcation without curing the Rule 22 violation or recognising the maintainability and scope of procedural recall as declared in **Tarkeshwar** (supra), the Commissioner's order dated 06.11.2025 is equally rendered unsustainable in law.

20. The impugned orders are, therefore, set aside.

21. The matter is remitted to Respondent No. 4 (Sub-Divisional Officer) to conduct fresh proceedings under Section 24 of the U.P. Revenue Code, 2006, after issuing due notice and opportunity of hearing to the petitioner and all other interested parties.

22. The Sub-Divisional Officer shall conclude the proceedings expeditiously, preferably within a period of three months from the date of production of a certified copy of this order, provided there is no legal impediment. The parties are directed to cooperate fully in the said proceedings.

23. The writ petition stands **allowed** in the terms indicated above.

(Dr. Yogendra Kumar Srivastava, J.)

December 15, 2025
RKK/-

Digitally signed by :-
RAJ KUMAR KANNAUJIA
High Court of Judicature at Allahabad