

A.F.R.**Court No. - 51****Case :- WRIT - C No. - 5015 of 2023****Petitioner :- Bajrangi****Respondent :- State Of U.P. And 2 Others****Counsel for Petitioner :- Mohd Zubair,Roshni Ibrahim****Counsel for Respondent :- C.S.C.****Hon'ble Dr. Yogendra Kumar Srivastava,J.**

1. Heard Ms. Roshni Ibrahim, learned counsel for the petitioner and Sri Ajit Kumar Singh, learned Additional Advocate General assisted by Sri Abhishek Shukla, learned Additional Chief Standing Counsel appearing for the State respondents.

2. The present petition seeks to assail an order dated 25.02.2021 passed by the respondent No. 3/Collector/District Magistrate, Fatehpur, District Fatehpur in Case No. 00340/2021, Computerized Case No. C202102000000394 (Bajrangi Vs. State), under Section 98(1) of the U. P. Revenue Code, 2006. The order dated 05.07.2021 passed by the respondent No. 2/Commissioner, Prayagraj Region, Prayagraj in revision filed against the earlier order, being revision No. 00340/2021, Computerized Case No. C202102000000394 (Bajrangi Vs. State), under Section 210 of the U. P. Revenue Code, 2006, is also sought to be challenged.

3. As per the pleadings and the record of the writ

petition, the petitioner has claimed himself to be the recorded bhumidhar with transferable rights over land bearing Gata No. 3946, area 1.0500 hectares, situate at Village Kondar, Pargana Muttaur, Tehsil and District Fatehpur.

4. It is sought to be contended that the petitioner belongs to scheduled caste and was suffering from a disease and in order to meet the expenses of medical treatment, he had taken a loan. It is submitted that in order to repay the loan and for the purposes of his medical treatment he was in need of funds and accordingly he had sought permission for transfer of his bhumidhari land by moving an application dated 20.10.2020 before the Collector in the prescribed R.C. Form -27.

5. It is pointed out that upon the aforestated application, a report dated 04.11.2020 was submitted by the Area Lekhpal indicating therein that since the transfer was being sought for repayment of loan amount and for meeting out the expenses for the treatment of the disease the petitioner had been suffering from, there was no objection to the permission which was being sought for transfer of the land in question.

6. Counsel for the petitioner has submitted that despite the fact that the petitioner's case for seeking permission for transfer was fully covered as per the provisions contained under Section 98 of the U.P.

Revenue Code, 2006¹ read with Rule 99 of the U.P. Revenue Code Rules, 2016², the Collector rejected the application by means of an order dated 25.02.2021. It is submitted that the aforestated order was passed despite taking into notice the facts stated in the application and also the report submitted by the Area Lekhpal indicating therein that there were no objections to the permission being sought.

7. Aggrieved against the aforestated order, the petitioner preferred a revision before the Commissioner, which was also rejected by an order dated 05.07.2021 reiterating whatever was stated in the earlier order passed by the Collector.

8. Contention of the learned counsel for the petitioner is that once the petitioner had duly fulfilled the requisite conditions for grant of permission for transfer as per the relevant statutory provisions contained under Section 98 of the Code, 2006 read with the provision under Rule 99 of the Rules, 2016 and the report submitted by the Area Lekhpal after due verification of the facts was also favourable, there was absolutely no reason for the application to have been rejected by the concerned respondent authority.

9. It is submitted that the order passed by the respondent No. 3 rejecting the application and also the revisional order passed thereagainst by the respondent

1 Code, 2006

2 Rules, 2016

No. 2, are non-speaking and bereft of reasons. It is further submitted that the only plausible reason which may seem to emerge from the two orders, is that after the proposed transfer, the remaining area of land held by the petitioner would be 0.5930 hectares.

10. Learned counsel for the petitioner has submitted that the requisite conditions under which permission of transfer of land may be granted by the Collector are provided under Section 98 of the Code, 2006 read with Rule 99 of the Rules, 2016. It is pointed out that the conditions laid down therein are in the form of alternatives and if any one of the conditions is fulfilled, the necessary permission ought to be granted.

11. In the case at hand, the petitioner claims to be suffering from a disease and was in need of funds for his treatment; accordingly the condition prescribed under Clause (b) of sub rule of Rule 99 was fulfilled. It is further sought to be contended that the condition prescribed under Clause (d) of sub rule (8) which mandates that the area of the land held by the applicant after transfer must not reduce to less than 1.26 hectares, has been clarified by the explanation appended to the Rule which provides that in a case where the conditions enumerated in any of the Clauses (a) to (c) of the Rule, are fulfilled, the non fulfillment of the condition enumerated in Clause (d) would not constitute a bar for grant of permission.

12. Learned Additional Advocate General appearing for

the State respondents has fairly submitted that the conditions specified therein that the area of land held by the applicant on the date of application, consequent to the transfer should not reduce to less than 1.26 hectares, would not be mandatory in the event the conditions specified under Clause (a), Clause (b) or Clause (c) are fulfilled. Learned Additional Advocate General has referred to the explanation appended to sub rule (8) to point out that the position in this regard has been clarified.

13. The provisions under the Code, 2006 and the Rules, 2016, which would be relevant for the purposes of the controversy involved in the present case are being extracted below:

"98. Restrictions on transfer by bhumidhars belonging to a Scheduled Caste.--(1) Without prejudice to the provisions of this Chapter, no bhumidhar belonging to a scheduled caste shall have the right to transfer, by way of sale, gift, mortgage or lease any land to a person not belonging to a scheduled caste, except with the previous permission of the Collector in writing:

Provided that the permission by the Collector may be granted only when--

(a) the bhumidhar belonging to a scheduled caste has no surviving heir specified in clause (a) of sub-section (2) of section 108 or clause (a) of section 110, as the case may be; or

(b) the bhumidhar belonging to a scheduled caste has settled or is ordinarily residing in the district other than that in which the land proposed to be transferred is situate or in any other State for the purpose of any service or any trade, occupation, profession or business; or

(c) the Collector is, for the reasons prescribed, satisfied that it is necessary to grant the permission for transfer

of land.

(2) For the purposes of granting permission under this section the Collector may make such inquiry as may be prescribed.

Rule 99. Collector's permission for transfer of Scheduled Caste bhumidhar's land. (Section 98).-- (1) An application under section 98 (1) or under section 98 (1) read with section 107, for permission to transfer land by way of sale or gift or for permission to bequeath land by will, as the case may be, shall be made by a Bhumidhar with transferable rights belonging to Scheduled Caste to the Collector in **R.C. Form-27**.

(2) An application under section 98 (1), for permission to mortgage his interest in the land shall be made by a bhumidhar, belonging to a Scheduled Caste to the Collector in R.C. Form-28.

(3) An application under section 98 (1), for permission to let out land shall be made by a bhumidhar belonging to a Scheduled Caste to the Collector in **R.C. Form-29**.

(4) On receipt of an application under section 98 (1) the Collector shall make such inquiry as he may, in the circumstances of the case, deem necessary. He may also depute an officer not below the rank of Naib Tahsildar for:

(a) verification of the facts stated in the application; and

(b) reporting the circumstances in which permission for transfer is sought.

(5) The inquiry officer referred to in sub-rule (4) of this rule shall submit the report in duplicate within the period of fifteen days, from the date of receiving the order of such inquiry.

(6) A copy of the report shall be supplied to the applicant free of charge, from the office of the Collector where such report has been submitted.

(7) The applicant may file objection against the report submitted by the inquiry officer within the period of seven days from the date of receipt of the copy of the report.

(8) After receiving the report submitted under sub-rule (3) and the objection, if any, if the Collector is satisfied that-

(a) the conditions of clause (a) or clause (b) of subsection (1) of section 98 are fulfilled; or

(b) the tenure holder or any member of his family is suffering from any fatal disease regarding which the certificate has been issued by any physician or surgeon specialist in the disease concerned and the permission for transfer is necessary to meet out the expenses for the treatment of such disease; or

(c) the applicant is seeking permission under section 98(1) of the Code for the proposed transfer to purchase any other land from the consideration of such proposed transfer and the facts in this regard in the application are supported with certified copy of a registered agreement to sell in favour of the applicant; or

(d) the area of land held by the applicant on the date of application does not, after such transfer, reduce to less than 1.26 hectares, and

(e) if the permission is being sought for transfer by sale the consideration for the transfer of the land is not below the amount calculated as per the circle rate fixed by the Collector;

he may grant the permission by recording the reasons.

Explanation. --For the removal of doubt it is hereby clarified that if the condition enumerated in clause (d) of this sub-rule is not fulfilled but any condition enumerated in clauses (a) to (c) of this rule is fulfilled the permission under section 98(1) of the Code may be granted by Collector.

(9) An application referred to in sub-rule (2) or sub-rule (3) of rule 99 for permission to mortgage or to let out land, as the case may be, may be granted by the Collector on his being satisfied that the mortgage or letting out, as the case may be, is not possible in favour of a person belonging to a Scheduled Caste or Scheduled Tribe.

(10) An application referred to in sub-rule (1) of rule 99 for permission to bequeath land by will, may be granted by the Collector on his being satisfied that the bequeath of the land was not possible in favour of the person belonging to a Scheduled Caste or a Scheduled Tribe.

(11) The Collector shall make an endeavor to dispose of the application under section 98(1) within the period of fifteen days from the date of receiving the report submitted

by the inquiry officer and if the application is not disposed of within such period the reason for the same shall be recorded."

14. Section 98 of the Code mandates that no *bhumidhar* belonging to a scheduled caste shall have the right to transfer, by way of sale, gift, mortgage or lease any land to a person not belonging to a scheduled caste except with the previous permission of the Collector in writing. The previous permission of the Collector is therefore, a condition precedent before any *bhumidhar* of scheduled caste can seek to transfer his land to a person not belonging to a scheduled caste. In the absence of such permission having been obtained, the transfer would be rendered void as per Section 104, and would be subject to the consequences provided under Section 105.

15. The proviso to Section 98 enumerates the conditions under which permission may be granted by the Collector, and the same are as follows:

(i) the *bhumidhar* belonging to a scheduled caste has no surviving heir specified in clause (a) of sub-section (2) of section 108 or clause (a) of section 110, as the case may be; or

(ii) the *bhumidhar* belonging to a scheduled caste has settled or is ordinarily residing in the district other than that in which the land proposed to be transferred is situate or in any other State for the purpose of any service or any trade, occupation, profession or business; or

(iii) the Collector is, for the reasons prescribed, satisfied that it is necessary to grant the permission for transfer of land.

16. The reasons prescribed, as referred to under clause (c) of the proviso to Section 98(1), upon which the Collector is to record its satisfaction that it is necessary to grant permission for transfer of the land, are specified under sub-rule (8) of Rule 99 of the Rules, 2016, and the same are as follows:

(i) the conditions of clause (a) or clause (b) of subsection (1) of section 98 are fulfilled; or

(ii) the tenure holder or any member of his family is suffering from any fatal disease regarding which the certificate has been issued by any physician or surgeon specialist in the disease concerned and the permission for transfer is necessary to meet out the expenses for the treatment of such disease; or

(iii) the applicant is seeking permission under section 98(1) of the Code for the proposed transfer to purchase any other land from the consideration of such proposed transfer and the facts in this regard in the application are supported with certified copy of a registered agreement to sell in favour of the applicant; or

(iv) the area of land held by the applicant on the date of application does not, after such transfer,

reduce to less than 1.26 hectares, and

(v) if the permission is being sought for transfer by sale the consideration for the transfer of the land is not below the amount calculated as per the circle rate fixed by the Collector;

17. The conditions under which permission may be granted for transfer to a *bhumidhar* belonging to a scheduled caste can thus be summarised as follows:-

(i) in the absence of surviving heir specified in clause (a) of sub-section (2) of section 108 or clause (a) of section 110;

(ii) the transferor has settled or is ordinarily residing in the district other than that in which the land proposed to be transferred is situate or in any other State for the purpose of any service or any trade, occupation, profession or business;

(iii) for the reasons prescribed under the Rules, i.e.

(a) the tenure holder or any member of his family is suffering from any fatal disease; or

(b) the applicant is seeking permission for the proposed transfer to purchase any other land from the consideration of such proposed transfer; or

(c) the area of land held by the applicant on the date of application does not, after such

transfer, reduce to less than 1.26 hectares, and

(d) if the permission is being sought for transfer by sale the consideration is not below the amount calculated as per the circle rate fixed by the Collector.

18. The explanation to Rule 99 clarifies that in a situation where any condition enumerated in clause (a) to (c) of sub-rule (8) of Rule 99 is fulfilled, the permission may be granted even if the holding of the *bhumidhar* (transferor) after such transfer reduces to less than 1.26 hectares.

19. The procedure for obtaining permission for transfer under Section 98 is provided for under Rule 99 of the Rules, 2016 and as per sub-rule (3) thereof an application seeking permission to transfer land by way of sale or gift or for permission to bequeath land by will, as the case may be, is to be made by a *bhumidhar* with transferable rights belonging to scheduled caste to the Collector in RC-Form 27. Upon receipt of such an application, the Collector under sub-rule (4) shall make an enquiry as he may, in the circumstances of the case deem necessary. For the purpose he may depute an officer not below the rank of Naib Tehsildar for : (a) verification of the facts stated in the application; and (b) reporting the circumstances in which permission for transfer is sought. Thereafter, under sub-rule (5), the inquiry officer shall submit the report in duplicate within a period of 15 days from the date of

receiving the order of such enquiry. The copy of the report is to be supplied to the applicant under sub-rule (6) whereupon the applicant may file objections against the report within a period of seven days and thereafter the Collector upon being satisfied that any of the conditions under sub-rules (8)(a) to (d), and sub-rule (8) (e) of Rule 99, are fulfilled, he may grant permission after recording reasons.

20. In a case where the application has been made as per the prescribed procedure and upon due enquiry as provided under the Rules, 2016 either of the aforestated conditions are held to be satisfied, the permission is required to be granted for transfer under Section 98.

21. The aforementioned legal position with regard to the interpretation of the provisions contained under Section 98 of the Code, 2006 and Rule 99 of the Rules, 2016 which relate to the restrictions on transfer by *bhumidhars* belonging to a Scheduled Caste and the manner in which permission may be granted for the purpose by the Collector, were subject matter of consideration in recent decisions of this Court in **Sitaram vs State of U.P. and others**³ and **Smt. Omwati Vs. Collector District Pilibhit And 2 Others**⁴ which has been relied upon by counsel for both the parties.

22. The only plausible reason that may seem to emerge from the two orders, which are subject matter of the

3 2022 (155) RD 178

4 2023 (1) ADJ 280

present writ petition, is that after the proposed transfer the remaining area of land held by the petitioner would reduce to 0.5930 hectare. This would mean that the area of land remaining with the petitioner would reduce to less than 1.26 hectares and would be hit by the injunctive condition under Clause (d) of sub rule (8) of Rule 99.

23. In this regard, it may be noticed that in terms of sub rule (8) of Rule 99, the Collector is required to record his satisfaction with regard to the fulfillment of conditions contained under Clauses (a), (b), (c), (d) and (e). It may further be noticed that Clauses (a), (b), (c) and (d), are connected, by the word 'or', and Clause (e) is connected by using the word 'and'.

24. The conjunctions 'and' and 'or' are two of the elemental words in the English Language – 'and' combines items while 'or' creates alternatives.

25. In **Maxwell on The Interpretation of Statutes**⁵, it has been observed as follows:

“in ordinary usage, 'and' is conjunctive and 'or' disjunctive”.

26. It was held by this Court in **Smt. Krishna Shri Gupta v. State of U.P. and Others**⁶ that in the context of statutory interpretation, the word 'or' has generally been construed as being disjunctive. The relevant observations made in the judgment are as follows:

“25. In logic, mathematics and in the context of

⁵ Maxwell on The Interpretation of Statutes, Twelfth Edition

⁶ 2020 (3) ADJ 358

statutory interpretation, the word “or” has generally been construed as being disjunctive i.e. connective that marks alternatives. It has been used to connect words, phrases or classes representing alternatives.”

27. In *Fakir Mohd. v. Sita Ram*⁷, it was held that the word 'or' is normally disjunctive. The use of the word 'or' in a statute manifests the legislative intent of the alternatives prescribed under law.

28. In the case of *Guru Nanak Dev University vs. Sanjay Kumar Katwal and another*⁸, it was held that the use of 'or' between two qualifications conveyed a disjunctive sense indicating alternatives and possession of either of the qualifications would be held to be sufficient. It was reiterated that the word 'or' is normally used in the disjunctive sense unless the context warrants otherwise. The relevant extract from the judgment is as follows :-

"9. The prescription of eligibility criteria is very clear. It requires a Bachelor's degree with not less than 45% marks or a Master's degree. The University's contention that the candidate must have a Bachelor's degree and only if his marks are less than 45% in the Bachelor's degree course, was the Master's degree to be considered, would mean that the word "or" should be substituted by the words "in the event of the candidate not having 45% marks in the Bachelor's degree". Reading such words into the provision is impermissible. The word "or" is disjunctive. No doubt, in some exceptional circumstances, the word "or" has been read as conjunctive as meaning "and", where the context warranted it. But the word "or" cannot obviously be read as referring to a conditional alternative, when such condition is not specified. In view of the provision relating to eligibility being unambiguous and using the word "or", it is clear that a Master's degree without a Bachelor's degree will satisfy the eligibility requirement."

7 (2002) 1 SCC 741

8 (2009) 1 SCC 610

29. The interpretation of the word 'or' in the context of an exemption notification issued under the U.P. Trade Tax Act, 1948 came up for consideration in the case of **G.P. Ceramics (P) Ltd. Vs. Commissioner, Trade Tax, Uttar Pradesh**⁹, and it was held that the three contingencies provided for under the notification which were connected by the word 'or', were disjunctive in nature. It was stated thus :-

"24. The eligibility criteria is contained in the notification. Sub-clause (ii) of Clause 2-B of the notification envisages three contingencies i.e. (i) the unit is established on land or building or both owned by the dealer; or (ii) the unit is established on land or building or both taken on lease for a period of not less than 15 years; or (iii) the unit is established on land or building or both allotted to such unit by the State or the Central Government or any government company or any corporation owned or controlled by the Central or the State Government.

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27. The eligibility criteria are laid down in the notification, which, as noticed hereinbefore, provide for three contingencies. They are disjunctive in nature and not conjunctive..."

30. In this regard, reference may also be had to the observations made by **Lord Halsbury in Mersey Docks and Harbour Board vs. Henderson**¹⁰, which are as follows :-

".....I know no authority for such a proceeding unless the context makes the necessary meaning of "or" "and" as in some instances it does; but I believe it is wholly unexampled so to read it when doing so will upon one construction entirely alter the meaning of the sentence unless some other part of the same statute or the clear intention of it requires that to be

9 (2009) 2 SCC 90

10 (1888) 13 AC 595 (HL)

done...."

31. It would therefore be seen that the meaning of the word 'or' as a tool of statutory construction has been subject matter of consideration in a number of decisions, and it has been consistently held that the word 'or' is normally disjunctive and its use in a statute manifests the legislative intent of the alternatives prescribed under law.

32. In the instant case the use of the word 'or' as a connective between Clauses (a), (b), (c) and (d), is indicative of the disjunctive sense marking the four alternative conditions. It would follow as a consequence that in the event either of the conditions under Clauses (a), (b), (c) or (d) are fulfilled, the same would have to be held sufficient for the purposes of recording of satisfaction by the Collector for grant of approval.

33. The condition under Clause (d), which is in the nature of an injunctive clause, in terms whereof it is provided that area of land held by the applicant on the date of the application, should not after transfer, reduce to less than 1.26 hectares, has been clarified by the explanation which is appended to sub rule (8).

34. The intent, purpose and effect of an Explanation appended to a statutory provision was considered in **S. Sundaram Pillai Vs. V.R. Pattabiraman and others**¹¹. It was held that the Explanation is meant to explain or clarify certain ambiguities in the provision. Referring to

¹¹ (1985) 1 SCC 591

earlier decisions in **Burmah Shell Oil Storage and Distributing Co. of India Ltd. v. CTO**¹², **Bihta Cooperative Development Cane Marketing Union Ltd. v. Bank of Bihar**¹³, **Hiralal Rattanlal Vs. State of U.P.**¹⁴, **Dattatraya Govind Mahajan v. State of Maharashtra**¹⁵ and also the principles laid down in **Sarathi in Interpretation of Statutes**¹⁶, **Swarup in Legislation and Interpretation**¹⁷ and **Bindra in Interpretation of Statutes**¹⁸, the object of an Explanation to a statutory provision was elaborated, and it was observed as follows:

“53. Thus, from a conspectus of the authorities referred to above, it is manifest that the object of an Explanation to a statutory provision is--

"(a) to explain the meaning and intendment of the Act itself,

(b) where there is any obscurity or vagueness in the main enactment, to clarify the same so as to make it consistent with the dominant object which it seems to subserve,

(c) to provide an additional support to the dominant object of the Act in order to make it meaningful and purposeful,

(d) an Explanation cannot in any way interfere with or change the enactment or any part thereof but where some gap is left which is relevant for the purpose of the Explanation, in order to suppress the mischief and advance the object of the Act it can help or assist the Court in interpreting the true purport and intendment of the enactment, and

(e) it cannot, however, take away a statutory

12 AIR 1961 SC 315

13 AIR 1967 SC 389

14 (1073) 1 SCC 216

15 (1977) 2 SCC 548

16 Sarathi, Interpretation of Statutes

17 Swarup, Legislation and Interpretation

18 Bindra, Interpretation of Statutes

right with which any person under a statute has been clothed or set at naught the working of an Act by becoming an hindrance in the interpretation of the same."

35. The effect and intendment of an explanation is to be determined by its own words. In certain cases an explanation may be introduced *ex abundanti cautela* i.e. by way of abundant caution in order to clear any possible ambiguities surrounding the meaning of the statutory provision and to place what the legislature considers to be the true meaning beyond controversy or doubt.

36. The Explanation appended to sub rule (8) provides that if the condition enumerated in Clause (d) of the sub rule is not fulfilled but any of the conditions enumerated in Clauses (a) to (c) of the sub rule are fulfilled, the permission under Section 98(1) may be granted.

37. The import of the Explanation would therefore be that even in a case where the area of land held by the applicant on the date of application, reduces to less than 1.26 hectares after the transfer, permission may still be granted in the event either of the conditions specified in Clauses (a) to (c) is fulfilled.

38. The use of 'or' between Clauses (a) to (d) of sub rule (8), as noticed earlier, conveys a disjunctive sense indicating alternatives and fulfillment of the conditions specified in either of the clauses would be a sufficient ground on the basis of which permission under Section 98(1) may be granted.

39. It would be relevant to underscore that while fulfillment of either of the conditions specified under Clauses (a) to (d), aforesaid, would be 'sufficient', none of these conditions can be held to be 'necessary'. To put it in other words, in a case where one of the conditions under Clauses (a) to (d) are fulfilled, non-fulfillment of any other condition would be of no consequence.

40. In logic and mathematics, '**necessity**' and '**sufficiency**' are terms used to describe a conditional or implicational relationship between two statements. In general, a 'necessary condition' is one that must be present in order for the other condition to occur, while a 'sufficient condition' is one that produces the said condition.

41. It can therefore be said that a 'necessary condition' is a condition that must be present for an event to occur whereas a 'sufficient condition' is a condition or set of conditions that will produce the event.

42. A 'sufficient condition' would on its own produce the result but its absence cannot lead to an inference that the result would not be produced. A causal fallacy occurs when one assumes that a sufficient condition is necessary for the event to occur.

43. Applying the aforesaid principles, in the context of sub rule (8), the conditions specified in each of the Clauses (a) to (d), would have to be held sufficient, though neither of them is necessary.

44. The Explanation appended to sub rule (8) seeks to clarify the position that the non-fulfillment of the condition with regard to the requirement that area of land held by the applicant consequent to the transfer does not reduce to less than 1.26 hectares, as provided under Clause (d), would not create a bar in the grant of permission under Section 98(1), in the event any of the conditions enumerated in Clauses (a) to (c) is fulfilled.

45. On the question of the effect of non-disclosure of reasons in the orders impugned, it would be necessary to state that the duty to give reasons and the necessity of passing a speaking order by an authority exercising quasi-judicial powers, is fairly well settled. It has been consistently held that an order passed by a quasi-judicial authority or even a administrative authority affecting the rights of parties, must be a 'speaking order' and it must not be like the 'inscrutable face of a sphinx'.

46. Emphasizing on the necessity to give reasons while exercising administrative or quasi-judicial functions, it was observed in **Union of India Vs. Mohan Lal Capoor and Others**¹⁹ observed as follows:

“28 Reasons are the links between the materials on which certain conclusions are based and the actual conclusions. They disclose how the mind is applied to the subject matter for a decision whether it is purely administrative or quasi-judicial. They should reveal a rationale nexus between the facts considered and conclusions reached. Only in this way can opinion or decisions recorded to be shown to be manifestly just and reasonable.”

¹⁹ (1973) 2 SCC 836

47. It would be apposite to refer to the observations made by Lord Denning M.R., in **Breen v. Amalgamated Engineering Union**²⁰, which are as follows:

“the giving of reasons is one of the fundamentals of good administration.”

48. In **Alexander Machinery (Dudley) Ltd. Vs. Crabtree**²¹, Sir Donaldson has observed that “failure to give reasons amounts to a denial of justice”.

49. In **Regina Vs. Immigration Appeal Tribunal Ex parte Khan (Mahmud)**²², Lord Lane, C.J. has observed:

“A party appearing before a tribunal is entitled to know, either expressly stated by the tribunal or inferentially stated, what it is to which the tribunal is addressing its mind.”

50. The **Law Commission**²³ in the **Fourteenth Report** relating to reform in Judicial Administration made the following recommendations:

“In the case of administrative decisions provision should be made that they should be accompanied by reasons. The reasons will make it possible to test the validity of these decisions by the machinery of appropriate writs.”

51. In **Travancore Rayon Ltd. v. Union of India**²⁴ it has been observed:

“The court insists upon disclosure of reasons in support of the order on two grounds : one, that the party aggrieved in a proceeding before the High Court or this Court has the opportunity to demonstrate that the reasons which persuaded the

20 (1971) 2 QB 175, 191 : (1971) 1 All ER 1148

21 1974 ICR 120

22 1983 QB 790 : (1983) 2 All ER 420

23 Law Commission, Fourteenth Report

24 (1969) 3 SCC 868

authority to reject his case were erroneous; the other, that the obligation to record reasons operates as a deterrent against possible arbitrary action by the executive authority invested with the judicial power.”

52. Dealing with the question as to whether it was incumbent on the authority exercising quasi-judicial or administrative powers to give any reasons for its decision, it was observed in **Mahabir Prasad Santosh Kumar v. State of U.P.**²⁵, as follows:

“The practice of the executive authority dismissing statutory appeals against orders which prima facie seriously prejudice the rights of the aggrieved party without giving reasons is a negation of the rule of law.

“Recording of reasons in support of a decision on a disputed claim by a quasi-judicial authority ensures that the decision is reached according to law and is not the result of caprice, whim or fancy or reached on grounds of policy or expediency. A party to the dispute is ordinarily entitled to know the grounds on which the authority has rejected his claim. If the order is subject to appeal, the necessity to record reasons is greater, for without recorded reasons the appellate authority has no material on which it may determine whether the facts were properly ascertained, the relevant law was correctly applied and the decision was just.”

53. In **Siemens Engineering & Manufacturing Co. of India Limited v. Union of India**²⁶ while dealing with the exercise of an appellate power by the Central Government under the Sea Customs Act, 1878, it was stated thus:

“It is now settled law that where an authority makes an order in exercise of a quasi-judicial function, it must record its reasons in support of the order it makes. Every quasi-judicial order must be supported by reasons...”

²⁵ (1970) 1 SCC 764

²⁶ (1976) 2 SCC 981

54. Summarizing the legal position with regard to the necessity to give reasons and pass a speaking order while exercising quasi-judicial functions in the case of **Kranti Associates Private Limited And Another v. Masood Ahmed Khan And Others**²⁷, it was held as follows:

“(a) In India the judicial trend has always been to record reasons, even in administrative decisions, if such decisions affect anyone prejudicially.

(b) A quasi-judicial authority must record reasons in support of its conclusions.

(c) Insistence on recording of reasons is meant to serve the wider principle of justice that justice must not only be done it must also appear to be done as well.

(d) Recording of reasons also operates as a valid restraint on any possible arbitrary exercise of judicial and quasi-judicial or even administrative power.

(e) Reasons reassure that discretion has been exercised by the decision-maker on relevant grounds and by disregarding extraneous considerations.

(f) Reasons have virtually become as indispensable a component of a decision-making process as observing principles of natural justice by judicial, quasi-judicial and even by administrative bodies.

(g) Reasons facilitate the process of judicial review by superior Courts.

(h) The ongoing judicial trend in all countries committed to rule of law and constitutional governance is in favour of reasoned decisions based on relevant facts. This is virtually the life blood of judicial decision-making justifying the principle that reason is the soul of justice.

(i) Judicial or even quasi-judicial opinions these days can be as different as the judges and

27 (2010) 9 SCC 496

authorities who deliver them. All these decisions serve one common purpose which is to demonstrate by reason that the relevant factors have been objectively considered. This is important for sustaining the litigants' faith in the justice delivery system.

(j) Insistence on reason is a requirement for both judicial accountability and transparency.

(k) If a Judge or a quasi-judicial authority is not candid enough about his/her decision-making process then it is impossible to know whether the person deciding is faithful to the doctrine of precedent or to principles of incrementalism.

(l) Reasons in support of decisions must be cogent, clear and succinct. A pretence of reasons or "rubber-stamp reasons" is not to be equated with a valid decision making process.

(m) It cannot be doubted that transparency is the sine qua non of restraint on abuse of judicial powers. Transparency in decision making not only makes the judges and decision makers less prone to errors but also makes them subject to broader scrutiny.

(n) Since the requirement to record reasons emanates from the broad doctrine of fairness in decision making, the said requirement is now virtually a component of human rights and was considered part of **Strasbourg Jurisprudence**. See (1994) 19 EHRR 553, at 562 para 29 and **Anyia vs. University of Oxford**, 2001 EWCA Civ 405, wherein the Court referred to Article 6 of **European Convention of Human Rights** which requires, "adequate and intelligent reasons must be given for judicial decisions".

(o) In all common law jurisdictions judgments play a vital role in setting up precedents for the future. Therefore, for development of law, requirement of giving reasons for the decision is of the essence and is virtually a part of "due process".

55. The aforementioned decisions indicate that an important consideration which has consistently weighed with the courts for holding that an administrative

authority exercising quasi-judicial functions must record reasons for its decision, is that such a decision is often subject to appellate as well as supervisory jurisdiction, and that the reasons, if recorded would enable the higher courts to effectively exercise the appellate or the supervisory power. The other considerations for taking this view are that the requirement of recording reasons would guarantee an objective consideration by the authority, introduce clarity in the decisions and minimize chances of arbitrariness in decision-making.

56. In addition to the above, the recording of reasons by an administrative authority would serve the salutary purpose of excluding the chances of arbitrariness and ensuring a degree of fairness in the process of decision-making.

57. The extent and nature of the reasons may depend upon particular facts and circumstances but what would be necessary is that the reasons should be clear and explicit so as to indicate that the authority has given due consideration to the points in controversy.

58. Having regard to the foregoing discussion regarding the rationale to record reasons by an administrative authority exercising quasi-judicial functions, this Court finds that the orders passed by the respondent authorities both at the first stage and at the revisional stage, are not indicative of any clear reasons, leaving it to this Court to make an inferential exercise to discern as to what

weighed in the minds of the authorities to arrive at their respective conclusions.

59. The only plausible reason which may seem to emerge from the two orders, is that after the proposed transfer, the remaining area of the land held by the petitioner would be 0.5930 hectare. As already noted above, the condition with regard to the area of the land, held by the applicant, consequent to the transfer of the land being reduced to less than 1.26 hectares, is not mandatory subject to the fulfillment of any of the other conditions.

60. The orders impugned do not reflect any consideration as to whether the conditions under the Clauses (a) to (c) of sub-rule (8) of the Rule 98, which are in the nature of alternatives, have been accorded consideration.

61. It would be relevant to reiterate the view taken by this Court in the case of **Sitaram** (supra) that in exercise of its discretionary power if the concerned authority ignores or does not take into account considerations which are relevant to the purpose of the statute in question, then its action would be invalid. This would be more so where the statute conferring discretion on the authority has structured the discretion by expressly laying down the consideration which should be taken into account by the authority for exercise of the discretion. In such a case, if the exercise of the discretionary power has

been influenced by considerations that cannot lawfully be taken into account or by disregard of the relevant considerations required to be taken into account, the decision arrived at by the authority would be invalid.

62. The authority while exercising the discretionary power in a case where the discretion of the authority has been structured while laying down specific conditions would be required to exercise the discretionary power taking into account only the relevant considerations and disregarding the consideration which are irrelevant.

63. The legal position in this regard has been summarised in the case of **Sitaram** by referring to the decisions in **R. vs. St Pancras Vestry**²⁸, **Associated Provincial Picture Houses, Ltd. vs. Wednesbury Corporation**²⁹, **Padfield And Others vs. Minister of Agriculture, Fisheries And Food And Others**³⁰ and **Breen vs. Amalamated Engineering Union And Others**³¹. The relevant observations made in the case of **Sitaram** are being extracted below:-

"21. The "irrelevant considerations" doctrine was stated by **Lord Esher MR** in **R. vs. St Pancras Vestry** by observing as follows:

"But they must fairly consider the application and exercise their discretion on it fairly, and not take into account any reason for their decision which is not a legal one. If people who have to exercise a public duty by exercising their discretion take into account matters which the Courts consider not to be

28 (1890) 24 Q.B.D. 371

29 [1947] 2 All E.R. 680

30 [1968] 1 All E.R. 694

31 [1971] 2 Q.B. 175

proper for the guidance of their discretion, then in the eye of the law they have not exercised their discretion."

22. The scope of interference by Courts in matters relating to exercise of discretion conferred by a statute upon an authority was subject matter of consideration in **Associated Provincial Picture Houses, Ltd. vs. Wednesbury Corporation** wherein it was stated by **Lord Greene, M.R.** as follows:

"... The law recognises certain principles on which the discretion must be exercised ... They are perfectly well understood. The exercise of such a discretion must be a real exercise of the discretion. If, in the statute conferring the discretion, there is to be found, expressly or by implication, matters to which the authority exercising the discretion ought to have regard, then, in exercising the discretion, they must have regard to those matters. Conversely, if the nature of the subject-matter and the general interpretation of the Act make it clear that certain matters would not be germane to the matter in question, they must disregard those matters.

.... the court is entitled to investigate the action of the local authority with a view to seeing whether it has taken into account matters which it ought not to take into account, or, conversely, has refused to take into account or neglected to take into account matters which it ought to take into account."

23. The circumstances under which exercise of discretionary powers by a statutory authority may be held to be invalid were stated in **Padfield And Others vs. Minister of Agriculture, Fisheries And Food And Others**, wherein **Lord Upjohn** observed as follows:

"Unlawful behaviour by the Minister may be state with sufficient accuracy ... (a) by an outright refusal to consider the relevant matter, or (b) by misdirecting himself in point of law, or (c) by taking into account some wholly irrelevant or extraneous consideration, or (d) by wholly omitting to take into account a relevant consideration."

24. The principle laid down in the decision of the **House of Lords in Padfield's case** (supra) was reiterated by **Lord Denning, M.R. in Breen vs. Amalamated Engineering Union And Others**, by stating as follows:

"The discretion of a statutory body is never unfettered. It is a discretion which is to be exercised according to law. That means at least this: the statutory body must be guided by relevant considerations and not by irrelevant. If its decision is influenced by extraneous considerations which it ought not to have taken into account, then the decision cannot stand. No matter that the statutory body may have acted in good faith; nevertheless the decision will be set aside."

25. The proposition can thus broadly be laid down by stating that a decision by an authority exercising discretionary power under a statute must be arrived at by taking into account the relevant considerations and eschewing the irrelevant considerations, in the absence of which the action would have to be held as ultra vires and void."

64. For the aforesaid reasons, and in particular that the orders passed by the respondent authorities are non-speaking and not indicative of an objective consideration of the relevant statutory provisions required for the purposes of grant of permission for transfer under Section 98 of the U.P. Revenue Code, 2006, the impugned orders are held to be legally unsustainable and are set aside.

65. The matter is remitted to the respondent no. 3 for passing a fresh order on the basis of the provisions contained under Section 98 of the Code, 2006 read with sub-rule (8) of Rule 99 of the Rules, 2016 in the light of the discussion made hereinabove. The respondent authority would be expected to pass appropriate orders on the application of the petitioner under Section 98

seeking grant of permission for transfer, expeditiously, and preferably within a period of three months from the date of presentation of a certified copy of this order.

66. The writ petition is **allowed** to the extent indicated above.

Order Date :- 10.5.2023
Arun K. Singh

[Dr. Y.K. Srivastava, J.]