**(2018) 07 UK CK 0173**

**Uttarakhand High Court**

**Case No:** Writ Petition (M/S) No. 740 Of 2016

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| Sohan Lal | | APPELLANT |
| | Vs | |
| State Of Uttarakhand & Others | | RESPONDENT |

**Date of Decision:** July 25, 2018

**Acts Referred:**
Uttar Pradesh Zamindari Abolition And Land Reforms Act, 1950 â€" Section 209, 331(4)#Code Of Civil Procedure, 1908 â€" Section 100, Order 47 Rule 1#Constitution Of India, 1950 â€" Article 227

**Citation:** (2018) 07 UK CK 0173

**Hon'ble Judges:** Manoj K. Tiwari, J

**Bench:** Single Bench

**Advocate:** P.C. Maulekhi, Mamta Bisht, C.S. Rawat

**Final Decision:** Allowed

**Judgement**

Manoj K. Tiwari, J

1. By means of this writ petition, petitioner has sought following relief:-

Issue a writ or order or direction in the nature of certiorari quashing the judgment and order dated 02.02.2016 passed by Board of Revenue, Dehradun

(Uttarakhand) in review petition no. 09 of 2014-15 (old no. 142 of 2014-15) Ã¢â,¬Å“Smt. Sushila & another Vs Sohan Lal & others.Ã¢â,¬â€‹

2. Brief facts of the case are as under:-

Sri Sohan Lal (petitioner herein) purchased 4 Bigha 11 Biswa land comprised in plot No. 4/2 Min situate in Village Devipura Mulia, Tehsil Ramnagar, District Nainital vide sale deed dated 02.06.1986, from Diwan Singh. The vendor i.e. Sri Diwan Singh S/o Sri Nandan Singh had purchased the said

land from one Sri Jeet Singh S/o Natha Singh in the year 1979.

3. Sri Bishan Dutt (since deceased), who is survived by his wife Ã¢â‚¬" Smt. Sushila and son Ã¢â‚¬" Dinesh Chandra, respondent Nos. 2 and 3, respectively,

also purchased 4 Bigha land from Sri Jeet Singh S/o Natha Singh comprised in plot No. 8 Min, 12 Min, 13 Min, 14 Min and 27 Min situate in Village

Devipura Mulia, Tehsil Ramnagar, District Nainital by a registered sale deed dated 12.06.1979.

4. Sri Bishan Dutt (predecessor in interest of respondent Nos. 2 and 3) was an attesting witness in the sale deed executed by Sri Diwan Singh in

favour of petitioner Ã¢â‚¬" Sri Sohan Lal on 02.06.1986. In the year 1997, petitioner filed a suit for possession against Sri Bishan Dutt and his son under

Section 209 of Uttar Pradesh Zamidari Abolition & Land Revenue Act, which was registered as 22/60 of 1997-98. After exchange of pleadings, the

said suit was decreed by learned Assistant Collector, 1st Class, Ramnagar, District Nainital vide judgment and order dated 19.01.2000. Sri Bishan Dutt

and his son Dinesh Chandra challenged the said judgment by filing Appeal No. 46/92 of 1999-2000, which was dismissed by Additional Commissioner,

Kumaon Division, Nainital vide judgment and order dated 21.05.2001. Feeling aggrieved, Bishan Dutt and his son filed Second Appeal No. 03 of 2008-

2009 which too was dismissed by learned Board of Revenue vide judgment and order dated 19.07.2014.

5. Since, in the meantime, Sri Bishan Dutt passed away, therefore, his legal representatives filed a review application before Board of Revenue

seeking review of judgment dated 19.07.2014 which was registered as Review Application No. 142 of 2014-15. The said review application was

allowed by learned Board of Revenue vide order dated 7.05.2015 and the matter was remanded back to first appellate court (i.e., Commissioner,

Kumaon Division) with a direction to treat the matter as test case and to personally visit the disputed land and to decide the case in the presence of persons, who are recorded tenure holder and are in cultivatory possession over the disputed land.

6. Petitioner challenged the said order dated 07.05.2015, passed by Board of Revenue, by filing WPMS No. 1288 of 2015 before this Court. A

coordinate Bench of this Court vide judgment dated 29.06.2015 allowed the said writ petition with the following directions:-

Ã¢â‚¬Å“Present petition, thus, stands allowed. Order dated 07.05.2015 is quashed. However, it is directed that learned Board of Revenue / Second

Appellate Court shall decide the review application No. 142 of 2014-15, at its own merit in accordance with law on the basis of principle laid down

under Order 47 C.P.C. within 60 days from the date copy of this order is communicated to the learned Second Appellate Court.

Petitioner shall be at liberty to file reply to the review application before the Second Appellate Court within ten days from today and rejoinder affidavit,

if any, thereon may be filed within ten days thereafter. It is further provided that till decision is taken in the review application, execution proceedings

shall be kept in abeyance.Ã¢â‚¬â€‹

7. Pursuant to the order of this Court dated 29.06.2015, matter was again heard by Board of Revenue and respondentÃ¢â‚¬â„¢s review application was

allowed vide order dated 02.02.2016, the judgments passed earlier by Assistant Collector, Commissioner and Board of Revenue were set aside and

the matter was remanded back to the first appellate court i.e. Commissioner, Kumaon Division, Nainital to decide the matter afresh, after hearing the

parties and other concerned persons, in the presence of those who are in cultivatory possession over the land.

8. The order dated 02.02.2016 passed by Board of Revenue on review application of Respondent No. 2 & 3 is challenged by petitioner in the present

writ petition.

9. Heard learned counsel for the parties and perused the record.

10. Perusal of review application filed by respondent Nos. 2 and 3 reveals that the ground on which respondent Nos. 2 and 3 had sought review of the

judgment dated 19.07.2014 was that Board of Revenue decided the appeal without framing substantial question of law.

11. Sri Maulekhi, learned counsel for the petitioner submits that in view of the judgment rendered by HonÃ¢â‚¬â„¢ble Supreme Court in the case of State

of Uttarakhand Vs Mohan Singh & others reported in 2013 (1) UD 21, framing of substantial question of law is not necessary for deciding second

appeal under Uttar Pradesh Zamidari Abolition & Land Reforms Act. Para 26 of the said judgment is extracted below:-

Ã¢â‚¬Å“26. We are of the view that the principle laid down in Mahindra and Mahindra and the judgments referred to earlier clearly apply when we

interpret sub- section (4) of Section 331 of the U.P. Act. Sub-section (4), as we have already indicated, has used the expression Ã¢â‚¬Å“on any of the

groundsÃ¢â‚¬ specified in Section 100 of the C.P.C. Consequently, the then existing Section 100 (i.e. section 100, as it existed in 1908 unamended) was

incorporated in sub-section (4) of Section 331 and substitution of the new Section 100 does not affect or restrict the grounds as incorporated. The right

of appeal to the Board of Revenue under sub-section (4) of Section 331 clearly intended to be limited to the grounds set out in the then existing Section

100, since those were the grounds which were before the Legislature and to which the Legislature could have applied its mind and it is reasonable to

assume that it was with reference to those specific and known grounds that the Legislature intended to limit the right of appeal.Ã¢â‚¬â€‹

12. The second submission made by Sri Maulekhi is that only an error apparent on the face of record can be corrected under review jurisdiction under

Order 47 Rule 1 of C.P.C. He further submits that coordinate Bench of this Court vide judgment dated 29.06.2015 rendered in WPMS No. 1288 of

2015 had issued a specific direction that the review application, filed by respondent Nos. 2 and 3, has to be decided strictly within the parameters laid

down under Order 47 of C.P.C., yet learned Board of Revenue heard and decided the review application as if sitting in appeal over its judgment dated

19.07.2014.

13. Per contra, Sri C.S. Rawat, learned counsel for respondent Nos. 2 and 3 supports the order dated 2.02.2016 passed by Board of Revenue on the

review application. He submits that Board of Revenue has merely remanded the matter to the first appellate court, therefore, the power under Article

227 of the Constitution of India may not be invoked in respect of the order passed by the Board of Revenue.

14. The review jurisdiction is extremely limited and unless there is mistake apparent on the face of the record, the order/judgment does not call for

review. The mistake apparent on record means that the mistake is self-evident, needs no search and stares at its face. HonÃ¢â‚¬â„¢ble Supreme Court

has held that review jurisdiction is not an appeal in disguise. The review does not permit rehearing of the matter on merits. Review cannot be made on

ground already urged during appeal and a party is not entitled to seek review of a judgment merely for the purpose of rehearing and a fresh decision of

the case.

15. In the present case, the suit filed by petitioner was decreed against respondent Nos. 2 and 3. The first appeal and second appeal filed by

respondent Nos. 2 and 3 were dismissed. Thus, the matter was concluded by concurrent findings of fact. Therefore, the impugned order passed by

Board of Revenue is clearly beyond of scope of review jurisdiction and is in teeth of the judgment rendered by this Court in WPMS No. 1288 of 2015.

16. A perusal of the impugned order dated 02.02.2016 indicates that the Board of Revenue has proceeded to deal with the review application as if it

was sitting in appeal over the judgment dated 19.07.2014. It is settled position in law that under the garb of review, rehearing of the matter is not

permissible. Perusal of the impugned order indicates that the learned Board of Revenue has traveled beyond the scope of review jurisdiction under

Order 47 of C.P.C., in disregard of the order passed by this Court in WPMS No. 1288 of 2015.

17. In such view of the matter, the impugned order dated 02.02.2016 cannot be sustained. The same is liable to be quashed and is hereby quashed.

18. Accordingly, the writ petition is allowed. Learned counsel for the petitioner submits that petitioner is entitled to possession over 4 Bigha 11 Biswa

land comprised in plot No. 4/2 Min situate in Village Devipura Mulia, Tehsil Ramnagar, District Nainital and upon instruction, he gives an undertaking

on behalf of his client that petitioner will handover peaceful possession, if any, over land comprised in plot nos. 8Min, 12 Min, 13 Min, 14 Min and 27

Min, which was purchased by Sri Bishan Dutt (predecessor in interest of respondent Nos. 2 and 3) to respondent Nos. 2 & 3.

19. Therefore, learned Assistant Collector, Ramnagar, District Nainital is directed to put the petitioner in possession over 4 Bigha 11 Biswa land

comprised in plot No. 4 of Village Devipura Mulia, Tehsil Ramnagar, District Nainital and in case, petitioner is found to be in possession of any excess

land, the possession thereof shall be handed-over to respondent Nos. 2 and 3. This exercise shall be completed within two months from the date of

presentation of certified copy of this order.