

Saumya Cooperative Housing Society, Allahabad Vs State of U.P.and others

Court: Allahabad High Court

Date of Decision: Nov. 24, 2011

Acts Referred: Uttar Pradesh Land Revenue Act, 1901 â€” Section 33

Citation: (2011) 10 ADJ 548 : (2012) 2 AWC 1616

Hon'ble Judges: A.P. Sahi, J

Bench: Single Bench

Final Decision: Allowed

Judgement

Hon"ble A.P. Sahi, J.

This is a petition arising out of proceedings for mutation in relation to the land in question which is subject matter of a

lease executed by the Collector, Allahabad. The lease registered on 29.6.1940, has been brought on record through the counter-affidavit sworn by

Sri D.S. Pandey, Sub-Divisional Magistrate (Sadar), Allahabad. The orders under challenge in the present writ petition have been passed by the

Sub-Divisional Magistrate on 25.8.2008 as affirmed by the Board of Revenue on 21.1.2010 as well as the orders passed by the Naib Tehsildar

(Government Estate) dated 29.2.2008 and 30.4.2008. The petitioner claims itself to be the assignee of the original lessee. The transfer by way of

assignment in favour of the petitioner came through a deed dated 10.7.1990.

2. After the lease was assigned, the petitioner tendered an application before the Allahabad Development Authority, which is the authority

empowered to sanction maps for raising constructions and making a planned development. The authority, pending consideration, called upon the

petitioner to obtain a No Objection Certificate from the Collector, Allahabad. The same was not being done as a result whereof a direction was

issued by this Court to the Collector to pass appropriate orders. The Collector refused to grant the No Objection Certificate on 25.4.1995.

3. The petitioner questioned the correctness of the said order by means of Writ Petition No.13203 of 1995, which was initially dismissed but on a

review petition filed by the petitioner, the same was ultimately allowed by a Division Bench vide judgment dated 13.4.2000, which is Annexure-1

to the writ petition. It was held that the order of the District Magistrate dated 25.4.1995 was founded on an erroneous consideration and,

therefore, was being quashed with a direction to consider the question of grant of No Objection Certificate with reference to the plan submitted by

the petitioner within a period of one month. The Collector again refused to grant the No Objection Certificate vide order dated 22.8.2000 which

was assailed by the petitioner in Writ Petition No.42687 of 2000. During the pendency of the said writ petition, the Collector also proceeded to

pass orders on 4.9.2003 nullifying the lease in favour of the original lessee and the assignment in favour of the petitioner. This was assailed in Writ

Petition No.5144 of 2003 where an interim order was passed in favour of the petitioner.

4. While the aforesaid two writ petitions were pending before this Court, the petitioner had also approached the State Government in this matter.

The State Government, after seeking legal opinion, on 5.12.2005 passed an order holding that the orders dated 22.8.2000 and 4.9.2003, which

were subject matter of the two writ petitions before this Court, were not correct and, accordingly, set aside the same with a direction to the

Collector, Allahabad, to pass a fresh order in relation to the restoration of the lease as well as the No Objection Certificate. This order dated

5.12.2005 was not questioned either by the authorities or by any other person.

5. The two writ petitions referred to hereinabove were disposed of by a final judgment dated 6.9.2006 by the following directions contained in the

order quoted herein below:

In view of the subsequent development, it is not necessary to decide these two writ petitions on merit. During pendency of this writ petition, the

petitioner filed an application before the State Government in the month of December, 2004 against the orders dated 22.8.2000 and 4.9.2003

passed by the Collector, Allahabad. The State Government after taking legal opinion have passed an order on 5.12.2003 by which it is held that

the ground mentioned by the Collector in the orders dated 22.8.2000 and 4.9.2003 are not acceptable and the matter was sent back for re-

decision. This order has been filed along with the supplementary-affidavit. We had granted time to the respondents but no counter-affidavit has

been filed. In view of this, both the writ petitions are disposed of with the direction that the Collector may pass orders in accordance with law at an

early date, if possible, within three months from the date of receipt of production of certified copy of this order.

With these observations, both the writ petitions are disposed of.

6. The Collector did not proceed in the matter and, therefore, the petitioner filed a contempt petition before this Court. The Collector in turn sought

clarifications from the State Government and the State Government reiterated its earlier opinion. After issuance of notice, the Collector passed

orders on 24.10.2007. By this order, the Collector restored the lease in favour of the petitioner on certain conditions entailed in paragraph No.38

of the same and further issued a direction to the subordinate authorities to carry out the mutation accordingly, calling upon the petitioner to deposit

the land revenue as per rules.

7. The Naib Tehsildar (Government Estate) rejected the mutation application of the petitioner on 29.2.2008 without following the procedure

prescribed in law. The Tehsildar (Sadar), Allahabad, who is a higher authority passed an order on 10.3.2008 for correcting and recording the

name of the petitioner in the relevant government records. The petitioner filed an application before the Naib Tehsildar for rectifying his earlier

order, who again on 30.4.2008 rejected the same.

8. The Sub-Divisional Magistrate/Deputy Collector, the respondent No.3, without any notice or without any proceedings having been carried out

in accordance with law, passed orders on 25.8.2008 contrary to the directions of the Collector as contained in the order dated 24.10.2007 and

set aside the order of the Tehsildar (Sadar) dated 10.3.2008.

9. Aggrieved by the said order of the Sub-Divisional Officer, the petitioner preferred a revision before the Board which was dismissed on

21.1.2010. Hence this writ petition.

10. Sri Yashwant Verma, learned counsel for the petitioner submits that the orders passed by the Sub-Divisional Magistrate, the Naib Tehsildar

and the Board of Revenue are all erroneous in law as they completely overlook the mandate of the order of the District Magistrate dated

24.10.2007. He submits that the land belongs to the State Government which has been leased out by His Excellency the Governor through the

Collector of the district. The property vested in the State Government has to be recorded in the register as provided for in the U.P. Land Records

Manual. He has invited the attention of the Court to para 180 read with paras 316 and 317 of the said Manual contained in Chapter XXV thereof.

The duty to maintain these records is under the general supervision and control of the Collector of the District as contained in Chapter 49 of the

said Manual. He further submits that any correction or discrepancy as per para 181 has to be done by the Collector of the district. He further

submits that recourse can be had to the provisions of Section 33 of the U.P. Land Revenue Act 1901 where also the Collector is empowered and

conferred with the authority to carry out necessary changes in the register maintained for the said purpose. He, therefore, contends that the

impugned orders are without jurisdiction and even otherwise in excess of jurisdiction.

11. Sri Naiyer, learned Addl. Advocate General on behalf of the State Government, contends that the very lease which has been executed in

favour of the petitioner including the order dated 24.10.2007 is contrary to law and according to him for various reasons, the lease-deed is void.

He further submits that the petitioner not being in possession is not entitled for mutation over the property. He further contends that the assignment

deed on which reliance has been placed has not been brought on record and this being a summary nature of proceeding, the present writ petition

cannot be maintained for the said purpose. He further contends that an appeal and a revision is also available against the order of the Naib

Tehsildar which has not been availed of by the petitioner and, as such, the petition is even otherwise not entertainable on the ground of availability

of alternative remedy. He further contends that the Sub-Divisional Magistrate has not committed any error and has restored a correct entry which

does not require any interference by this Court.

12. At the very outset, it is made clear that a supplementary-affidavit came to be filed by the State Government on 17.11.2011 in support of the

stand already taken in the counter-affidavit. Both these Affidavits bring on record an internal communication made by the Collector, Commissioner

and the State Government in relation to the validity of the lease-deed and the procedure followed for grant of such lease as well as the assignment

and status of the petitioner -Society. The communications in effect attempt to point out the infirmities in the grant of lease and it's subsistence. The

counter-affidavit brings on record a letter of the then Commissioner dated 3.5.2008 addressed to the District Magistrate pointing out certain

infirmities in the lease which had been finalized vide order dated 24.10.2007. The Collector in turn wrote a letter to the Commissioner replying to

the same with a copy to the Principal Secretary (Revenue), Government of Uttar Pradesh. The said letter dated 13.8.2009 is also on record. The

Commissioner again wrote a letter on 16.11.2011 when the arguments in the present petition had commenced, reiterating the report of the District

Magistrate dated 13.8.2009.

13. The petitioners had filed a representation in relation to the master plan of 2000-21 and also filed writ petition No.49585 of 2008 for a

direction to the State Government to reconsider the said representation of the petitioner. The State Government passed an order rejecting the

representation of the petitioner on 20.8.2009. Sri Naiyer for the State submitted that this order coupled with the notification dated 3.1.2003 clearly

indicates that the petitioner - Cooperative Society was not entitled to any such benefit and that the entire process adopted by the petitioner is

contrary to law.

14. This argument, which is being raised on behalf of the State, is clearly in relation to the merits of the lease, which has been restored on

24.10.2007. There is nothing on record to indicate that the order dated 24.10.2007 passed by the Collector pursuant to the directions of the State

Government have been either modified, rescinded or upturned by any competent authority.

15. During the course of hearing, this Court had called upon the learned Addl. Advocate General to assist in the matter relating to the jurisdiction

of the authority to pass the impugned orders. Sri Naiyer has been unable to point out any provision under law which may run counter to what has

been demonstrated by the learned counsel for the petitioner.

16. The orders passed by the Naib Tehsildar which are under challenge before this Court and that of the Sub-Divisional Magistrate clearly run

counter to the order of the District Magistrate dated 24.10.2007 which has not been set aside or modified by the State Government in spite of the

alleged adverse report of the Commissioner and the Collector referred to herein above. Sri Naiyer, learned counsel for the State Government, has

been unable to point out anything on record which may tend to nullify the effect of the order dated 24.10.2007.

17. Coming to the issue of jurisdiction, suffice it to say that even in matters of mutation this Court in the case of Sri Lal Bachan Vs. Board of

Revenue, Uttar Pradesh and Others, , has held that a writ petition would be maintainable against orders which are without jurisdiction or are

otherwise perverse. As would be seen presently, the present writ petition also falls within the same category inasmuch as the Sub-Divisional

Magistrate, while passing the order dated 25.8.2008 has failed to record any provision which may empower him to act and proceed contrary to

the directions of the Collector contained in the order dated 24.10.2007.

18. Sri Naiyer submits that it is the Tehsildar with concurrent powers to the Sub-Divisional Magistrate to maintain the record and, therefore, it was

within their jurisdiction to have examined the status of possession as also the status of the assignment deed before proceeding to pass the orders.

He, therefore, submitted that neither the Naib Tehsildar nor the Sub-Divisional Magistrate have acted without any authority. This argument has to

be rejected inasmuch as the Collector is the highest authority under the U.P. Land Revenue Act, 1901, within the district empowered to maintain

records of all government land. The relevant paragraph of the U.P. Land Records Manual as pointed out by the learned counsel for the petitioner

and referred to herein above clearly demonstrate that the Collector enjoys the overall authority with regard to maintenance of records of rights.

This is also reflected in Chapter 49 of the Manual. The Collector, having passed the order on 24.10.2007, the Sub-Divisional Officer who is an

authority subordinate to him, and the Naib Tehsildar, who is still subordinate in hierarchy, had no jurisdiction to virtually sit in Appeal over the

order dated 24.10.2007. It is for this reason that the Commissioner while sending his last communication dated 16.11.2011 also expressed his

own disability to take any action in the matter with a request to the State Government to consider passing orders. It is, therefore, clear that the

orders passed by the revenue authorities namely the Sub-Divisional Magistrate and the Naib Tehsildar in a matter arising out of mutation is in teeth

of the order dated 24.10.2007 passed by the Collector of the district which still holds good.

19. An order of mutation is passed only for fiscal purposes and it is for this reason that the District Magistrate in his order dated 24.10.2007 issued

directions for carrying out the mutation and also to proportionately realise the land revenue dues of the land in question. It goes without saying that

the District Magistrate under the orders of this Court as well as in view of the directions given by the State Government, had passed the said order

in relation to the restoration of the lease in favour of the petitioner. The same was accordingly done and till date the said order has neither been set

aside or modified. A certain element of finality is attached to the said order which reflects application of mind on the disputed issues that are sought

to be canvassed by the respondents. In my opinion, there is something like a doctrine of finality even in quasi judicial and administrative decisions.

The District Magistrate, while determining the substantive issue of the restoration and subsistence of lease, has issued consequential directions for

mutation. After all stability is the soul of the law of property. The matter was in the penumbral state for 17 years since 1990 and came to be settled

by the Collector on 24.10.2007. The curtain, therefore, deserved to be drawn at the earliest and it could not be re-opened through an indirect

method in summary proceedings of mutation. The order of the Collector, therefore, has an overriding effect and the Sub-Divisional Magistrate as

well as the Naib Tehsildar have exceeded their jurisdiction in virtually sitting in appeal over the same.

20. Sri Naiyer could not point out any provision to the contrary which may confer any jurisdiction on the Sub-Divisional Magistrate or the

Tehsildar to pass an order of mutation after final orders have been passed by the Collector for restoring the lease. Apart from this, the judgment of

the Division Bench dated 6.9.2006 clearly directed the Collector to take a decision in the matter. This judgment has also become final and was not

questioned either by the State Government or by any other authority. The Collector, therefore, assumed authority by virtue of the order of the

State Government and the Division Bench judgment. He was, therefore, justified in passing the order dated 24.10.2007. It is, therefore, clear that

neither the Sub-Divisional Magistrate nor the Naib Tehsildar had any authority go go contrary to what the Collector had directed to be done in

terms of the order dated 24.10.2007. The said order of the Collector, needless to repeat, clearly directs that the mutation has to be carried out in

favour of the petitioner.

21. The plea of alternative remedy in the circumstances herein above and also that the petition was entertained, this Court does not find it

appropriate to accept the same. On exchange of Affidavits it is clear that the impugned orders are unsustainable in law.

22. In the circumstances of the case and in view of the discussion herein above, this Court has no doubt in it's mind that the impugned orders are

erroneous in law. The Board of Revenue also committed a manifest error by not interfering with the same. Accordingly, the orders impugned dated

21.1.2010, 25.8.2008, 30.4.2008 and 29.2.2008 are quashed.

23. The respondents - authorities are directed to maintain the records as per the order of the Collector dated 24.10.2007 unless such order is

either set aside or modified. The writ petition is, accordingly, allowed with no orders as to costs.