

(2002) 10 AHC CK 0220

Allahabad High Court

Case No: C.M.W.P. No. 5203 of 1990

Smt. Bitola Munwari

APPELLANT

Vs

Additional Commissioner
(Administration) and Others

RESPONDENT

Date of Decision: Oct. 24, 2002

Acts Referred:

- Allahabad High Court Rules, 1952 - Rule 7
- Constitution of India, 1950 - Article 226
- Uttar Pradesh Land Revenue Act, 1901 - Section 201, 219
- Uttar Pradesh Zamindari Abolition and Land Reforms Rules, 1952 - Rule 285I, 285J, 285K, 285L, 285M

Citation: (2003) 3 AWC 2212 : (2003) 94 RD 86

Hon'ble Judges: Anjani Kumar, J

Bench: Single Bench

Advocate: H.M. Srivastava, for the Appellant; P.K. Bisariya, S.C., for the Respondent

Final Decision: Dismissed

Judgement

Anjani Kumar, J.

Heard Sri H. M. Srivastava, learned counsel for the petitioner and Sri P. K. Bisariya, learned counsel for the duly

impleaded respondents.

2, Sri P. K. Bisariya has raised preliminary objection to the effect that the petitioner has challenged the order passed by the Commissioner under

the provisions of the U. P. Zamindari Abolition and Land Reforms Rules and he has remedy as held by the Full Bench of this Court in Ram

Swaroop v. Board of Revenue and Ors., 1990 RD 291, wherein the Full Bench has said that the order passed by the revisional authority will

apply to recovery of arrears and the orders passed by the Commissioner will be amenable to revisional jurisdiction of the Board of Revenue u/s

219 of the U. P. Land Revenue Act. Sri Bisariya has submitted that in view of this Full Bench decision, the petitioner should be relegated to the

alternative remedy of filing a revision before the Board of Revenue.

3. Sri H, M. Srivastava has submitted that since the petition has been pending since 1990 and interim order was also granted by this Court. At this

stage, in the year 2002 the petitioner should not be relegated to the alternative remedy for filing revision before the Board of Revenue. For this he

relied upon the decision of the learned single Judge of this Court in Mohd. Yamin and Another Vs. The Commissioner and Others, .

4. Sri Bisariya has further submitted that even in the impugned order of the Commissioner and also in paragraph 17 of the writ petition, it has been

stated that the petitioner has already approached this Hon"ble Court by means of writ petition, i.e., Civil Misc. Writ Petition No. Nil of 1989

which has been disposed of by this Court by the judgment and order dated 25th January, 1989 and a photocopy of the same has been produced

before me during the course of hearing. In this view of the matter, the present writ petition, according to Sri Bisariya, is barred by provisions of

Chapter XXII Rule 7 of the Rules of Court, 1952, as the present writ petition is filed on the same set of facts on which the earlier was disposed of.

5. Sri Srivastava has submitted that this cannot be said to be a second petition on the same facts because the order of the auction of the

petitioner"s land was not in existence when the earlier writ petition was filed. However, Sri Srivastava has not denied the filing of the earlier writ

petition and passing of the judgment and order dated 25h January, 1989.

6. It has also been stated in the counter-affidavit that the co-borrower has also filed writ petition being Civil Misc. Writ Petition No. 35804 of

1991 before this Court which was dismissed by this Court on 6th January, 1992.

7. In view of the aforesaid objections of Sri Bisarlya and replies submitted by Sri Srivastava, this Court refuses to exercise discretionary and

equitable Jurisdiction under Article 226 of the Constitution of India in favour of the petitioner.

8. Sri Bisariya has further submitted that in view of Rule 285-I of the U. P. Z. A. and L. R. Rules, the petitioner could have approached the

Commissioner along with money for which the land in question was sold plus five percent thereof with a prayer to set aside the sale on the ground

of some material irregularity or mistake. The scheme in the Rules 285-I, 285J, 285K, 285L and 285M clearly demonstrates that it was open to the

petitioner to have approached the Commissioner according to the aforesaid Rules which he failed to approach the Commissioner and straightway

rushed up to this Court concealing this fact that earlier writ petition on the same set of facts has already been dismissed by this Court by the

judgment and order dated 25th January, 1989 and also without approaching Board of Revenue as held by the Full Bench of this Court.

9. In view of what has been stated above, this petition deserves to be dismissed and is hereby dismissed. The interim order, if any, stands vacated.