

(2014) 05 AHC CK 0059

Allahabad High Court

Case No: Writ-B No. 9978 of 2014

Komal Singh

APPELLANT

Vs

Board of Revenue

RESPONDENT

Date of Decision: May 5, 2014

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 41 Rule 11, Order 47 Rule 1, 114
- Constitution of India, 1950 - Article 136, 226, 32
- Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 - Section 132, 161

Citation: (2014) 124 RD 25

Hon'ble Judges: Ram Surat Ram (Maurya), J

Bench: Single Bench

Advocate: Satya Prakash, Advocate for the Appellant; Brij Kumar Yadav, H.N. Pandey and Himanshu Pandey, Advocate for the Respondent

Final Decision: Dismissed

Judgement

Ram Surat Ram (Maurya), J.

Heard Sri Satya Prakash for the petitioner, Standing Counsel for State of U.P. and Sri Himanshu Pandey, for respondents-4 to 7 and Sri Brij Kumar Yadav, for respondent-8. This writ petition has been filed against the order of Board of Revenue U.P. dated 10.12.2013, entertaining the review application filed by respondents-4 to 7, in Revision No. 2 of 2009-2010 decided on 13.5.2010, arising out of proceedings u/s 161 of U.P. Zamindari Abolition and Land Reforms Act, 1950 (hereinafter referred to as the Act).

2. Plot 381 (area 0.11 acre) of village Manpura, tahsil Bharthana, district Etawah was reserved for manure pit and plot 382 was reserved for chak road during consolidation. Land Management Committee, through resolution dated 8.7.1994

allotted an area of 20 square meter of plot 381 to Komal Singh (the petitioner) for manure pit. Babu Singh, Ram Singh, Shyam Singh, Shri Krishna Singh and Mulayam Singh/resident of the village were also allotted some area of plot 381, separately for manure pit. Dilasa Ram and others (respondents-2 to 7) filed an application (registered as Case No. 2) u/s 161 of the Act, for exchange of the plot 381 and 382 from their land of plots 383 and 384. It was alleged that village abadi lies in plot 380 as such manure pit be shifted toward east from plot 381 to make the atmosphere of abadi more hygienic. Sub-Divisional Officer, Bharthana, Etawah by order dated 9.6.1997 rejected the exchange application. However, by order dated 19.7.1997, earlier order dated 9.6.1997 was set aside and the case was restored and exchange application was allowed. By this exchange, chak road has been shifted towards west in plot 381, manure pits were shifted toward eastern side in plots 383 and 384.

3. Komal Singh filed an application dated 13.6.2008 for recall of the order dated 19.7.1997. Respondents-2 to 7 filed an objection and stated that the application was highly time barred but no application for condonation of delay was filed alongwith it. Exchange was made in public interest and was made after hearing Counsel for Gaon Sabha. Komal Singh has no personal grievances and recall application filed by him was not maintainable. He had knowledge of the impugned order from very beginning and there was no cause for condonation of inordinate delay. Recall application was heard by Sub-Divisional Officer, who by order dated 6.4.2009 held that the order dated 19.7.1997 was passed on merit after hearing the parties. Recall application was filed with an inordinate delay of more than 10 years and no cause was shown for condonation of inordinate delay in filing the recall application. On these findings recall application was rejected, by order dated 6.4.2009.

4. Komal Singh filed an appeal (registered as Appeal No. 24 of 2009) from the aforesaid order. The appeal was heard by Additional Commissioner, who by order dated 23.9.2009 held that land of manure pit is a public utility land and falls in the category of the land mentioned u/s 132 of the Act, which cannot be exchanged on the application of private party in proceeding u/s 161 of the Act. Although the land in dispute was allotted to the petitioner by Land Management Committee but he or other allottees were neither impleaded as party nor notice of the proceeding was given to them. On these findings the appeal was allowed and order dated 19.7.1997 and 6.4.2009 were set aside and the matter was remitted to Sub-Divisional Officer to follow the further action in accordance of the observations made in the order. Thereafter, Sub-Divisional Officer issued parwana amaldaramad dated 23.12.2009 restoring position prior to the order dated 19.7.1997 in the record.

5. Dilasa Ram and Mahaveer Singh (respondents-2 and 3) filed a revision (registered as Revision No. 2 of 2009-2010) against the aforesaid order dated 23.9.2009 before Board of Revenue U.P. Subsequently, an application was filed for transposing respondents-3 to 7 at revisionists in the revision. The revision was heard by Member, Board of Revenue U.P., who by order dated 13.5.2010 found that

Additional Commissioner has only remanded the matter to Sub-Divisional Officer. Although some of the points have been finally decided but Sub-Divisional Officer, while deciding the matter afresh would consider the arguments of the revisionists. On these findings the revision was partly allowed and the matter was remanded to Sub-Divisional Officer to decide the matter afresh after considering the points raised by the revisionists. Dilasa Ram and Mahaveer Singh (respondents-2 and 3) filed a writ petition (registered as Writ-C No. 43979 of 2010) from the aforesaid order, which was dismissed by this Court by order dated 29.7.2010, on the ground that as the impugned orders were orders of remand as such no interference was required. Thereafter, Bharat Singh and others (respondents-3 to 7) filed a review application (registered as Review Application No. 2 of 2009-2010). Single Member of Board of Revenue U.P. by the impugned order dated 10.12.2013 entertained the review application and directed to refer the matter to the Bench constituted for hearing the review application. Hence this writ petition has been filed.

6. The Counsel for the petitioners submits that the revision was decided on merit after hearing arguments of the parties, the review application was not maintainable. The order of Board of Revenue dated 13.5.2010 was challenged by Dilasa Ram and Mahaveer Singh (respondents-2 and 3) in Writ-C No. 43979 of 2010, which was dismissed by this Court by order dated 29.7.2010. Order dated 13.5.2010 was merged with the order of this Court dated 29.7.2010, review application is not maintainable before Board of Revenue. Respondents-3 to 7 have common interest along with respondents-2 and 3 and the order passed in the writ petition is binding upon them also and operate as res-judicata. Land of plot 381 is the land reserved for manure pit, in consolidation and is a public utility land and falls in the category of the land mentioned u/s 132 of the Act, it cannot be exchanged in proceeding u/s 161 of the Act. He relied upon the judgment of this Court in [Sheo Balak Singh Vs. Mahabir Singh and Another](#), in which it has been held that after dismissal of second appeal under Order XLI Rule 11 C.P.C., First Appellate Court has no jurisdiction to review its judgment. Judgment of Supreme Court in [Ramesh and Another Vs. Seth Gendalal Motilal Patni and Others](#), in which it has been held that proceeding under Article 226 of the Constitution is a civil proceeding. Judgment of Supreme Court in [Daryao and Others Vs. The State of U.P. and Others](#), in which it has been held that after dismissal of writ petition under Article 226 of the Constitution by High Court, another writ petition under Article 32 of the Constitution in Supreme Court is barred on the principle of res-judicata. Judgment in [Parsion Devi and Others Vs. Sumitri Devi and Others](#), in which it has been held that only error apparent on the face of record can be corrected in the review application. Judgment of this Court in [In Re: Mohit Kumar](#), and judgment of Board of Revenue in Dr. Raghunandan v. Richpal, 1971 RD 175 in which it has been held that judgment passed on merit after hearing arguments cannot be reviewed.

7. In reply to the aforesaid arguments, the Counsel for the respondents submitted that summary dismissal of the writ petition as the Court declined to interfere in the

impugned orders which were order of remand and is no order on merit and review application filed by respondents-4 to 7 thereafter was maintainable as held by Supreme Court in [S. Bagirathi Ammal Vs. Palani Roman Catholic Mission](#), The Counsel for the respondents submitted that Board of Revenue merely entertained the Review Application. Review Application is still pending before Board of Revenue. At this stage, this Court is not required to examine scope of review application, in detail as the petitioner has an opportunity to argue other points before Board of Revenue in the Review Application.

8. I have considered the arguments of the Counsel for the parties and examined the record. Section 273 of U.P. Tenancy Act, 1939 confers unfettered power of review upon Board of Revenue U.P. By virtue of Rule 339 of the Rules, the provisions of section 273 of U.P. Tenancy Act, 1939 has been applied to the proceedings of Schedule II of U.P. Act No. 1 of 1951. By section 341, provisions of Code of Civil Procedure, 1908 are applied as such Board of Revenue has jurisdiction for review of its judgment u/s 114 read with Order XLVII Rule 1 C.P.C. also. Full Bench of Board of Revenue in Bhajan v. Ram Pratap, 1972 RD 19 (FB) and this Court in [Smt. Kalindi Deve Vs. Board of Revenue, Additional Commissioner, Gorakhpur Division, Prithvi Chand and Gaon Sabha Mauja Chapathia Tappa](#), held that Board of Revenue is competent to review its order.

9. So far as effect of dismissal of Writ-C No. 43979 of 2010, filed by Dilasa Ram and Mahaveer Singh (respondents-2 and 3) in concerned, Constitution Bench of Supreme Court in [Ramesh and Another Vs. Seth Gendalal Motilal Patni and Others](#), held that under extraordinary original civil jurisdiction under Article 226 of the Constitution, High Court does not hear an appeal or revision. A petition to the High Court invoking this jurisdiction is a proceeding quite independent of the original controversy. A decision in the exercise of this jurisdiction, whether interfering with the proceeding impugned or declining to do so, is a final decision in so far as the High Court is concerned because it terminates finally the special proceeding before it. But it is not to be taken that any order will be a final order. The question will always arise what has the High Court decided and what is the effect of the order. If, for example, the High Court declines to interfere because all the remedies open under the law are not exhausted, the order of the High Court may not possess that finality which the article contemplates. The answer to the question whether the order is final or not will not depend on whether the controversy is finally over but whether the controversy raised before the High Court is finally over or not. Supreme Court in [Kunhayammed and Others Vs. State of Kerala and Another](#), and [Ramesh Vs. State of Rajasthan](#), held that where a SLP having been dismissed by a non-speaking order, we do not think it would be just to deprive the aggrieved person of the statutory right of seeking relief in review jurisdiction of the High Court if a case for relief in that jurisdiction could be made out merely because a SLP under Article 136 of the Constitution had already stood rejected by the Supreme Court by a non-speaking order. Whatever be the phraseology employed in the order of

dismissal, if it is a non-speaking order, i.e., it does not assign reasons for dismissing the special leave petition, it would neither attract the doctrine of merger so as to stand substituted in place of the order put in issue before it. Thus dismissal of writ petition, as this Court declined to interfere with remand order, does not bar the statutory remedy of review before Board of Revenue, U.P.

10. So far as other arguments raised by the Counsel for the petitioner, in respect of scope of review jurisdiction is concerned, it is not proper for this Court to go into this controversy as review application is still pending before Board of Revenue and the petitioner has right to raise all these points before Board of Revenue. In view of the aforesaid discussions, the writ petition has no merit and is dismissed.