(2006) 08 AHC CK 0134

In the Allahabad High Court

Case No : Special Appeal No. 333 of 1996

Anil Kumar and Ram Autar APPELLANT

Vs

State of U.P. and Gaon Sabha, Piprauli RESPONDENT

Date of Decision : 19-08-2006

Acts Referred:

Constitution of India, 1950 — Article 226, 227
Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 122B, 122B(4A), 122B(4F), 3(4), 333
Uttar Pradesh Zamindari Abolition and Land Reforms Rules, 1952 — Rule 5

Citation : (2006) 7 ADJ 668 : (2006) 4 AWC 3833 : (2006) 2 RD 510

Hon'ble Judges : B.S. Chauhan, J;Ashok Bhushan, J

Bench : Division Bench

Advocate : M.D. Misra, for the Appellant; Chandra Kesh Rai and Rajeev Mishra and S.C., for the Respondent

Final Decision : Dismissed

Judgement

B.S. Chauhan and Ashok Bhushan, JJ.—We have heard Sri M.D. Mishra, learned Counsel for the appellants, and Sri Chandra Kesh Rai, learned standing counsel for the respondents.

2. This appeal has been filed against the order of learned Single Judge dated 26th February, 1996 allowing two writ petitions filed by Gaon Sabha challenging the order dated 12th December, 1992 of the Chief Revenue Officer, Ballia.

3. Brief facts of the case for deciding the appeal are; proceedings u/s 122-B of Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 were initiated against the appellants by issuing a notice under Z.A. Form 49- A. The notice alleged that the appellants are in unauthorised occupation of Plot Nos. 856/1/1 and 856/3 situate in Piprauli, which is a Gaon Sabha property. The notice issued under Z.A. Form 49-A was objected by the appellants and objections were filed stating that the appellants are in possession of the land in dispute from time immemorial, they have perfected their rights u/s 122-B(4-F) of Uttar Pradesh

Zamindari Abolition and Land Reforms Act, 1950. It was also contended that by the appellants in the reply to the notice that the appellants are in possession in pursuance of their own rights and the Gaon Sabha has no concerned with the land. It was prayed that the notice be discharged. The Tahsildar after hearing both the parties made a spot inspection and came to the conclusion that the land is covered by water and is of uneven nature. It was further held that in C.H. Forms 2A, 11 and 23 the land has been shown as Gaon Sabha land in the category of Class 6(1). The Tahsildar held that Gaon Sabha is in possession and these proceedings have been initiated to give undue benefit to the appellants. Holding the possession of the Gaon Sabha, the Tahsildar dropped the proceedings and discharged the notice. Aggrieved against the order of Tahsildar passed u/s 122-B, the appellants filed a revision before the Collector, Ballia which revision has been allowed by Chief Revenue Officer vide judgment dated 22nd December, 1992. The revisional authority decided the revision in favour of the appellants holding that appellants can only be evicted by filing a suit for eviction. The Gaon Sabha aggrieved against the order of Chief Revenue Officer filed Writ Petition No. 138 of 1993 and 139 of 1993 challenging the order of Chief Revenue Officer. The learned Single Judge by judgment dated 26th February, 1996 allowed the writ petitions, quashed the order of Chief Revenue Officer and remanded the matter to the Additional Tahsildar to decide the case afresh after making spot inspection placing a map on scale on the record showing the specific area covered by water or used for agricultural purpose. This appeal has been filed by the appellants against the said order of learned Single Judge.

4. The first question which has arisen for consideration is as to whether this appeal against the judgment of learned Single Judge dated 26th February, 1996 is maintainable under Chapter VIII, Rule 5'' of the Rules of the Court.

5. Sri Mishra submitted that the appeal is fully maintainable under Chapter VIII, Rule 5 of the Rules of the Court. He contended that the Tahsildar having dropped the proceedings vide his order dated 3rd August, 1992, there was nothing to be challenged by the appellants. He further contended that in fact the revision filed by the appellants was a misconceived revision since the proceedings were dropped and there was no occasion to file the revision. Sri Mishra contended that the order of Chief Revenue Officer was nullity since the revision was required to be decided only by the Collector and Chief Revenue Officer had no jurisdiction to decide the revision. He further contended that in view of the above position the writ petition has to be treated against the order of Tahsildar dated 3rd August, 1992 and it could not be treated as a writ petition against the revisional order passed by the Chief Revenue Officer. He contended that the appeal is maintainable since the bar created under Chapter VIII, Rule 5 shall not apply.

6. Sri Chandra Kesh Rai, learned standing counsel, refuting the submissions of learned Counsel for the appellants contented that revision was filed by the appellants themselves in which revision the Gaon Sabha was one of the respondents. He further submitted that Chief Revenue Officer having decided the

matter against the Gaon Sabha, the Gaon Sabha had every right to file the writ petition and the writ petition was a writ petition filed against the revisional order passed under Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950, hence the special appeal is clearly barred.

7. We have considered the submissions and perused the record.

8. The special appeal is filed under Chapter-VIII, Rule 5 of the Rules of the Court. Chapter-VIII, Rule 5 of the Rules of the Court is quoted below:

[5. Special appeal.- An appeal shall lie to the Court from a judgment (not being a judgment passed in the exercise of appellate jurisdiction in respect of a decree or order made by a Court subject to the Superintendence of the Court and not being an order made in the exercise of revisional jurisdiction or in the exercise of its of Superintendence or in the exercise of criminal jurisdiction [or in the exercise of jurisdiction conferred by Article 226 or Article 227 of the Constitution in respect of any judgment, order or award (a) of a tribunal Court or statutory arbitrator made or purported to be made in the exercise or purported exercise of jurisdiction under any Uttar Pradesh Act or under any Central Act, with respect to any of the matters enumerated in the State List or the Concurrent List in the Seventh Schedule to the Constitution, or (b) of the Government or any Officer or authority, made or purported to be made in the exercise or purported exercise of appellate or revisional jurisdiction under any such Act of one Judge.]

9. Sri Mishra in support of his contention, submitted that Chapter VIII, Rule 5 is only a procedural law and the right of appeal flows from the Letters Patent which is the inherent jurisdiction of the High Court.

10. To recapitulate the facts of the case again, the writ petition was filed against the order passed by Chief Revenue Officer under Sub-section (4-A) of Section 122-B of Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950.

11. Sub-section (4-A) of Section 122-B of Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950, which is relevant for the purpose, is quoted below:

(4- A) Any person aggrieved by the order of the Assistant Collector under Sub-section (3) or Sub-section (4) may, within thirty days from the date of such order prefer, a revision before the Collector on the grounds mentioned in clauses (a) to (e) of Section 333.

12. From a plain reading of Chapter VIII, Rule 5 it does appear that the special appeal against the judgment of learned Single Judge arising out of writ petition from a revisional order passed under any U.P. Act or under any Central Act with respect to any of the matters enumerated in the State List or the Concurrent List in the Seventh Schedule to the Constitution is barred. The writ petition being against a revisional order under Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950, which is an Act enacted under the State List in the Seventh Schedule of the Constitution a bar under Chapter VIII, Rule 5 of the Rules of the Court is attracted.

13. A Division Bench of this Court in Vajara Yojna Seed Farm and Others Vs. Presiding Officer, Labour Court II and Another, , in which one of us (Justice Ashok Bhushan) was a member, had considered the question of bar of special appeal under Chapter VIII, Rule 5 of the Rules of the Court. The Division Bench in the said judgment considered the provisions of the Uttar Pradesh High Court (Abolition of Letters Patent Appeals) Act, 1962, as amended in the year 1981, and summarised the law regarding maintainability of the special appeal in paragraph 64. The above Division Bench is fully attracted in the present case and in view of the above Division Bench judgment the present appeal is barred under Chapter VIII, Rule 5 of the Rules of the Court.

14. To overcome the above bar under Chapter VIII, Rule 5, Sri Mishra has submitted that the revision was not maintainable and not having been decided by competent authority the revisional order was nullity, hence the writ petition has to be treated as writ petition against the order of Additional Tahsildar only. This submission needs a closure scrutiny.

15. The order of Tahsildar dropping the proceedings u/s 122-B has been filed along with the stay application as Annexure-2. The Additional Tahsildar while dropping the proceedings also recorded finding that it is the Gaon Sabha which is in possession of the land in dispute. It was further held that the land is uneven land and covered by water and in C.H. Form 2A and C.H. From 23 Part-1 the land is recorded as land covered by water belonging to category 6(1). The findings recorded by the Tahsildar were prejudicial to the appellants, hence they felt aggrieved by the said order and filed the revision under Sub-section (4-A) of Section 122-B of Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950. The revision was filed by the appellants themselves in which they again reiterated their rights under Sub-section (4-F) of Section 122- B. The memo of revision has been filed as Annexure-3 to the stay application in which the findings recorded by the Tahsildar were challenged. The submission of Sri Mishra that revision was not maintainable by the appellants against the order by which proceedings were dropped cannot be accepted.

16. Under Sub-section (4-A) of Section 122-B of Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950, as quoted above, the right has been given to any person aggrieved by the order. The words "any person aggrieved by the order" are of very wide import. Even if by the order of Tahsildar proceedings were dropped, the appellants felt aggrieved as in the said orders findings were against the appellants and they wanted some more relief from the Tahsildar, i.e., declaration of right under Sub-section (4-F) of Section 122-B. It is further to be noted that revisional authority passed favourable order in favour of the appellants. The revision of the appellants was allowed giving them some relief, thus, it is not open for the appellants at this stage to say that their revision was misconceived.

17. Now remain the last submission of the appellants that Chief Revenue Officer had no jurisdiction to decide the revision. Sri Mishra submitted that it is the

Collector who alone is competent to decide the revision. We have perused the order of leaned Single Judge. The submission that the revision was decided by authority not competent was not even raised before the learned Single Judge. Had this stand taken by the appellants before the learned Single Judge, the writ petition could have been allowed on the own submission of the appellants setting aside the order of Chief Revenue Officer. The word "Collector" has been defined in Section 3(4) of the Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 as an officer appointed as Collector under the provisions of the UP. Land Revenue Act, 1901, and includes an Assistant Collector of the first class empowered by the State Government to discharge all or any of the functions of a Collector. The Chief Revenue Officer passed the order purporting to exercise the power of Collector. The revision itself was filed before the Collector. In these context without expressing any conclusive opinion on the above submission, suffice it to mention that under Chapter VIII, Rule 5 of the Rules of the Court the bar of special appeal is attracted when the order is passed by a tribunal, Court or statutory arbitrator made or purported to be made in the exercise or purported exercise of jurisdiction. The Chief Revenue Officer undoubtedly passed the order in purported exercise of jurisdiction under Sub-section (4-A) of Section 122-B of Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950, hence the order being in purported exercise of jurisdiction conferred on Chief Revenue Officer the bar under Chapter VIII, Rule 5 of the Rules of the Court is attracted. Chapter VIII, Rule 5 of the Rules of the Court specifically uses the words "in the exercise or purported exercise of jurisdiction under any Uttar Pradesh Act". This also dispel the second submission of Sri Mishra that the bar under Chapter VIII, Rule 5 shall not apply.

18. In view of the foregoing discussions, we are of the definite opinion that special appeal having been filed against the judgment of learned Single Judge arising out of writ petition from a revisional order passed under the U.P. Act under State List of the Seventh Schedule to the Constitution of India the special appeal under Chapter VIII, Rule 5 of the Rules of the Court is fully barred. We make it clear that we have not made any observation on the merits of the claim of the appellants since we are dismissing the appeal as not maintainable.

19. The special appeal is accordingly dismissed.

