
(2014) 01 AHC CK 0007
In the Allahabad High Court
Case No : Writ-B No. 2858 of 2014

Balmiki

APPELLANT

Vs

Board of Revenue and Others

RESPONDENT

Date of Decision : 17-01-2014

Acts Referred:

Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 131B, 198

Citation : (2014) 104 ALR 69 : (2014) 122 RD 476

Hon'ble Judges : Ran Vijai Singh, J

Bench : Single Bench

Advocate : Abhishek Kumar, Advocate for the Appellant; R.C. Upadhyay, Advocate for the Respondent

Final Decision : Disposed Off

Judgement

Ran Vijai Singh, J.—Heard Sri Abhishek Kumar, learned Counsel for the petitioner, learned Standing Counsel and Sri R.C. Upadhyay, learned Counsel for the Gaon Sabha. By means of this writ petition, the petitioner has prayed for issuing a writ of certiorari quashing the order dated 27.9.2013 passed by learned Member Board of Revenue by which the petitioner's revision has been dismissed holding it to be not maintainable being against an interlocutory order.

2. It is contended by learned Counsel for the petitioner that the order impugned in the revision was not interlocutory order as by the impugned order, in the revision, stay vacation application of the petitioner was rejected. In his submissions, any order passed on the stay vacation application amounts to final order and the revision would be maintainable. In support of his submissions, he has placed reliance upon few judgments of this Court e.g. Brahmpal and Others Vs. Board of Revenue and Others, and Talib Khan Vs. Additional Commissioner (Administration), Moradabad Division and Others, . In his submissions, the learned Member Board of Revenue has erred in dismissing the revision as not maintainable.

3. The facts giving rise to this case are that it appears the petitioner is a valid lease holder of the land in dispute, which was granted in the year 1986. Seeking cancellation of the aforesaid lease, a proceeding under sub-section 4 of section 198 of U.P. Zamindari Abolition and Land Reforms Act, 1950 (hereinafter referred to as "the Act") was initiated by the respondents No. 3 and 4. The said proceeding was dismissed in default on three occasions. The respondents No. 3 and 4 have filed an application before the Collector Ballia seeking injunction restraining the petitioner from alienating the land as pending proceeding of cancellation of lease, the lease holder was going to transfer the lease land. On this application, an interim order was passed restraining the petitioner from transferring the land in dispute.

4. For vacating the aforesaid order, the petitioner has filed stay vacation application, which has been rejected by the order dated 13.9.2005. Challenging the aforesaid order, revision has been filed, which has been dismissed as not maintainable. This Court in the case of Brahampal and others and Talib Khan (supra) has held that any order passed on the stay vacation application would fall in the ambit of final order and not interlocutory order, therefore revision was maintainable and the learned Member Board of Revenue has erred in dismissing the revision as not maintainable.

5. Although, on this ground, the writ petition deserves to be allowed, but looking into the facts and circumstances of the case, since this order was passed on the stay vacation application in the pending restoration application, I am not relegating the matter before the Board of Revenue to pass any order on merit in the revision. The writ petition is disposed of with the direction to the Chief Revenue Officer Ballia to decide the pending restoration application after hearing all concerned within a period of three months from the date of receipt of certified copy of the order of this Court. Learned Counsel for the petitioner contends that the petitioner has become bhumidhar in view of the provisions contained u/s 131B of the Act and he has every right to transfer the land. This Court refrains itself from making any observation on this point and the petitioner is at liberty to raise all these points, in case proceeding of cancellation of lease is revived.