(2013) 05 AHC CK 0111

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 26881 of 2013

Brahmpal and Others APPELLANT

Vs

Board of Revenue and Others RESPONDENT

Date of Decision : 14-05-2013

Acts Referred:

Citation : (2013) 9 ADJ 303 : (2013) 6 AWC 5600 : (2014) 122 RD 18

Hon'ble Judges : Ran Vijai Singh, J

Bench : Single Bench

Advocate : K.P. Tiwari, for the Appellant; S.K. Srivastava, Alka Srivastava and Anuj Kumar, for the Respondent

Final Decision : Allowed

Judgement

Ran Vijai Singh, J.—Heard Sri. K.P. Tiwari, learned counsel for the petitioner, learned standing counsel for the State respondent, Sri. Vijai Bhan Singh holding brief of Sri. Anuj Kumar, learned counsel for the Gaon Sabha and Sri. S.K. Srivastava, learned counsel for the respondent No. 3. Through this writ petition the petitioner has prayed for issuing a writ of certiorari quashing the orders dated 9.4.2013 and 5.3.2013 passed by the learned Member, Board of Revenue in Revision No. 46 of 2006-07. vide order dated 5.3.2013 the learned Member, Board of Revenue has dismissed the petitioner''s revision as not maintainable whereas vide order dated 9.4.2013 the petitioner''s review application has been rejected.

2. Sri. K.P. Tiwari, learned counsel for the petitioners contends that the learned Member, Board of Revenue has erred in dismissing the revision as not maintainable. In his submission, learned Member, Board of Revenue even did not appreciate the direction of this Court given in Writ -B. No. 68501 of 2012 [Smt. Rajesh v. State of U.P. and others) decided on 28.1.2013 through which this Court had directed the Board of Revenue, U.P. at Allahabad to decide Revision on merits expeditiously, preferably within a period of two months from the date of production of a certified copy of this order.

3. The facts giving rise in this writ petition are that it appears that the respondent No. 3 has filed a suit u/s 229B of the U.P. Zamindari abolition and Land Reforms Act, 1950 (in short the Act). The aforesaid suit was numbered as Suit No. 47 of 2006 (Smt. Rajesh v. Yadram). In the aforesaid suit respondent No. 3 has filed an application u/s 229D seeking interim protection. On the said application an order was passed by the Sub Divisional Officer, Meerut directing the parties to maintain status quo. The petitioner, herein, has filed an application for vacation of the aforesaid order dated 25.4.2006. The Sub Divisional Officer after hearing both parties has directed the parties vide order dated 28.3.2006 to maintain the order dated 25.4.2006 till the disposal of the suit. Challenging the order dated 28.3.2006 the petitioner has filed Revision No. 46 of 2007 (Brijpal v. Sub Divisional Officer, Meerut. In the said revision an application was filed seeking interim protection. On the said application an order was passed by the learned Member, Board of Revenue for maintaining status quo. The respondent has filed an application for recall of the aforesaid order and that application was rejected on 2.11.2007. Challenging this order respondent No. 3 has filed Writ-B No. 68501 of 2012. The said writ petition was disposed of on 28.1.2013 by the following order:

This petition is directed against the order dated 6.11.2012 passed by Board of Revenue rejecting application filed by petitioner to recall interim order dated 2.11.2007 passed on application of contesting respondent.

A perusal of record goes to show that revision is pending since 2006-07 and the parties are only litigating on interim matter and it would be appropriate that revision itself be directed to be decided on merits.

Considering the facts and circumstances, this petition stands finally disposed of with direction to respondent No. 2, Board of Revenue, U.P. at Allahabad, to decide Revision No. 46 of 2006-07 pending before it on merits expeditiously, preferably, within a period of two months from the date of production of a certified copy of this order in accordance with law after notice and opportunity of hearing to all concerned.

4. Thereafter the matter proceeded and the learned Member, Board of Revenue passed the impugned order dated 5.3.2013 dismissing the revision as not maintainable on the ground that the revision has been filed against an interlocutory order. The petitioner has filed an application seeking review of the aforesaid order enclosing a copy of the order of this Court dated 28.1.2013. Learned Member, Board of Revenue without looking the contents of the review application has rejected the application vide order dated 9.4.2013.

5. Sri. Tiwari contends that once this Court has given a direction to decide the revision on merits vide order dated 28.1.2013, it was incumbent upon the learned Member, Board of Revenue to decide the revision on merits but instead of doing so he has dismissed the revision as not maintainable. He has further submitted that deciding of stay vacation application on merit would mean

termination of stay application touching finality to such application in pending proceeding and the order passed therein would be revisable. In support of his submission he has placed reliance upon a decision of this Court in Talib Khan Vs. Additional Commissioner (Administration), Moradabad Division and Others, , wherein this Court has held that the order passed for deciding an application for interim protection finally is revisable.

6. Sri. S.K. Srivastava, learned counsel for the respondent No. 3 submitted that no infirmity can be attached with the order impugned passed by the learned Member, Board of Revenue. He has also contended that the petitioner was not cooperating in the disposal of the revision and as and when the case was listed it was got adjourned on his instance. In his submission the writ petition deserves to be dismissed.

7. Having heard the learned counsel for the parties and perusing the record I find that it is not in dispute that a suit u/s 229B of the Act was filed by respondent No. 3 and in that suit an order for maintaining status quo was passed on the application u/s 229D of the Act filed at the instance of respondent No. 3. When the petitioner has filed an application for recall of the aforesaid order, it was made absolute vide order dated 23.8.2006. Challenging the said order the petitioner has filed revision alongwith an application for interim protection in which an order was passed for maintaining status quo. The application filed by respondent No. 3 seeking recall of the aforesaid order was rejected on 2.11.2007. Challenging this order the respondent No. 3 filed Writ -B No. 68501 of 2012, that was disposed of with the direction to the learned Member, Board of Revenue to decide the revision on merits.

8. Sri. Tiwari contends that once this Court has directed the learned Member, Board of Revenue to decide the revision on merit it was to be decided on merit. From going through the direction of this Court and considering the submission of the learned counsel for the petitioner I am also of the view that once this Court has directed the learned Member, Board of Revenue to decide the revision on merit expeditiously preferably within a period of two months from the date of production of the certified copy of the order passed in that case in accordance with law after notice to the parties, there was no escape from deciding the same on merit and the learned Member, Board of Revenue has in fact passed the impugned order in the teeth of the order passed by this Court on 28.1.2013 in Writ-B No. 68501 of 2012 and it appears to be contemptuous.

9. Otherwise also this Court this Court in the case of Talib Khan (supra) has held that disposal of the stay vacation application on merits would mean termination of the stay application in the pending proceedings and that would become final and the revision would be maintainable. For ready reference paragraph 10 of the aforesaid judgment is reproduced below:

10. Section 333 of the Act is very widely worded which empowers the Board or Additional Commissioner to call for the record of any suit or proceeding.

Application u/s 229D has been separately provided under the act and when an application u/s 229D is disposed of finally either granting or refusing to grant interim order, it can be said that the said proceedings are finally terminated. u/s 333 of the Act, the Court is empowered to call for record of any suit or proceeding. The order u/s 229D is not specifically excluded from the purview of Section 333 of the act. It is relevant to note that by U.P. Act No. 11 of 2002, an amendment has been inserted excluding one proceeding from the revisional jurisdiction that is proceedings under sub-section (4-A) of Section 198. Had the legislature intended to have excluded the proceeding u/s 229D, there was no reason of not indicating or mentioning the same in Section 333. The amendment made in 2002 as noted above, clearly shows the intendment of the Legislature that no other proceeding has been excluded except the proceeding under sub-section (4-A) of Section 198 from the purview of Section 333 of the Act.

In view of the foregoing discussions, the impugned orders passed by the learned Member, Board of Revenue cannot be sustained in the eye of law and the same are hereby quashed. The writ petition succeeds and is allowed. Learned Member, Board of Revenue is directed to decide the revision on merits expeditiously in accordance with law preferably within a period of two months from the date of production of a certified copy of the order of this Court without granting any unnecessary adjournment to the learned counsel for the parties.

