(2011) 02 UK CK 0016

In the Uttarakhand High Court

Case No : Writ Petition (M/S) No. 319 of 2011

Chitranjan Shah. APPELLANT

Vs

Govind Lal Shah and Others RESPONDENT

Date of Decision : 23-02-2011

Acts Referred:

Citation : (2011) 02 UK CK 0016

Hon'ble Judges : Brahma Singh Verma, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

B.S. Verma, J.—Learned Counsel for the parties are ready to argue the appeal finally today at the admission stage.

2. Heard and perused the record.

3. By means of this writ petition, the Petitioner has sought a writ in the nature of certiorari quashing the Order dated 11.05.1994 passed by the Respondent No. 3 (Annexure No. 4) and the order dated 12-11.2010 passed by the Respondent No. 2-learned Additional Chief Revenue Commissioner, Circuit Court, Uttarakhand, Nainital (Annexure No. 7).

4. According to the Petitioner, the land in question was allotted to Bengali families under the Government Grants Act and they were given rights as Bhumidhar with non-transferable rights. It is contended that the land was recorded in the name of Mukand Lal Shah in the capacity of head of the family, while the land was allotted to all the family members. The name of the Petitioner was included in the list of family members, therefore, he is entitled to succeed the land and to get his name recorded in revenue record on the basis of Government Orders.

5. A perusal of the record shows that the Naib Tehsildar, Gadarpur, in his order dated 18-2-1992, has held that the land was recorded as Bhumidhar with non-

transferable rights pertaining to plot No. 159/1 by mistake and the rights, which were granted in the land were non-transferable, therefore, Mukand Lal Shah was not entitled to execute a will.

6. Aggrieved by the said order, the Respondent No. 1-Govind Lal Shah preferred Appeal No. 52/31 of 1991-92, Govind Lal Shah v. Sri Chitranjan Shah and Anr. before the Collector Nainital u/s 210 of the Land Revenue Act, which was dismissed by judgment and order dated 16-4-1992.

7. Further aggrieved by the order dated 16-4-1992, the Respondent No. 1 preferred Revision No. 106 of 1991-92/178 year 92-93 before the Commissioner, Kumaun Division, Nainital. The learned Commissioner partly allowed the revision and referred the matter to the Board of Revenue, U.P. vide order dated 11-5-1994.

8. The learned Board of Revenue by its order dated 2-12-2000 has rejected the reference and upheld the order dated 16-4-1992 passed by the Collector.

9. Further aggrieved by the said order, Govind Lal Sah filed Writ Petition (M/S) No. 86 of 2001 before this Court. This Court ultimately allowed the writ petition by order dated 29-7-2008 holding that the Board of Revenue, U.P. was not having jurisdiction in the matter and the order is without jurisdiction. The order passed by the Board of Revenue was set aside and the matter was remitted to the Additional Chief Revenue Commissioner, Nainital to decide the reference.

10. Learned Additional Chief Revenue Commissioner by the impugned order dated 12-11-2010 has decided the reference and held that if the land of plot No. 159/1 is recorded as Bhumidhar with transferable rights and the person who is recorded as Bhumidhar with transferable rights may bequeath his land by way of will. Learned Additional Chief Revenue Commissioner has remanded the matter to the trial court observing that if after recording additional evidence by the parties, the plot No. 159/1 is not found to be the land under Class 1-A, then the said land would stand in the name of Chitranjan Shah as per earlier orders of the trial court and the appellate court.

11. The stand taken by the Petitioner before the learned Commissioner was that Sri Mukand Lal Shah never deposited 20 times of the land revenue, even though he was recorded Bhumidhar with transferable rights and he had no right to execute the will of the land in dispute. The land was allotted to displaced families and the name of Mukand Lal Shah was entered as head of the family.

12. The learned Additional Chief Revenue Commissioner has remanded the case to the trial court, i.e. Tehsildar Gadarpur to examine whether Mukand Lal Shah was having Bhumidhari rights or not and direction was given to the effect if after additional evidence led by the parties, Mukand Lal Shah is found Bhumidhar with transferable rights, then the will in question be treated as a valid will and if the rights were non-transferable, then the entry of Chitranjan Shah will continue.

13 .For the reasons and discussion above, I find no reason to interfere with the

impugned order passed by the learned Additional Chief Revenue Commissioner since the Naib Tehsildar concerned had not dealt with this question in his order, therefore, the order of remand appears to be justified and proper. Otherwise also, the Naib Tehsildar had not given any finding on this point how the land was recorded and what happened to the pending proceeding for correction of record. The impugned remand order does not suffer from any perversity or manifest error of law. The writ petition being devoid of merit is liable to be dismissed outright at the threshold.

14. The writ petition is dismissed in limine.

15. All pending applications stand disposed of.