
(2016) 04 AHC CK 0215
In the Allahabad High Court
Case No : Writ-C No. 5610 of 2012

Ganga Raman Sharma

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 22-04-2016

Acts Referred:

Constitution of India, 1950 — Article 226

Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 122B(4F)

Citation : (2016) 7 ADJ 390 : (2016) 5 AllWC 5023 : (2016) 132 RD 251

Hon'ble Judges : Ran Vijai Singh, J.

Bench : Single Bench

Advocate : R.S. Singh, D.P. Singh, Advocates, for the Appellant; C.S.C. Shivendra Bahadur, Advocate, for the Respondent

Final Decision : Allowed

Judgement

Ran Vijai Singh, J.— Heard Sri R.S. Singh along with Sri D.P. Singh, learned counsel for the petitioner, learned standing counsel for the State-respondents and Sri Shivendra Bahadur, learned counsel for respondent no. 6 as well as Sri T.M.Khan, learned counsel for Gaon Sabha.

2. Through this writ petition prayer has been made to issue writ of certiorari quashing the order dated 29.10.2011 passed by Additional Commissioner (Administration) Gorakhpur Division, Gorakhpur in Revision No. 511/886/G (Dwarika v. Ganga Raman) by which revision has been allowed and the order dated 31.5.2005 passed by Sub Divisional Officer in the restoration application filed by the petitioner has been set aside.

3. While assailing the impugned order learned counsel for the petitioner contends that the order dated 29.10.2011 passed by the Additional Commissioner is without jurisdiction as the revision itself was not maintainable against the order dated 31.5.2005. Whereas learned counsel for the respondents submits that the writ petition itself is not maintainable for the reasons that the application seeking recall of the order dated 29.10.2011 is pending and the petitioner is availing two

remedies simultaneously, which is impermissible under the law. In the submission of learned counsel for the respondents, the present writ petition deserves to be dismissed.

4. The brief facts of this case are that in a proceeding under section 122B (4F) of U.P. Zamindari Abolition and Land Reforms Act, 1950 (in short the Act) the Sub Divisional Officer has passed an order dated 10.10.1998 for recording the name of respondent no. 6 as Bhumidhar with non transferable right over plot no. 547 situated in village Bansdeeha upon which it is alleged that the respondent no. 6 had been in possession prior to 1985.

5. The petitioner herein claiming himself to be lease holder on the aforesaid plot, has filed restoration application seeking recall the order dated 10.10.1998 before the Sub Divisional officer on 28.7.2004. The restoration application was allowed on 31.5.2005 by Sub Divisional Officer and order dated 10.10.1998 was recalled.

6. Aggrieved by the order dated 31.5.2005 the respondent no. 6 has filed revision No. 511/886/G (Dwarika v. Ganga Raman) before the Additional Commissioner, Gorakhpur Division, Gorakhpur which, in turn, was heard and allowed by the Additional Commissioner (Admn.) vide order dated 29.10.2011 on the ground that the petitioner had no right to file restoration application.

7. The petitioner herein has filed restoration application seeking recall of the order dated 29.10.2011, which is said to be pending. Pending that application the present writ petition has been filed.

8. It is contended by learned counsel for the petitioner that against the order, allowing restoration application seeking recall of the order, passed under section 122B (4F) of the Act revision was not maintainable.

9. A Division bench of this court in the case of Shushila and another v. State of U.P. and others being Special Appeal No. 479 of 2015 decided on 29.9.2015 has held that an order passed under section 122B (4F) of the Act is not revisable. In view of the fact that the order passed under section 122B(4F) itself is not revisable therefore any order passed on the restoration application seeking recall of the order passed under section 122B (4F) is also not revisable therefore in my opinion the order passed by the Revisional court, against the order allowing restoration application, is without jurisdiction.

10. It is also well settled that an order without jurisdiction is a nullity and no legal consequences can flow such orders. Reference may be made to the decisions of the Apex Court in Dr. (Smt.) Kuntush Gupta v. Management of Hindu Kanya Mahavidyalaya, Sitapur and others, AIR 198 SC 2186, Hasham Abbas Sayyad v. Usman Abbas Sayyad and others, AIR 2007 SC 1077, Dwarka Prasad Agarwal (D) LRs. and anr. v. B.D. Agarwal and others, AIR 2003 SC 2686, Thankamma v. State of Kerala and others, 1982 KLJ 309, Shakuntla Devi v. Kamla and others, 2005 (3) ALD 118 (SC), Managing Director, Army Welfare Housing Organization v. Sumangal Services Pvt. Ltd. (2004) 9 SCC 619, Sarup

Singh and another v. Union of India and another (2011) 11 SCC 198.

11. Therefore pending restoration application, filing of fresh writ petition will not be fatal as question of jurisdiction goes to the root of matter and it can be raised and examined at any stage of proceedings before any court.

12. In view of the foregoing discussions, the writ petition succeeds and is allowed. The impugned order dated 29.10.2011 passed by Additional Commissioner (Administration) Gorakhpur Division, Gorakhpur is hereby quashed. However, this order will not preclude the respondent no. 6 to challenge the initial order dated 31.5.2005 before the appropriate court.