
(2004) 08 UK CK 0064

In the Uttarakhand High Court

Case No : Writ Petition No. 1068 of 2004 (M/S)

Girish Chandra

APPELLANT

Vs

Apar Ayukt (Prakashan) Garhwal Mandal and Others

RESPONDENT

Date of Decision : 04-08-2004

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2004) 08 UK CK 0064

Hon'ble Judges : Rajesh Tandon, J

Bench : Single Bench

Advocate : K.S. Bhaskar, for the Appellant; B.D. Upadhyay, for the Respondent

Final Decision : Dismissed

Judgement

Rajesh Tandon, J.—By the present writ petition the Petitioner has prayed for a writ of certiorari quashing the order dated 21-05-1998 of the Additional Commissioner and the order dated 14-07-1995 passed by Assistant Collector.

2. Briefly stated the facts giving rise to the present writ petition are that in a mutation case before the Tehsildar, Kotdwar Garhwal, Petitioner was directed to be mutated in place of Prem Singh. Against the said order appeal has been preferred before the Assistant Collector, who partly allowed the same and the name of Respondent No. 3 Sri Subhash was also directed to be entered with the Petitioner as co-tenure holder vide order dated 14-07-1995. Against the said order a revision was preferred before the Commissioner Garhwal Division and the Commissioner vide order dated 21-05-1998 set aside the order passed by the Assistant Collector dated 14-07-1995 and directed that the name of Respondent No. 3 Subhash Chandra be entered as Bhumidhar in place of Sri Prem Singh. The present writ petition has been preferred challenging the order dated 21-05-1998 passed by the Commissioner, Garhwal Division.

3. Mutation proceedings do not decide rights or title of parties. These proceedings are just fiscal in nature and no writ petition under Article 226 of the

Constitution of India is maintainable. Division Bench of Allahabad High Court in a case Jaipal Vs. Board of Revenue and Others, has held as under:

The only exception to this general rule is in those cases in which the entry itself confers a title on the Petitioner by virtue of the provisions of the U.P. Zamindari Abolition and Land Reforms Act. This petition does not fall in that class and we think, therefore, this Court should not entertain it. It is accordingly dismissed with costs.

4. Reference was also made to the decision in Smt. Amrendra Kaur v. Collector, Rampur and Ors. R.D. 2003 (95) 211, it has been held by Allahabad High Court as under:

A reference in this regard may be made to the decisions in Avadhesh Pratap Singh and Ors. v. Pahupat Pratap Singh and Ors. 1941 RD 1068, Smt. Lakhpati and Anr. v. Board of Revenue 1984 RD 378, Chhedi Lal v. Board of Revenue 1982 RD 201, Mohar Tewari v. Board of Revenue U.P. and Anr. 1990 RD 20, and Nagai and Anr. v. Board of Revenue and Ors. 2002 (93) RD 365. In all the aforesaid decisions, it has consistently been held that the mutation proceedings are summary in nature. The findings recorded and observations made by the authorities in those proceedings have got no binding effect on the regular side either upon the parties or upon the Courts. In the present case, as stated above, the Petitioner has already filed suit for cancellation of sale deeds in question and has, thus, already availed of the alternative remedy thus the present petition filed under Article 226 of the Constitution of India is legally not maintainable. It is, however, observed that the findings recorded and observations made by the Courts below on the merits of the case, will have no adverse effect upon the parties or upon the Courts below while deciding the said suits. They will be at liberty to decide the said suits on the basis of the evidence produced by the parties ignoring the orders passed in the mutation proceedings.

5. Mutation proceedings being summary proceedings no interference can be made in a writ petition under Article 226 of the Constitution of India. However, liberty is given to the Petitioner to approach the Court of appropriate jurisdiction for redressal of the rights.

6. Consequently, the writ petition is dismissed. No order as to costs. Interim order dated 8-5-2003 shall remain operative till 30-9-2004.