(2016) 08 AHC CK 0088

In the Allahabad High Court

Case No : Writ B No. 6637 of 2011

Har Prasad APPELLANT

Vs

Board of Revenue U.P. At Allahabad RESPONDENT

Date of Decision : 30-08-2016

Acts Referred:

Uttar Pradesh General Clauses Act, 1904 — Section 6(c), 6(e)
Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 197, 198

Citation : (2016) 133 RD 16

Hon'ble Judges : Ram Surat Ram (Maurya), J.

Bench : Single Bench

Advocate : Madan Mohan and Tripathi B.G. Bhai, Advocates, for the Petitioner; C.S.C. and D.D. Chauhan and P.S.Verma and Vishal and Khandelwal, Advocates, for the Respondent; Madan Mohan and P.S. Verma, Advocates, for the Petitioner; C.S.C. and Birendra Singh and D.

Final Decision : Dismissed

Judgement

Ram Surat Ram (Maurya), J.—Heard Sri Madan Mohan, along with Sri P.S. Verma for the petitioners and Sri S.M.A. Abdy, along with Sri Ajeet Kumar Yadav for the respondents.

2. The aforesaid writ petitions have been filed against the order of Board of Revenue, U.P. Dated 24.1.2011, allowing the revision and setting aside the order of Commissioner dated 21.5.2010 and reinstating the order of SDO dated 1.4.2010.

3. On the application of Mulayam Singh, respondent-4, proceeding u/s 198(4) of U.P. Consolidation of Holdings Act, 1953 (hereinafter referred to as the ''Act'') was initiated for cancellation of patta of the petitioners. Initially, the application was filed before SDO, but subsequently, Mulayam Singh moved an application for transferring the application to the Collector, which was allowed by Collector and the case was transferred to Additional City Magistrate. Thereafter, Mulayam Singh filed another application u/s 192 before the Commissioner for transferring

the case from Additional City Magistrate to the Court of Collector. Commissioner by order dated 20.10.2009 transferred the case to the Collector. When the case was taken up before the Collector, the petitioners raised an objection and requested to send the case to SDO, but the Collector by order dated 2.7.2009 rejected the objection of the petitioner. Thereafter, one of the petitioners filed a revision (registered as Revision No. 201 of 2009/09), which was allowed by Member, Board of Revenue by order dated 3.9.2009 and the matter has been transferred to SDO for deciding the case. After remand, the case was tried by SDO. The parties were allowed to adduce their evidence. The petitioners contested the case and adduced their evidence. SDO has recorded statement of various allottees as well as complainant and Lekhpal of the village. From the statement of various witnesses recorded before the SDO, it appears that the land in dispute has already been allotted to Smt. Mundra Devi on 1.7.1963, Vijay Pal on 1.7.1964 and Smt. Kesar Devi on 3.7.1968 and they were in possession over the land in dispute. Without taking due publication, the Pradhan has initiated fresh allotment proceeding on 25.2.2004, which has been accepted by Tahsildar on 29.2.2004, but on the basis of this allotment, the allottes were not given possession over the land allotted to them. Since the land in dispute was not vacant, as such, fresh allotment of the land in dispute was illegal. SDO therefore allowed the application and cancelled the patta of the petitioners by order dated 1.4.2010. The petitioners challenged the aforesaid order in revision, which was heard by Commissioner, who by the order dated 7.6.2010, held that u/s 198(4) of the Act, the Collector is the appropriate authority for deciding the application for cancellation of patta. The order passed by SDO is totally without jurisdiction. On this finding, he allowed the revision and set aside the order of SDO dated 1.4.2010 and remanded the matter to the Collector for deciding the case afresh. The aforesaid order was challenged by the respondents in revision before the Board of Revenue. Board of Revenue by the impugned order dated 24.1.2011 held that as the matter has been transferred on the application of the petitioner to SDO for deciding it on merit, as such, the petitioner again cannot question the jurisdiction of SDO and the order passed by SDO cannot be said to be without jurisdiction. On this finding, the revision was allowed and the order of Commissioner was set aside and the order of SDO was reinstated. Hence, this writ petition has been filed.

4. The counsel for the petitioners submits that Section 198 of U.P. Act No. 1 of 1951 was amended by U.P. Act No. 11 of 2002, w.e.f. 9.9.2002. By virtue of this amendment, Tahsildar was given jurisdiction to grant approval of the patta u/s 197 and Assistant Collector, Incharge of Sub Division, was conferred authority u/s 198(4) of the Act, for deciding the application for cancellation of patta. The Act was further amended by U.P. Act No. 27 of 2004, w.e.f. 20.8.2004. By this amendment, the effect of U.P. Act No. 11 of 2002 was taken away and again the jurisdiction for approval of the patta was granted to SDO and the Collector was assigned with the jurisdiction for cancellation of patta u/s 198(4) of the Act. In the present case, the application for cancellation of patta was filed by Mulayam

Singh on 24.8.2004. On the date of application, SDO was not competent to entertain and make inquiry u/s 198(4) of the Act. The word ''Collector'' for the purposes of Section 198(4) of the Act does not include the Assistant Collector, Incharge Sub Division Officer, as notified by notification of State of U.P. dated 5.12.1968. Thus, on the date of application as well as on the date of passing of the order, the Assistant Collector has no jurisdiction to decide the application u/s 198(4) of the Act and his order dated 1.4.2010 is totally without jurisdiction and is a nullity. The Commissioner has rightly set aside that order and remanded the matter for trial on merit, but the Board of Revenue has illegally set aside that order. He submits that the inquiry as contemplated u/s 198 is an independent inquiry and provisions of Code of Civil Procedure are not applicable to it, as held by this Court in Jagdish v. Shukeen 2006 (100) RD 175, therefore no reliance can be placed upon Section 21(2) CPC. Board of Revenue has illegally relied upon Section 21(2) CPC in holding that issue relating to jurisdiction cannot be rasied before higher forum. He submits that the jurisdiction of appropriate authority is creation of the statute and parties cannot confer jurisdiction on a particular authority by their consent. Even the order of Board of Revenue in this respect was illegal and Board of Revenue had no jurisdiction to confer jurisdiction upon Assistant Collector to hear the application u/s 198(4) of the Act, as held by this Court in Mahesh Chandra v. Zila Panchayat, Mainpuri 1997 U.P. Revenue Judgments 372 (DB) and judgments of Supreme Court in Collector, Distt. Gwalior and Another v. Cine Exhibitors Pvt. Ltd. And Another 2012 (4) SCC 441 and Chandrika Misir v. Bhaiyalal AIR 1973 SC 2391. He also relied upon the judgment of this Court in Santosh Singh v. Anil Kumar 1988 (2) AWC 999 and submits that the issue relating to lack of inherent jurisdiction can be raised at any time. Thus, the Board of Revenue was not correct in saying that jurisdiction cannot be raised before the higher forum. So far as merit is concerned, neither the SDO, nor Board of Revenue has recorded any finding for cancellation of patta of the petitioners. The judgment of SDO is cryptic in this respect, while the judgment of Board of Revenue is totally silent upon it.

5. Counsel for the respondent has relied upon the judgment of Supreme Court in Kiran Singh v. Chaman Paswan AIR 1954 SC 340 and judgment of this Court in Rajeev Agarwal v. Ramesh Pal Singh 2003 (3) AWC 1740, in which it has been held that judgment on merit should not be reversed purely on technical ground, unless it has resulted in failure of justice and.

6. I have considered the arguments of counsel for the parties and examined the record. Admittedly, the proceeding for cancellation of patta dated 25.2.2004, as approved on 29.2.2004, was started on the application of Mulayam Singh, filed on 24.8.2004. The patta was granted and approved according to the provisions of U.P. Act No. 1 of 1951, as amended by U.P. Act No. 11 of 2002. U.P. Act No. 11 of 2002 was in effect repealed by U.P. Act No. 27 of 2004. The petitioners themselves raised an objection that as the patta was granted according to the provisions of U.P. Act No. 11 of 2002, as such, SDO has jurisdiction to hear the application for cancellation of patta. This objection of the petitioners was

accepted by Board of Revenue by the judgment dated 3.9.2009. Therefore, the order of Board of Revenue is final in between the parties and the petitioners cannot be permitted to say that SDO has no jurisdiction to decide the application on merit. The principles of res-judicata will apply at the different stages of same proceeding as held by Supreme Court in Arjun Singh v. Mohindra Kumar AIR 1964 SC 993 and Division Bench of this Court in Ram Prasad v. State of U.P. 1990 RD 131 (DB).

7. Section 6 (c & e) of U.P. General Clauses Act, 1904 provides that if any right, privilege, obligation, liability acquired, accrued or incurred under any enactment, then repeal of the enactment will not affect the remedy under the Repealing Act. The right of the petitioners accrued under U.P. Act No. 11 of 2002, therefore remedy for cancellation of patta under U.P. Act No. 11 of 2002 can be availed and it is incorrect to say that the SDO has no jurisdiction to cancel the patta, as held by Supreme Court in Glaxo Smith Kline PLC & Ors. v. Controller of Patents & Designs & Ors. reported in AIR 2009 SC 1147: (2008) 17 SCC 416. Cases relied upon by the counsel for the petitioner have no application in the present case.

8. So far as merit of the case is concerned, SDO recorded evidence of various persons, including the allottees themselves, who had admitted that the land allotted to them, were in possession of Smt. Mundra Devi, Vijay Pal and Smt. Kesar Devi and they could not get possession over it. One of the condition for allotment u/s 197 of U.P. Act No. 1 of 1951 is that the land in dispute should be vacant on the date of allotment. In the present case, the land in dispute was not vacant and the allottees were not given possession over it, hence, the allotment was irregular and has been rightly cancelled. Although no detailed finding has been recorded by the SDO in this respect, but the evidence on record clearly established that the land in dispute was not vacant on the date of allotment.

9. Apart from it, a finding has also been recorded that the procedure for allotment of land was not followed by Land Management Committee. Thus, the allotment was totally irregular and has been rightly cancelled. No interference is required by this court.

10. The writ petitions have no merit and are dismissed.

