
(2013) 03 AHC CK 0055

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 14285 of 2013

Hariom

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

Date of Decision : 18-03-2013

Acts Referred:

Constitution of India, 1950 — Article 226
Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 195, 197, 198, 333

Citation : (2013) 6 ADJ 345 : (2013) 5 ALJ 198 : (2014) 2 AWC 1288 : (2013) 119 RD 747

Hon'ble Judges : Ran Vijai Singh, J

Bench : Single Bench

Advocate : K.K. Singh and S.Q. Khan, for the Appellant; Mahesh Narain Singh, Shailendra Singh and Vijai Bhan Singh, for the Respondent

Final Decision : Allowed

Judgement

Ran Vijai Singh, J.—Heard Sri K.K. Singh, learned counsel for the petitioner, learned standing counsel for the State respondents, Sri Shailendra Singh, learned counsel appearing for respondent Nos. 5 to 7 and Sri Vijai Bhan Singh, holding brief of Sri M.N. Singh, learned counsel appearing for the Gaon Sabha. Through this writ petition the petitioner has prayed for issuing a writ order or direction in the nature of certiorari quashing the order dated 11.2.2013¹ passed by the Additional Commissioner (Administration), Moradabad Division, Moradabad, respondent No. 2 in Revision No. 05/12-13 (Shishu Pal Singh and others v. Hari Om and others) by which the revision filed by the respondent Nos. 5 to 7 have been allowed and the petitioner's fishery lease dated 26.9.2012 has been cancelled with the direction to initiate proceedings for grant of fresh lease.

2. Sri K.K. Singh, learned counsel for the petitioner while assailing the order impugned submitted that the order is without jurisdiction as against the order granting the fishery lease or lease a revision would not be maintainable. In his

submission as the lease was granted under the provisions of the Government Order dated 17.10.1995 the appropriate remedy for the respondent was to seek its cancellation by way of filing an application before the Collector concerned but instead of doing so he availed the remedy of revision. He has drawn attention of the Court to a Full Bench decision of this Court in the case of Ram Kumar v. State of Uttar Pradesh, ILR (All) 2006-0-371, wherein it has been observed that against an order granting lease or lease appropriate remedy is to file an application for cancellation of lease before the Collector.

3. Sri Shailendra Singh, learned counsel appearing for respondent Nos. 5 to 7 submitted that since initial allotment was bad, therefore the power has been exercised u/s 333 of the U.P. Zamindari Abolition and Land Reforms Act, 1950 and no infirmity can be attached with this order.

4. For appreciating the controversy in hand as to whether the revision shall be maintainable against an order granting lease or lease it would be convenient to peruse the language used in Section 333 of the U.P. Zamindari Abolition and Land Reforms Act, 1950 (in short the Act), which is reproduced herein below:

333. Power to call for cases.--(1) The Board or the Commissioner or the Additional Commissioner may call for the record of any suit or proceeding [other than proceeding under sub-section (4-A) of Section 198] decided by any Court subordinate to him in which appeal lies or where in appeal lies but has not been preferred, for the purpose of satisfying himself as to the legality or propriety of any order passed in such suit or proceeding and if such subordinate Court appears to have;

(a) exercised a jurisdiction not vested in it by law; or

(b) failed to exercise a jurisdiction so vested; or

(c) acted in the exercise of jurisdiction illegally or with material irregularity;

the Board or the Commissioner or the Additional Commissioner, as the case may be, may pass such order in the case as he thinks fit.

(2) If an application under this section has been moved by any person either to the Board or to the Commissioner or to the Additional Commissioner, no further application by the same person shall be entertained by any other of them.

5. On the bare reading of Section 333 of the Act it will transpire that the power under this section can be exercised by the Board (Board of Revenue, U.P.) or the Commissioner or the Additional Commissioner by calling the record of any suit or proceeding decided by any Court subordinate to him against which no appeal lies or appeal lies but has not been availed with a view to satisfy himself as to the legality or propriety of any order passed in suit or proceeding and if such subordinate Court has exercised a jurisdiction not vested in it by law or failed to exercise the jurisdiction so vested or acted in the exercise of jurisdiction illegally or with material irregularity.

6. The question would be as to whether the Sub Divisional Officer while approving or disapproving the proposal to grant lease acts as a Court or as an administrative authority. What is Court has not been defined in the U.P. Zamindari Abolition and Land Reforms Act, 1950. However, under the constitutional scheme and doctrine of separation of powers, there are three main limbs, legislature, executive and judiciary. The judiciary is distinct from the executive and legislature. The judicial function involves decision of rights and liabilities of the parties. Enquiry and investigation into the facts, as a matter of fact, are the material part of the judicial function. The Court renders decision on an application, suit, revision, appeal, writ etc. in accordance with the provisions contained under which the application, suit, revision, appeal, writ etc. are filed. There is a complete mechanism and procedure of the functioning of the Court and rendering a decision in a case which requires version of the applicant, version of the other side, evidence on the pleadings of the rival parties, which may be oral or documentary, legal submissions etc. The Apex Court in the case of State of Gujarat and Another Vs. Gujarat Revenue Tribunal Bar Association and Another, , has held that an authority discharging statutory function may be described as a quasi-judicial authority when it possesses certain attributes or trappings of a Court, but not all. In case certain powers under C.P.C. or Cr.P.C. have been conferred upon an authority, but it has not been entrusted with the judicial powers of the State, it cannot be held to be a Court. Reference may be given in The Bharat Bank Ltd., Delhi Vs. Employees of the Bharat Bank Ltd., Delhi and The Bharat Bank Employees' Union, Delhi, ; Shri Virindar Kumar Satyawadi Vs. The State of Punjab, ; The Engineering Mazdoor Sabha Representing Workmen Employed Under the Hind Cycles Ltd. and Another Vs. The Hind Cycles Ltd., Bombay, ; Associated Cement Companies Ltd. Vs. P.N. Sharma and Another, ; Rama Rao and Another Vs. Narayan and Another, ; State of Himachal Pradesh Vs. Raja Mahendra Pal and Others, ; Keshab Narayan Banerjee and Others Vs. The State of Bihar, ; Indian National Congress (I) Vs. Institute of Social Welfare and Others, ; K. Shamrao and Others Vs. Assistant Charity Commissioner, ; Trans Mediterranean Airways Vs. Universal Exports and Another, at page 338; Namit Sharma Vs. Union of India (UOI),).

7. Here in this case under the Government Order dated 17.10.1995 procedure has been prescribed for grant of fishery lease and there the power has been conferred upon the Sub Divisional Officer either to approve or disapprove the proposal to grant lease. It is purely an administrative work entrusted upon the Sub Divisional Officer and it does not require the parties to plead their cases or produce any evidence or it requires any hearing before approving or disapproving the proposal. Therefore, I am of the considered opinion that while discharging the function either to approve or disapprove the proposal to grant lease the Sub Divisional Officer does not act as a Court.

8. u/s 333 of the Act the power has been conferred upon the U.P. Board of Revenue, Commissioner, Additional Commissioner to call for the record of any suit or proceeding decided by any Court subordinate to him. Here in this case as

I have held that while exercising power to approve or disapprove the proposal to grant lease the Sub Divisional Officer does not act like a Court, Therefore, the revision cannot be directly filed against the approval or disapproval to grant lease or even execution of the lease.

9. In Ram Kumar (supra) a Full Bench of this Court has held that an order of the Sub Divisional Officer approving or refusing the proposal to grant lease/execution of lease under the relevant Government Order although open to judicial review under Article 226 but it is neither appealable nor revisable under the provisions of the Act. The remedy available to the petitioner would be to file an application for cancellation of lease before the Collector as in the case of grant of lease for agricultural purpose with respect to the land under Sections 195 and 197 of the Act which power is conferred under sub-section (4) of Section 198 of the Act.

10. In view of the foregoing discussions, I am of the considered opinion that the order impugned dated 11.12.2011 passed by the Additional Commissioner (Administration), Moradabad, respondent No. 2 in Revision No. 05/12-13 (Shishu Pal Singh and others v. Hari Om and others) is without jurisdiction. It is also well-settled that an order without jurisdiction is a nullity and no legal consequences can flow such orders reference. Reference may be made to the decisions of the Apex Court in M.D., Army Welfare Housing Organisation Vs. Sumangal Services Pvt. Ltd., , Sarup Singh and Another Vs. Union of India (UOI) and Another, and a Division Bench decision of this Court in the case of Committee of Management Shri Jawahar Inter College and another v. State of U.P. and others, in Special Appeal No. 164 of 2012 decided on 25.1.2012 in which it has been held that the order without jurisdiction is a nullity. In view of the foregoing discussions the impugned order dated 11.12.2012 passed by the Additional Commissioner (Administration) Moradabad Division, Moradabad cannot be sustained and it is, hereby, quashed. The writ petition succeeds and is allowed. However, allowing the writ petition and setting aside the order passed by the Additional Commissioner will not preclude the respondents to avail the remedy to file an application for cancellation of lease in accordance with law. In case such an application is filed that be considered and decided in accordance with law on its own merit expeditiously.