(2003) 08 UK CK 0023

In the Uttarakhand High Court

Case No : Writ Petition No. 715 (M/S) of 2003

Jahid Hussain and Others — APPELLANT

Vs

Additional Chief Revenue Commissioner and Others — RESPONDENT

Date of Decision : 22-08-2003

Acts Referred:

Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 161, 229B

Citation : (2003) 08 UK CK 0023

Hon'ble Judges : Rajesh Tandon, J

Bench : Single Bench

Advocate : J.C. Pandey, for the Appellant; Sharad Sharma, for the Respondent

Final Decision : Allowed

Judgement

Rajesh Tandon, J.—By this writ petition the Petitioners have challenged the order-dated 22.5.2003 passed by the Additional Chief Revenue Commissioner, Uttaranchal, Circuit Court, Nainital.

2. Brief facts giving rise to this writ petition are that the Petitioners filed a revenue suit No. 22/211 of 1988-89 u/s 229B of U.P.Z.A. and L.R. Act for declaration of their rights in their favour in respect of the land in Khasra No. 312/1 area 024 hectare and in Khasra No. 312/1 area 336 hectare in village Ujain Tanda, Tehsil Kashipur, District Udham Singh Nagar. Vide order-dated 7.3.1990 the suit was decreed in favour of the Petitioners by the Assistant Collector, Kashipur but in the mean while the said land was mutated in the name of some other person in exchange. Due to the changed circumstances the Petitioner moved another application No. 22/28 of 1989-90 u/s 161 of U.P.Z.A. and L.R. Act for exchange of its allotted land in village Ujjain to some other land in village Jaspur Khurd. The application was allowed by the Assistant Collector, Kashipur vide order dated 25.5.1990 for exchange moved by the Petitioners u/s 161 of U.P.Z.A. and L.R. Act and directed the name of the Petitioners to be recorded in the revenue record in the category of Bhumidhar with non transferable rights in respect of the land in khasra No. 269/3 measuring 0.096

hectare and khasra No. 507/1 measuring 0.206 hectare pertaining to village Jaspur Khurd and Khasra No. 30 measuring 0.069 hectare and accordingly they were given possession over the land in dispute and their names were also recorded in the revenue record.

3. On a recall petition filed by the Gaon Sabha, the Assistant Collector, Kashipur allowed the said application on 23.12.1997. The Petitioners have preferred an appeal before the Commissioner, Kumaon, Nainital being appeal No. 49/14 of 1997-98. On 20.5.1998 Sri N.K. Arya, Additional Commissioner has dismissed the appeal No. 49/14 of 1997-98 against which the Petitioners have preferred appeal before the Board of Revenue being Second Appeal No. 72 of 1998.

4. Heard Sri J.C. Pandey for the Petitioner and Sri Sharad Sharma on behalf of Respondent No. 6 at great length.

5. The grievance of the Petitioners is that the Additional Chief Revenue Commissioner Sri N.K. Arya who has decided Appeal No. 49/14 of 1997-98 on 20.5.1998, instead of transferring the said Second Appeal No. 72 of 1998, heard the appeal and dismissed it on 22.5.2003. Prima facie it was an order of remand and no interference with the said order was warranted but looking to the averment contained in paragraph 28 of the writ petition, I am of the opinion that there should have been a justice oriented approach and the officer concerned should have transferred the matter to another Court. Paragraph 28 and 29 of the writ petition is quoted below:

28. That as already stated the Additional Chief Revenue Commissioner had no jurisdiction to proceed and decide the Second Appeal No. 72 of 1998 pending before him and by doing so he has violated the established principle of law that justice should not only be done but should also seem to be done.

29. That the Additional Chief Revenue Commissioner by entertaining the appeal against the impugned order dated 20th May 1998 passed by him when he was sitting as Additional Commissioner, Kumaon and by doing so he has violated a settled principle of law that a judge can not sit over his own judgment.

6. I am also of the opinion that no one can be a judge of his own cause as held by the Apex Court in a case Rattan Lal Sharma v. Managing Committee and Ors. AIR 1993 SC 215. The Apex Court has held as under:

One of the cardinal principles of natural justice is ''Nemo debet esse judex in propria causa'' (No one shall be a judge in his own cause).

7. In the view of the aforesaid order dated 22.5.2003 passed by Sri N.K. Arya, Additional Chief Revenue Commissioner cannot be sustained.

8. In the result the writ petition is allowed. The order dated 22.5.2003 is quashed. The Chief Revenue Commissioner is directed to dispose of the appeal himself or to transfer it to some other competent officer for disposal according to law within a period of four months. The parties shall maintain status quo during

pendency of the appeal.

