(1993) 03 AHC CK 0038

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 1204(M/S) of 1993

Kaushalya Devi APPELLANT

Vs

Board of revenue, U.P.At lucknow and others RESPONDENT

Date of Decision : 24-03-1993

Acts Referred:

Uttar Pradesh Land Revenue Act, 1901 — Section 33A, 34, 35

Citation : (1993) 03 AHC CK 0038

Hon'ble Judges : S.N.Sahay, J

Final Decision : Allowed

Judgement

S. N. Sahay, J.—This writ petition is directed against the order of revenue courts contained in Annexures 10,15 and 17 to the writ petition.

2. The facts giving rise to this writ petition which are not in dispute appear to be that upon the death of one Jadu Nandan Lal, who was tenureholder of certain plots in village Manikpur alias Nagbhar Mehrauna in District Deoria, the name of his widow Smt, Kaushilya Devipetitioner in this writ petition, was entered in the land records by order of the Qanoongo dated 2291988. The entry in favour of the petitioner was made by the Qanoongo on the basis of the fact that the case regarding succession was an uncontested one. Subsequently, Ram Asrey Lairespondent no. 3 in the present writ petition, moved an application dated 2891988 for mutation to be made in his favour claiming to be the legal heir and successorininterest of the deceased Jadu Nandan Lal. The mutation applications moved by respondent no. 3 were registered as Mutation Cases Nos. 203 and 204 of 1988. These cases were contested.

3. The real dispute which has brought the parties to this Court, commenced when the Naib Tahsildar passed an order dated 1611990 directing the entry made in favour of the petitioner under the directions of the Qanoongo dated 2281988 to be made ineffective. He did not pass a clear order as to what he intended to do, but it seems that while directing the said entry to be made ineffective, it was considered that the entry made under the order dated

2281988 should be expunged. However, this particular aspect of the case is not very material for the purposes of the controversy in the present writ petition. It was by an accidental slip that instead of 2281988, the date was mentioned as 2291989 in the order passed by the Naib Tahsildar, but the error was discovered and was subsequently corrected by him by order dated 1811990. Some inquiry is said to have been made against the Naib Tahsildar with regard to the manner in which the said order was passed by him, where upon it is said that the Naib Tahsildar passed another order recalling the earlier order dated 1811990. However, respondent no. 3 moved an application dated 621991 for causing Amaldaramad of the orders dated 1611990 and 1811990 passed by the Naib Tahsildar to be made in the land records. The application of respondent no.3 dated 2671991 was rejected by the Tahsildar by order dated 2671991 by Annexure 9 to the writ petition. The respondent no. 3 did not lose heart and persisted in the matter after the transfer of the Tahsildar. Subsequently another order dated 2211992(Annexure 10) was passed by the new incumbent directing Amald aramad to be made of the orders of the Naib Tahsildar dated 1611990 and 1811990. The petitioner felt aggrieved from the order dated 2211992 and preferred an appeal to the SubDivisional Officer, Salempur. He allowed the appeal on 1821992 and set aside the order of the Tahsildar dated 22192 and directed that the mutation cases may be decided on merits at an early date. Respondent no. 3 filed a revision against the order of the SubDivisional Officer and the same was dismissed by the I Addl. Commissioner, Gorakhpur by order dated 641992. Respondent no. 3 took the matter to the Board of Revenue which by its order dated 12111992 allowed the revision and directed the name of the petitioner to be expunged and further directed the Tahsildar to decide the mutation cases on merits according to law. The petitioner filed a review application but the same was also dismissed by the Board of Revenue on 1121993. It is thus that the petitioner has approached this Court under Article 226 of the Constitution for quashing the order of the Board of Revenue and appropriate relief.

4. I have heard Sri Azmal Khan appearing on behalf of the petitioner and Sri J. K. Sinha on behalf of respondent no. 3. They have argued the matter on merits before me. The learned Standing Counsel has also been heard, who has accepted notice on behalf of respondent nos. 1 and 2.

5. From the facts narrated above, it will be clear that there is an order dated 2291988 which was passed by the Qanoongo for recording the name of the petitioner under Section 33A of the U. P. Land Revenue Act, 1901 in view of the matter of succession to the property of Jadu Nandan Lal being uncontested at that stage, That order has been cancelled by the Naib Tahsildar by order dated 1611990 and 1811990 and it is on the basis of these orders, which have been upheld by the Board of Revenue, that the name of the petitioner has been directed to be expunged. The effect of the impugned orders passed by the Board of Revenue is that the order of the Naib Tahsildar dated 1611990 and 1811990 have been restored and have been given due effect. There can be no doubt that the said orders of Naib Tahsildar are without jurisdiction. In the first place, it is to

be borne in mind that the order in favour of the petitioner was passed under Section 33A of the said Act and unless another order is passed by a competent authority in exercise of jurisdiction vested in him, the entry made on the basis of that order could not be expunged. The mutation cases which have been registered under Section 34 of the said Act upon the succession matter being converted into a contested one, after the claim made by respondent no. 3, could be terminated, after due inquiry, by a valid order passed under Section 35 of the Act; Therefore, the order under Section 33A could be superseded by an order passed by a competent Court under Section 35 and not otherwise. Secondly, the Naib Tahsildar himself had passed an order recalling the order dated 1811990. There was no justification for the Tahsildar to direct thereafter that the said order may be implemented. The Tahsildar who passed the order dated 221.1992 for the Amaldaramad of the aforesaid orders of the Naib Tahsildar, overlooked the fact that earlier an order had been passed by his predecessor on 2671991 rejecting the prayer of respondent no. 3 for Amaldaramad of the orders of the Naib Tabsildar dated 1611990 and 1811990. Therefore, it is clear that on ground of propriety also, the order of the Tahsildar dated 2211992 could not have been passed and Amaldaramad could not have been directed to be made.

6. The order of the SubDivisional Officer dismissing the appeal filed against the order dated 2211992, indicates that the said order was not appealable. In other words, the SubDivisional Officer, could not assume jurisdiction and could not pass any order in exercise of the appellate jurisdiction and direct the order dated 2211992 to be set aside. After coming to the conclusion that no appeal lies against the order dated 2211992, he could not have passed the appellate order dated 1821992. To that extent and only for that purpose the impugned orders passed by the Board of Revenue allowing the revision and setting aside the appellate order of the SubDivisional Officer cannot be said to be bad. But the situation as it exists at present is that there is an order of the Board of Revenue which is lawful on the face of it, and, as such, might, not call for any interference, but the effect of that order is to perpetuate and implement an order which is without jurisdiction. As observed earlier, the orders of the Naib Tahsildar dated 1611990 and 1811990 are without jurisdiction and no effect can be given to the same. If the impugned orders of the Board of Revenue are allowed to stand, then it will lead to the implementation of orders without jurisdiction and that cannot be countenanced. Under the circumstances, there can be no option but to quash the impugned orders of the Board of Revenue in exercise of the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India, so as to direct that the orders of the Naib Tahsildar also which are illegal and without jurisdiction, may not be implemented. The parties are not going to be prejudicated in any manner at all by this course of action, because the mutation eases are still subjudice and the entry made in favour of the petitioner under order of the Qanoongo dated 2291988 will be subject to the final decision of the orders that may be passed in mutation cases and if the mutation cases are decided against the petitioner then obviously the said entry will go, Therefore, I

have come to the conclusion that the impugned orders of the Board of Revenue as well as the Naib Tahsildar, as indicated above, should be quashed.

7. It may be mentioned that Sri J. K. Sinha has submitted that a direction may be issued to the Tahsildar to decide the mutation cases within a fixed time. There can be no objection to it, rather it will be in the interest of justice.

8. For the above reasons the writ petition is allowed and the impugned orders of the Board of Revenue dated 12111992 (Annexure 15) and dated 1121992 (Annexure 7) to the writ petition as well as the orders dated 1611990 and 1811990 passed by the Naib Tahsildar referred to above, are hereby quashed. It is made clear that the entry made in favour of the petitioner in the land records on the basis of the order of the Qanoongo dated 2291988 shall be subject to the final orders that may be passed in the mutation cases mentioned above and the entries in the land records shall be suitably made in accordance with such final orders. It is further directed that the mutation cases shall be decided by the Tahsildar or the concerned court or authority in accordance with law within three months positively from the date of production of a certified copy of this judgment. The parties shall bear their own costs.

(Petition allowed)

