
(2009) 09 AHC CK 0196
In the Allahabad High Court

Keshav Tiwari (D) through L.Rs.

APPELLANT

Vs

Chief Revenue Officer and Others

RESPONDENT

Date of Decision : 08-09-2009

Acts Referred:

Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 — Section 122B

Citation : (2010) 1 AWC 37

Hon'ble Judges : A.P. Sahi, J

Bench : Single Bench

Final Decision : Allowed

Judgement

A.P. Sahi, J.—Heard Shri Mahendra Rai holding brief of Shri A.K. Mishra, learned Counsel for the petitioner, Shri Abishek Kumar, learned Counsel for the respondent No. 3 and the learned standing counsel for the respondent Nos. 1 and

2. The present writ petition questions the correctness of the order dated 13.2.1992 whereby the Chief Revenue Officer while setting aside the order dated 13.1.1992 has remanded the matter back to the Assistant Collector for decision afresh on the merits of the application that had been moved on behalf of the Gaon Sabha for review of the order passed on 13.1.1992 itself.

3. In proceedings u/s 122B of the U.P.Z.A. and L.R. Act. 1950, the notice issued against the petitioner after contest was discharged by a detailed reasoned order dated 13.1.1992. The Gaon Sabha through its counsel moved an application for review on the same day which was allowed and the order was set aside. This order, which was passed on the review application was taken up in a revision by the petitioner. The revisional authority allowed the same but while doing so remanded the matter to the Tehsildar for decision afresh on the review application.

4. Learned Counsel for the petitioner contends that the entire exercise undertaken by the Assistant Collector for reviewing the matter is without jurisdiction and that the order which was passed on a misc. application moved on

behalf of the Gaon Sabha was absolutely unjustified. It is submitted that once an order has been passed on the merits of the claim after considering the entire material on record, it was no longer open to the Assistant Collector to have proceeded to entertain an application for review of the order.

5. Learned Counsel for the Gaon Sabha, on the other hand, contends that from a perusal of the application that was moved on behalf of the Gaon Sabha, it appears that the order of the Assistant Collector, which had been passed on the very same day, had failed to refer to certain documents filed on behalf of the Gaon Sabha and that on account of such non-consideration the review was permissible. He contends that in view of the provisions of the Section 341 of the U.P.Z.A. and L.R. Act the provisions of Order XLVII, Rule 1 of the C.P.C. would apply and therefore a review would be permissible keeping in view the principle of the Order XLVII of the C.P.C.

6. Against the order dated 13.1.1992, whereby the previous order of the same date had been annulled, a revision was preferred by the petitioner and while allowing the same, the matter has been remitted back to the Assistant Collector for a decision afresh. Learned Counsel for the Gaon Sabha contends that the revisional order being passed in favour of the petitioner there is no occasion for the petitioner to have preferred this writ petition.

7. I have considered the rival submissions of the learned Counsel for the parties and it appears that an order was passed on 13.1.1992, whereby the notice issued to the petitioner under the provisions of the U.P.Z.A. and L.R. Act for the purposes of taking action u/s 122B of the said Act had been withdrawn after having assessed the entire evidence that had been adduced by the parties.

8. The report of the Lekhpal and the relevant khataunis have been discussed in the order dated 13.1.1992, a copy whereof is Annexure-1 to the writ petition. A perusal of the said order also indicates that a clear finding has been recorded to the effect that the disputed land had been earlier recorded as ahadi, which is evident from a perusal of a C.H. Form No. 41 that had been prepared during consolidation operations. After perusing the said documents and the law applicable in this regard, the Assistant Collector discharged the notice holding that the land stands recorded as abadi and the petitioner was found in possession over the same. The said order does not indicate that it has not considered any relevant material or that it has considered anything irrelevant. In absence of any ground of fraud or misrepresentation, the question of reviewing the order, merely because certain documents had not been mentioned, is totally unwarranted. Even if the said principles are applied there is nothing to establish any fraud or misrepresentation having been practised by the petitioner. Apart from this, the provisions of review are strictly not available in proceedings u/s 122B of the U.P.Z.A. and L.R. Act, which are in the nature of summary proceedings. In that view of the matter, the learned Assistant Collector committed an error in entertaining the application moved on behalf of the Gaon Sabha on the very same day. As a matter of fact, if the Gaon Sabha was

aggrieved it could have moved a revision before the authority concerned. Moving of an application for review, in my opinion, was thoroughly ill advised.

9. So far as, the contention of the learned Counsel for the Gaon Sabha to the effect that the remand order simply relegates the parties to the same stage does not commend itself, inasmuch as, this Court would not relegate the parties to a proceeding which otherwise in law could not have been initiated, namely the review of the order dated 13.1.1992.

10. Once having found that the application which had been moved for review was not entertainable, there is no occasion for this Court to allow the impugned order dated 13.2.1992 to stand to the extent it remands the matter back to the Assistant Collector.

11. It is to be noted that the principle of law in matters of remand is well-settled. An order of remand should not be ordinarily passed in order to facilitate the writing of a better judgment. Reference may be had to the contentions similarly advanced in the case of *Lachman and Anr. v. Additional Commissioner (Judicial), Moradabad Division, Moradabad and Ors.* 2009 (5) ADJ 552, paragraphs 9 and 13, quoted below:

9. Learned Counsel for the petitioners contends that once the order of the prescribed authority was found to be erroneous and the matter has been remitted back thrice then there was no occasion for the appellate authority to have remitted back the matter to the prescribed authority for writing a better judgment. Learned Counsel for the petitioners had relied on the decision of *Chhatar Mahto and Others Vs. Chito Mahto and Others*, and the decision of the Apex Court in case of *Ashwinkumar K. Patel Vs. Upendra J. Patel and Others*, has urged that once the entire issues were dealt with by the appellate authority then there was no occasion to have remitted the case back to the prescribed authority, more so when the appellate authority itself was satisfied that the prescribed authority has committed an error.

13. Prima facie the issues having almost been found in favour of the petitioners again and again by the appellate authority, which also stands supported by the judgments relied on by and learned Counsel for the petitioners, there does not appear to be any justification for the appellate authority to have remitted the matter to the prescribed authority to write a better judgment. The appellate court could have sufficiently dealt with the matter itself instead of again passing a remand order.

12. A perusal of the said decision indicates that the decision of the Apex Court and the other decisions of this Court clearly rule that the Court should avoid remand unless it is imperative to do so in the circumstances indicated therein. No such contingency had arisen in the instant case warranting remand. The Chief Revenue Officer could not confer the jurisdiction of review and reopen the matter again before the Tehsildar.

13. Keeping in view the aforesaid law as settled, the impugned order to the extent o,f remand appears to be absolutely unjustified in law and the same is accordingly quashed.

The writ petition stands allowed.